



Taxation Laws Amendment (Foreign Income) Act 1990

No. 5 of 1991

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Taxation Laws Amendment (Foreign Income) Act 1990

No. 5 of 1991

An Act to amend the law relating to taxation

[Assented to 8 January 1991]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Taxation Laws Amendment (Foreign Income) Act 1990*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

**PART 2—AMENDMENT OF THE INCOME TAX ASSESSMENT
ACT 1936**

Division 1—Amendments

Principal Act

3. In this Division, “Principal Act” means the *Income Tax Assessment Act 1936*¹.

Interpretation

4. Section 6 of the Principal Act is amended:

- (a) by omitting “or” from the end of paragraph (a) of the definition of “assessment” in subsection (1);
- (b) by inserting after paragraph (a) of the definition of “assessment” in subsection (1) the following paragraph:
 - “(aa) the ascertainment of the amount of interest payable under section 102AAM; or”.

Foreign income and foreign tax

5. Section 6AB of the Principal Act is amended:

- (a) by adding at the end of subsection (1) “, and includes a reference to an amount included in assessable income under section 102AAZD, 456, 457, 458 or 459.”;
- (b) by omitting subsection (2) and substituting the following subsection:

“(2) A reference in this Act to foreign tax is a reference to:

(a) tax imposed by a law of a foreign country, being:

- (i) tax upon income; or
- (ii) tax upon profits or gains, whether of an income or capital nature; or
- (iii) tax deemed by section 160AFC to have been paid in respect of a dividend; or
- (iv) any other tax, being a tax that is subject to an agreement having the force of law under the *Income Tax (International Agreements) Act 1953*;

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

(b) any of the following:

- (i) tax that is taken, because of section 160AFCA, to have been paid in respect of an amount included in assessable income under section 456;
- (ii) tax that is taken, because of section 160AFCB, to have been paid in respect of an amount included in assessable income under section 457;
- (iii) tax that is taken, because of section 160AFCC, to

have been paid in respect of an amount included in assessable income under section 458;

- (iv) tax that is taken, because of section 160AFCD, to have been paid in respect of the section 23AI exempt part of an attribution account payment (within the meaning of section 160AFCD).”;

(c) by inserting after subsection (3) the following subsection:

“(3A) Except as provided by section 160AFCA, 160AFCB, 160AFCC or 160AFCD, a taxpayer is not taken to have been personally liable for, and to have paid, foreign tax in respect of:

- (a) an amount included in assessable income under section 102AAZD, 456, 457, 458 or 459; or
- (b) the section 23AI exempt part of an attribution account payment (within the meaning of section 160AFCD).”.

Grossing-up of foreign income

6. Section 6AC of the Principal Act is amended by adding at the end the following subsections:

“(3) Where a taxpayer is, because of section 160AFCA, taken to have paid an amount of foreign tax in respect of an amount included in the assessable income of the taxpayer under section 456 (in this subsection called the ‘**section 456 amount**’), the section 456 amount is taken, for the purposes of this Act (other than sections 160AFCA and 371) to be increased by the amount of that tax.

“(4) Where a taxpayer is, because of section 160AFCB, taken to have paid an amount of foreign tax in respect of an amount included in the assessable income of the taxpayer under section 457 (in this subsection called the ‘**section 457 amount**’), the section 457 amount is taken, for the purposes of this Act (other than sections 160AFCB and 371) to be increased by the amount of that tax.

“(5) Where a taxpayer is, because of section 160AFCC, taken to have paid an amount of foreign tax in respect of an amount included in the assessable income of the taxpayer under section 458 (in this subsection called the ‘**section 458 amount**’), the section 458 amount is taken, for the purposes of this Act (other than sections 160AFCC and 371) to be increased by the amount of that tax.”.

Income beneficially derived

7. Section 6B of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsection:

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

- (a) if the person derived the amount of income by reason of being beneficially entitled to an amount representing passive income; or
- (b) if the person derived the amount of income as a beneficiary in a trust estate and the amount of income can be attributed, directly or indirectly, to passive income or to an amount that is taken, by any application or successive applications of this subsection, to be an amount of income attributable to passive income.”;
- (b) by omitting paragraph (2A) (b) and substituting the following paragraph:
 - “(b) if the income so derived is, by virtue of subsection (1), (1A) or (2), attributable to a dividend, passive income or interest income derived from that source.”;
- (c) by inserting after subsection (2A) the following subsection:
 - “(2AA) In subsections (1A) and (2A), ‘**passive income**’ has the same meaning as in section 160AEA.”.

8. After section 23AG of the Principal Act the following sections are inserted:

Exemption of foreign branch profits of Australian companies

“23AH. (1) For the purposes of subsections (2) and (3), if the following conditions are satisfied in relation to foreign income derived by a taxpayer:

- (a) the foreign income is derived by the taxpayer during the year of income commencing on 1 July 1990 or a subsequent year of income;
- (b) the foreign income is derived in carrying on a business in a listed country at or through a permanent establishment of the taxpayer in the listed country;
- (c) the foreign income is not eligible designated concession income in relation to any listed country in relation to the year of income;
- (d) the foreign income is subject to tax in any listed country in a tax accounting period:
 - (i) ending before the end of the year of income; or
 - (ii) commencing during the year of income;

then:

- (e) the foreign income is foreign branch income; and
- (f) the taxpayer is the original taxpayer in relation to the foreign branch income.

“(2) If the original taxpayer in relation to the foreign branch income is a company, the assessable income of the company does not include

so much of the foreign branch income as is attributable to a period when the company was a resident.

“(3) If:

- (a) the original taxpayer in relation to the foreign branch income is the trustee of a trust estate or a partnership; and
- (b) the following conditions are satisfied in relation to another taxpayer (in this subsection called the **‘actual taxpayer’**):
 - (i) the actual taxpayer is a company;
 - (ii) apart from this subsection, an amount is included in the assessable income of the actual taxpayer of a year of income (in this subsection called the **‘current year of income’**) under subsection 92 (1) or section 97, 98A or 100;
 - (iii) the whole or a part of the amount so included in the actual taxpayer’s assessable income (which whole or part is in this subsection called the **‘taxpayer’s portion of the foreign branch income’**) is attributable (either directly or indirectly through one or more interposed trusts or partnerships) to the foreign branch income;

the assessable income of the actual taxpayer of the current year of income does not include so much of the taxpayer’s portion of the foreign branch income as is attributable to a period when the actual taxpayer was a resident.

“(4) Subsections (2) and (3) of this section are to be disregarded in applying subsection 160ZA (4).

“(5) For the purposes of subsection (1), where a taxpayer disposes, either in whole or in part, of a business carried on in a listed country at or through a permanent establishment of the taxpayer in the listed country, any foreign income derived in the course of that disposal is taken to have been derived in carrying on that business.

“(6) For the purposes of subsections (8) and (9), if the following conditions are satisfied in relation to the disposal of an asset by a taxpayer:

- (a) the asset is disposed of during:
 - (i) the year of income commencing on 1 July 1990 (in this subsection called the **‘disposal year of income’**); or
 - (ii) a subsequent year of income (in this subsection also called the **‘disposal year of income’**);
- (b) the asset consists of:
 - (i) a unit of property for which depreciation is, or would apart from this section be, allowable to the taxpayer under section 54 in respect of any year of income; or
 - (ii) a building; or

(iii) land;

- (c) the asset was used by the taxpayer wholly or principally for the purpose of producing foreign income from carrying on a business in a listed country at or through a permanent establishment of the taxpayer in the listed country;
- (d) the asset is not a taxable Australian asset of the taxpayer;
- (e) a gain or profit of a capital nature accrues to the taxpayer in respect of the disposal of the asset;
- (f) that gain or profit is not eligible designated concession income in relation to any listed country in relation to the disposal year of income;
- (g) that gain or profit is subject to tax in any listed country in a tax accounting period:
 - (i) ending before the end of the disposal year of income; or
 - (ii) commencing during the disposal year of income;

then:

- (h) that gain or profit is a foreign branch capital gain; and
- (j) the taxpayer is the original taxpayer in relation to the foreign branch capital gain.

“(7) For the purposes of subsections (8) and (9), if the following conditions are satisfied in relation to the disposal of an asset of a taxpayer (in this subsection called the **‘taxpayer’s asset’**):

- (a) the taxpayer’s asset is disposed of during:
 - (i) the year of income of the taxpayer commencing on 1 July 1990 (in this subsection called the **‘disposal year of income’**); or
 - (ii) a subsequent year of income of the taxpayer (in this subsection also called the **‘disposal year of income’**);
- (b) the taxpayer’s asset consists of the taxpayer’s interest in any of the following partnership assets of a partnership in which the taxpayer is a partner:
 - (i) a unit of property for which depreciation is, or would apart from this section be, allowable to the partnership under section 54 in respect of any year of income;
 - (ii) a building;
 - (iii) land;
- (c) the partnership asset was used by the partnership wholly or principally for the purpose of producing foreign income from carrying on a business in a listed country at or through a permanent establishment of the partnership in the listed country;
- (d) the taxpayer’s asset is not a taxable Australian asset of the taxpayer;
- (e) a gain or profit of a capital nature accrues to the taxpayer in respect of the disposal of the taxpayer’s asset;

- (f) that gain or profit is not eligible designated concession income in relation to any listed country in relation to the disposal year of income;
- (g) that gain or profit is subject to tax in any listed country in a tax accounting period:
 - (i) ending before the end of the disposal year of income; or
 - (ii) commencing during the disposal year of income;

then:

- (h) that gain or profit is a foreign branch capital gain;
- (j) the taxpayer is the original taxpayer in relation to the foreign branch capital gain.

“(8) If the original taxpayer in relation to the foreign branch capital gain is a company, no capital gain accrues to the company under Part IIIA in respect of the disposal of the asset.

“(9) If:

- (a) the original taxpayer in relation to the foreign branch capital gain is the trustee of a trust estate; and
- (b) the following conditions are satisfied in relation to another taxpayer (in this subsection called the **‘actual taxpayer’**):
 - (i) the actual taxpayer is a company;
 - (ii) apart from this subsection, an amount is included in the assessable income of the actual taxpayer of a year of income (in this subsection called the **‘current year of income’**) under subsection 92 (1) or section 97, 98A or 100;
 - (iii) the whole or a part of the amount so included in the actual taxpayer’s assessable income (which whole or part is in this subsection called the **‘taxpayer’s portion of the foreign branch capital gain’**) is attributable (either directly or indirectly through one or more interposed trusts or partnerships) to the foreign branch capital gain;

the assessable income of the actual taxpayer of the current year of income does not include so much of the taxpayer’s portion of the foreign branch capital gain as is attributable to a period when the actual taxpayer was a resident.

“(10) Unless the contrary intention appears, an expression used in subsections (6), (7) and (8) and in Part IIIA has the same meaning in those subsections as it has in that Part.

“(11) Subsection 324 (2) applies in relation to this section in a corresponding way to the way in which it applies in relation to Part X.

“(12) In this section:

‘company’ has the same meaning as in Part X;

‘double tax agreement’ has the same meaning as in Part X;

‘eligible designated concession income’ has the same meaning as in Part X;

‘foreign income’ includes an amount that:

- (a) apart from this section, would be included in assessable income under a provision of this Act other than Part IIIA; and
- (b) is derived from sources in a foreign country;

‘listed country’ has the same meaning as in Part X;

‘permanent establishment’, in relation to a listed country:

- (a) if there is a double tax agreement in relation to the listed country—has the same meaning as in the double tax agreement; or
- (b) in any other case—has the meaning given by subsection 6 (1);

‘subject to tax’ has the same meaning as in Part X;

‘tax accounting period’ has the same meaning as in Part X.

Exemption of amounts paid out of attributed income

“23AI. (1) Where:

(a) either:

- (i) an attribution account payment of a kind referred to in paragraph 365 (1) (a), (b), (c) or (e) is made to a taxpayer (other than a partnership or taxpayer in the capacity of trustee of a trust); or
- (ii) an attribution account payment of a kind referred to in paragraph 365 (1) (d) is made to a taxpayer; and

(b) on the making of the payment, an attribution debit arises, for the entity making the payment, in relation to the taxpayer;

the following provisions have effect:

- (c) if the payment is of a kind referred to in paragraph 365 (1) (a)—the payment is exempt from tax to the extent of the debit;
- (d) if the payment is of a kind referred to in paragraph 365 (1) (b) and, apart from this section, an amount would be included in the taxpayer’s assessable income under section 92 in respect of an individual interest in the net income of the partnership of the year of income referred to in that paragraph—that amount is not so included, to the extent of the debit;
- (e) if the payment is of a kind referred to in paragraph 365 (1) (c) and, apart from this section, an amount would:
 - (i) be included in the taxpayer’s assessable income under section 97, 98A or 100; or
 - (ii) be assessable to the trustee of the trust referred to in that paragraph under section 98;

in respect of a share of the net income of the trust of the year of income referred to in that paragraph—that amount is not so included, or not so assessable, to the extent of the debit;

- (f) if the payment is of a kind referred to in paragraph 365 (l) (d)—the payment is not, to the extent of the debit, assessable to the taxpayer as mentioned in that paragraph;
- (g) if the payment is of a kind referred to in paragraph 365 (1) (e) and, apart from this section, an amount would be included in the taxpayer's assessable income, of the year of income referred to in that paragraph, under section 99B in respect of the trust property referred to in that paragraph—that amount is not so included to the extent of the debit.

“(2) This section is to be disregarded for the purposes of applying:

- (a) the definition of ‘foreign income deduction’ in sections 79D and 160AFD; and
- (b) any other provision of this Act to determine allowable deductions.

“(3) In this section:

‘**attribution account payment**’ has the same meaning as in Part X;

‘**attribution debit**’ has the same meaning as in Part X;

‘**company**’ has the same meaning as in Part X;

‘**trust**’ has the same meaning as in Part X.

Exemption of certain non-portfolio dividends from foreign countries

“23AJ. (1) Where:

- (a) a non-portfolio dividend is paid to a taxpayer by a company that is a resident of a listed or an unlisted country; and
- (b) the taxpayer is a company that is a resident within the meaning of section 6;

then the dividend is exempt from income tax to the extent that it is an exempting receipt of the taxpayer.

“(2) In this section:

‘**company**’ has the same meaning as in Part X;

‘**exempting receipt**’ has the same meaning as in Part X;

‘**non-portfolio dividend**’ has the same meaning as in Part X;

‘**resident of a listed country**’ has the same meaning as in Part X;

‘**resident of an unlisted country**’ has the same meaning as in Part X.”.

9. After section 47 of the Principal Act the following section is inserted:

Distribution benefits—CFCs

“47A. (1) Subject to subsection (2), if:

- (a) a company (in this section called the ‘**first company**’) has profits immediately before a distribution time for a distribution benefit in relation to the first company; and

- (b) the distribution time occurred after 3 June 1990; and
- (c) the first company is a CFC at the distribution time; and
- (d) the first company is a resident of an unlisted country at the distribution time;

so much of the distribution payment in relation to the distribution time as would not otherwise be a dividend and does not exceed the amount of those profits is taken, for the purposes of this Act, to be a dividend paid by the first company:

- (e) to the recipient of the benefit as a shareholder in the first company; and
- (f) out of profits derived by the first company; and
- (g) at the distribution time.

“(2) If:

- (a) either of the following subparagraphs applies:
 - (i) by virtue of subsection (1), the whole or a part of the distribution payment is included in the assessable income of a taxpayer of the year of income in which the distribution time occurred under section 44;
 - (ii) by virtue of subsection (1), an amount is included in the assessable income of a taxpayer of a year of income under section 458 in respect of the distribution payment; and
- (b) the taxpayer’s return of income for the year of income was not prepared on the basis that the distribution payment had the consequence specified in subsection (1);

that subsection has effect in relation to the taxpayer and in relation to that distribution payment as if the reference in that subsection to the purposes of this Act were a reference to the purposes of this Act (other than Division 18, section 365 and Division 6 of Part X).

“(3) Subject to subsections (9) and (12), a reference in this section to a distribution benefit in relation to the first company is a reference to an eligible benefit where the following conditions are satisfied:

- (a) the eligible benefit was provided to:
 - (i) an associated entity in relation to the first company; or
 - (ii) another entity that, immediately after the time of the provision of the eligible benefit, was an associated entity in relation to the first company;
- (b) the eligible benefit was provided by:
 - (i) the first company; or
 - (ii) an entity (in this subsection called the ‘arranger’) other than the first company under an arrangement between:
 - (A) the first company; and
 - (B) the arranger or another entity;

- (c) if subparagraph (b) (ii) applies—the first company made, or entered into an undertaking to make, one or more transfers of property or services to the arranger or to another entity (which transfers are in this section called the ‘**arrangement transfers**’) that are attributable, in whole or in part, to the provision of the eligible benefit.

“(4) Where the first company entered into an undertaking to make one or more arrangement transfers, the time of the arrangement transfers is the time the undertaking was entered into.

“(5) Where, at a particular time, an entity (in this subsection called the ‘**provider**’) waives or releases the obligation of another entity (in this subsection called the ‘**recipient**’) to pay or repay to the provider an amount:

- (a) the waiver or release is taken to constitute an eligible benefit provided at that time by the provider to the recipient; and
- (b) if the eligible benefit is a distribution benefit in relation to the first company—each of the following times is a distribution time for the eligible benefit:
 - (i) if the eligible benefit was provided by the first company—the time of the provision of the eligible benefit; or
 - (ii) in any other case—the time, or each of the times, of the arrangement transfers concerned;
- (c) if the eligible benefit is a distribution benefit in relation to the first company—the distribution payment in relation to the distribution time is:
 - (i) if the benefit was provided by the first company—the amount the payment or repayment of which is waived or released; or
 - (ii) in any other case—so much of the amount or market value of the arrangement transfer as is attributable to the provision of the eligible benefit.

“(6) For the purposes of subsection (5), an entity is taken to be under an obligation to pay or repay an amount even if the amount is not due for payment or repayment.

“(7) Where, at a particular time, an entity (in this subsection called the ‘**provider**’) makes a loan to another entity (in this subsection called the ‘**recipient**’), where:

- (a) the parties to the loan are not at arm’s length with each other in relation to the loan; or
- (b) the purpose, or one of the purposes, of the making of the loan was to facilitate, directly or indirectly (through one or more interposed companies, partnerships or trusts), the payment of a dividend that is, or would be:

- (i) exempt from tax under section 23AJ (in whole or in part); or
- (ii) an exempting receipt for the purposes of section 377; or
- (c) the purpose, or one of the purposes, of the making of the loan was to facilitate, directly or indirectly, the provision of an eligible benefit by the recipient, being an eligible benefit that is a distribution benefit in relation to any company;

the following provisions have effect:

- (d) the making of the loan is taken to constitute an eligible benefit provided by the provider to the recipient at that time;
- (e) if the eligible benefit is a distribution benefit in relation to the first company—each of the following times is a distribution time for the eligible benefit:
 - (i) if the benefit was provided by the first company—the time of the provision of the benefit; or
 - (ii) in any other case—the time, or each of the times, of the arrangement transfers concerned;
- (f) if the eligible benefit is a distribution benefit in relation to the first company—the distribution payment in relation to the distribution time is:
 - (i) if the benefit was provided by the first company—the amount of the loan; or
 - (ii) in any other case—so much of the amount or market value of the arrangement transfer as is attributable to the provision of the eligible benefit.

“(8) Where, at a particular time:

- (a) an entity (in this subsection called the ‘**provider**’) acquires from a company (in this subsection called the ‘**recipient**’):
 - (i) a share in the recipient;
 - (ii) a right to acquire a share in the recipient;
 - (iii) an option to acquire a share in the recipient; or
- (b) an entity (in this subsection also called the ‘**provider**’) acquires from the trustee of a unit trust (in this subsection also called the ‘**recipient**’):
 - (i) a unit in the recipient;
 - (ii) a right to acquire a unit in the recipient;
 - (iii) an option to acquire a unit in the recipient;

the following provisions have effect:

- (c) the acquisition is taken to constitute an eligible benefit provided by the provider to the recipient at that time;
- (d) if the eligible benefit is a distribution benefit in relation to the first company—each of the following is a distribution time for the eligible benefit:

- (i) if the benefit was provided by the first company—the time of the provision of the benefit; or
 - (ii) in any other case—the time, or each of the times, of the arrangement transfers concerned;
- (e) if the eligible benefit is a distribution benefit in relation to the first company—the distribution payment in relation to the distribution time is:
 - (i) if the benefit was provided by the first company—the amount or market value of the consideration paid or given by the first company in respect of the acquisition; or
 - (ii) in any other case—so much of the amount or market value of the arrangement transfer as is attributable to the provision of the eligible benefit;
- (f) if:
 - (i) the eligible benefit is a distribution benefit in relation to the first company; and
 - (ii) the provider transferred property or services to the recipient in respect of the acquisition;

in determining the profits of the company immediately before the distribution time, or the first distribution time, as the case requires, for the distribution benefit, the following assumptions are to be made:

 - (iii) if the benefit was provided by the first company—the assumption that, immediately before the distribution time, the company had:
 - (A) disposed of the property or services to an entity other than the recipient; and
 - (B) received, in respect of that disposal, consideration equal to the market value of the property or services;
 - (iv) if subparagraph (iii) does not apply—the assumption that, immediately before the distribution time, the company had:
 - (A) disposed of equivalent property or services to an entity other than the recipient or the entity who provided the eligible benefit; and
 - (B) received, in respect of that disposal, consideration equal to the market value of the property or services.

“(9) An eligible benefit that is covered by subsection (8) and provided at a particular time is not a distribution benefit in relation to the first company if, at that time, there is no entity who is:

- (a) either:

- (i) the holder of an eligible equity interest in the first company; or
 - (ii) an associate of an entity who is the holder of an eligible equity interest in the first company; and
- (b) the holder of an eligible equity interest in the recipient referred to in that subsection.

“(10) Where:

- (a) an entity (in this subsection called the ‘**provider**’) transfers property or services to another entity (in this subsection called the ‘**recipient**’); and
- (b) the property or services are transferred:
 - (i) for no consideration; or
 - (ii) for a consideration less than the market value of the property or services; and
- (c) in the case of a transfer of services—the services do not consist of the making of a loan; and
- (d) in any case—the property or services are not transferred by way of consideration for the acquisition from a company of:
 - (i) a share in the company; or
 - (ii) a right to acquire a share in the company; or
 - (iii) an option to acquire a share in the company; and
- (e) in any case—the property or services are not transferred in respect of the acquisition from the trustee of a unit trust of:
 - (i) a unit in the unit trust; or
 - (ii) a right to acquire a unit in the unit trust; or
 - (iii) an option to acquire a unit in the unit trust; and
- (f) in the case of a transfer of property—the property does not consist of a payment in respect of a call on a share in a company;

the following provisions have effect:

- (g) the transfer is taken to constitute an eligible benefit provided by the provider to the recipient at that time;
- (h) if the eligible benefit is a distribution benefit in relation to the first company—each of the following is a distribution time for the eligible benefit:
 - (i) if the benefit was provided by the first company—the time of the provision of the benefit; or
 - (ii) in any other case—the time, or each of the times, of the arrangement transfers concerned;
- (j) if the eligible benefit is a distribution benefit in relation to the first company—the distribution payment in relation to the distribution time is:
 - (i) if the benefit was provided by the first company—the

amount by which the amount or market value of the property or services exceeds the consideration (including nil consideration) mentioned in paragraph (b); or

- (ii) if subparagraph (i) does not apply and there is only one arrangement transfer—the amount by which so much of the amount or market value of the arrangement transfer as is attributable to the provision of the eligible benefit exceeds the consideration (including nil consideration) mentioned in paragraph (b); or
- (iii) if subparagraph (i) does not apply and there are 2 or more arrangement transfers—the amount worked out in relation to the arrangement transfer using the following formula:

$$\text{Total Excess} \times \frac{\text{Arrangement transfer}}{\text{Total arrangement transfers}}$$

where:

‘Total Excess’ means the amount by which so much of the total amount or market value of all of the arrangement transfers as is attributable to the provision of the eligible benefit exceeds the consideration (including nil consideration) mentioned in paragraph (b);

‘Arrangement transfer’ means the amount or market value of the arrangement transfer concerned;

‘Total arrangement transfers’ means the total amount or market value of all of the arrangement transfers;

- (k) if the eligible benefit is a distribution benefit in relation to the first company—in determining the profits of the company immediately before a distribution time for the distribution benefit, the following assumptions are to be made:
 - (i) if the benefit was provided by the first company—the assumption that, immediately before the distribution time, the company had:
 - (A) disposed of the property or services to an entity other than the recipient; and
 - (B) received, in respect of that disposal, consideration equal to the market value of the property or services;
 - (ii) if subparagraph (i) does not apply and there is only one arrangement transfer—the assumption that, immediately before the distribution time, the company had:
 - (A) disposed of the property or services covered by the arrangement transfer to an entity other than the entity who provided the eligible benefit; and
 - (B) received, in respect of that disposal, consideration

equal to the market value of the property or services;

(iii) if subparagraph (i) does not apply and there are 2 or more arrangement transfers—the assumption that, immediately before each distribution time, the company had:

(A) disposed of the property or services covered by the arrangement transfer concerned to an entity other than the entity who provided the eligible benefit; and

(B) received, in respect of that disposal, consideration equal to the market value of the property or services.

“(11) Where, at a particular time, an entity (in this subsection called the ‘**provider**’) makes a payment to another entity, being a company (in this subsection called the ‘**recipient**’), in respect of a call on a share in the recipient:

(a) the making of the payment is taken to constitute an eligible benefit provided by the provider to the recipient at that time; and

(b) if the eligible benefit is a distribution benefit in relation to the first company—each of the following is a distribution time for the eligible benefit:

(i) if the benefit was provided by the first company—the time of the provision of the benefit; or

(ii) in any other case—the time, or each of the times, of the arrangement transfers concerned;

(c) if the eligible benefit is a distribution benefit in relation to the first company—the distribution payment in relation to the distribution time is:

(i) if the benefit was provided by the first company—the amount of the payment; or

(ii) in any other case—so much of the amount or market value of the arrangement transfer as is attributable to the provision of the eligible benefit.

“(12) An eligible benefit that is covered by subsection (11) and provided at a particular time is not a distribution benefit in relation to the first company if, at that time, there is no entity who is:

(a) either:

(i) the holder of an eligible equity interest in the first company; or

(ii) an associate of an entity who is the holder of an eligible equity interest in the first company; and

- (b) the holder of an eligible equity interest in the recipient referred to in that subsection.

“(13) If:

- (a) apart from this subsection, a particular eligible benefit that is covered by subsection (8) or (11) and provided at a particular time is not a distribution benefit in relation to the first company only because of subsection (9) or (12); and
- (b) at a later time, there is an entity who is:
 - (i) either:
 - (A) the holder of an eligible equity interest in the first company; or
 - (B) an associate of an entity who is the holder of an eligible equity interest in the first company; and
 - (ii) the holder of an eligible equity interest in the recipient referred to in whichever of subsections (8) and (11) is applicable;

the following provisions have effect:

- (c) this section has effect as if subsection (9) or (12), as the case requires, had never applied in relation to that eligible benefit;
- (d) section 170 does not prevent the amendment of an assessment at any time for the purposes of giving effect to this subsection.

“(14) If:

- (a) apart from this subsection, a particular eligible benefit (in this subsection called the ‘**first eligible benefit**’) that is covered by subsection (8) or (11) and provided at a particular time is not a distribution benefit in relation to the first company only because of subsection (9) or (12); and
- (b) the recipient referred to in whichever of subsections (8) and (11) is applicable provides an eligible benefit (in this subsection called the ‘**second eligible benefit**’) to:
 - (i) the first company; or
 - (ii) the provider referred to in whichever of those subsections is applicable; or
 - (iii) an associated entity in relation to:
 - (A) the first company; or
 - (B) that provider; and
- (c) the provision of the first eligible benefit facilitated, directly or indirectly, the provision of the second eligible benefit;

the following provisions have effect:

- (d) this section has effect as if subsection (9) or (12), as the case requires, had never applied in relation to the first eligible benefit;

- (e) section 170 does not prevent the amendment of an assessment at any time for the purposes of giving effect to this subsection.

“(15) In determining whether a company has profits at a particular time, it is to be assumed that the accounts of the company had been drawn up immediately before that time.

“(16) For the purposes of this section, where:

- (a) the first company has profits (in this subsection called the **‘original profits’**) immediately before a distribution time for a distribution benefit in relation to the first company; and
- (b) by virtue of subsection (1), an amount (in this subsection called the **‘original assessable amount’**) is included in the assessable income of a taxpayer (in this subsection called the **‘original taxpayer’**) of a year of income (in this subsection called the **‘original year of income’**) under section 44, 458 or 459 in respect of the distribution payment in relation to the distribution time; and
- (c) any of the following subparagraphs applies:
 - (i) the original taxpayer is:
 - (A) a resident at any time during the original year of income; and
 - (B) a company or a natural person (other than a company or a natural person in the capacity of a trustee);
 - (ii) the original taxpayer is the trustee of a corporate unit trust in relation to the original year of income;
 - (iii) the original taxpayer is the trustee of a public trading trust in relation to the original year of income;
 - (iv) the original taxpayer is the trustee of an eligible entity (within the meaning of Part IX) in relation to the original year of income;
 - (v) the original taxpayer is the trustee of a resident trust estate (within the meaning of Division 6) in relation to the year of income who is liable to be assessed and pay tax under section 99 or 99A in respect of a part of the net income of the trust estate;

then, in determining the profits that the first company has at a later time, no account is to be taken of so much of the original profits as is equal to the original assessable amount.

“(17) For the purposes of this section, where:

- (a) the first company has profits (in this subsection called the **‘original profits’**) immediately before a distribution time for a distribution benefit in relation to the first company; and
- (b) by virtue of subsection (1), an amount (in this subsection called the **‘original assessable amount’**) is included in the assessable

income of a taxpayer (in this subsection called the **'original taxpayer'**) of a year of income (in this subsection called the **'original year of income'**) under section 44, 458 or 459 in respect of the distribution payment in relation to the distribution time; and

- (c) all of the following conditions are satisfied:
- (i) the original taxpayer is the trustee of a trust estate who is liable to be assessed and pay tax under section 98 in respect of a share in the net income of the trust estate of the original year of income;
 - (ii) the beneficiary who was entitled to that share was a resident at any time during the original year of income;
 - (iii) the whole or a part (which whole or part is in this subsection called the **'beneficiary's portion of the original assessable amount'**) of the share of the net income is attributable to the original assessable amount;

then, in determining the profits that the first company has at a later time, no account is to be taken of so much of the original profits as is equal to the beneficiary's portion of the original assessable amount.

“(18) For the purposes of this section, where:

- (a) the first company has profits (in this subsection called the **'original profits'**) immediately before a distribution time for a distribution benefit in relation to the first company; and
- (b) by virtue of subsection (1), an amount (in this subsection called the **'original assessable amount'**) is included in the assessable income of a taxpayer (in this subsection called the **'original taxpayer'**) of a year of income (in this subsection called the **'original year of income'**) under section 44, 458 or 459 in respect of the distribution payment in relation to the distribution time; and
- (c) the original taxpayer is the trustee of a trust estate or a partnership; and
- (d) the following conditions are satisfied in relation to another taxpayer (in this subsection called the **'actual taxpayer'**):
 - (i) an amount is included in the assessable income of the actual taxpayer of a year of income (in this subsection called the **'assessment year of income'**) under subsection 92 (1) or section 97 or 100;
 - (ii) the actual taxpayer is:
 - (A) a resident at any time during the assessment year of income, being a company or a natural person (other than a company or a natural person in the capacity of a trustee); or
 - (B) the trustee of a corporate unit trust in relation to the assessment year of income; or

- (C) the trustee of a public trading trust in relation to the assessment year of income; or
 - (D) the trustee of an eligible entity (within the meaning of Part IX) in relation to the assessment year of income; or
 - (E) the trustee of a trust estate who is liable to be assessed and pay tax under section 98 in respect of a share in the net income of a trust estate; or
 - (F) the trustee of a trust estate who is liable to be assessed and pay tax under section 99 or 99A in respect of a part of the net income of a trust estate;
- (iii) if sub-subparagraph (ii) (A), (B), (C) or (D) applies—the whole or a part of the amount so included in the actual taxpayer's assessable income (which whole or part is in this subsection called the **'actual taxpayer's portion of the original assessable amount'**) is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the original assessable amount;
- (iv) if sub-subparagraph (ii) (E) applies:
- (A) the beneficiary who was entitled to the share concerned was a resident at any time during the assessment year of income; and
 - (B) the whole or a part (which whole or part is in this subsection also called the **'actual taxpayer's portion of the original assessable amount'**) of the share of the net income is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the original assessable amount;
- (v) if sub-subparagraph (ii) (F) applies:
- (A) the trust estate was a resident trust estate (within the meaning of Division 6) in relation to the assessment year of income; and
 - (B) the whole or a part (which whole or part is in this subsection also called the **'actual taxpayer's portion of the original assessable amount'**) of the part of the net income is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the original assessable amount;

then, in determining the profits that the first company has at a later time, no account is to be taken of so much of the original profits as is equal to the actual taxpayer's portion of the original assessable amount.

“(19) The provisions of section 102AAJ apply for the purposes of this section in like manner as they apply for the purposes of Division 6AAA.

“(20) For the purposes of this section, the question whether a company is a resident of an unlisted country is to be determined in the same manner in which that question is determined for the purposes of Part X.

“(21) In this section:

‘arrangement’ means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved;

‘associate’ has the same meaning as in Part X;

‘associated entity’, in relation to a company, means either of the following entities:

- (a) a shareholder in the company;
- (b) an entity who is an associate of a shareholder in the company;

‘CFC’ has the same meaning as in Part X;

‘distribution benefit’ has the meaning given by subsection (3) of this section;

‘eligible equity interest’:

- (a) in relation to a company, means any of the following:
 - (i) a share, or an interest in a share, in the company;
 - (ii) a right to acquire a share, or an interest in a share, in the company;
 - (iii) an option to acquire a share, or an interest in a share, in the company; or
- (b) in relation to a unit trust, means any of the following:
 - (i) a unit, or an interest in a unit, in the unit trust;
 - (ii) a right to acquire a unit, or an interest in a unit, in the unit trust;
 - (iii) an option to acquire a unit, or an interest in a unit, in the unit trust; or

‘entity’ has the same meaning as in Part X;

‘loan’ includes:

- (a) an advance of money; and
- (b) the provision of credit or any other form of financial accommodation; and
- (c) the payment of an amount for, on account of, on behalf or at the request of an entity where there is an obligation (whether expressed or implied) to repay the amount; and

- (d) a transaction (whatever its terms or form) which in substance effects a loan of money;
- ‘property’** has the same meaning as in Division 6AAA;
- ‘services’** has the same meaning as in Division 6AAA;
- ‘statutory accounting period’** has the same meaning as in Part X;
- ‘transfer’** has the same meaning as in Division 6AAA.”.

10. Section 79D of the Principal Act is repealed and the following section is substituted:

Limitation on deductions for foreign income

“79D. (1) Where:

- (a) apart from this section, there are one or more foreign income deductions of a taxpayer in relation to a class of assessable foreign income in relation to a year of income; and
- (b) either:
 - (i) the taxpayer did not derive any assessable foreign income of that class in the year of income; or
 - (ii) the taxpayer derived assessable foreign income of that class in the year of income and its amount is exceeded by the sum of the foreign income deductions;

then, for the purposes of this Act, those deductions are reduced respectively:

- (c) where subparagraph (b) (i) applies—to nil; or
- (d) where subparagraph (b) (ii) applies—by amounts proportionate to those deductions and equal in total to the amount of the excess referred to in that subparagraph.

“(2) In this section:

‘assessable foreign income’ has the same meaning as in section 160AFD;
‘class of assessable foreign income’ has the same meaning as in section 160AFD;

‘foreign income deduction’ has the same meaning as in section 160AFD.”.

General domestic losses of post-1989 years of income

11. Section 79E of the Principal Act is amended:

- (a) by inserting in subsections (5) and (6) “assessable” before “foreign” (wherever occurring);
- (b) by omitting from subsection (12) the definitions of “class of income” and “foreign source”;
- (c) by inserting in subsection (12) the following definitions:
 - “**‘assessable foreign income’** has the same meaning as in section 160AFD;
 - ‘class of assessable foreign income’** has the same meaning as in section 160AFD;

‘exempt income’ does not include income to which section 23AH, 23AI or 23AJ or paragraph 99B (2) (d) or (e) applies;
‘foreign income deduction’ has the same meaning as in section 160AFD;”;

- (d) by omitting subsection (14) and substituting the following subsection:

“(14) For the purposes of the definition of ‘non-loss deduction’ in subsection (12), where:

- (a) there are one or more foreign income deductions of a taxpayer in relation to a class of assessable foreign income in relation to a year of income; and
- (b) either:
 - (i) the taxpayer did not derive any assessable foreign income of that class in the year of income; or
 - (ii) the taxpayer derived assessable foreign income of that class in the year of income and its amount is exceeded by the sum of the foreign income deductions;

then:

- (c) where subparagraph (b) (i) of this subsection applies—the foreign income deductions are to be disregarded; and
- (d) where subparagraph (b) (ii) of this subsection applies—the foreign income deductions are to be disregarded to the extent of the excess referred to in that subparagraph.”.

General domestic losses of pre-1990 years of income

12. Section 80 of the Principal Act is amended:

- (a) by inserting in subsections (2B) and (2C) “assessable” before “foreign” (wherever occurring);
- (b) by omitting subsection (3) and substituting the following subsection:

“(3) In this section:

‘assessable foreign income’ has the same meaning as in section 160AFD;

‘exempt income’ does not include income to which section 23AH, 23AI or 23AJ or paragraph 99B (2) (d) or (e) applies;

‘net exempt income’ means:

- (a) where the taxpayer is a resident—the amount by which the taxpayer’s exempt income derived from all sources exceeds the sum of the expenses (not being expenses of a capital nature) incurred in deriving that income, and any taxes payable in respect of that income in any country or place outside Australia; and
- (b) where the taxpayer is a non-resident—the amount by

which the taxpayer's exempt income derived from sources in Australia (other than income, if any, to which section 128D applies) exceeds the sum of the expenses (not being expenses of a capital nature) incurred in deriving that income.”;

- (c) by adding at the end of subsection (9) “, as in force immediately before the commencement of the *Taxation Laws Amendment (Foreign Income) Act 1990*.”.

Film losses of pre-1990 years of income

13. Section 80AAA of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) In this section, ‘**exempt income**’ and ‘**net exempt income**’ have the same respective meanings as in section 80.”.

Primary production losses of pre-1990 years of income

14. Section 80AA of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:

“(5) In this section, ‘**exempt income**’ and ‘**net exempt income**’ have the same respective meanings as in section 80.”.

Transfer of loss within company group

15. Section 80G of the Principal Act is amended by omitting subsection (19) and substituting the following subsection:

“(19) In this section, ‘**exempt income**’ and ‘**net exempt income**’ have the same respective meanings as in section 80.”.

Receipt of trust income not previously subject to tax

16. Section 99B of the Principal Act is amended:

- (a) by omitting “or” from the end of paragraph (2) (b);
- (b) by adding at the end of subsection (2) the following paragraphs:
 - “(d) an amount that is or has been included in the assessable income of any taxpayer (other than a company) under section 102AAZD; or
 - (e) if the beneficiary is a company—an amount that is or has been included in the assessable income of the beneficiary under section 102AAZD.”;
- (c) by adding at the end the following subsection:

“(3) In paragraphs (2) (d) and (e):

‘**company**’ means a company other than a company in the capacity of a trustee.”.

Revocable trusts

17. Section 102 of the Principal Act is amended by omitting from subsection (2B) all the words after “to that net income” and substituting the following words and paragraphs:

“reduced by:

- (a) so much (if any) of that net income as is attributable to a period when the person who created the trust was not a resident and is also attributable to sources out of Australia; and
- (b) so much (if any) of that net income as is not covered by paragraph (a) and represents an amount included in the assessable income of any taxpayer under section 102AAZD.”.

18. After section 102 of the Principal Act the following Division is inserted:

“Division 6AAA—Special Provisions relating to Non-resident Trust Estates etc.

“Subdivision A—Preliminary

Object of Division

“102AAA. The object of this Division is to set out rules relating to the following:

- (a) the payment of interest on distributions from certain non-resident trust estates (Subdivision B);
- (b) the winding-up of certain non-resident trust estates in existence on 12 April 1989 (Subdivision C);
- (c) an accruals system of taxation of certain non-resident trust estates (Subdivision D).

Interpretation

“102AAB. In this Division, unless the contrary intention appears:

‘1 July 1990 net worth’, in relation to a trust estate, means the market value, as at the beginning of 1 July 1990, of the assets of the trust estate, reduced by the liabilities of the trust estate as at the beginning of that day;

‘accounts’ has the same meaning as in Part X;

‘actual transfer’, in relation to property or services, means a transfer of the property or services other than a transfer that is taken to have been made because of subsection 102AAK (1), (2), (5), (6), (8), (10) or (11);

‘approved form’ means the form approved in writing by the Commissioner for the purposes of the provision in which the expression appears;

‘arm’s length amount’, in relation to an actual transfer of property or services to a trust estate, means the amount that the trustee could

reasonably be expected to have been required to pay to obtain the property or the services concerned from the transferor under a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction;

'associate' has the same meaning as in Part X;

'attributable income', in relation to a trust estate, has the meaning given by section 102AAU;

'attributable taxpayer' has the meaning given by section 102AAT;

'attribution account payment' has the same meaning as in Part X;

'attribution debit' has the same meaning as in Part X;

'Australian entity' has the same meaning as in Part X;

'Australian trust' has the same meaning as in Part X;

'basic statutory interest rate', in relation to a year of income, means the interest rate, or each of the interest rates, applicable for the purposes of section 10 of the *Taxation (Interest on Overpayments) Act 1983* for the year of income or for periods included in the year of income, as the case may be;

'CFC' has the same meaning as in Part X;

'controlled foreign trust' has the same meaning as in Part X;

'corporate unit trust', in relation to a year of income, means a unit trust that is a corporate unit trust in relation to the year of income for the purposes of Division 6B;

'de facto marriage' means a relationship between 2 persons who, although not legally married to each other, live with each other on a *bona fide* domestic basis as husband and wife;

'depreciation provision' has the same meaning as in Part X;

'designated concession income' has the same meaning as in Part X;

'discretionary trust estate' means a trust estate where:

(a) both of the following conditions are satisfied:

(i) a person (who may include the trustee) is empowered (either unconditionally or on the fulfilment of a condition) to exercise any power of appointment or other discretion;

(ii) the exercise of the power or discretion, or the failure to exercise the power or discretion, has the effect of determining, to any extent, either or both of the following:

(A) the identities of those who may benefit under the trust;

(B) how beneficiaries are to benefit, as between themselves, under the trust; or

(b) one or more of the beneficiaries under the trust have a contingent or defeasible interest in some or all of the corpus or income of the trust estate; or

(c) the trustee of another trust estate, being a trust estate where both of the conditions in paragraph (a) are satisfied, benefits,

or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the first-mentioned trust estate; **'eligible designated concession income'** has the same meaning as in Part X;

'entity' means any of the following:

- (a) a company;
- (b) a partnership;
- (c) a person in the capacity of trustee;
- (d) any other person;

'exempt income', in relation to a trust estate, means the exempt income of the trust estate calculated as if the trustee were a taxpayer who was a resident;

'IP time' means 7.30 p.m., by standard time in the Australian Capital Territory, on 12 April 1989;

'listed country' has the same meaning as in Part X;

'listed country trust estate' has the meaning given by section 102AAE;

'net income', in relation to a trust estate, in relation to a year of income, means:

- (a) if the trust estate is a corporate unit trust in relation to the year of income—the net income (within the meaning of Division 6B) of the corporate unit trust of the year of income; or
- (b) if the trust estate is a public trading trust in relation to the year of income—the net income (within the meaning of Division 6C) of the public trading trust of the year of income; or
- (c) in any other case—the net income (within the meaning of Division 6) of the trust estate;

'non-attributable year of income', in relation to a trust estate, means a non-resident year of income of the trust estate where no amount calculated by reference to the attributable income of the trust estate of that year of income is included in the assessable income of any taxpayer under subsection 102AAZD (1);

'non-discretionary trust estate' means a trust estate other than a discretionary trust estate;

'non-resident family trust' has the meaning given by section 102AAH;

'non-resident trust estate' (except in section 102AAA), in relation to a year of income, means a trust estate that is not a resident trust estate in relation to the year of income;

'non-resident year of income', in relation to a trust estate, means a year of income in relation to which the trust estate is a non-resident trust estate;

'pre-franking rebate tax', in relation to a taxpayer, in relation to a year of income, means the tax that would be payable by the taxpayer in respect of income of the year of income if the taxpayer were not entitled to a rebate under Part IIIAA;

'profits' includes gains, whether of an income or capital nature;

'property' includes money;

'public trading trust', in relation to a year of income, means a unit trust that is a public trading trust in relation to the year of income for the purposes of Division 6C;

'public unit trust' has the meaning given by section 102AAF;

'resident trust estate', in relation to a year of income, means:

- (a) a resident trust estate in relation to the year of income within the meaning of Division 6; or
- (b) a unit trust that is a corporate unit trust, or a public trading trust, in relation to the year of income; or
- (c) an eligible entity (within the meaning of Part IX) in relation to the year of income;

'scheme' means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved;

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

- (a) an arrangement for or in relation to:
 - (i) the performance of work (including work of a professional nature), whether with or without the provision of property; or
 - (ii) the provision of, or of the use of facilities for, entertainment, recreation or instruction; or
 - (iii) the conferring of benefits, rights or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; or
- (b) a contract of insurance; or
- (c) an arrangement for or in relation to the lending of money;

'spouse', in relation to a person, includes another person who, although not legally married to the person, lives with the person on a *bona fide* domestic basis as the husband or wife of the person;

'subject to tax' has the same meaning as in Part X;

'tax accounting period' has the same meaning as in Part X;

'tax law', in relation to a listed country or an unlisted country, has the same meaning as in Part X;

'transfer':

- (a) in relation to property—includes dispose of (whether by assignment, declaration of trust or otherwise) or provide; and
- (b) in relation to services—includes allow, confer, give, grant, perform or provide;

‘trust estate’, in relation to a transfer of property or services, means the trust estate or, as the case requires, the trustee of the trust estate;

‘underlying transfer’, in relation to a transfer of property or services to a trust estate, means:

- (a) if that transfer was an actual transfer—the actual transfer; or
- (b) if that transfer was taken to have been made because of subsection 102AAK (1)—the actual transfer referred to in that subsection; or
- (c) if that transfer was taken to have been made because of subsection 102AAK (2)—the actual transfer referred to in paragraph 102AAK (2) (d); or
- (d) if that transfer was taken to have been made because of subsection 102AAK (5)—the actual transfer referred to in paragraph 102AAK (5) (b); or
- (e) if that transfer was taken to have been made because of the application of subsection 102AAK (6) or (8) to an actual transfer—the actual transfer; or
- (f) if that transfer was taken to have been made because of the application of subsection 102AAK (6) or (8) to a transfer that was taken to have been made because of subsection 102AAK (1)—the actual transfer referred to in subsection 102AAK (1); or
- (g) if that transfer was taken to have been made because of the application of subsection 102AAK (6) or (8) to a transfer that was taken to have been made because of subsection 102AAK (5)—the actual transfer referred to in paragraph 102AAK (5) (b); or
- (h) if that transfer was taken to have been made because of subsection 102AAK (10)—the actual transfer referred to in paragraph 102AAK (10) (b); or
- (j) if that transfer was taken to have been made because of one or more applications of subsection 102AAK (11) to an actual transfer—the actual transfer; or
- (k) if that transfer was taken to have been made because of one or more applications of subsection 102AAK (11) to a transfer (in this paragraph called the **‘deemed transfer’**) that was taken to have been made because of subsection 102AAK (1), (2), (5), (6), (8) or (10)—the actual transfer that, under a preceding paragraph of this definition, is the underlying transfer in relation to the deemed transfer;

‘underlying transferor’, in relation to a transfer of property or services to a trust estate, means the entity who made the underlying transfer concerned;

‘weighted statutory interest rate’, in relation to a year of income, means:

- (a) if there is only one basic statutory interest rate in relation to the year of income—that rate; or
- (b) if there are 2 or more basic statutory interest rates in relation to the year of income—the weighted average of the basic statutory rates for the year of income.

Each listed country and unlisted country to be treated as a separate foreign country

“102AAC. For the purposes of the application of section 6AB to this Division, each listed country and each unlisted country is to be treated as a separate foreign country.

‘Subject to tax’—application of subsection 324 (2)

“102AAD. Subsection 324 (2) applies in relation to this Division in a corresponding way to the way in which it applies in relation to Part X.

Listed country trust estates

“102AAE. (1) For the purposes of this Division, a trust estate is taken to be a listed country trust estate in relation to a year of income if, and only if, either of the following paragraphs applies to each item of income or profit derived by the trust estate in the year of income:

- (a) the income or profit is either:
 - (i) subject to tax in a listed country in a tax accounting period ending before the end of the year of income or commencing during the year of income; or
 - (ii) designated concession income in relation to any listed country;
- (b) both of the following conditions are satisfied:
 - (i) a part of the income or profit is either:
 - (A) subject to tax in a listed country in a tax accounting period ending before the end of the year of income or commencing during the year of income; or
 - (B) designated concession income in relation to any listed country;
 - (ii) the remaining part, or each of the remaining parts, of the income or profit:
 - (A) is subject to tax in another listed country or in different listed countries, as the case may be, in a tax accounting period ending before the end of the year of income or commencing during the year of income; or

(B) is designated concession income in relation to any listed country.

“(2) For the purposes of the application of subparagraph (1) (b) (ii) to a trust estate, if a particular part of an item of income or profit (which part is in this subsection called the ‘**item part**’) derived by the trust estate is included, or would apart from section 23 be included, in the assessable income of the trust estate of a year of income (in this subsection called the ‘**trust’s year of income**’) and either of the following paragraphs applies:

(a) both of the following conditions are satisfied:

- (i) the trustee of the trust estate is liable to be assessed and pay tax under section 98, 99 or 99A in respect of a part of, or a share in, the net income of the trust estate of the trust’s year of income;
- (ii) the whole or a part of the part or share of the net income is attributable to the item part;

(b) all of the following conditions are satisfied:

- (i) an amount is included in the assessable income of another taxpayer of the trust’s year of income or the next following year of income (which taxpayer is in this subsection called the ‘**actual taxpayer**’) under subsection 92 (1) or section 97, 98A or 100;
- (ii) the actual taxpayer is:
 - (A) a company or a natural person (other than a company or a natural person in the capacity of a trustee); or
 - (B) the trustee of an eligible entity (within the meaning of Part IX) in relation to the year of income concerned; or
 - (C) the trustee of a corporate unit trust in relation to the year of income concerned; or
 - (D) the trustee of a public trading trust in relation to the year of income concerned; or
 - (E) the trustee of a trust estate who is liable to be assessed and pay tax under section 98, 99 or 99A in respect of a part of, or a share in, the net income of a trust estate;
- (iii) if sub-subparagraph (ii) (A), (B), (C) or (D) applies—the whole or a part of the amount so included in the actual taxpayer’s assessable income is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the item part;
- (iv) if sub-subparagraph (ii) (E) applies—the whole or a part of the part or share of the net income is attributable

(either directly or indirectly through one or more interposed partnerships or trusts) to the item part; the item part is to be treated as if it were subject to tax in a listed country in a tax accounting period ending before the end of the trust's year of income.

“(3) For the purposes of this section, where a part of a particular item of income or profits derived by an entity would, if it were a separate item of income or profits, be taken to be subject to tax in a listed country in a particular tax accounting period, that part is taken to be subject to tax in that listed country in that tax accounting period.

Public unit trusts

“102AAF. (1) Subject to this section, for the purposes of this Division, a unit trust is a public unit trust at all times during a year of income if either of the following conditions are satisfied:

- (a) at any time during the year of income:
 - (i) any of the units in the unit trust were listed for quotation in the official list of a stock exchange in Australia or elsewhere; or
 - (ii) any of the units in the unit trust were offered to the public;
- (b) at all times during the year of income, the units in the unit trust were held by not fewer than 50 persons.

“(2) In determining whether a unit trust is a public unit trust at all times during a year of income for the purposes of this Division, subsections 102G (2) to (8) (inclusive) and (10) apply:

- (a) as if a reference in those subsections to Division 6B were a reference to this Division; and
- (b) as if a reference in those subsections to subsection 102G (1) were a reference to subsection (1) of this section; and
- (c) as if a reference in those subsections to a public unit trust in relation to a year of income were a reference to a public unit trust at all times during a year of income.

“(3) In determining whether a unit trust (in this subsection called the ‘**first unit trust**’) is a public unit trust at all times during a year of income for the purposes of this Division, the following provisions have effect:

- (a) the following entities are taken to be one person:
 - (i) an entity, whether or not it holds units in the first unit trust; and
 - (ii) the entity or entities who are the associate or associates of the entity;
- (b) where any units in the first unit trust are held by the trustee of another trust that, apart from this paragraph, is a public unit

trust at all times during the year of income—a person who has a beneficial interest in property of that other trust that consists of those units is taken to hold those units;

(c) where any units in the first unit trust are held by the trustee of another trust that:

(i) apart from paragraph (b); or

(ii) by virtue of the application of paragraph (b);

is a public unit trust at all times during the year of income—a person who has a beneficial interest in the property of that other trust that consists of those units (whether or not that beneficial interest is taken to be held by virtue of the application of this paragraph) is taken to hold those units.

When entity is in a position to control a trust estate

“102AAG. (1) For the purposes of this Division, an entity is taken to be in a position to control a trust estate if, and only if:

(a) a group in relation to the entity had the power by means of the exercise by the group of any power of appointment or revocation or otherwise, to obtain, with or without the consent of any other entity, the beneficial enjoyment of the corpus or income of the trust estate; or

(b) a group in relation to the entity was able in any manner whatsoever, whether directly or indirectly, to control the application of the corpus or income of the trust estate; or

(c) a group in relation to the entity was capable under a scheme of gaining the enjoyment or the control referred to in paragraph (a) or (b); or

(d) a trustee of the trust estate was accustomed or under an obligation (whether formally or informally) or might reasonably be expected to act in accordance with the directions, instructions or wishes of a group in relation to the entity; or

(e) a group in relation to the entity was able to remove or appoint the trustee, or any of the trustees, of the trust estate.

“(2) In subsection (1), a reference to a group in relation to an entity is a reference to:

(a) the entity acting alone; or

(b) an associate of the entity acting alone; or

(c) the entity and one or more associates of the entity acting together; or

(d) 2 or more associates of the entity acting together.

Non-resident family trusts

“102AAH. (1) Subject to subsections (4) and (5), for the purposes of this Division, a trust estate is a non-resident family trust in relation to a natural person at a particular time if, and only if, at that time:

- (a) the trust estate is either:
 - (i) a post-marital family trust in relation to the natural person; or
 - (ii) a family relief trust in relation to the natural person; and
- (b) the trust is constituted by:
 - (i) a deed of trust or other instrument; or
 - (ii) an order or declaration of a court.

“(2) For the purposes of this section, a trust estate is a post-marital family trust in relation to a natural person at a particular time if:

- (a) either of the following conditions is satisfied:
 - (i) the trust was created pursuant to:
 - (A) a decree or order of dissolution or annulment of marriage, being a dissolution or annulment that, because of the *Family Law Act 1975*, has effect, or continues to have effect in Australia or is recognised as valid in Australia; or
 - (B) a decree or order of judicial separation or a similar decree or order;
 - (ii) the trust was created in consequence of the break-down of a *de facto* marriage; and
- (b) at that time, the only persons who benefit, or are capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust (which persons are in subsections (4) and (5) called the **‘primary potential beneficiaries’**) are natural persons who:
 - (i) are non-residents at that time; and
 - (ii) are covered by any of the following categories:
 - (A) the spouse or former spouse of the natural person;
 - (B) a child of the natural person;
 - (C) a child of the former spouse of the natural person, being a child who was such a child at a time when the former spouse was the spouse of the natural person;
 - (D) a child of the spouse of the natural person.

“(3) For the purposes of this section, a trust estate is a family relief trust in relation to a natural person at a particular time (in this subsection called the **‘test time’**) if:

- (a) the only persons who benefit, or are capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust (which persons are in subsections (4) and (5) called the **‘primary potential beneficiaries’**) are natural persons who:
 - (i) are identified by name in the trust deed or instrument,

or in the court order or declaration, constituting the trust; and

- (ii) are non-residents at that time; and
- (iii) are covered by any of the following categories:
 - (A) the spouse or former spouse of the natural person;
 - (B) a parent of the natural person or of the natural person's spouse or former spouse;
 - (C) a child of the natural person or of the natural person's spouse or former spouse;
 - (D) a grandparent of the natural person;
 - (E) a grandchild of the natural person;
 - (F) a brother or sister of the natural person or of the natural person's spouse or former spouse;
 - (G) a child of a brother or sister mentioned in sub-subparagraph (F); and
- (b) the trust was established, and is operated, for the relief of persons who are in necessitous circumstances; and
- (c) any of the following conditions is satisfied:
 - (i) at the test time, the assets of the trust are not excessive having regard to the requirements, or likely requirements, of the primary potential beneficiaries;
 - (ii) no transfers of property or services to the trust estate were made during the period (in this paragraph called the **'test period'**) commencing at the IP time and ending at the test time;
 - (iii) immediately after each transfer of property or services to the trust estate made during the test period, the assets of the trust were not excessive having regard to the requirements, or likely requirements, of the beneficiaries at the time of the transfer.

“(4) Subsection (1) does not prevent a trust estate from being a non-resident family trust in relation to a natural person at a particular time if, in the event of the death of a particular primary potential beneficiary at that time, one or more natural persons (which persons are in subsection (5) called the **'secondary potential beneficiaries'**) who:

- (a) are non-residents at that time; and
 - (b) are children of the primary potential beneficiary;
- would benefit, or be capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust.

“(5) Subsections (1) and (4) do not prevent a trust estate from being a non-resident family trust in relation to a natural person at a particular time if, in the event of the death of all of the primary potential beneficiaries and all of the secondary potential beneficiaries at that time, there are one or more funds, authorities or institutions in

Australia covered by paragraph 78 (1) (a) that would benefit, or be capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust.

“(6) For the purposes of this section, if, at a particular time, an entity holds an interest in, or right to benefit under, a trust that is dependent on the death of one or more natural persons, then, the entity is taken to be an entity who, in the event of the death of that natural person or those natural persons immediately after that time, would benefit under the trust.

“(7) A reference in this section to a natural person does not include a reference to a natural person in the capacity of a trustee.

Transfer of property or services

“102AAJ. (1) A reference in this Division to the transfer of property or services to a trust estate includes a reference to the transfer of such property or services by way of the creation of the trust estate.

“(2) For the purposes of this Division, where an entity acquires property that did not previously exist, the property is taken to have existed immediately before the acquisition and to have been transferred by the entity who created the property.

“(3) For the purposes of this Division, property or services are taken to have been transferred to an entity if the property or services have been applied for the benefit of, or in accordance with the directions of, the entity.

“(4) Without limiting the generality of subsection (3), a reference in that subsection to the application of property or services for the benefit of an entity includes a reference to the application of property or services in the discharge, in whole or in part, of a debt due by the entity.

“(5) Unless the contrary intention appears, a reference in this Division to a transfer of property or services includes a reference to a transfer made before the commencement of this Division.

“(6) A reference in this Division to a transfer of property or services made before the IP time includes a reference to a transfer made at the IP time.

Deemed transfers of property or services to trust estate

“102AAK. (1) For the purposes of this Division, where an entity (in this subsection called the ‘**prime entity**’) causes another entity to actually transfer property or services to a trust estate, the prime entity is taken to have transferred the property or services (instead of the other entity).

“(2) For the purposes of this Division, where:

- (a) the trustee of a trust estate issues units in the trust to an entity (in this subsection called the **‘first entity’**) in the first entity’s capacity as a manager, underwriter or dealer in relation to the marketing or placement of the units; and
- (b) in the course of the marketing or placement of the units, the units are disposed of by the first entity to another entity (in this subsection called the **‘second entity’**); and
- (c) at a particular time (in this subsection called the **‘second entity’s transfer time’**), the second entity transfers property or services to the first entity as consideration for the acquisition of the units; and
- (d) the first entity has actually transferred, or actually transfers, property or services (in this subsection called the **‘original property or services’**) to the trust estate for the sole purpose of acquiring the units;

the second entity is taken to have transferred the original property or services (instead of the first entity) at the second entity’s transfer time.

“(3) A reference in subsection (2) to a unit in a trust estate is a reference to an interest (however described) in any of the income or property of the trust estate.

“(4) Subsections (1) and (2) do not limit the operation of subsection (5).

“(5) Where, under a scheme:

- (a) an entity (in this subsection called the **‘scheme entity’**) actually transfers property or services to another entity; and
- (b) property or services are actually transferred to a trust estate at a particular time otherwise than by the scheme entity;

the Commissioner may, for the purposes of this Division, treat the property or services mentioned in paragraph (b) as having been transferred by the scheme entity to the trust estate (instead of by any other entity) at that time to such extent as the Commissioner considers reasonable.

“(6) For the purposes of this Division, if (apart from subsections (8), (10) and (11)) an entity, being a partnership, transfers property or services to a trust estate at a particular time:

- (a) each partner in the partnership is taken to have transferred a part of the property or services to the trust estate at that time; and
- (b) the market value of the part transferred by a particular partner is calculated using the formula:

Market value × Partner’s interest

where:

Market value means the market value, immediately before the transfer, of the property or services transferred by the partnership;

Partner's interest means:

- (i) the partner's percentage interest in the profits of the partnership as at that time; or
 - (ii) the partner's percentage interest in the property of the partnership as at that time;
- or, if they are different, whichever is the higher.

“(7) Nothing in paragraph (6) (a) affects the application of this Division to the transfer made by the partnership concerned.

“(8) For the purposes of this Division, if:

- (a) apart from this subsection, subsections (6), (10) and (11), an entity being the trustee of a trust estate (in this subsection called the ‘**transferor trust estate**’) transfers property or services (in this subsection called the ‘**transferred property or services**’) to another trust estate (in this subsection called the ‘**transferee trust estate**’) at a particular time (in this subsection called the ‘**transfer time**’); and
- (b) the transferor trust estate was an Australian trust, or a controlled foreign trust, at the transfer time; and
- (c) the transferor trust estate was a discretionary trust estate at the transfer time; and
- (d) apart from this subsection, subsections (6), (10) and (11), one or more other entities transferred property or services to the transferor trust estate at or before the transfer time;

each of those other entities is taken to have transferred the transferred property or services to the transferee trust estate at the transfer time.

“(9) Nothing in subsection (8) affects the application of this Division to the transfer mentioned in paragraph (8) (a).

“(10) For the purposes of this Division, where:

(a) any of the following subparagraphs applies:

- (i) any of the following events occurs in relation to a company (which company is in this subsection called the ‘**transferor**’):
 - (A) the company passes a resolution for its winding-up;
 - (B) an order is made for the winding-up of the company;
 - (C) any similar event;
- (ii) a partnership (in this subsection also called the ‘**transferor**’) ceases to exist for the purposes of this Act;
- (iii) either of the following sub-subparagraphs applies in

relation to the trustee of a trust estate (in this subsection also called the **'transferor'**):

(A) the trust estate commences to be wound-up;

(B) the trust estate ceases to exist for the purposes of this Act; and

- (b) an actual transfer of property or services is made to a trust estate (in this subsection called the **'transferee'**) as a consequence of the transferor being wound-up or ceasing to exist;

the transferor is taken to have transferred to the transferee the property or services concerned.

“(11) For the purposes of this Division (other than section 102AAN), where:

- (a) the following subparagraphs apply to an entity (in this subsection called the **'defunct entity'**):

(i) the defunct entity is a company, a partnership or the trustee of a trust estate;

(ii) the defunct entity transferred property or services to a trust estate (including a transfer that was taken to have been made because of another application or other applications of this subsection) at a particular time;

(iii) if the defunct entity is a company—any of the following events occurs:

(A) the company passes a resolution for its winding-up;

(B) an order is made for the winding-up of the company;

(C) any similar event;

(iv) if the defunct entity is a partnership—the partnership ceases to exist for the purposes of this Act;

(v) if the defunct entity is a trustee of a trust estate—either of the following sub-subparagraphs applies:

(A) the trust estate commences to be wound-up;

(B) the trust estate ceases to exist for the purposes of this Act; and

- (b) the Commissioner is satisfied that another entity (in this subsection called the **'successor entity'**) has benefited or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting (either directly or indirectly through one or more interposed companies, partnerships or trusts) by, or as a result of:

(i) a transfer of property or services made by the defunct entity; or

(ii) a transfer of property or services made as a consequence

of the defunct entity being wound-up or ceasing to exist;
and

- (c) the Commissioner is of the opinion that it is appropriate to apply this subsection to the successor entity;

the assessable income of the successor entity of the year of income in which the event, or the earliest event, mentioned in subparagraph (a) (iii), (iv) or (v) occurred and of each subsequent year of income is to be determined as if the successor entity had transferred to the trust estate mentioned in subparagraph (a) (ii), at the time mentioned in that subparagraph:

- (d) the whole of the property or services mentioned in that subparagraph; or
- (e) if the Commissioner thinks it appropriate—a part of the property or services referred to in that subparagraph.

Division not to apply to transfers by trustees of deceased estates

“102AAL. A reference in this Division to a transfer of property or services to a trust estate does not include a reference to a transfer made by the trustee of the estate of a deceased person under:

- (a) the terms of the deceased person’s will or codicil; or
- (b) an order of a court that varied or modified the provisions of the deceased person’s will or codicil;

unless:

- (c) the transfer was made in or as the result of the exercise (by the trustee or any other person) of a power of appointment or any other discretion; or
- (d) under subsection 102AAK (1), the property or services are taken to have been transferred by an entity other than the trustee, instead of by the trustee; or
- (e) under subsection 102AAK (5), the Commissioner treats the property or services as having been (to any extent) transferred by an entity other than the trustee, instead of by the trustee.

“Subdivision B—Payment of Interest by Taxpayer on Distributions from Certain Non-resident Trust Estates

Payment of interest by taxpayer on distributions from certain non-resident trust estates

“102AAM. (1) For the purposes of this section, if:

- (a) an amount is included in the assessable income of a taxpayer of a year of income (which year of income is in this section called the ‘current year of income’), being the year of income commencing on 1 July 1990 or a subsequent year of income, under section 99B in relation to a trust estate; and

(b) the whole or a part of the amount so included in the taxpayer's assessable income (which whole or part is in this section called the **'distributed amount'**) is attributable to:

- (i) if the trust estate was a listed country trust estate in relation to a particular non-resident year of income of the trust estate (in this section called the **'non-resident trust's year of income'**)—so much of the income and profits of the trust estate of the non-resident trust's year of income as represents eligible designated concession income in relation to any listed country in relation to the non-resident trust's year of income; or
- (ii) if the trust estate was not a listed country trust estate in relation to a particular non-resident year of income of the trust estate (in this section also called the **'non-resident trust's year of income'**)—so much of the income and profits of the trust estate of the non-resident trust's year of income as has not been subject to tax in any listed country in a tax accounting period:
 - (A) ending before the end of the non-resident trust's year of income; or
 - (B) commencing during the non-resident trust's year of income;

then:

- (c) the distributed amount is the distributed amount of the non-resident trust's year of income; and
- (d) the taxpayer is the original taxpayer in relation to the distributed amount of the non-resident trust's year of income.

“(2) Subject to this section, if the original taxpayer in relation to the distributed amount of the non-resident trust's year of income is:

- (a) a company or a natural person (other than a company or a natural person in the capacity of a trustee); or
- (b) the trustee of a corporate unit trust in relation to the current year of income; or
- (c) the trustee of a public trading trust in relation to the current year of income; or
- (d) the trustee of an eligible entity within the meaning of Part IX in relation to the current year of income;

the taxpayer is liable to pay interest to the Commissioner in respect of the distributed amount of the non-resident trust's year of income, calculated under subsection (5), on the amount calculated using the formula:

$$[\text{Distributed amount} \times \text{Applicable rate of tax}] - \text{FTC}$$

where:

Distributed amount means the distributed amount of the non-resident trust's year of income;

Applicable rate of tax has the meaning given by subsection (10);

FTC [Foreign tax credit] means so much of any credit under Division 18 to which the taxpayer is entitled as is attributable to the distributed amount of the non-resident trust's year of income.

“(3) Subject to this section, if:

- (a) the original taxpayer in relation to the distributed amount of the non-resident trust's year of income is the trustee of a trust estate who is liable to be assessed and pay tax under section 98, 99 or 99A in respect of a part of, or a share in, the net income of the trust estate; and
- (b) the whole or a part (which whole or part is in this subsection called the ‘**taxpayer's portion of the distributed amount of the non-resident trust's year of income**’) of the part or share of the net income is attributable to the distributed amount of the non-resident trust's year of income;

the taxpayer is liable to pay interest to the Commissioner in respect of the taxpayer's portion of the distributed amount of the non-resident trust's year of income, calculated under subsection (5), on the amount calculated using the formula:

$$\left[\frac{\text{Taxpayer's portion of the distributed amount}}{\text{Applicable rate of tax}} \right] - \text{FTC}$$

where:

Taxpayer's portion of the distributed amount means the taxpayer's portion of the distributed amount of the non-resident trust's year of income;

Applicable rate of tax has the meaning given by subsection (10);

FTC [Foreign tax credit] means so much of any credit under Division 18 to which the taxpayer is entitled as is attributable to the taxpayer's portion of the distributed amount of the non-resident trust's year of income.

“(4) Subject to this section, if:

- (a) the original taxpayer in relation to the distributed amount of the non-resident trust's year of income is the trustee of a trust estate or a partnership; and
- (b) the following conditions are satisfied in relation to another taxpayer (in this subsection called the ‘**actual taxpayer**’):
 - (i) an amount is included in the assessable income of the actual taxpayer of a year of income under subsection 92 (1) or section 97, 98A or 100;
 - (ii) the actual taxpayer is:
 - (A) a company or a natural person (other than a company or a natural person in the capacity of a trustee); or
 - (B) the trustee of an eligible entity (within the meaning of Part IX) in relation to the year of income; or

- (C) the trustee of a corporate unit trust in relation to the year of income; or
 - (D) the trustee of a public trading trust in relation to the year of income; or
 - (E) the trustee of a trust estate who is liable to be assessed and pay tax under section 98, 99 or 99A in respect of a part of, or a share in, the net income of a trust estate;
- (iii) if sub-subparagraph (ii) (A), (B), (C) or (D) applies—the whole or a part of the amount so included in the actual taxpayer's assessable income (which whole or part is in this subsection called the **'taxpayer's portion of the distributed amount of the non-resident trust's year of income'**) is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the distributed amount of the non-resident trust's year of income;
 - (iv) if sub-subparagraph (ii) (E) applies—the whole or a part (which whole or part is in this subsection also called the **'taxpayer's portion of the distributed amount of the non-resident trust's year of income'**) of the part or share of the net income is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the distributed amount of the non-resident trust's year of income;

the actual taxpayer is liable to pay interest to the Commissioner in respect of the taxpayer's portion of the distributed amount of the non-resident trust's year of income, calculated under subsection (5), on the amount calculated using the formula:

$$\left[\begin{array}{l} \text{Taxpayer's portion of} \\ \text{the distributed amount} \end{array} \times \begin{array}{l} \text{Applicable} \\ \text{rate of tax} \end{array} \right] - \text{FTC}$$

where:

Taxpayer's portion of the distributed amount means the taxpayer's portion of the distributed amount of the non-resident trust's year of income;

Applicable rate of tax has the meaning given by subsection (10);

FTC [Foreign tax credit] means so much of any credit under Division 18 to which the taxpayer is entitled as is attributable to the taxpayer's portion of the distributed amount of the non-resident trust's year of income.

~~“(5) Interest payable by a taxpayer under this section is to be calculated:~~

- (a) in respect of the period commencing at whichever of the following times is the latest:

- (i) the beginning of the first year of income of the taxpayer that begins after the end of the non-resident trust's year of income;
 - (ii) the beginning of the year of income of the taxpayer commencing on 1 July 1990;
 - (iii) if the taxpayer is a natural person (other than a natural person in the capacity of a trustee) who first commenced to be a resident of Australia at a time (in this subparagraph called the '**first residence time**') on or after 1 July 1990—the beginning of the year of income of the taxpayer next following the year of income of the taxpayer in which the first residence time occurred;
- and ending at the end of the assessment year of income; and
- (b) at such rate of interest as is, or such rates of interest as are, applicable for the purposes of section 10 of the *Taxation (Interest on Overpayments) Act 1983*.

“(6) Where the assessable income of a taxpayer of a year of income includes one or more of the following amounts in relation to one or more non-resident years of income of a particular trust estate (which amounts are in this subsection called the '**principal amounts**’):

- (a) the distributed amount of the non-resident trust's year of income;
- (b) the taxpayer's portion of the distributed amount of the non-resident trust's year of income;

the aggregate of the interest payable by the taxpayer in respect of the principal amounts is not to exceed the difference between:

- (c) the aggregate of the principal amounts; and
- (d) so much of the taxpayer's pre-franking rebate tax for the year of income as is attributable to the aggregate of the principal amounts.

“(7) For the purposes of this section, the extent to which an amount (in this subsection called the '**section 99B amount**') included in the assessable income of a taxpayer of a year of income under section 99B in relation to a trust estate is attributable to an amount (in this subsection called the '**trust amount**') covered by subparagraph (1) (b) (i) or (ii) is to be determined in accordance with the following paragraphs:

- (a) in all cases—distributions of income and profits of the trust estate are to be taken to have been made in the following order:
 - (i) first, from income and profits of the earliest non-resident year of income;
 - (ii) then, successively from income and profits of successive subsequent years of income;
- (b) if subparagraph (1) (b) (i) applies—the extent to which the amount (in this paragraph called the '**adjusted section 99B**

amount'), being so much of the section 99B amount as is attributable to the income and profits of the trust estate of the non-resident trust's year of income, represents eligible designated concession income in relation to any listed country in relation to the non-resident trust's year of income is calculated using the formula:

$$\frac{\text{Adjusted section 99B amount}}{\text{amount}} \times \frac{\text{Eligible designated concession income}}{\text{Total income}}$$

where:

Adjusted section 99B amount means the adjusted section 99B amount;

Eligible designated concession income means the number of dollars in the amount, being so much of the income and profits of the trust estate of the non-resident trust's year of income as represents eligible designated concession income in relation to any listed country in relation to the non-resident trust's year of income;

Total income means the number of dollars in the income and profits of the trust estate of the non-resident trust's year of income;

- (c) if subparagraph (1)(b)(ii) applies—the extent to which the amount (in this paragraph called the '**adjusted section 99B amount**'), being so much of the section 99B amount as is attributable to the income and profits of the trust estate of the non-resident trust's year of income, represents income and profits that have not been subject to tax in a listed country in a tax accounting period mentioned in that subparagraph is calculated using the formula:

$$\frac{\text{Adjusted section 99B amount}}{\text{amount}} \times \frac{\text{Untaxed income}}{\text{Total income}}$$

where:

Adjusted section 99B amount means the adjusted section 99B amount;

Untaxed income means the number of dollars in the amount, being so much of the income and profits of the trust estate of the non-resident trust's year of income as is not subject to tax in any listed country in a tax accounting period mentioned in that subparagraph;

Total income means the number of dollars in the income and profits of the trust estate of the non-resident trust's year of income.

“(8) For the purposes of subsection (7), an amount of income or profits of a trust estate is to be taken to be distributed if the amount is paid to, or applied for the benefit of (within the meaning of section 99B), a beneficiary of the trust estate.

“(9) Where, apart from this subsection, the amount of interest that would be payable under this section by a taxpayer in respect of the distributed amount of a non-resident trust’s year of income, or in respect of the taxpayer’s portion of the distributed amount of a non-resident trust’s year of income, is less than 50 cents, interest is not payable by the taxpayer under this section.

“(10) For the purposes of this section, the applicable rate of tax in relation to a taxpayer is:

- (a) if the taxpayer is a company (other than a company in the capacity of a trustee)—the general company tax rate (within the meaning of Part IIIAA) for the year of tax to which the assessment year of income relates; or
- (b) in any other case—the maximum rate specified in Column 2 of the table in Part I of Schedule 7 of the *Income Tax Rates Act 1986* that applies for the assessment year of income.

“(11) For the purposes of the application of this section to a taxpayer, the assessment year of income is:

- (a) if subsection (2) or (3) applies—the current year of income; or
- (b) if subsection (4) applies—the year of income referred to in subparagraph (4) (b) (i).

“(12) The Commissioner must make an assessment of the interest payable by a taxpayer under this section.

“(13) Nothing in this Act precludes notice of an assessment made in respect of a taxpayer under subsection (12) from being incorporated in a notice of any other assessment made in respect of the taxpayer under this Act.

“(14) Unless the contrary intention appears, in sections 170, 172, 174, 201, 204, 205, 206, 207, 208, 209, 214, 215, 216, 254, 255, 258, 259 and 265, but not in any other section of this Act, ‘income tax’ or ‘tax’ includes interest payable under this section.

“Subdivision C—Winding-up of Non-resident Trust Estates in Existence on 12 April 1989

Winding-up of non-resident trust estates—tax rebates

“102AAN. (1) If:

- (a) an amount (in this section called the ‘section 99B amount’) is included in the assessable income of a taxpayer of:
 - (i) the year of income commencing on 1 July 1988 (which

- year of income is in this section called the **‘taxpayer’s year of income’**); or
 - (ii) the year of income commencing on 1 July 1989 (which year of income is in this section also called the **‘taxpayer’s year of income’**); or
 - (iii) the year of income commencing on 1 July 1990 (which year of income is in this section also called the **‘taxpayer’s year of income’**);
- under section 99B in relation to:
- (iv) a trust estate that:
 - (A) if the period commencing on 1 July 1988 and ending at the IP time had been a year of income, would be a non-resident trust estate in relation to that year of income; and
 - (B) was in existence, and was a discretionary trust estate, at the IP time; and
 - (v) an amount paid to, or applied for the benefit of (within the meaning of section 99B), the taxpayer after the IP time; and
- (b) before the IP time, one or more entities (in this section called the **‘transferors’**) transferred property or services to the trust estate; and
 - (c) at least one of the transferors was an Australian entity at:
 - (i) in any case—the time of that transfer of property or services; or
 - (ii) in the case of an entity who is a natural person (other than a natural person in the capacity of trustee)—the end of 30 June 1991; or
 - (iii) in the case of an entity to whom subparagraph (ii) does not apply—the IP time; and
 - (d) the trust estate is completely wound up before 30 June 1991; and
 - (e) neither the transferors, nor any associate of the transferors, transferred property or services to the trust estate after the IP time (not being property or services relating to, or consisting of, the provision of personal services in connection with that winding-up);
- the following provisions have effect:
- (f) the taxpayer is the original taxpayer in relation to the section 99B amount and in relation to the taxpayer’s year of income;
 - (g) the section 99B amount, as reduced by so much of that amount as represents an amount that, if it had been derived by a taxpayer being a resident, would have been an amount of assessable income derived, or included in assessable income, in respect of property or services transferred to the trust estate

after the IP time, is to be taken to be the rebatable section 99B amount.

“(2) If the original taxpayer in relation to the section 99B amount in relation to the taxpayer’s year of income is:

- (a) a company or a natural person (other than a company or a natural person in the capacity of a trustee); or
- (b) the trustee of a corporate unit trust in relation to the taxpayer’s year of income; or
- (c) the trustee of a public trading trust in relation to the taxpayer’s year of income; or
- (d) the trustee of an eligible entity (within the meaning of Part IX) in relation to the taxpayer’s year of income;

the following provisions have effect:

- (e) the taxpayer is entitled to a rebate of tax in the taxpayer’s assessment for the taxpayer’s year of income of such an amount (if any) that is necessary to ensure that the rate of tax on the rebatable section 99B amount does not exceed 10%;
- (f) a reference in subsection 160AF (1) to the foreign income of the taxpayer does not include a reference to the rebatable section 99B amount.

“(3) If:

- (a) the original taxpayer in relation to the section 99B amount in relation to the taxpayer’s year of income is the trustee of a trust estate who is liable to be assessed and pay tax under section 98, 99 or 99A in respect of a part of, or a share in, the net income of the trust estate; and
- (b) the whole or a part (which whole or part is in this subsection called the **‘taxpayer’s portion of the section 99B amount’**) of the part or share of the net income is attributable to the section 99B amount;

the following provisions have effect:

- (c) the taxpayer is entitled to a rebate of tax in the taxpayer’s assessment for the taxpayer’s year of income of such an amount (if any) as is necessary to ensure that the rate of tax on so much of the taxpayer’s portion of the section 99B amount as represents the rebatable section 99B amount does not exceed 10%;
- (d) a reference in subsection 160AF (1) to the foreign income of the taxpayer does not include a reference to the rebatable section 99B amount.

“(4) If:

- (a) the original taxpayer in relation to the section 99B amount in relation to the taxpayer’s year of income is the trustee of a trust estate or a partnership; and

- (b) the following conditions are satisfied in relation to another taxpayer (in this subsection called the **'actual taxpayer'**):
- (i) an amount is included in the assessable income of the actual taxpayer of a year of income (in this subsection called the **'current year of income'**) under subsection 92 (1) or section 97, 98A or 100;
 - (ii) the actual taxpayer is:
 - (A) a company or a natural person (other than a company or a natural person in the capacity of a trustee); or
 - (B) the trustee of an eligible entity (within the meaning of Part IX) in relation to the current year of income; or
 - (C) the trustee of a corporate unit trust in relation to the current year of income; or
 - (D) the trustee of a public trading trust in relation to the current year of income; or
 - (E) the trustee of a trust estate who is liable to be assessed and pay tax under section 98, 99 or 99A in respect of a part of, or a share in, the net income of a trust estate;
 - (iii) if sub-subparagraph (ii) (A), (B), (C) or (D) applies—the whole or a part of the amount so included in the actual taxpayer's assessable income (which whole or part is in this subsection called the **'taxpayer's portion of the section 99B amount'**) is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the section 99B amount;
 - (iv) if sub-subparagraph (ii) (E) applies—the whole or a part (which whole or part is in this subsection also called the **'taxpayer's portion of the section 99B amount'**) of the part or share of the net income is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the section 99B amount;

the following provisions have effect:

- (c) the actual taxpayer is entitled to a rebate of tax in the taxpayer's assessment for the current year of income of such an amount (if any) as is necessary to ensure that the rate of tax on so much of the taxpayer's portion of the section 99B amount as represents the rebatable section 99B amount concerned does not exceed 10%;
- (d) a reference in subsection 160AF(1) to the foreign income of the actual taxpayer does not include a reference to so much of the taxpayer's portion of the section 99B amount as represents the rebatable section 99B amount concerned.

Winding-up of non-resident discretionary trusts—adjustment of tax treatment of beneficiaries

“102AAP. Where:

- (a) the trustee of a trust estate has a discretion to pay or apply income of the trust estate to or for the benefit of specified beneficiaries; and
- (b) the trust estate is completely wound up before 30 June 1991; and
- (c) the trustee exercises the trustee’s discretion in favour of a beneficiary:
 - (i) in the course of that winding-up; and
 - (ii) during a year of income mentioned in subparagraph 102AAN (1) (a) (i), (ii) or (iii); and
 - (iii) after the IP time; and
- (d) under section 101, the beneficiary is taken to be presently entitled to the amount (in this subsection called the ‘**distributed amount**’) paid to the beneficiary or applied to the beneficiary’s benefit by the trustee in the exercise of that discretion; and
- (e) the conditions set out in subparagraph 102AAN (1) (a) (iv) and paragraphs 102AAN (1) (b), (c) and (e) are satisfied in relation to the trust estate;

the following provisions have effect:

- (f) neither section 97 nor 98 is taken to have applied in relation to the beneficiary’s present entitlement to the distributed amount;
- (g) the distributed amount is taken to have been included in the assessable income of the beneficiary of the taxpayer’s year of income under section 99B.

Winding-up of non-resident trust estates—modified accruals system of taxation

“102AAQ. Where the conditions set out in subparagraph 102AAN (1) (a) (iv) and paragraphs 102AAN (1) (b) to (e) (inclusive) are satisfied in relation to a trust estate, then, for the purposes of this Division, an entity is not taken to be an attributable taxpayer in relation to:

- (a) the year of income of the entity commencing on 1 July 1990; or
- (b) the year of income of the entity commencing on 1 July 1991; and in relation to the trust estate.

When trust estate is taken to be completely wound up

“102AAR. For the purposes of this Subdivision, a trust estate is not taken to be completely wound up as at a particular time unless:

- (a) all of the liabilities of the trust estate are discharged before that time; and

- (b) all of the property of the trust estate is distributed to the beneficiaries of the trust estate before that time.

“Subdivision D—Accruals System of Taxation of Certain Non-resident Trust Estates

Object of Subdivision

“102AAS. The object of this Subdivision is to set out rules relating to the following:

- (a) the determination of attributable taxpayer status (section 102AAT);
- (b) the calculation of the attributable income of a trust estate (sections 102AAU to 102AAZC (inclusive));
- (c) the inclusion of amounts in assessable income (sections 102AAZD, 102AAZE and 102AAZF);
- (d) the keeping of associated records (section 102AAZG).

Accruals system of taxation—attributable taxpayer

“102AAT. (1) Subject to this Division, for the purposes of this Division, an entity is an attributable taxpayer in relation to a year of income of the entity (which year of income is in this section called the ‘entity’s current year of income’) and in relation to a particular trust estate if, and only if:

- (a) either of the following subparagraphs applies:
 - (i) all of the following conditions are satisfied:
 - (A) the trust estate was a discretionary trust estate at any time during the entity’s current year of income;
 - (B) the trust estate was not a public unit trust at all times during the entity’s current year of income;
 - (C) the entity has transferred property or services to the trust estate at a time (in this subparagraph called the ‘transfer time’) before or during the entity’s current year of income;
 - (D) if the underlying transfer was made in the course of carrying on a business—it is not the case that, at or about the time of the underlying transfer, identical or similar property or services were transferred by the underlying transferor in the ordinary course of business to ordinary clients or customers under arm’s length transactions and in similar circumstances and subject to identical or similar terms and conditions as those that applied in relation to the underlying transfer of the property or services concerned;
 - (E) if the underlying transfer was made under an arm’s

length transaction otherwise than in the course of carrying on a business—the entity was in a position, at any time after the transfer time and before the end of the entity’s current year of income, to control the trust estate;

(F) if the transfer was made before the IP time and the trust estate was in existence, and was a discretionary trust estate, at the IP time—the entity was in a position, at any time after the IP time and before the end of the entity’s current year of income, to control the trust estate;

(ii) all of the following conditions are satisfied:

(A) the trust estate was a non-discretionary trust estate, or a public unit trust, at all times during the entity’s current year of income when the trust estate was in existence;

(B) the entity has transferred property or services to the trust estate after the IP time and before or during the entity’s current year of income;

(C) the underlying transfer was made for no consideration or for a consideration less than the arm’s length amount in relation to the underlying transfer;

(D) it is not the case that the sole purpose of the underlying transfer was the acquisition of units in the trust estate where the parties to the underlying transfer were at arm’s length with each other in relation to the underlying transfer and the trust estate was a public unit trust at all times during the entity’s current year of income when the trust estate was in existence; and

(b) if the entity is a natural person (other than a natural person in the capacity of a trustee):

(i) if:

(A) the natural person first commenced to be a resident of Australia at a time (in this subparagraph called the ‘**first residence time**’) after the IP time and before the end of the entity’s current year of income; and

(B) the transfer, or each of the transfers, covered by paragraph (a) was made before the first residence time;

the trust estate was not a non-resident family trust in relation to the natural person at all times:

(C) after the beginning of the first year of income of

the natural person after the first residence time;
and

(D) before the end of the entity's current year of income;

when the trust estate was in existence; or

(ii) in any other case—the trust estate was not a non-resident family trust in relation to the natural person at all times after the beginning of the year of income of the taxpayer commencing on 1 July 1990 and before the end of the entity's current year of income when the trust estate was in existence; and

(c) it is not the case that:

(i) the entity is a natural person (other than a natural person in the capacity of a trustee) who first commenced to be a resident of Australia at a time (in this paragraph called the '**first residence time**') after the IP time and before the end of the entity's current year of income; and

(ii) the transfer was made before the first residence time; and

(iii) the entity was not in a position to control the trust estate at any time during the period:

(A) commencing at the beginning of the first year of income of the entity after the first residence time; and

(B) ending at the end of the entity's current year of income.

“(2) For the purposes of this section, if:

(a) an entity (in this subsection called the '**transferor**') being a partnership is an attributable taxpayer in relation to the entity's current year of income and in relation to a particular trust estate (in this subsection called the '**transferee trust estate**') because of one or more transfers (being actual transfers or transfers taken to have been made because of subsection 102AAK (1), (2) or (5)) of property or services made by the transferor to the transferee trust estate; or

(b) an entity (in this subsection also called the '**transferor**') being a trust estate is an attributable taxpayer in relation to the entity's current year of income and in relation to another trust estate (in this subsection also called the '**transferee trust estate**') because of one or more transfers (being actual transfers or transfers taken to have been made because of subsection 102AAK (1), (2) or (5)) of property or services made by the transferor to the transferee trust estate;

the question whether any other entity is an attributable taxpayer in relation to the same year of income and in relation to the transferee trust estate is to be determined as if:

- (c) if paragraph (a) applies—subsection 102AAK (6) did not apply in relation to any of the transfers mentioned in that paragraph; or
- (d) if paragraph (b) applies—subsection 102AAK (8) did not apply in relation to any of the transfers mentioned in that paragraph.

“(3) If:

- (a) apart from this subsection, an entity, being a natural person (other than a natural person in the capacity of a trustee), is not an attributable taxpayer in relation to the entity’s current year of income and in relation to a trust estate; and
- (b) apart from paragraph (1) (b), the entity would have been such an attributable taxpayer; and
- (c) apart from subparagraph 102AAH (2) (b) (i) or (3) (a) (ii), the trust estate was not a non-resident family trust in relation to the natural person at some time after the entity’s current year of income when the natural person was alive and the trust estate was in existence;

the following provisions have effect:

- (d) subsection (1) has effect as if paragraph (1) (b) had applied;
- (e) section 170 does not prevent the amendment of an assessment at any time for the purposes of giving effect to this subsection.

“(4) If:

- (a) apart from this subsection, an entity is not an attributable taxpayer in relation to the entity’s current year of income and in relation to a trust estate; and
- (b) apart from sub-subparagraph (1) (a) (i) (E) or (F) or paragraph (1) (c), the entity would have been such an attributable taxpayer; and
- (c) the entity was in a position to control the trust estate at some time after the entity’s current year of income when the trust estate was in existence;

the following provisions have effect:

- (d) subsection (1) has effect as if sub-subparagraph (1) (a) (i) (E) or (F) or paragraph (1) (c), as the case may be, had applied;
- (e) section 170 does not prevent the amendment of an assessment at any time for the purposes of giving effect to this subsection.

Attributable income of a trust estate

“102AAU. (1) Subject to this Subdivision, the attributable income of a non-resident trust estate of a year of income is:

- (a) if the non-resident trust estate is not a listed country trust estate in relation to the year of income—the net income of the non-resident trust estate of the year of income; or

- (b) if the non-resident trust estate is a listed country trust estate in relation to the year of income—the amount that would have been the net income of the non-resident trust estate of the year of income if the exempt income of the trust estate included all income and profits of the trust estate other than eligible designated concession income in relation to any listed country in relation to the year of income;

reduced by:

- (c) so much (if any) of the amount covered by paragraph (a) or (b) as represents:

- (i) an amount:

- (A) that is or has been included in the assessable income of a beneficiary under section 97; or
 - (B) in respect of which the trustee of the non-resident trust estate is or has been assessed and liable to pay tax under section 98, 99 or 99A; or

- (ii) an amount:

- (A) that is paid to a beneficiary, being a resident of a listed country, during the period of 13 months commencing at the beginning of the year of income; and
 - (B) subject to tax in a listed country in a tax accounting period ending before the end of the year of income or commencing during the year of income; or

- (iii) an amount that consists of, or is attributable to, so much of a frankable dividend (within the meaning of Part IIIAA) as has been franked in accordance with section 160AQF; or

- (iv) an amount that is included in the assessable income of the trustee of the trust estate under section 160AQT; or

- (v) if an amount is or has been included in the assessable income of any taxpayer under section 102AAZD because the taxpayer is an attributable taxpayer in relation to any year of income (in this subparagraph called the **'taxpayer's year of income'**) and in relation to a trust estate other than the non-resident trust estate—so much of an amount paid to the trustee of the non-resident trust estate as represents the attributable income of that other trust estate of the taxpayer's year of income; or

- (vi) if:

- (A) one or more amounts (in this subparagraph called the **'section 458 amounts'**) are included in the assessable incomes of one or more taxpayers under section 458 in respect of a dividend paid by a CFC; and

- (B) the assessable income of the trust estate of the year of income includes an amount that is attributable (either directly or indirectly through one or more interposed partnerships or trusts) to the payment of the dividend;

the total of the section 458 amounts; or

(vii) if:

- (A) an attribution account payment is made to the trustee of the trust estate during the year of income; and

- (B) the making of the attribution account payment gives rise to an attribution debit, in relation to any taxpayer, for the entity making the payment;

the amount of the attribution debit; or

(viii) an amount of income or profits of the trust estate:

- (A) that is subject to tax in any listed country in a tax accounting period ending before the end of the year of income or commencing during the year of income; and

- (B) that is not eligible designated concession income in relation to any listed country in relation to the year of income; and

- (d) so much of any foreign tax or Australian tax paid by the trustee or a beneficiary as is attributable to so much of the amount covered by paragraph (a) or (b), as the case requires, as remains after the reduction or reductions covered by paragraph (c).

“(2) The attributable income of a resident trust estate of a year of income is 0.

“(3) For the purposes of sub-subparagraph (1)(c)(ii)(A), a beneficiary is to be taken to be a resident of a listed country if, and only if, the beneficiary is treated as a resident of the listed country for the purposes of the tax law of the listed country.

“(4) If the tax law of a listed country adopts some criterion other than treatment as a resident as the criterion for applying a worldwide source tax base to a beneficiary, then, subsection (3) has effect, in relation to that tax law, as if that criterion were the same as treatment as a resident of the listed country for the purposes of that tax law.

“(5) For the purposes of this section, where, because of section 101, a beneficiary is presently entitled to a particular amount, the amount is taken to have been paid to the beneficiary.

“(6) For the purposes of this section, the extent to which an amount referred to in subparagraph (1)(c)(i) or (ii) (in this subsection called the **‘taxed amount’**) represents the amount covered by paragraph (1)(b)

(in this subsection called the ‘**listed country trust amount**’) is calculated using the formula:

$$\text{Taxed amount} \times \frac{\text{Listed country trust amount}}{\text{Net income}}$$

where:

Taxed amount means the taxed amount;

Listed country trust amount means the number of dollars in the listed country trust amount;

Net income means the number of dollars in the net income of the non-resident trust estate concerned of the year of income concerned.

Double tax agreements to be disregarded

“102AAV. In calculating the attributable income of a trust estate, the *Income Tax (International Agreements) Act 1953* is to be disregarded, except for the purpose of references in this Act to that Act.

Certain provisions to be disregarded in calculating attributable income

“102AAW. For the purpose of applying this Act in calculating the attributable income of a trust estate, sections 20, 23AI, 38 to 43 (inclusive), 128D, 456, 457, 458 and 459 are to be disregarded.

Income and expenses to be expressed in Australian currency

“102AAX. (1) For the purpose of applying this Act in calculating the attributable income of a trust estate of a year of income, any amount (in this section called an ‘**eligible amount**’) of income wherever derived or of expenditure wherever incurred is to be expressed in Australian currency.

“(2) Where, according to the accounts of the trust estate that are used to calculate the attributable income of the trust estate of the year of income, some or all of the eligible amounts of the trust estate are not expressed in Australian currency, then any such eligible amount is to be converted:

(a) if there is a single or predominant foreign currency in which the eligible amounts of the trust estate are expressed in the accounts and paragraph (b) does not apply:

(i) where the eligible amount is expressed in that currency—to Australian currency at a rate equal to:

(A) if sub-subparagraph (B) does not apply—the average of the exchange rates applicable from time to time during the year of income; or

(B) if the trustee of the trust estate elects in accordance with subsection (3)—the exchange rate applicable on the last day of the year of income; or

- (ii) in any other case—first to the single or predominant currency using any reasonable method and then to Australian currency in accordance with whichever of sub-subparagraph (i) (A) or (B) applies; or
 - (b) if the eligible amount is an amount of foreign tax paid by the trustee of the trust estate:
 - (i) if the foreign tax was paid by deduction from another amount—to Australian currency, or to another currency and then to Australian currency, according to the method applicable under paragraph (a) or (c) for the conversion of the amount from which it was deducted; or
 - (ii) in any other case—to Australian currency at the rate of exchange applicable at the time when the foreign tax was paid; or
 - (c) if neither paragraph (a) or (b) applies—to Australian currency using any reasonable method.
- “(3) The trustee of the trust estate may elect that sub-subparagraph (2) (a) (i) (B) is to apply in relation to the trust estate.
- “(4) An election under subsection (3):
- (a) must be in writing; and
 - (b) must be lodged with the Commissioner before the end of the period of 30 days after the end of the year of income concerned, or within such further period as the Commissioner allows.
- “(5) Where the trustee of the trust estate does so, that sub-subparagraph applies instead of sub-subparagraph (2) (a) (i) (A) in calculating the attributable income of the trust estate for the year of income and for all subsequent years of income.

Modified application of trading stock provisions

“102AAY. For the purpose of applying this Act in calculating the attributable income of the trust estate, Subdivision B of Division 2 of Part III has effect as if the value of the article of trading stock to be taken into account at the beginning of the year of income were its cost price.

Modified application of depreciation provisions

“102AAZ. (1) For the purpose of determining the attributable income of a trust estate of a year of income (in this section called the ‘**attributable year of income**’), where property has been held by the trustee of the trust estate in a non-attributable year of income before the attributable year of income, then, in relation to the application of a depreciation provision to the property, subsection (2) applies.

“(2) Such amount as the Commissioner considers appropriate to take account of the holding of the property as mentioned in subsection (1) is, under the depreciation provision:

(a) an allowable deduction to the trustee of the trust estate; or
(b) included in the assessable income of the trust estate;
as the case requires, for the attributable year of income in substitution for any amount that would otherwise be so included or allowable.

“(3) For the purpose of exercising the Commissioner’s power under subsection (2) in relation to deductions allowable under sections 54 to 62 (inclusive), the Commissioner must assume that the property was used by the trustee of the trust estate during any non-attributable year of income wholly and exclusively for the purpose of producing assessable income.

Modified application of Division 13 of Part III

“102AAZA. In calculating the attributable income of a trust estate of a year of income:

- (a) for the purposes of section 136AC, if the trust estate is a non-resident trust estate in relation to the year of income—the trustee is taken to be a non-resident, within the meaning of that section, without regard to the assumption about the trustee’s residence that is made in whichever of the following provisions is applicable:
 - (i) the definition of ‘net income’ in subsection 95 (1);
 - (ii) the definition of ‘net income’ in subsection 102D (1);
 - (iii) the definition of ‘net income’ in section 102M;
 - (iv) section 272; and
- (b) section 136AF applies as if:
 - (i) the reference in subsection 136AF (1) to the application of section 136AD in relation to a taxpayer were a reference both to:
 - (A) the application of that section in relation to any trust estate in calculating its attributable income or in relation to any CFC in calculating its attributable income under Division 7 of Part X; and
 - (B) the actual application of that section in relation to any taxpayer in calculating the taxable income of the taxpayer apart from this Division; and
 - (ii) the references in paragraphs 136AF (1) (a) and (b) to assessable income or allowable deductions in relation to the relevant taxpayer were references to assessable income, or to allowable deductions, taken into account in calculating the attributable income of the trust estate.

Modified application of Part IIIA

“102AAZB. For the purposes of applying this Act in calculating the attributable income of a trust estate, Part IIIA applies as if:

- (a) the following provisions were disregarded:

- (i) subsections 160M (13) and (14);
- (ii) subsection 160Z (6) and paragraph 160Z (9) (c); and
- (b) the trust estate were a resident trust estate, or a resident unit trust, as the case may be.

Modified application of loss provisions—pre-1990-91 losses

“102AAZC. (1) In calculating the attributable income of a trust estate of a year of income, no deductions are allowable under section 79E, 79F, 80, 80AAA or 80AA in respect of losses of a year of income earlier than the year of income commencing on 1 July 1990.

“(2) In calculating the attributable income of a trust estate of a year of income, section 160AFD does not apply to an overall foreign loss incurred in a year of income earlier than the year of income commencing on 1 July 1990.

Assessable income of attributable taxpayer to include attributable income of trust estate to which taxpayer has transferred property or services

“102AAZD. (1) Subject to section 102AAZE and to this section, if:

- (a) an entity is an attributable taxpayer:
 - (i) in relation to the year of income of the taxpayer commencing on 1 July 1990 (which year of income is in this section called the ‘taxpayer’s current year of income’) or in relation to a subsequent year of income of the taxpayer (which year of income is in this section also called the ‘taxpayer’s current year of income’); and
 - (ii) in relation to a trust estate; and
- (b) any part of a non-resident year of income of the trust estate occurs during the taxpayer’s current year of income; and
- (c) the taxpayer is a resident at any time during the taxpayer’s current year of income;

the assessable income of the taxpayer of the taxpayer’s current year of income includes:

- (d) if the taxpayer is a resident at all times during the taxpayer’s current year of income—the whole of the notional attributable income of the trust estate of the taxpayer’s current year of income; or
- (e) if the taxpayer is a resident for only part of the taxpayer’s current year of income—the amount calculated using the formula:

$$\text{Notional attributable income} \times \frac{\text{Days in residency period}}{\text{Days in year of income}}$$

where:

Notional attributable income means the notional attributable income of the trust estate of the taxpayer's current year of income;

Days in residency period means the number of whole days during the taxpayer's current year of income when the taxpayer was a resident;

Days in year of income means the number of whole days in the taxpayer's current year of income.

“(2) A reference in subsection (1) to the notional attributable income of the trust estate of the taxpayer's current year of income is a reference to:

- (a) if there is a year of income of the trust estate that begins at the same time as the beginning of the taxpayer's current year of income—the attributable income of the trust estate of that year of income; or
- (b) in any other case—the amount obtained:
 - (i) by calculating, for each year of income of the trust estate (in this paragraph called the ‘trust's year of income’) any part of which occurs during the taxpayer's current year of income, the amount calculated using the formula:

$$\text{Attributable income} \times \frac{\text{Days in overlapping period}}{\text{Days in trust's year of income}}$$

where:

Attributable income means the attributable income of the trust estate of the trust's year of income;

Days in overlapping period means the number of whole days in the trust's year of income that occurred during the taxpayer's current year of income;

Days in trust's year of income means the number of whole days in the trust's year of income; and

- (ii) by adding together the amounts calculated under subparagraph (i).

“(3) If:

- (a) an amount is included in the assessable income of an attributable taxpayer of the taxpayer's current year of income under subsection (1); and
- (b) before or during the taxpayer's current year of income, one or more entities other than the taxpayer have transferred property or services to the trust estate concerned; and
- (c) the taxpayer gives to the Commissioner, in accordance with the approved form, such information in connection with the operation of this Division as is required by the form to be set out;

the Commissioner may reduce the amount included in the taxpayer's assessable income of the taxpayer's current year of income under subsection (1) having regard to:

- (d) the extent to which the attributable income of the trust estate is, in the opinion of the Commissioner, attributable to property or services transferred by the taxpayer; and
- (e) such other matters as the Commissioner considers relevant.

“(4) If:

- (a) apart from this subsection, an amount would be included in the assessable income of an attributable taxpayer of the taxpayer's current year of income under subsection (1) in relation to a particular trust estate; and
- (b) the taxpayer could not reasonably be expected to obtain the information required to determine the attributable income of the trust estate;

the following provisions have effect:

- (c) no amount is to be included in the assessable income of the taxpayer of the taxpayer's current year of income under subsection (1) in relation to the trust estate;
- (d) the assessable income of the taxpayer of the taxpayer's current year of income includes the amount obtained:
 - (i) if any of the transfers that were taken into account in determining whether the taxpayer was an attributable taxpayer in relation to the taxpayer's current year of income and in relation to the trust estate were made by the taxpayer to the trust estate after the IP time—by calculating, for each such transfer, the amount calculated using the formula:

$$\text{Adjusted value of the transfer} \times \left[\frac{\text{Weighted statutory interest rate}}{\text{rate} + 5\%} \right]$$

where:

Adjusted value of the transfer has the meaning given by subsection (5);

Weighted statutory interest rate means the weighted statutory interest rate in relation to the taxpayer's current year of income; and

- (ii) if any of the transfers that were taken into account in determining whether the taxpayer was an attributable taxpayer in relation to the taxpayer's current year of income and in relation to the trust estate were made by the taxpayer to the trust estate before the IP time—the amount calculated using the formula:

$$\frac{\text{Adjusted net worth of trust estate}}{\times} \left[\frac{\text{Weighted statutory interest rate} + 5\%}{\right]$$

where:

Adjusted net worth of trust estate has the meaning given by subsection (6);

Weighted statutory interest rate means the weighted statutory interest rate in relation to the taxpayer's current year of income; and

- (iii) by adding together the amounts calculated under subparagraphs (i) and (ii).

“(5) For the purposes of subsection (4), the adjusted value of a transfer of property or services made by an attributable taxpayer to a trust estate is:

- (a) if the transfer occurred during the taxpayer's current year of income—the amount calculated using the formula:

$$\frac{\text{Market value of transferred property or services}}{\times} \frac{\text{Days after transfer}}{\text{Days in year of income}}$$

where:

Market value of transferred property or services means the market value, immediately before the transfer, of the property or services;

Days after transfer means the number of whole days in the taxpayer's current year of income after the day on which the transfer took place;

Days in year of income means the number of whole days in the taxpayer's current year of income; or

- (b) if the transfer of the property or services occurred before the taxpayer's current year of income—the sum of:

- (i) the market value, immediately before the transfer, of the property or services; and

- (ii) the amount obtained:

- (A) by calculating, in respect of the transfer, for each year of income preceding the taxpayer's current year of income, the amount ascertained using the formula in subparagraph (4) (d) (i); and

- (B) by adding together the amounts calculated under sub-subparagraph (A).

“(6) For the purposes of the application of subsection (4) in relation to a transfer of property or services made by an attributable taxpayer to a trust estate, the adjusted net worth of the trust estate is:

- (a) if the taxpayer's current year of income is the year of income commencing on 1 July 1990—the 1 July 1990 net worth of the trust estate; or
- (b) in any other case—the sum of:
 - (i) the 1 July 1990 net worth of the trust estate; and
 - (ii) the amount obtained:
 - (A) by calculating, in respect of the transfer, for each year of income preceding the taxpayer's current year of income, the amount ascertained using the formula in subparagraph (4) (d) (ii); and
 - (B) by adding together the amounts calculated under sub-subparagraph (A).

“(7) If:

- (a) subsection (4) applies to an attributable taxpayer in relation to the taxpayer's current year of income; and
- (b) any of the transfers taken into account in determining whether the taxpayer was an attributable taxpayer in relation to the taxpayer's year of income and in relation to the trust estate concerned were made before the IP time; and
- (c) the taxpayer gives to the Commissioner, in accordance with the approved form, such information in connection with the operation of this Division as is required by the form to be set out;

the Commissioner may reduce the amount included in the taxpayer's assessable income of the taxpayer's current year of income under subsection (4) having regard to:

- (d) the extent to which the market value, as at the beginning of the taxpayer's current year of income, of the assets of the trust estate is, in the opinion of the Commissioner, attributable to property or services transferred by the taxpayer before the IP time; and
- (e) such other matters as the Commissioner considers relevant.

Accruals system of taxation does not apply to small amounts

“102AAZE. An amount is not to be included in the assessable income of the taxpayer of a year of income under section 102AAZD in relation to a trust estate that is a listed country trust estate in relation to the year of income if the amount obtained by:

- (a) identifying each trust estate in relation to which the taxpayer is an attributable taxpayer in relation to the year of income; and
- (b) calculating the attributable income of the year of income of each such trust estate; and
- (c) adding the amounts calculated under paragraph (b);

does not exceed the lesser of the following amounts:

- (d) \$20,000;
- (e) 10% of the total of the net incomes of each of those trust estates of the year of income.

Only resident partners, beneficiaries etc. liable to be assessed as a result of attribution

“102AAZF. Section 460 applies to an amount included in the assessable income of a taxpayer under section 102AAZD in a corresponding way to the way in which section 460 applies to an amount included in the assessable income of a taxpayer under section 456, 457, 458 or 459 and, for the purposes of that corresponding application, references in sections 336, 338 and 460 to a Part X Australian resident are to be read as references to a resident within the meaning of section 6.

Keeping of records

“102AAZG. (1) Subject to this section, a person who is an attributable taxpayer:

- (a) in relation to the year of income of the person commencing on 1 July 1990 or in relation to a subsequent year of income of the person; and
- (b) in relation to a particular trust estate;

must keep records (in Australia or elsewhere) containing particulars of:

- (c) the acts, transactions and other circumstances that resulted in the person being an attributable taxpayer in relation to that year of income and in relation to that trust estate; and
- (d) except where subsection 102AAZD (4) applies in relation to the trust estate and in relation to the year of income of the person—the basis of the calculation of the attributable income of the trust estate for each year of income of the trust estate any part of which occurred during the year of income of the person; and
- (e) the basis of the calculation of the amounts (including nil amounts) included in the assessable income of the person of the year of income of the person under section 102AAZD.

“(2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding \$3,000.

“(3) A person who is required by this section to keep records must:

- (a) keep the records in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and
- (b) keep the records so as to enable the person’s liability under this Act to be readily ascertained.

“(4) This section does not require a person to keep a record of information if:

- (a) the person did not know, and had no reasonable grounds to suspect, that the person was an attributable taxpayer of the kind mentioned in subsection (1); or
- (b) the person did not know that, and made all reasonable efforts to ascertain whether, the person was an attributable taxpayer as mentioned in subsection (1); or
- (c) the person did not know, and made all reasonable efforts to obtain, the information.

“(5) Subject to subsections (6) and (7), the following provisions apply to a partnership as if the partnership were a person:

- (a) subsections (1) to (4) (inclusive) of this section;
- (b) subsections 262A (4) and (5), in so far as those subsections apply to records kept under or for the purposes of this section;
- (c) Part III of the *Taxation Administration Act 1953*, in so far as that Part of that Act relates to the provisions covered by paragraph (a) or (b) of this subsection.

“(6) Where, by virtue of subsection (5), an offence is taken to have been committed by a partnership, that offence is taken to have been committed by each of the partners.

“(7) In a prosecution of a person for an offence by virtue of subsection (6), it is a defence if the person proves that the person:

- (a) did not aid, abet, counsel or procure the act or omission by virtue of which the offence was taken to have been committed; and
- (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, an act or omission by virtue of which the offence is taken to have been committed.”.

Loans etc. to shareholders and associates deemed to be dividends

19. Section 108 of the Principal Act is amended by inserting after subsection (2) the following subsections:

“(2A) In spite of anything in any other provision of this section, if:

- (a) a company has profits immediately before a distribution time for a distribution benefit in relation to the company; and
- (b) the distribution time occurred after 3 June 1990; and
- (c) the first company is a CFC at the distribution time; and
- (d) the first company is a resident of an unlisted country at the distribution time; and
- (e) apart from this subsection, an amount deemed by this section to be a dividend paid by the company would include an amount (in this subsection called the ‘**eligible distributed amount**’) that represents the whole or a part of so much of the distribution payment as does not exceed the amount of those profits;

then, the eligible distributed amount is not deemed by this section to be a dividend paid by the company.

“(2B) An expression used in subsection (2A) of this section and in section 47A has the same meaning in that subsection as it has in that section.”.

Interpretation

20. Section 110 of the Principal Act is amended:

- (a) by omitting “or” from subparagraph (b) (ii) of the definition of “AD/RLA policy” in subsection (1);
- (b) by adding at the end of paragraph (b) of the definition of “AD/RLA policy” in subsection (1) the following word and subparagraph:
 - “or (iv) an eligible non-resident policy;”;
- (c) by inserting “or an eligible non-resident policy” after “eligible policy” in the definition of “CS policy” in subsection (1);
- (d) by inserting “or an eligible non-resident policy” after “eligible policy” in the definition of “NCS policy” in subsection (1);
- (e) by inserting “a policy (other than an eligible non-resident policy) that is” after “means” in the definition of “RA policy” in subsection (1);
- (f) by inserting in subsection (1) the following definition:
 - “**‘eligible non-resident policy’** means a life assurance policy that is:
 - (a) issued by a life assurance company in the course of a business carried on by the company at or through a permanent establishment of the company in a foreign country; and
 - (b) vested in an entity (within the meaning of Part X):
 - (i) who is not an associate (within the meaning of Part X) of the company; and
 - (ii) who is not a Part X Australian resident (within the meaning of Part X);”.

Deductions to be allowable for expenditure incurred in gaining superannuation premiums

21. Section 111A of the Principal Act is amended by adding at the end the following subsection:

“(2) Subsection (1) does not apply to superannuation premiums that are:

- (a) received in respect of eligible non-resident policies; or
- (b) exempt from tax under section 23AH.”.

Deductions to be allowable for expenditure incurred in gaining the investment component of certain premiums

22. Section 111AA of the Principal Act is amended by adding at the end of subsection (1) the following word and paragraphs:

- “or (d) premiums received in respect of eligible non-resident policies; or
- (e) premiums exempt from tax under section 23AH.”.

Exemption of income attributable to certain policies etc.

23. Section 112A of the Principal Act is amended:

- (a) by inserting in subsection (1) “and eligible non-resident policies” after “exempt policies”;
- (b) by inserting in subsection (2) “(other than eligible non-resident policies)” after “not to include policies”.

Repeal of section 112B

24. Section 112B of the Principal Act is repealed.

Notional Part IIIA disposals of fund assets

25. Section 116CB of the Principal Act is amended by inserting in subsection (2) “or eligible non-resident policies” after “exempt policies”.

Amount of assessable income in particular class

26. Section 116CE of the Principal Act is amended by inserting in subsection (5) “or eligible non-resident policies” after “exempt policies”.

Consequential adjustments to assessable income and allowable deductions

27. Section 136AF of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) Subsection (1) also has the effect that it would have if the reference in that subsection to the application of section 136AD in relation to a taxpayer included references to:

- (a) the application of section 136AD in accordance with section 102AAZA for the purpose of calculating the attributable income of a trust estate; and
- (b) the application of section 136AD in accordance with section 400 for the purpose of calculating the attributable income of a CFC.”.

Interpretation

28. Section 160AE of the Principal Act is amended:

- (a) by omitting from subsection (1) the definition of “underlying tax” and substituting the following definition:

“‘underlying tax’ means foreign tax payable on the taxable profits of a company;”;

- (b) by omitting from subsection (1) the definition of “profits”;
- (c) by inserting in subsection (1) the following definitions:
 - “**‘attributable income’** has the same meaning as in Part X;
 - ‘attributed tax account debit’** has the same meaning as in Part X;
 - ‘attribution account entity’** has the same meaning as in Part X;
 - ‘attribution account payment’** has the same meaning as in Part X;
 - ‘attribution percentage’** has the same meaning as in Part X;
 - ‘attribution surplus’** has the same meaning as in Part X;
 - ‘CFC’** has the same meaning as in Part X;
 - ‘CFC-type foreign tax’** means foreign tax in respect of amounts that correspond to those included in assessable income under section 456;
 - ‘distributable profits’** has the same meaning as in Part X;
 - ‘exempting profits’** has the same meaning as in Part X;
 - ‘exempting profits percentage’** has the same meaning as in Part X;
 - ‘exempting receipt’** has the same meaning as in Part X;
 - ‘listed country’** has the same meaning as in Part X;
 - ‘modified passive income’** has the meaning given by subsection 160AEA (2);
 - ‘non-exempting profits’**, in relation to a company in relation to a taxpayer, means distributable profits of the company other than exempting profits of the company in relation to the taxpayer;
 - ‘non-portfolio dividend’** has the same meaning as in Part X;
 - ‘notional allowable deduction’** has the same meaning as in Part X;
 - ‘passive income’** has the meaning given by subsection 160AEA (1);
 - ‘resident of a listed country’** has the same meaning as in Part X;
 - ‘resident of an unlisted country’** has the same meaning as in Part X;
 - ‘statutory accounting period’** has the same meaning as in Part X;
 - ‘taxable profits’**, in relation to a company, means income and profits or gains, whether of an income or capital nature, of the company on which foreign tax is payable;
 - ‘unlisted country’** has the same meaning as in Part X.”;
- (d) by inserting in subsection (2) “or gains” after “profits” (wherever occurring);
- (e) by inserting in subsection (2) “(other than section 160AFD)” after “Division”;
- (f) by adding at the end the following subsections:
 - “(7) For the purposes of this Division, and for the purposes of the application of section 6AB to this Division, each listed

country and each unlisted country is to be treated as a separate foreign country.

“(8) For the purposes of this Division, underlying tax relates to distributable profits of a company to the extent that the taxable profits of the company on which the underlying tax is payable are attributable to the distributable profits.”.

29. After section 160AE of the Principal Act the following section is inserted:

Passive income

“160AEA. (1) In this Division:

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

- (a) dividends (within the meaning of section 6) paid to the taxpayer in the year of income; or
- (b) unit trust dividends (within the meaning of Division 6B or 6C) paid to the taxpayer in the year of income; or
- (c) a distribution made to the taxpayer in the year of income where the distribution is taken to be a dividend because of section 47; or
- (d) an amount that is taken to be a dividend paid to the company in the year of income because of section 47A or 108; or
- (e) interest income derived by the taxpayer in the year of income; or
- (f) annuities derived by the taxpayer in the year of income; or
- (g) rental income derived by the taxpayer in the year of income; or
- (h) royalties derived by the taxpayer in the year of income; or
- (j) an amount derived by the taxpayer in the year of income as consideration for the assignment, in whole or in part, of any copyright, patent, design, trade mark or other like property or right; or
- (k) profits of a capital nature that accrued to the taxpayer in the year of income; or
- (m) passive commodity gains that accrued to the taxpayer in the year of income; or
- (n) an amount included in the assessable income of the taxpayer of the year of income under section 102AAZD, 456, 457, 458 or 459;

but does not include offshore banking income.

“(2) In this Division:

‘modified passive income’, in relation to a taxpayer, in relation to a year of income, means amounts that would be passive income of the taxpayer

of the year of income if that passive income did not include interest income of the taxpayer of the year of income.

“(3) In this section:

‘commodity’ means any thing that is capable of delivery under an agreement for its delivery, but does not include an instrument creating or evidencing a chose in action;

‘passive commodity gain’, in relation to a taxpayer, in relation to a year of income, means a gain realised by the taxpayer in a year of income from disposing of a passive commodity investment;

‘passive commodity investment’, in relation to a taxpayer, means:

(a) either of the following contracts:

(i) a forward contract in respect of a commodity;

(ii) a futures contract in respect of a commodity; or

(b) a right or option in respect of such a contract;

except where both of the following conditions are satisfied:

(c) the taxpayer carries on:

(i) a business of producing or processing the commodity; or

(ii) a business that involves the use of the commodity as a raw material in a production process;

(d) the contract, right or option relates to the carrying on of that business;

‘rent’ has the same meaning as in Part X;

‘rental income’ means income derived by way of rent.”.

Credits in respect of foreign tax

30. Section 160AF of the Principal Act is amended by omitting paragraph (7) (a) and substituting the following paragraph:

“(a) passive income;”.

Certain dividends deemed to be interest income

31. Section 160AFA of the Principal Act is amended by omitting from subsection (1A) and paragraph (2) (b) “total profits derived during” and substituting “distributable profits in relation to”.

Foreign underlying tax

32. Section 160AFC of the Principal Act is amended:

(a) by omitting from paragraph (2) (b) “out of the” and substituting “that relates to the distributable”;

(b) by omitting the definition of component C in the formula in subsection (2) and substituting the following definition:

“C is the number of whole dollars in the distributable profits out of which the dividend has been paid.”;

- (c) by omitting the definitions of components **B**, **C** and **D** in the formula in subsection (4) and substituting the following definitions:

“**B** is the amount (if any) of underlying tax paid by the paying company that relates to the distributable profits out of which the dividend has been paid;

C is the amount (if any) of foreign tax deemed to have been paid by the paying company by any other application or applications of this subsection in relation to the dividend series; and

D is the number of whole dollars in the distributable profits out of which the dividend has been paid.”;

- (d) by inserting after subsection (5) the following subsection:

“(5A) Where the dividend is in whole or in part:

- (a) an exempting receipt of a company in relation to an accounting period in relation to the Australian company; or

- (b) an exempting receipt of the Australian company;

then, in determining the foreign tax (if any) that the Australian company is taken, because of this section, to have paid, and to have been personally liable for, in respect of the dividend:

- (c) a reference in subsection (2) or (4) to the amount of the dividend is a reference to so much of the dividend as is not an exempting receipt; and

- (d) a reference in subsection (2) or (4) to the amount of the underlying tax that relates to the distributable profits out of which the dividend has been paid is a reference to:

- (i) where the dividend is paid by a company (in this subparagraph called the ‘**paying company**’) that is a resident of a listed country—the amount calculated using the formula:

$$\frac{\text{Attribution surplus tax}}{\text{tax}} + \left[\frac{\text{General tax}}{\text{tax}} \times \frac{\text{Attribution surplus}}{\text{percent}} \right]$$

where:

Attribution surplus tax means so much of the underlying tax as relates exclusively to the part of the distributable profits that is attributable to any attribution surplus, immediately before the payment of the dividend, for the paying company in relation to the Australian company;

General tax means so much of the underlying tax as does not relate exclusively to the part of the attributable profits attributable to that attribution

surplus or exclusively to the remainder of the distributable profits;

Attribution surplus percent means the percentage of the general tax that may reasonably be related to the part of the distributable profits that is attributable to that attribution surplus; or

- (ii) in any other case—the amount calculated using the formula:

$$\text{Non-exempting tax} + \left[\frac{\text{General tax}}{\text{Non-exempting percent}} \right]$$

where:

Non-exempting tax means so much of the underlying tax as relates exclusively to non-exempting profits, in relation to the Australian company, forming part of the distributable profits;

General tax means so much of the underlying tax as does not relate exclusively to non-exempting profits in relation to the Australian company, or exclusively to exempting profits in relation to the Australian company, forming part of the distributable profits;

Non-exempting percent means the percentage of the **General tax** that may reasonably be related to non-exempting profits, in relation to the Australian company, forming part of the distributable profits; and

- (e) a reference in subsection (2) or (4) to the amount of the distributable profits out of which the dividend has been paid is a reference to:
- (i) where the dividend is paid by a company that is a resident of a listed country—so much of those distributable profits as is attributable to any attribution surplus, for the latter company in relation to the Australian company, existing immediately before the dividend is paid; or
 - (ii) in any other case—any non-exempting profits, in relation to the Australian company, that form part of those distributable profits.”;
- (e) by inserting in subsections (6) and (7) “distributable” before “profits” (wherever occurring);
- (f) by omitting subsections (10) and (11) and substituting the following subsection:

“(10) In this section:

‘**accounting period**’ means an accounting period used by the

company in the accounts by reference to which it distributes dividends.”.

33. After section 160AFC of the Principal Act the following sections are inserted:

Foreign tax in respect of amounts assessable under section 456

“160AFCA. If:

- (a) an amount (in this section called the ‘**section 456 amount**’) is included in the assessable income of a taxpayer, being a company, of a year of income under section 456 in respect of the taxpayer’s attribution percentage of the attributable income of a CFC for a statutory accounting period; and
- (b) at the end of the statutory accounting period, the CFC was related to the taxpayer;

then the taxpayer is taken, for the purposes of this Division, to have paid, and to have been personally liable for, in respect of the section 456 amount, in the year of income, an amount of foreign tax equal to the attribution percentage of the total amount of the notional allowable deductions under section 393 in relation to the attributable income of the CFC for the statutory accounting period.

Foreign tax in respect of amounts assessable under section 457

“160AFCB. If:

- (a) an amount (in this section called the ‘**section 457 amount**’) is included in the assessable income of a taxpayer, being a company, of a year of income under section 457 as a result of a change of residence at a particular time (in this section called the ‘**residence-change time**’) by a CFC; and
- (b) at the residence-change time, the CFC was related to the taxpayer;

the following provisions have effect:

- (c) the taxpayer is taken, for the purposes of this Division, to have paid, and to have been personally liable for, in respect of the section 457 amount, in the year of income, an amount of foreign tax equal to the total foreign tax and Australian tax paid by the CFC that is attributable to the section 457 amount;
- (d) if the section 457 amount is attributable in whole or part to a non-portfolio dividend paid to the CFC by a foreign company that, at the time of the payment of the dividend, was related to the taxpayer—the taxpayer is taken, for the purposes of this Division, to have paid, and to have been personally liable for, in respect of the section 457 amount, in the year of income, an amount of foreign tax equal to the taxpayer’s attribution percentage, at the residence-change time, of the amount (if any) of foreign tax that the CFC would have been taken to have

paid, and to have been personally liable for, because of section 160AFC, in respect of the whole or the part of the dividend if:

- (i) the CFC had been an Australian company at the time of the payment of the dividend; and
- (ii) it were a requirement of that section (in addition to the other requirement of that section), for companies to be a pair of companies in a dividend series, that they be related to the taxpayer referred to in this section.

Foreign tax in respect of amounts assessable under section 458

“160AFCC. If:

- (a) an amount (in this section called the ‘**section 458 amount**’) is included in the assessable income of a taxpayer, being a company, of a year of income under section 458 in respect of a dividend paid by a CFC to another CFC; and
- (b) at the time of the payment of the dividend, both CFCs were related to the taxpayer;

then the taxpayer is taken, for the purposes of this Division, to have paid, and to have been personally liable for, in respect of the section 458 amount, in the year of income, an amount of foreign tax equal to the sum of the following amounts:

- (c) if the CFC to which the dividend is paid has paid an amount of foreign tax (other than under a tax law of the listed or unlisted country of which the CFC is a resident) in respect of the dividend—the amount calculated using the following formula:

$$\text{Section 458 amount} \times \frac{\text{Foreign tax}}{\text{Dividend}}$$

where:

Section 458 amount means the section 458 amount;

Foreign tax means the amount of the foreign tax;

Dividend means the amount of the dividend;

- (d) the amount calculated using the formula:

$$160\text{AFC deemed tax} \times \frac{\text{Section 458 amount}}{\text{Dividend} - \text{Exempting profits part}}$$

where:

160AFC deemed tax means the amount (if any) of foreign tax that the CFC to which the dividend is paid would have been taken to have paid, and to have been personally liable for, because of section 160AFC, in respect of the dividend if:

- (i) the CFC had been an Australian company at the time of the payment of the dividend; and
- (ii) it were a requirement of that section (in addition to the other requirement of that section), for companies to be

a pair of companies in a dividend series, that they be related to the taxpayer referred to in this section; and

- (iii) for the purpose of applying subsection 160AFC (2) or (4) in the case where the paying company referred to in that subsection is the CFC that paid the dividend, the reference in component **B** of the formula in that subsection to underlying tax included a reference to amounts that would be underlying tax if Australian tax were foreign tax;

Section 458 amount means the section 458 amount;

Dividend means the amount of the dividend;

Exempting profits part means the exempting profits percentage, in relation to the taxpayer, of the dividend.

Foreign tax in respect of amounts exempt under section 23AI

“160AFCD. If an attribution account payment made to a resident taxpayer by an attribution account entity in a year of income is, in whole or in part (which whole or part is in this section called the ‘**section 23AI exempt part**’), exempt from tax under section 23AI, the following provisions have effect:

- (a) the section 23AI exempt part is taken, for the purposes of paragraph 160AF (1) (a) but not (d), to be included in the assessable income of the taxpayer of the year of income;
- (b) the taxpayer is taken for the purposes of this Division to have paid, and to have been personally liable for, in respect of the section 23AI exempt part, in the year of income, an amount of foreign tax calculated using the formula:

$$(EP \times DT) + (AEP \times UT) - AT$$

where:

EP [Exempt Percentage] means the percentage of the attribution account payment represented by the section 23AI exempt part;

DT [Direct Tax] means any foreign tax that, disregarding this section and section 160AFC, the taxpayer is taken for the purposes of this Division to have paid, and to have been personally liable for, in respect of the attribution account payment;

AEP [Adjusted Exempt Percentage] means the percentage that would be formula component **EP** if the attribution account payment were reduced by any part of that payment that is exempt under section 23AJ;

UT [Underlying Tax] means any foreign tax (other than CFC-type foreign tax) that, disregarding this section, the taxpayer is taken, for the purposes of this Division, to have paid, and to have been personally liable for, under section 160AFC in respect of the attribution account payment;

AT [Attributed Tax] means the amount of any attributed tax account debit arising for the attribution account entity in relation to the taxpayer on the making of the attribution account payment, to the extent that the amount of the debit does not exceed the amount of the formula component $AEP \times UT$.”.

34. Section 160AFD of the Principal Act is repealed and the following section is substituted:

Losses of previous years

“160AFD. (1) Where a resident taxpayer has incurred one or more overall foreign losses in respect of a class of assessable foreign income in respect of any of the 7 pre-1990 years of income before a particular year of income, the amount that, but for this section, would be the taxpayer’s assessable foreign income of that class of the particular year of income is, for the purposes of this Act, reduced by an amount calculated using the formula:

$$\text{Total loss} - \text{Recouped loss}$$

where:

Total loss means the amount of the loss, or the sum of the amounts of the losses;

Recouped loss means so much of the **Total loss** as has been taken into account, in any previous application of this subsection, in reducing the taxpayer’s assessable foreign income of that class.

“(2) Where a resident taxpayer has incurred one or more overall foreign losses in respect of a class of assessable foreign income in respect of any of the post-1989 years of income before a particular year of income, the amount that, but for this section, would be the taxpayer’s assessable foreign income of that class of the particular year of income is, for the purposes of this Act, reduced by an amount calculated using the formula:

$$\text{Total loss} - \text{Recouped loss}$$

where:

Total loss means the amount of the loss, or the sum of the amounts of the losses;

Recouped loss means so much of the **Total loss** as has been taken into account, in any previous application of this subsection, in reducing the taxpayer’s assessable foreign income of that class.

“(3) Where, because of the application of either subsection (1) or (2) or of both subsections (1) and (2), a taxpayer’s assessable foreign income of a particular class of a year of income is to be reduced by 2 or more losses, the losses are to be taken into account in accordance with the following principles:

- (a) any loss or losses under subsection (1) are to be taken into account before any under subsection (2);

- (b) any losses under the same subsection are to be taken into account in the order in which they were incurred.

“(4) Where the amount of a taxpayer’s assessable foreign income of a particular class of a year of income is reduced under subsection (1) or (2), any foreign tax paid by the taxpayer in respect of the amount is, for the purposes of this Act, to be calculated as if the amount were so reduced.

“(5) This section has effect whether or not the law of the foreign country concerned allows the income of a taxpayer of a particular year to be reduced because of losses incurred in previous years.

“(6) Where:

- (a) apart from this subsection, an overall foreign loss in respect of a class of assessable foreign income incurred by a taxpayer in respect of a year of income would be taken into account for the purpose of applying subsection (1) or (2) in relation to the particular year of income referred to in that subsection; and
- (b) if that loss were a loss incurred by the taxpayer within the meaning of section 80, it would not, because of section 80A or 80DA, be taken into account for the purpose of applying section 80 in relation to the particular year of income;

then the overall foreign loss is not to be taken into account for the purpose of applying subsection (1) or (2) of this section in relation to the particular year of income.

“(7) Where:

- (a) there are one or more foreign income deductions of a taxpayer in relation to a class of assessable foreign income in relation to a year of income; and
- (b) either:
 - (i) the taxpayer did not derive any assessable foreign income of that class during the year of income; or
 - (ii) the taxpayer derived assessable foreign income of that class during the year of income and its amount is exceeded by the sum of the foreign income deductions;

the taxpayer is taken, for the purposes of this section, to have incurred an overall foreign loss in respect of the class of assessable foreign income for the year of income equal to:

- (c) where subparagraph (b) (i) applies—the amount of the deductions; or
- (d) where subparagraph (b) (ii) applies—the amount of the excess referred to in that subparagraph.

“(8) For the purposes of this section, each of the following kinds of assessable foreign income constitutes a single class:

- (a) interest income;

- (b) modified passive income;
- (c) offshore banking income;
- (d) all other assessable foreign income.

“(9) In this section:

‘assessable foreign income’, in relation to a taxpayer in relation to a year of income, means:

- (a) foreign income that is included in the assessable income of the taxpayer of the year of income; or
- (b) where:
 - (i) during the year of income, the taxpayer derives a profit or gain of a capital nature from sources in a foreign country; and
 - (ii) the whole or part of the profit or gain is included in the assessable income of the taxpayer of the year of income other than under Part IIIA;

the whole or the part of the profit or gain;

‘foreign income deduction’, in relation to a taxpayer in relation to a class of assessable foreign income in relation to a year of income, means any deduction that, disregarding section 79D, is allowed or allowable from the assessable income of the taxpayer of the year of income, to the extent that the deduction relates to assessable foreign income of that class of any year of income;

‘post-1989 year of income’ means the year of income commencing on 1 July 1989 or any later year of income;

‘pre-1990 year of income’ means any year of income before the year of income commencing on 1 July 1989.”.

Carry-forward and transfer of excess credits

35. Section 160AFE of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsections:

“(1) If:

- (a) there is an initial credit shortfall for a class of income of a taxpayer in relation to a year of income (in this subsection called the **‘current year of income’**); and
- (b) either or both of the following conditions are satisfied:
 - (i) there is a post-transfer excess credit balance for the class of income of the taxpayer in relation to one or more earlier years of income that is available for the current year of income;
 - (ii) one or more amounts that relate to that class of income have been transferred to the taxpayer under subsection (1D) for utilisation in the current year of income;

the taxpayer is to be taken to have utilised the following amounts, in the following order, in the current year of income, to successively increase the amount ascertained under paragraph 160AF (1) (c) (in the application of that paragraph to the class of income of the taxpayer in relation to the current year of income) to an amount not exceeding the Australian tax upper limit for the class of income of the taxpayer in relation to the current year of income:

- (c) the post-transfer excess credit balance for the class of income of the taxpayer in relation to the fifth year of income before the current year of income, being the balance that is available for the current year of income;
- (d) the post-transfer excess credit balance for the class of income of the taxpayer in relation to the fourth year of income before the current year of income, being the balance that is available for the current year of income;
- (e) the post-transfer excess credit balance for the class of income of the taxpayer in relation to the third year of income before the current year of income, being the balance that is available for the current year of income;
- (f) the post-transfer excess credit balance for the class of income of the taxpayer in relation to the second year of income before the current year of income, being the balance that is available for the current year of income;
- (g) the post-transfer excess credit balance for the class of income of the taxpayer in relation to the year of income before the current year of income, being the balance that is available for the current year of income;
- (h) any amounts that relate to that class of income and that have been transferred to the taxpayer under subsection (1D) for utilisation in the current year of income.

“(1A) For the purposes of the application of this section in relation to a taxpayer, if:

- (a) all of the foreign income derived by the taxpayer in a year of income consists of income of a single class (within the meaning of subsection 160AF (7)); and
- (b) section 160AF applies in relation to the taxpayer in relation to the year of income;

section 160AF is to be taken to apply in relation to that income as if the income were income of a particular class.

“(1B) For the purposes of the application of this section in relation to a taxpayer, if section 160AF applies in relation to a particular class of income of the taxpayer in relation to a year of income:

- (a) the amount ascertained under paragraph 160AF (1) (c) in that application (apart from this section) is the original foreign tax upper limit for the class of income of the taxpayer in relation to the year of income; and
- (b) the amount ascertained under paragraph 160AF (1) (d) in that application is the Australian tax upper limit for the class of income of the taxpayer in relation to the year of income; and
- (c) if the original foreign tax upper limit for the class of income of the taxpayer in relation to the year of income exceeds the Australian tax upper limit for the class of income of the taxpayer in relation to the year of income—the amount of the excess is the initial excess credit for the class of income of the taxpayer in relation to the year of income; and
- (d) if the original foreign tax upper limit for the class of income of the taxpayer in relation to the year of income falls short of the Australian tax upper limit for the class of income of the taxpayer in relation to the year of income—the amount of the shortfall is the initial credit shortfall for the class of income of the taxpayer in relation to the year of income.

“(1C) For the purposes of the application of this section in relation to a taxpayer, if there is an initial excess credit for a class of income of the taxpayer in relation to a year of income (in this subsection called the **‘original year of income’**):

- (a) the opening excess credit balance for the class of income of the taxpayer in relation to the original year of income that is available for a later year of income (in this paragraph called the **‘current year of income’**), being one of the 5 years of income after the original year of income, is:
 - (i) if the current year of income is the first year of income after the original year of income—the initial excess credit, reduced by so much of the initial excess credit as is transferred by the taxpayer under subsection (1D) for utilisation in the original year of income; or
 - (ii) if the current year of income is a later year of income—the closing excess credit balance for the class of income of the taxpayer in relation to the original year of income that is available for the previous year of income; and
- (b) the post-transfer excess credit balance for the class of income of the taxpayer in relation to the original year of income that is available for a later year of income (in

- this paragraph called the **'current year of income'**), being one of the 5 years of income after the original year of income, is the opening excess credit balance for the class of income of the taxpayer in relation to the original year of income that is available for the current year of income, reduced by so much of that opening excess credit balance as is transferred by the taxpayer under subsection (1D) for utilisation in the current year of income; and
- (c) the closing excess credit balance for the class of income of the taxpayer in relation to the original year of income that is available for a later year of income (in this paragraph called the **'current year of income'**), being one of the 5 years of income after the original year of income, is the post-transfer excess credit balance for the class of income of the taxpayer in relation to the original year of income that is available for the current year of income, reduced by so much of that post-transfer excess credit balance as is taken to have been utilised in the current year of income under subsection (1).
- “(1D) For the purposes of this section, if:
- (a) either of the following conditions are satisfied in relation to an Australian company (in this section called the **'credit company'**) in relation to a year of income (in this subsection called the **'current year of income'**):
- (i) the credit company has an initial excess credit in relation to a class of income of the Australian company in relation to the current year of income;
 - (ii) the credit company has an opening excess credit balance for a class of income of the credit company in relation to a year of income earlier than the current year of income, being a balance that is available for the current year of income; and
- (b) section 160AF applies in relation to that class of income of an Australian company (in this section called the **'income company'**) of the current year of income, being a company that is a group company in relation to the credit company in relation to the current year of income; and
- (c) the credit company and the income company give the Commissioner, on or before the date of lodgment of the return of income of the income company for the current year of income or within such further time as the Commissioner allows, a notice in writing signed by the public officer of each of those companies, stating that the whole or a specified part of:
- (i) the initial excess credit; or

(ii) the opening excess credit balance;
as the case may be, should be transferred to the income company for utilisation in the current year of income;
the notice gives effect to the transfer concerned.

“(1E) Subsection (1D) applies only to the following 2 classes of income:

- (a) passive income;
- (b) all other income other than offshore banking income.”;
- (b) by omitting subsections (7) and (8).

Penalty for false or misleading statements

36. Section 160AS of the Principal Act is amended by adding at the end of subsection (2) “or 264A (1) (d) or (e)”.

What constitutes a disposal or acquisition

37. Section 160M of the Principal Act is amended:

- (a) by inserting after subsection (12) the following subsections:

“(12A) Subsection (12) does not apply where a company that is a CFC ceases to be a resident of an unlisted country or a listed country and becomes a resident within the meaning of section 6.

“(12B) In subsection (12A):

‘CFC’ has the same meaning as in Part X;

‘resident of a listed country’ has the same meaning as in Part X;

‘resident of an unlisted country’ has the same meaning as in Part X.”;

- (b) by inserting after subsection (13) the following subsection:

“(13A) Subsection (13) does not apply where a trust estate becomes a resident trust estate if, immediately before it does so, it is a CFT, within the meaning of section 342, because paragraph (a) of that section applies.”;

- (c) by inserting after subsection (14) the following subsection:

“(14A) Subsection (14) does not apply where a unit trust becomes a resident unit trust if, immediately before it does so, it is a CFT, within the meaning of section 342, because paragraph (a) of that section applies.”.

Capital gains and capital losses

38. Section 160Z of the Principal Act is amended:

- (a) by inserting in subsection (6) and paragraph (9) (c) “eligible” before “exempt”;
- (b) by adding at the end the following subsection:

“(10) in this section:

‘**eligible exempt income**’ means exempt income other than income to which section 23AH, 23AI or 23AJ or paragraph 99B (2) (d) or (e) applies.”.

39. After section 160ZF of the Principal Act the following section is inserted:

Adjustment where section 47A applies to rolled-over assets

“160ZFA. Where:

(a) either:

(i) because of Division 17, this Part does not apply to the disposal of an asset by a person (in this section called the ‘**transferor**’) to another person (in this section called the ‘**transferee**’); or

(ii) because of Division 17, in its application in accordance with Division 7 of Part X, this Part does not apply, for the purpose of calculating the attributable income of a company under that Division in relation to any taxpayer, to the disposal of an asset by the CFC (in this section also called the ‘**transferor**’) to another person (in this section also called the ‘**transferee**’); and

(b) section 47A applies in relation to the disposal of the asset to deem the transferor to have paid a dividend to the transferee; and

(c) either:

(i) the whole or part of the deemed dividend is included in the assessable income of the transferee under section 44; or

(ii) an amount in respect of the deemed dividend is included in the assessable income of another taxpayer under section 458 or 459; and

(d) the transferee subsequently disposes of the asset;

then, for the purposes of this Part, the consideration in respect of the subsequent disposal is taken to be reduced by the lesser of:

(e) the amount of the deemed dividend; and

(f) the amount of any capital gain that, disregarding Division 17, would have accrued to the transferor:

(i) where subparagraph (a) (i) applies—under this Part; or

(ii) where subparagraph (a) (ii) applies—under this Part in its application for the purpose of calculating the attributable income of the transferor in relation to the taxpayer;

in respect of the disposal referred to in subparagraph (a) (i) or

(ii) if the consideration in respect of the disposal had been

equal to the market value of the asset at the time of that disposal.”.

Return of capital on investment in trust

40. Section 160ZM of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) Section 23AI and paragraphs 99B (2) (d) and (e) are to be disregarded in determining whether an amount is assessable income of the taxpayer for the purposes of subsection (1) of this section.”.

Transfer of asset from company or trust to spouse upon breakdown of marriage

41. Section 160ZZMA of the Principal Act is amended by inserting after subsection (3) the following subsections:

“(3A) If:

- (a) there is a requirement to calculate under Division 7 of Part X the attributable income of a company in relation to any taxpayer; and
- (b) this section, as it has effect in accordance with that Division, is relevant to that calculation because both of the following subparagraphs apply:
 - (i) the company is the first taxpayer;
 - (ii) apart from the residency assumption mentioned in that Division, the disposal of the asset concerned is not a disposal of a taxable Australian asset;

then, in addition to the effect that this section has apart from this subsection, this section also has the effect, in relation to any subsequent disposal of the asset (whether by the spouse or otherwise) that it would have if it had applied in relation to the spouse subject to the modifications made by that Division.

“(3B) If:

- (a) there is a requirement to calculate under section 102AAU the attributable income of a non-resident trust estate of a year of income; and
- (b) this section, as it has effect in accordance with Subdivision D of Division 6AAA of Part III, is relevant to that calculation because both of the following subparagraphs apply:
 - (i) the trustee of the trust estate is the first taxpayer;
 - (ii) apart from the assumptions about residency that apply for the purposes of that Subdivision, the disposal of the asset concerned is not a disposal of a taxable Australian asset;

then, in addition to the effect that this section has apart from this subsection, this section also has the effect, in relation to any subsequent

disposal of the asset (whether by the spouse or otherwise) that it would have if it had applied in relation to the spouse subject to the modifications made by that Subdivision.”.

Transfer of asset between companies in the same group

42. Section 160ZZO of the Principal Act is amended by inserting before subsection (3) the following subsection:

“(2D) If:

- (a) there is a requirement to calculate under Division 7 of Part X the attributable income of a company in relation to any taxpayer; and
- (b) this section, as it has effect in accordance with that Division, is relevant to that calculation because both of the following subparagraphs apply:
 - (i) the company is the transferor;
 - (ii) apart from the residency assumption mentioned in that Division, the disposal of the asset concerned is not a disposal of a taxable Australian asset;

then, in addition to the effect that this section has apart from this subsection, this section also has the effect, in relation to any subsequent disposal of the asset (whether by the transferee or otherwise) that it would have if it had applied in relation to the transferee subject to the modifications made by that Division.”.

Transfer of asset from subsidiary to holding company for no consideration

43. Section 160ZZOA of the Principal Act is amended by inserting before subsection (3) the following subsection:

“(2A) If:

- (a) there is a requirement to calculate under Division 7 of Part X the attributable income of a company in relation to any taxpayer; and
- (b) this section, as it has effect in accordance with that Division, is relevant to that calculation because both of the following subparagraphs apply:
 - (i) the company is the transferor;
 - (ii) apart from the residency assumption mentioned in that Division, the disposal of the asset concerned is not a disposal of a taxable Australian asset;

then, in addition to the effect that this section has, apart from this subsection, this section also has the effect, in relation to any subsequent disposal of the asset (whether by the transferee or otherwise) that it would have if it had applied in relation to the transferee subject to the modifications made by that Division.”.

Commissioner may collect tax from person owing money to taxpayer

44. Section 218 of the Principal Act is amended by inserting “102AAM or” before “170AA” in paragraph (ba) and subparagraph (c) (iv) of the definition of “tax” in subsection (6B).

Assessment where no administration

45. Section 220 of the Principal Act is amended:

(a) by inserting after paragraph (1) (a) the following paragraph:

“(aa) interest under section 102AAM to which the taxpayer is liable has not been assessed or paid; or”;

(b) by omitting subsection (8) and substituting the following subsection:

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

‘tax’ includes:

(a) interest under section 102AAM; and

(b) additional tax under Part VII.”.

Penalty for false or misleading statements

46. Section 223 of the Principal Act is amended by omitting from subsection (8) all the words after “but does not include a statement made” and substituting the following words and paragraphs:

“in:

(e) a document produced pursuant to paragraph 264 (1) (b) or 264A (1) (d) or (e) (other than a document containing particulars of the basis of the calculation of taxable income of a year of income and the tax payable in respect of that taxable income that were specified in a return in accordance with section 221AZD); or

(f) a document produced pursuant to subparagraph 451 (2) (c) (ii) or paragraph 453 (1) (e).”.

Interpretation

47. Section 251R of the Principal Act is amended by inserting in subsection (7) “section 102AAN,” after “subsection 6 (1),”.

48. After section 264 of the Principal Act the following section is inserted:

Offshore information notices

“264A. (1) Where the Commissioner has reason to believe that:

(a) information relevant to the assessment of a taxpayer is:

(i) within the knowledge (whether exclusive or otherwise) of a person outside Australia; or

(ii) recorded (whether exclusively or otherwise) in a document outside Australia; or

(iii) kept (whether exclusively or otherwise) by means of a mechanical, electronic or other device outside Australia;
or

(b) documents relevant to the assessment of a taxpayer are outside Australia (whether or not copies are in Australia or, if the documents are copies of other documents, whether or not those other documents are in Australia);

the Commissioner may, by notice in writing served on the taxpayer (which notice is in this section called the '**offshore information notice**'), request the taxpayer:

(c) to give to the Commissioner, within the period and in the manner specified in the offshore information notice, any such information; or

(d) to produce to the Commissioner, within the period and in the manner specified in the offshore information notice, any such documents; or

(e) to make copies of any such documents and to produce to the Commissioner, within the period and in the manner specified in the offshore information notice, those copies.

“(2) The period specified in the offshore information notice must end 90 days after the date of service of the notice.

“(3) Upon written application made by the taxpayer within the period specified in the offshore information notice, the Commissioner may, by notice in writing served on the taxpayer, extend the period specified in the offshore information notice.

“(4) Where:

(a) an application under subsection (3) is made before the end of the period specified in the offshore information notice; and

(b) at the end of the period, the Commissioner has not notified the taxpayer of the Commissioner's decision on the application;

the following provisions have effect:

(c) the Commissioner is taken to have extended the period under subsection (3) to the end of the day (in this subsection called the '**decision day**') on which the Commissioner's decision is notified to the taxpayer;

(d) if the Commissioner decides to extend the period—the extended period must end after the decision day.

“(5) A reference in this section (other than subsection (3)) to the period specified in the offshore information notice is a reference to the period as extended under subsection (3).

“(6) Where:

(a) an offshore information notice (in this subsection called the '**first notice**') was served on a taxpayer; and

- (b) during the period specified in the first notice (including a period specified by virtue of one or more previous applications of this subsection), another offshore information notice (which other notice is in this subsection called the ‘**subsequent notice**’) is served on the taxpayer; and
- (c) the subsequent notice is expressed to be by way of variation of the first notice;

the following provisions have effect:

- (d) the request, or each of the requests, set out in the subsequent notice is taken, for the purposes of subsections (10), (11) and (14), to have been set out in the first notice;
- (e) if the period specified in the first notice would, apart from this subsection, end before the end of the period specified in the subsequent notice—the period specified in the first notice is taken to have been extended under subsection (3) to the end of the period specified in the subsequent notice.

“(7) The Commissioner may, by notice in writing served on the taxpayer, vary the offshore information notice by:

- (a) reducing its scope; or
- (b) correcting a clerical error or obvious mistake;

and, if the Commissioner does so, a reference in this section to the offshore information notice is to be read as a reference to the notice as so varied.

“(8) The Commissioner may withdraw an offshore information notice.

“(9) If the Commissioner withdraws an offshore information notice, nothing in this section prevents the Commissioner giving another offshore information notice in substitution, in whole or in part, for the withdrawn notice.

“(10) If the taxpayer refuses or fails to comply with the request or requests set out in the offshore information notice, then, except with the consent of the Commissioner:

- (a) if the information or documents to which the request or requests apply are only relevant to one issue concerning the assessment of the taxpayer:
 - (i) where the request, or any of the requests, apply to information—the information is not admissible in proceedings disputing the taxpayer’s assessment; or
 - (ii) where the request, or any of the requests, apply to documents—neither the documents, nor any secondary evidence of the documents, are admissible in proceedings disputing the taxpayer’s assessment; or

(b) if:

- (i) the information or documents to which the request or

requests apply are relevant to 2 or more issues concerning the assessment of the taxpayer; and

- (ii) the refusal or failure of the taxpayer relates to information or documents that are relevant to any or all of those issues;

the following provisions have effect:

- (iii) where the request, or any of the requests, apply to information—the information, to the extent to which it is relevant to the issue or issues mentioned in subparagraph (ii), is not admissible in proceedings disputing the taxpayer's assessment;

- (iv) where the request, or any of the requests, apply to documents—neither:

- (A) the documents, to the extent to which they are relevant to the issue or issues mentioned in subparagraph (ii); nor

- (B) secondary evidence of the documents, to the extent to which the secondary evidence is relevant to the issue or issues mentioned in subparagraph (ii);

are admissible in proceedings disputing the taxpayer's assessment.

“(11) Without limiting the power conferred by subsection (10), where:

- (a) the taxpayer refuses or fails to comply with the request or requests set out in the offshore information notice; and
- (b) the refusal or failure of the taxpayer relates to some, but not all, of the information or documents to which the request or requests apply and that are relevant to a particular issue concerning the assessment of the taxpayer;

the Commissioner, in exercising that power, must have regard to whether there is reason to believe that, because of the absence of that information or those documents, the remaining information or documents that are relevant to that issue are, or are likely to be, misleading.

“(12) The Commissioner, in exercising the power conferred by subsection (10), must ignore the consequences (whether direct or indirect) of an obligation arising under a law of, or of a part of, a foreign country, in so far as that obligation relates to the secrecy of information or documents.

“(13) In spite of anything in this section, the Commissioner must give a consent under subsection (10) in any case where a refusal would have the effect, for the purposes of the Constitution, of making any tax or penalty incontestable.

“(14) Where, before the commencement of the hearing of proceedings disputing the taxpayer’s assessment, the Commissioner forms both of the following views:

- (a) the view that the taxpayer has refused or failed to comply with the request or requests set out in the offshore information notice;
- (b) the view that the Commissioner is unlikely to give a consent under subsection (10) in relation to that request or those requests and in relation to those proceedings;

the Commissioner must serve on the taxpayer a notice in writing setting out those views.

“(15) A failure to comply with subsection (14) does not affect the validity of a decision under subsection (10).

“(16) A reference in this section to a refusal or failure of a taxpayer to comply with a request includes a reference to a refusal or failure resulting from the taxpayer being incapable of complying with the request.

“(17) A reference in this section to proceedings disputing the taxpayer’s assessment is a reference to proceedings before a court or the Tribunal arising out of, or relating to, an objection against the assessment.

“(18) Nothing in this Act precludes an offshore information notice from being set out in the same document as a notice under section 264.

“(19) An offshore information notice must set out the effect of subsection (10).

“(20) A failure to comply with subsection (19) does not affect the validity of the offshore information notice.

“(21) A request under this section is not taken to be a requirement for the purposes of any other provision of this Act or of any provision of the *Taxation Administration Act 1953*.

“(22) A refusal or failure to comply with a request set out in an offshore information notice is not an offence.

“(23) The express references in this section to documents do not imply that references to documents in any other provision of this Act, or in a provision of the *Taxation Administration Act 1953*, do not have the meaning given by section 25 of the *Acts Interpretation Act 1901*.

“(24) Nothing in this section affects the operation of section 264 and nothing in section 264 affects the operation of this section.”.

49. After section 315 of the Principal Act the following Part is inserted:

**“PART X—ATTRIBUTION OF INCOME IN RESPECT OF
CONTROLLED FOREIGN COMPANIES**

“Division 1—Preliminary

Object of Part

“316. (1) The object of this Part is to provide for certain amounts to be included in a taxpayer’s assessable income (Division 9) in respect of:

- (a) the attributable income of a CFC (section 456); and
- (b) certain changes of residence by a CFC (section 457); and
- (c) certain dividends paid by a CFC (sections 458 and 459).

“(2) To that end (and for other purposes of this Act) this Part contains rules relating to the following:

- (a) interpretation (Division 1);
- (b) types of entities (Division 2);
- (c) control interests, attribution interests, attributable taxpayers and attribution percentages (Division 3);
- (d) attribution accounts (Division 4);
- (e) attributed tax accounts (Division 5);
- (f) exempting receipts etc. (Division 6);
- (g) the calculation of attributable income of a CFC (Division 7);
- (h) the active income test (Division 8);
- (j) post-attribution asset disposals (Division 10);
- (k) the keeping of records (Division 11).

Interpretation

“317. In this Part, unless the contrary intention appears:

‘accounting period’, in relation to company, means an accounting period used by the company in the accounts by reference to which it distributes dividends;

‘accounting records’ includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;

‘accounts’ means ledgers, journals, profit and loss accounts and balance-sheets, and includes statements, reports and notes attached to, or intended to be read with, any of the foregoing;

‘active income test’ has the meaning given by section 432;

‘adjusted tainted income’ has the meaning given by section 386;

‘AFI’ or ‘Australian financial institution’ means any of the following Australian entities:

- (a) a bank within the meaning of the *Banking Act 1959*;

- (b) a person who carries on State banking within the meaning of paragraph 51 (xiii) of the Constitution;
 - (c) a registered corporation within the meaning of the *Financial Corporations Act 1974*;
 - (d) a life assurance company;
- 'AFI subsidiary'** or **'Australian financial institution subsidiary'** has the meaning given by section 326;
- 'aircraft'** means a machine or apparatus that can derive support in the atmosphere from the reactions of the air or from buoyancy, but does not include an air-cushion vehicle;
- 'associate'** has the meaning given by section 318;
- 'associate-inclusive control interest'** has the meaning given by section 349;
- 'attributable income'** has the meaning given by Division 7;
- 'attributable taxpayer'**, has the meaning given by section 361;
- 'attributed tax account credit'** has the meaning given by section 375;
- 'attributed tax account debit'** has the meaning given by section 376;
- 'attributed tax account surplus'** has the meaning given by section 374;
- 'attribution account entity'** has the meaning given by section 363;
- 'attribution account payment'** has the meaning given by section 365;
- 'attribution credit'** has the meaning given by section 371;
- 'attribution debit'** has the meaning given by section 372;
- 'attribution percentage'** has the meaning given by section 362;
- 'attribution tracing interest':**
- (a) in relation to a CFC—has the meaning given by section 358;
and
 - (b) in relation to a CFP—has the meaning given by section 359;
and
 - (c) in relation to a CFT—has the meaning given by section 360;
- 'Australian 1% entity'**, in relation to a company or trust, means an Australian entity whose associate-inclusive control interest in the company or trust is at least 1%;
- 'Australian entity'** has the meaning given by section 336;
- 'Australian partnership'** has the meaning given by section 337;
- 'Australian tax'** means income tax or withholding tax;
- 'Australian trust'** has the meaning given by section 338;
- 'CFC'** or **'controlled foreign company'** has the meaning given by section 340;
- 'CFE'** or **'controlled foreign entity'** has the meaning given by section 339;
- 'CFP'** or **'controlled foreign partnership'** has the meaning given by section 341;
- 'CFT'** or **'controlled foreign trust'** has the meaning given by section 342;

‘CGT roll-over provisions’ means section 160ZZF and Divisions 5A, 7A and 17 of Part IIIA;

‘commodity’ means any thing that is capable of delivery under an agreement for its delivery, but does not include an instrument creating or evidencing a chose in action;

‘commodity investment’ means:

(a) either of the following contracts:

(i) a forward contract in respect of a commodity;

(ii) a futures contract in respect of a commodity; or

(b) a right or option in respect of such a contract;

‘company’ does not include a company in the capacity of trustee;

‘company title interest’, in relation to land, means a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in a company that owns the land or building;

‘control tracing interest’:

(a) in relation to a CFC—has the meaning given by section 353;
or

(b) in relation to a CFP—has the meaning given by section 354;
or

(c) in relation to a CFT—has the meaning given by section 355;

‘currency exchange gain’, in relation to a company, in relation to a statutory accounting period, means a currency gain realised by the company in the statutory accounting period, to the extent to which it is attributable to currency exchange rate fluctuations;

‘currency exchange loss’, in relation to a company, in relation to a statutory accounting period, means a currency loss realised by the company in the statutory accounting period, to the extent to which it is attributable to currency exchange rate fluctuations;

‘de facto marriage’ means a relationship between 2 persons who, although not legally married to each other, live with each other on a *bona fide* domestic basis as husband and wife;

‘depreciation provision’ means any of sections 54 to 62 of Division 3 of Part III, or any provision of Divisions 10, 10AAA, 10AA, 10A, 10C and 10D of that Part;

‘designated concession income’, in relation to a particular listed country, means income or profits of a kind specified in the regulations where:

(a) either of the following subparagraphs applies:

(i) foreign tax imposed by a tax law of the listed country is not payable in respect of the income or profits because of a particular feature;

(ii) foreign tax imposed by a tax law of the listed country is payable in respect of the income or profits but there is a feature in relation to that tax; and

(b) the feature is of a kind specified in the regulations;
‘direct attribution account interest’ has the meaning given by section 366;

‘direct attribution interest’ has the meaning given by section 356;

‘direct control interest’:

(a) in relation to a company—has the meaning given by section 350;

(b) in relation to a trust—has the meaning given by section 351;

‘discretionary trust’ means a trust where:

(a) both of the following conditions are satisfied:

(i) a person (who may include the trustee) is empowered (either unconditionally or on the fulfilment of a condition) to exercise any power of appointment or other discretion;

(ii) the exercise of the power or discretion, or the failure to exercise the power or discretion, has the effect of determining, to any extent, either or both of the following:

(A) the identities of those who may benefit under the trust;

(B) how beneficiaries are to benefit, as between themselves, under the trust; or

(b) one or more of the beneficiaries under the trust have a contingent or defeasible interest in some or all of the corpus or income of the trust; or

(c) the trustee of another trust, being a trust where both of the conditions in paragraph (a) are satisfied, benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the first-mentioned trust;

‘disposal’, in relation to an asset, includes redemption;

‘distributable profits’, in relation to a company, means the amount, whether of an income or capital nature, that, having regard to the accounts of the company and such other matters as may reasonably be regarded as relevant, constitutes profits of the company that would be available for distribution by the company by way of dividends if there were disregarded any requirement of the constituent document, or of any resolution or decision, of the company restricting the availability of the profits for distribution in that way, other than any requirement providing for an eligible provision or reserve;

‘double tax agreement’, in relation to a foreign country, means:

(a) if there is only one agreement (within the meaning of the *Income Tax (International Agreements) Act 1953*) in force in respect of the foreign country—that agreement; or

(b) if there are 2 or more agreements (within the meaning of that Act) in force in respect of the foreign country—the agreement that is expressed to be:

- (i) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income; or
- (ii) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital; or
- (iii) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital; or
- (iv) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains; or
- (v) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital and to certain other taxes;

‘eligible designated concession income’, in relation to a listed country, in relation to a particular period (in this definition called the **‘income period’**), means designated concession income in relation to the listed country:

- (a) that is not subject to tax in another listed country in a tax accounting period:
 - (i) ending before the end of the income period; or
 - (ii) commencing during the income period; or
- (b) that is:
 - (i) subject to tax in another listed country in a tax accounting period:
 - (A) ending before the end of the income period; or
 - (B) commencing during the income period; and
 - (ii) designated concession income in relation to that other listed country;

‘eligible finance share’ has the meaning given by section 327;

‘eligible finance share dividend’ means a dividend in respect of an eligible finance share;

‘eligible provision or reserve’ means:

- (a) a provision or reserve required to be maintained by law; or
- (b) a provision for any liability in respect of foreign tax or Australian tax; or
- (c) a reserve maintained for the purpose of qualifying for relief from foreign tax; or
- (d) a provision or reserve for depreciation, bad or doubtful debts or leave payments; or
- (e) any other provision or reserve of a kind prescribed by regulations for the purposes of this paragraph;

‘eligible transferor’ has the meaning given by sections 347 and 348;

‘entitled to acquire’ has the meaning given by section 322;

'entity' means any of the following:

- (a) a company;
- (b) a partnership;
- (c) a person in the capacity of trustee;
- (d) any other person;

'exempting profits' has the meaning given by section 378;

'exempting profits percentage' has the meaning given by section 379;

'exempting receipt' has the meaning given by section 377 (in relation to a company that is a resident of an unlisted country) or section 380 (in relation to a company that is a resident within the meaning of section 6);

'factoring income' means income derived from carrying on a business of factoring;

'financial intermediary business' means:

- (a) banking business; or
- (b) a business whose income is principally derived from the lending of money;

'general insurance company' means a company whose sole or principal business is insurance business within the meaning of subsection 3 (1) of the *Insurance Act 1973*, but does not include a life assurance company;

'goods' includes:

- (a) ships, aircraft and other vehicles; and
- (b) animals, including fish; and
- (c) minerals, trees and crops, whether on, under or attached to land or not; and
- (d) gas and electricity;

'grossed-up amount' has the meaning given by section 373;

'gross tainted turnover' has the meaning given by section 435;

'gross turnover' has the meaning given by section 434;

'group' includes:

- (a) one entity alone; and
- (b) a number of entities the members of which are not in any way associated with each other nor acting together;

'income interest in a partnership' means an interest in the profits of the partnership;

'income interest in a trust' means an interest in the income of the trust;

'indirect attribution account interest' has the meaning given by section 369;

'indirect attribution interest' has the meaning given by section 357;

'indirect control interest' has the meaning given by section 352;

'IP time' means 7.30 p.m., by standard time in the Australian Capital Territory, on 12 April 1989;

'law', in relation to a listed country or an unlisted country, means a law of that listed country or unlisted country, or of any part of, or place in, that listed country or unlisted country;

'lease' includes a sublease and, in relation to a company title interest in land, includes an agreement similar to a lease or sublease;

'leased' includes let on hire (including a letting on hire that is described in the relevant agreement as a lease) under an agreement other than a hire-purchase agreement;

'life assurance company' has the same meaning as in section 110;

'life assurance policy' has the same meaning as in section 110;

'life assurance premiums' means premiums (within the meaning of section 110) in respect of life assurance policies;

'listed country' has the meaning given by section 320;

'member of a non-portfolio company group' has the meaning given by section 334;

'net tainted commodity gains' has the meaning given by section 443;

'net tainted currency exchange gains' has the meaning given by section 444;

'non-attributable income period', in relation to a taxpayer in relation to a company in relation to the application of a provision of this Act in accordance with Division 7, means a statutory accounting period of the company for which:

(a) there is no requirement to calculate under Division 7 the attributable income of the company in relation to the taxpayer;
or

(b) there is a requirement to calculate under Division 7 the attributable income of the company in relation to the taxpayer, but the particular provision is not relevant to that calculation;

'non-discretionary trust' means a trust other than a discretionary trust;

'non-portfolio dividend' means a dividend paid to a company where that company has a voting interest, within the meaning of section 160AFB, amounting to at least 10% of the voting power, within the meaning of that section, in the company paying the dividend;

'non-resident family trust' has the meaning given by section 328;

'non-share forward contract' means a forward contract that is not in respect of shares or a share price index;

'non-share futures contract' means a futures contract that is not in respect of shares or a share price index;

'notional allowable deduction' has the meaning given by subsection 382 (2);

'notional assessable income' has the meaning given by subsection 382 (2);

'notional exempt income' has the meaning given by subsection 382 (2);

'Part X Australian resident' means a resident within the meaning of section 6, but does not include an entity where:

- (a) there is a double tax agreement in force in respect of a foreign country; and
- (b) that agreement contains a provision that is expressed to apply where, apart from the provision, the entity would, for the purposes of the agreement, be both a resident of Australia and a resident of the foreign country; and
- (c) that provision has the effect that the entity is, for the purposes of the agreement, a resident solely of the foreign country;

'passive income' has the meaning given by section 446;

'premium income' means:

- (a) premiums in respect of insurance or reinsurance; or
- (b) life assurance premiums;

'profits' includes gains, whether of an income or capital nature;

'property management services' includes any of the following services:

- (a) cleaning;
- (b) secretarial;
- (c) catering;

'provide', in relation to services, includes allow, confer, give, grant or perform;

'public unit trust' has the meaning given by section 329;

'recognised accounts':

- (a) in relation to a company, in relation to a statutory accounting period, means the accounts referred to in subparagraph 432 (1) (c) that are prepared by the company for the statutory accounting period; or
- (b) in relation to a partnership in which a company is a partner at any time during a statutory accounting period, means the accounts referred to in paragraph 437 (1) (b) that are prepared by the partnership for the statutory accounting period;

'rent' means any consideration (in this definition called a **'rental consideration'**) paid or given by a lessee under a lease and includes consideration (whether paid or given by a lessee or another person) in the nature of a rental consideration;

'residency assumption', in relation to a CFC, means the assumption about the residence of the CFC that is made in paragraph 383 (a);

'retention period', in relation to a statutory accounting period, means the period of 5 years commencing at the end of the statutory accounting period;

'sale', in relation to goods, includes exchange or hire-purchase and **'purchase'**, when used in relation to goods, has a corresponding meaning;

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

- (a) an arrangement for or in relation to:
 - (i) the performance of work (including work of a professional nature), whether with or without the provision of property; or
 - (ii) the provision of, or of the use of facilities for, entertainment, recreation or instruction; or
 - (iii) the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction; or

(b) a contract of insurance; or

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

'ship' means a vessel or boat of any description, and includes:

(a) an air-cushion vehicle; and

(b) any floating structure;

'statutory accounting period' has the meaning given by section 319;

'subject to tax' has the meaning given by section 324;

'tainted asset', in relation to a company, means:

(a) any of the following:

(i) loans (including deposits with a bank or other financial institution);

(ii) debenture stock, bonds, debentures, certificates of entitlement, bills of exchange, promissory notes or other securities;

(iii) shares in a company;

(iv) an interest in a trust or partnership;

(v) futures contracts;

(vi) forward contracts;

(vii) interest rate swap contracts;

(viii) currency swap contracts;

(ix) forward exchange rate contracts;

(x) forward interest rate contracts;

(xi) life assurance policies;

(xii) a right or option in respect of such a loan, security, share, interest, contract or policy;

(xiii) any similar financial instrument; or

(b) an asset that was held by the company solely or principally for the purpose of deriving tainted rental income; or

(c) an asset other than:

(i) trading stock; or

(ii) any other asset used solely in carrying on a business;

but does not include a commodity investment;

'tainted commodity gain', in relation to a company, in relation to a statutory accounting period, means a gain realised by the company in the statutory accounting period from disposing of a tainted commodity investment;

'tainted commodity investment', in relation to a company, means:

- (a) either of the following contracts:
 - (i) a forward contract in respect of a commodity;
 - (ii) a futures contract in respect of a commodity; or
 - (b) a right or option in respect of such a contract;
- except where either of the following conditions is satisfied:
- (c) both of the following subparagraphs apply:
 - (i) the company carries on:
 - (A) a business of producing or processing the commodity; or
 - (B) a business that involves the use of the commodity as a raw material in a production process;
 - (ii) the contract, right or option relates to the carrying on of that business;
 - (d) both of the following subparagraphs apply in relation to the contract:
 - (i) the contract was entered into by the company for the sole purpose of eliminating or reducing the risk of adverse financial consequences that might result for the company, under another contract, from fluctuations in the price of the commodity;
 - (ii) the company does not and will not derive tainted sales income from a transaction under that other contract;

'tainted commodity loss', in relation to a company, in relation to a statutory accounting period, means a loss realised by the company in the statutory accounting period from disposing of a tainted commodity investment;

'tainted currency exchange gain', in relation to a company, in relation to a statutory accounting period, means a currency exchange gain realised by the company in the statutory accounting period except where the gain related to an active income transaction (within the meaning of section 439);

'tainted currency exchange loss', in relation to a company, in relation to a statutory accounting period, means a currency exchange loss realised by the company during the statutory accounting period except where the loss related to an active income transaction (within the meaning of section 439);

'tainted income ratio' has the meaning given by section 433;

'tainted interest income', in relation to a company, means:

- (a) interest or a payment in the nature of interest; or

- (b) an amount that, if the company were a resident within the meaning of section 6, would be included in assessable income under Division 16E of Part III; or

- (c) factoring income;

but does not include offshore banking income within the meaning of Division 18 of Part III;

'tainted rental income', in relation to a company, in relation to a statutory accounting period, means income derived by the company in the statutory accounting period by way of rent in respect of any of the following:

- (a) a lease to which an associate of the company was a party at the time the income was derived;
- (b) a lease where any or all of the rent was paid or given by an associate of the company;
- (c) a lease of land, except where the following conditions are satisfied:

- (i) the land is situated in a listed country or in an unlisted country;
- (ii) at all times during the period when the income accrued, the company was a resident of the listed country, or of the unlisted country, as the case may be;

- (d) a lease of land where the following conditions are satisfied:

- (i) the land is situated in a listed country or in an unlisted country;
- (ii) at all times during the period when the income accrued, the company was a resident of the listed country, or of the unlisted country, as the case may be;
- (iii) it is not the case that a substantial part of the income is attributable to the provision of labour-intensive property management services in connection with the land, being services provided by directors or employees of the company;

- (e) a lease of either of the following:

- (i) a ship;
- (ii) an aircraft;

except where a substantial part of the income is attributable to the provision by the directors or employees of the company of any of the following in relation to the ship or aircraft concerned:

- (iii) operating crew services;
- (iv) maintenance services;
- (v) management services;

- (f) a lease of either of the following:

- (i) a cargo container designed or intended for use on ships

or aircraft as part of a containerised cargo handling system;

- (ii) plant or equipment designed or intended for use on board ships;

except where a substantial part of the income is attributable to the provision by the directors or employees of the company of either of the following in relation to the container, plant or equipment concerned:

- (iii) maintenance services;
- (iv) management services;

‘tainted royalty income’, in relation to a company, means royalties derived by the company except where all of the following conditions are satisfied:

- (a) the royalties are derived in the course of a business carried on by the company;
- (b) at the time the royalties were derived, the entity liable to pay the royalties was not an associate of the company;
- (c) either of the following subparagraphs applies:
 - (i) the matter or thing in respect of which the royalty is consideration originated with the company;
 - (ii) the company has substantially developed, altered or improved that matter or thing with the result that its market value was substantially enhanced;

‘tainted sales income’ has the meaning given by section 447;

‘tainted services income’ has the meaning given by section 448;

‘tax accounting period’, in relation to an entity, in relation to a foreign tax imposed by a tax law of a listed country, means the accounting period used by the entity for the purposes of determining the tax base under that law;

‘tax detriment’ has the meaning given by section 330;

‘tax law’, in relation to a listed country or an unlisted country, means:

- (a) if the listed country or the unlisted country has federal foreign tax and either or both of the following:
 - (i) State foreign tax;
 - (ii) municipal foreign tax;

the law of the listed country or the unlisted country that imposes the federal foreign tax; or

- (b) in any other case—the law of the listed country or the unlisted country that imposes foreign tax;

‘trust’ means:

- (a) an entity in the capacity of trustee (including an entity that is taken to be a trustee because of section 268); or
- (b) as the case requires, a trust or trust estate;

‘unlisted country’ has the meaning given by section 320.

Associates

“318. (1) For the purposes of this Part, the following are associates of an entity (in this subsection called the ‘**primary entity**’) that is a natural person (otherwise than in the capacity of trustee):

- (a) a relative of the primary entity;
- (b) a partner of the primary entity or a partnership in which the primary entity is a partner;
- (c) if a partner of the primary entity is a natural person otherwise than in the capacity of trustee—the spouse or a child of that partner;
- (d) a trustee of a trust where the primary entity, or another entity that is an associate of the primary entity because of another paragraph of this subsection, benefits under the trust;
- (e) a company where:
 - (i) the company is sufficiently influenced by:
 - (A) the primary entity; or
 - (B) another entity that is an associate of the primary entity because of another paragraph of this subsection; or
 - (C) another company that is an associate of the primary entity because of another application of this paragraph; or
 - (D) 2 or more entities covered by the preceding sub-subparagraphs; or
 - (ii) a majority voting interest in the company is held by:
 - (A) the primary entity; or
 - (B) the entities that are associates of the primary entity because of subparagraph (i) of this paragraph and the preceding paragraphs of this subsection; or
 - (C) the primary entity and the entities that are associates of the primary entity because of subparagraph (i) of this paragraph and because of the preceding paragraphs of this subsection.

“(2) For the purposes of this Part, the following are associates of a company (in this subsection called the ‘**primary entity**’):

- (a) a partner of the primary entity or a partnership in which the primary entity is a partner;
- (b) if a partner of the primary entity is a natural person otherwise than in the capacity of trustee—the spouse or a child of that partner;
- (c) a trustee of a trust where the primary entity, or another entity that is an associate of the primary entity because of another paragraph of this subsection, benefits under the trust;

- (d) another entity (in this paragraph called the **‘controlling entity’**) where:
 - (i) the primary entity is sufficiently influenced by:
 - (A) the controlling entity; or
 - (B) the controlling entity and another entity or entities; or
 - (ii) a majority voting interest in the primary entity is held by:
 - (A) the controlling entity; or
 - (B) the controlling entity and the entities that, if the controlling entity were the primary entity, would be associates of the controlling entity because of subsection (1), because of subparagraph (i) of this paragraph, because of another paragraph of this subsection or because of subsection (3);
- (e) another company (in this paragraph called the **‘controlled company’**) where:
 - (i) the controlled company is sufficiently influenced by:
 - (A) the primary entity; or
 - (B) another entity that is an associate of the primary entity because of another application of this paragraph of this subsection; or
 - (C) a company that is an associate of the primary entity because of another application of this paragraph; or
 - (D) 2 or more entities covered by the preceding sub-subparagraphs; or
 - (ii) a majority voting interest in the controlled company is held by:
 - (A) the primary entity; or
 - (B) the entities that are associates of the primary entity because of subparagraph (i) of this paragraph and the other paragraphs of this subsection; or
 - (C) the primary entity and the entities that are associates of the primary entity because of subparagraph (i) of this paragraph and the other paragraphs of this subsection;
- (f) any other entity that, if a third entity that is an associate of the primary entity because of paragraph (d) of this subsection were the primary entity, would be an associate of that third entity because of subsection (1), because of another paragraph of this subsection or because of subsection (3).

“(3) For the purposes of this Part, the following are associates of a trustee (in this subsection called the **‘primary entity’**):

- (a) any entity that benefits under the trust;
- (b) if a natural person benefits under the trust—any entity that, if the natural person were the primary entity, would be an associate of that natural person because of subsection (1) or because of this subsection;
- (c) if a company is an associate of the primary entity because of paragraph (a) or (b) of this subsection—any entity that, if the company were the primary entity, would be an associate of the company because of subsection (2) or because of this subsection.

“(4) For the purposes of this Part, the following are associates of a partnership (in this subsection called the ‘**primary entity**’):

- (a) a partner in the partnership;
- (b) if a partner in the partnership is a natural person—any entity that, if that natural person were the primary entity, would be an associate of that natural person because of subsection (1) or (3);
- (c) if a partner in the partnership is a company—any entity that, if the company were the primary entity, would be an associate of the company because of subsection (2) or (3).

“(5) In determining, for the purposes of this section, whether an entity is an associate of another entity at a particular time (in this subsection called the ‘**test time**’):

- (a) an entity (in this subsection called the ‘**public unit trust entity**’) that, apart from this subsection, is the trustee of a public unit trust at the test time is to be treated as if it were a company instead of a trustee; and
- (b) the public unit trust entity is taken to be sufficiently influenced by another entity or other entities if the public unit trust entity is accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the other entity or other entities (whether those directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed companies, partnerships or trusts); and
- (c) another entity or other entities are taken to hold a majority voting interest in the public unit trust entity if either of the following percentages is not less than 50%:
 - (i) the percentage of the income of the trust represented by the share of the income to which the other entity or other entities are entitled, or that the other entity or other entities are entitled to acquire;
 - (ii) the percentage of the corpus of the trust represented by the share of the corpus to which the other entity or other

entities are entitled, or that the other entity or other entities are entitled to acquire.

“(6) For the purposes of this section:

- (a) a reference to an entity benefiting under a trust is a reference to the entity benefiting, or being capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust, either directly or through any interposed companies, partnerships or trusts; and
- (b) a company is sufficiently influenced by an entity or entities if the company, or its directors, are accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the entity or entities (whether those directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed companies, partnerships or trusts); and
- (c) an entity or entities hold a majority voting interest in a company if the entity or entities are in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the company.

“(7) In this section, and in any other provision of this Act in so far as that provision has effect for the purposes of this section:

- (a) a reference to the spouse of a person (in this paragraph called the **‘first person’**):
 - (i) includes a reference to a de facto spouse of the first person; and
 - (ii) does not include a reference to a person who is legally married to the first person but is living separately and apart from the first person on a permanent basis; and
- (b) a reference to the de facto spouse of a person (in this paragraph called the **‘first person’**) is a reference to a person who (although not legally married to the first person) is living with the first person as the husband or wife of the first person on a genuine domestic basis.

Statutory accounting period of a company

“319. (1) Subject to this section, each period of 12 months finishing at the end of 30 June is a statutory accounting period of a company.

“(2) A company may, by notice in writing to the Commissioner, elect that a day (in this section called the **‘new day’**) is to be the last day of its statutory accounting period instead of the day (in this section called the **‘old day’**) that would otherwise apply under this section.

“(3) The new day must be:

- (a) if:

- (i) the company has not previously given a notice under this section; and
- (ii) the company regularly uses:
 - (A) an accounting period of 12 months finishing at the end of a day other than 30 June for the purposes of complying with the requirements of a tax law of any country; or
 - (B) an accounting period of 12 months finishing at the end of a day other than 30 June for the purposes of reporting to its shareholders;

either of those days; or

- (b) if the company has previously given a notice under this section—30 June or either of the days that, but for the giving of the notice, would be applicable under paragraph (a).

“(4) Subject to any further application of subsection (2) and to subsection (5):

- (a) the first statutory accounting period using the new day is the period that begins immediately after the end of the statutory accounting period (using the old day) during which the election was made; and
- (b) later statutory accounting periods are the successive periods of 12 months finishing at the end of the new day.

“(5) Where, when it makes the election, it is less than 12 months since the company was incorporated or otherwise established:

- (a) the reference in subparagraph (3) (a) (ii) to the company regularly using an accounting period is instead a reference to the company proposing to use the accounting period; and
- (b) subject to any further application of subsection (2):
 - (i) the first statutory accounting period of the company is the period beginning at the time of incorporation or establishment and ending at the end of the new day; and
 - (ii) later statutory accounting periods are the successive periods of 12 months finishing at the end of the new day.

Listed countries and unlisted countries

“320. (1) In this Part:

‘listed country’ means a foreign country, or a part of a foreign country, that is declared by the regulations to be a listed country for the purposes of this Part;

‘unlisted country’ means:

- (a) a foreign country that does not (either in whole or in part) consist of a listed country or listed countries; or
- (b) if one or more parts of a foreign country are listed countries—the remainder of that foreign country.

“(2) Subject to this section, for the purposes of this section, if, apart from this section:

- (a) a colony, overseas territory or protectorate of a foreign country; or
- (b) an overseas territory for the international relations of which a foreign country is responsible;

is not a foreign country in its own right, the colony, territory or protectorate is taken to be a foreign country in its own right.

“(3) Subject to subsection (4), for the purposes of this section, if, apart from this subsection and subsection (4), there are 2 or more foreign countries with a common income tax system, those countries are to be treated as the same country.

“(4) For the purposes of this section, if, apart from this subsection, one or more parts of a particular foreign country are excluded (either expressly or by implication) from the operation of a double tax agreement in force in relation to the foreign country, the part or parts so excluded are to be taken to constitute a separate foreign country.

Each listed country and each unlisted country to be treated as a separate foreign country

“321. For the purposes of the application of section 6AB to this Part, each listed country and each unlisted country is to be treated as a separate foreign country.

Meaning of ‘entitled to acquire’

“322. For the purposes of this Part, an entity is entitled to acquire anything that the entity is absolutely or contingently entitled to acquire, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

State foreign taxes may be treated as federal foreign taxes

“323. If, apart from this section, a listed country or an unlisted country has both:

- (a) federal foreign tax; and
- (b) State foreign tax;

the regulations may provide that a specified State foreign tax is to be treated, for the purposes of this Part, as if it were an additional federal foreign tax of the listed country or the unlisted country.

When income or profits subject to tax in a listed country

“324. (1) Subject to subsection (2), for the purposes of this Part, a particular item of income or profits derived by an entity is taken to be subject to tax in a listed country in a particular tax accounting period if, and only if:

- (a) foreign tax (other than a withholding-type tax) is payable under

a tax law of the listed country in respect of the item because the item is included in the tax base of that law for the tax accounting period; or

(b) both of the following conditions are satisfied:

(i) either of the following sub-subparagraphs applies:

(A) regulations made for the purposes of section 160AFF provide that an amount of foreign tax (other than a withholding-type tax) not actually paid in respect of the item because of a particular provision of a law of the listed country is deemed to have been paid;

(B) a double tax agreement provides that an amount of foreign tax (other than a withholding-type tax) not actually paid in respect of the item because of a particular provision of a law of the listed country is deemed to have been paid;

(ii) if that foreign tax had been payable, it would have been payable under a tax law of the listed country in respect of the item because the item would have been included in the tax base of that law for the tax accounting period.

“(2) If:

(a) apart from this subsection, a particular item of income or profits derived by an entity is not subject to tax in a listed country in a particular tax accounting period; and

(b) apart from a feature of a kind specified in the regulations, the item would have been subject to tax in the listed country in the tax accounting period;

the regulations may provide that the item is to be treated, for the purposes of this Part or one or more specified provisions of this Part, as if it were subject to tax in the listed country in the tax accounting period.

When dividends etc. taxed in a listed country at normal company tax rate

“325. For the purposes of this Part, a dividend or other amount of a particular kind is to be taken to be taxed in a listed country at the country’s normal company tax rate if, and only if:

(a) foreign tax is payable under a tax law of the listed country in respect of the dividend or the other amount of a particular kind at the same rate as, or a higher rate than, is payable under the tax law in respect of non-dividend income, or non-dividend amounts not of that particular kind, as the case may be, included in the tax base of a company that is a resident of the listed country; and

(b) the tax law of the listed country does not provide for any

credit, rebate or other tax concession in respect of the dividend or the other amount of a particular kind, other than for foreign tax payable under a tax law of a different listed or an unlisted country.

AFI subsidiary

“326. (1) For the purposes of this Part, a company is an AFI subsidiary (or an Australian financial institution subsidiary) at a particular time if either of the following paragraphs applies:

- (a) at that time, there is a group of 5 or fewer AFI entities the aggregate of whose direct control interests and indirect control interests in the company is not less than 50%;
- (b) both of the following subparagraphs apply:
 - (i) at that time, there is a single AFI entity (in this paragraph called the ‘**assumed controller**’) the aggregate of whose direct control interests and indirect control interests in the company is not less than 40%;
 - (ii) at that time, the company is not controlled by a group of entities not being or including the assumed controller or any of its associates.

“(2) A reference in this section to an AFI entity is a reference to:

- (a) a company that is an AFI; or
- (b) a 100% subsidiary of such a company.

“(3) For the purposes of this section, a company (in this subsection called the ‘**subsidiary company**’) is taken to be the 100% subsidiary of another company (in this subsection called the ‘**holding company**’) at a particular time if:

- (a) at that time, all the shares in the subsidiary company were beneficially owned by:
 - (i) the holding company; or
 - (ii) a company that is, or 2 or more companies each of which is, a 100% subsidiary of the holding company; or
 - (iii) the holding company and a company that is, or 2 or more companies each of which is, a 100% subsidiary of the holding company; and
- (b) there was no agreement, arrangement or understanding in force at that time by virtue of which any person was in a position, or would be in a position after that time, to affect rights of the holding company or of a 100% subsidiary of the holding company in relation to the subsidiary company.

“(4) For the purposes of this section, where a company is a 100% subsidiary of another company (including a company that is such a 100% subsidiary by virtue of another application or other applications of this subsection), every company that is a 100% subsidiary of the

first-mentioned company is taken to be a 100% subsidiary of that other company.

“(5) For the purposes of subsection (3), a person is taken to be in a position at a particular time to affect any rights of a company in relation to another company if, at that time, that person has a right, power or option (whether by virtue of any provision of the constituent document of either of those companies or by virtue of any agreement or instrument or otherwise) to acquire those rights or do an act or thing that would prevent the first-mentioned company from exercising those rights for its own benefit or receiving any benefits accruing by reason of those rights.

Eligible finance shares

“327. For the purposes of this Part, a share in a company is an eligible finance share if all the following conditions are satisfied:

- (a) the shareholder is an AFI or an AFI subsidiary;
- (b) the share was issued to the shareholder by the company in the ordinary course of business carried on by the shareholder;
- (c) the shareholder is not an associate of the company;
- (d) having regard to:
 - (i) the manner in which the amount of dividends in respect of the share are to be calculated; and
 - (ii) the conditions applicable to the payment of dividends in respect of the share; and
 - (iii) any other relevant matters;

the payment of the dividends in respect of the share may reasonably be regarded as equivalent to the payment of interest on a loan where the interest accrues at intervals not exceeding 12 months and is paid not later than 12 months after it accrues.

Non-resident family trusts

“328. (1) Subject to subsections (4) and (5), for the purposes of this Part, a trust is a non-resident family trust in relation to a natural person at a particular time if, and only if, at that time:

- (a) the trust is either:
 - (i) a post-marital family trust in relation to the natural person; or
 - (ii) a family relief trust in relation to the natural person; and
- (b) the trust is constituted by:
 - (i) a deed of trust or other instrument; or
 - (ii) an order or declaration of a court.

“(2) For the purposes of this section, a trust is a post-marital family trust in relation to a natural person at a particular time if:

- (a) either of the following conditions is satisfied:

- (i) the trust was created pursuant to:
 - (A) a decree or order of dissolution or annulment of marriage, being a dissolution or annulment that, because of the *Family Law Act 1975*, has effect, or continues to have effect in Australia or is recognised as valid in Australia; or
 - (B) a decree or order of judicial separation or a similar decree or order;
 - (ii) the trust was created in consequence of the break-down of a *de facto* marriage; and
 - (b) at that time, the only persons who benefit, or are capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust (which persons are in subsections (4) and (5) called the **‘primary potential beneficiaries’**) are natural persons who:
 - (i) are not Part X Australian residents at that time; and
 - (ii) are covered by any of the following categories:
 - (A) the spouse or former spouse of the natural person;
 - (B) a child of the natural person;
 - (C) a child of the former spouse of the natural person, being a child who was such a child at a time when the former spouse was the spouse of the natural person;
 - (D) a child of the spouse of the natural person.
- “(3) For the purposes of this section, a trust is a family relief trust in relation to a natural person at a particular time (in this subsection called the **‘test time’**) if:
- (a) the only persons who benefit, or are capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust (which persons are in subsections (4) and (5) called the **‘primary potential beneficiaries’**) are natural persons who:
 - (i) are identified by name in the trust deed or instrument, or in the court order or declaration, constituting the trust; and
 - (ii) are not Part X Australian residents at that time; and
 - (iii) are covered by any of the following categories:
 - (A) the spouse or former spouse of the natural person;
 - (B) a parent of the natural person or of the natural person’s spouse or former spouse;
 - (C) a child of the natural person or of the natural person’s spouse or former spouse;
 - (D) a grandparent of the natural person;
 - (E) a grandchild of the natural person;

- (F) a brother or sister of the natural person or of the natural person's spouse or former spouse;
- (G) a child of a brother or sister mentioned in sub-paragraph (F); and
- (b) the trust was established, and is operated, for the relief of persons who are in necessitous circumstances; and
- (c) any of the following conditions is satisfied:
 - (i) at the test time, the assets of the trust are not excessive having regard to the requirements, or likely requirements, of the primary potential beneficiaries;
 - (ii) no transfers of property or services to the trust were made during the period (in this paragraph called the **'test period'**) commencing at the IP time and ending at the test time;
 - (iii) immediately after each transfer of property or services to the trust made during the test period, the assets of the trust were not excessive having regard to the requirements, or likely requirements, of the beneficiaries at the time of the transfer.

“(4) Subsection (1) does not prevent a trust from being a non-resident family trust in relation to a natural person at a particular time if, in the event of the death of a particular primary potential beneficiary at that time, one or more natural persons (which persons are in subsection (5) called the **'secondary potential beneficiaries'**) who:

- (a) are not Part X Australian residents at that time; and
- (b) are children of the primary potential beneficiary;

would benefit, or be capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust.

“(5) Subsections (1) and (4) do not prevent a trust from being a non-resident family trust in relation to a natural person at a particular time if, in the event of the death of all of the primary potential beneficiaries and all of the secondary potential beneficiaries at that time, there are one or more funds, authorities or institutions in Australia covered by paragraph 78(1)(a) that would benefit, or be capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust.

“(6) For the purposes of this section, if, at a particular time, an entity holds an interest in, or right to benefit under, a trust that is dependent on the death of one or more natural persons, then, the entity is taken to be an entity who, in the event of the death of that natural person or those natural persons immediately after that time, would benefit under the trust.

“(7) A reference in this section to a natural person does not include a reference to a natural person in the capacity of a trustee.

Public unit trusts

“329. For the purposes of this Part, a unit trust is a public unit trust at a particular time if, assuming that the 12 month period ending at that time had been a year of income, the unit trust would have been a public unit trust at all times during the year of income for the purposes of Division 6AAA of Part III.

Tax detriment

“330. (1) For the purposes of this Part, each of the following is a tax detriment to a partner in a partnership:

- (a) an increase in an amount included under section 92 in the partner's assessable income in respect of an interest in the net income of the partnership;
- (b) a reduction in an amount allowable under section 92 as a deduction to the partner in respect of the partner's interest in a partnership loss of the partnership;
- (c) a combination of such a reduction to nil and such an increase.

“(2) For the purposes of this Part, an increase in an amount included under section 97, 98A or 100 in the assessable income of a beneficiary in respect of a share of the net income of a trust is a tax detriment to the beneficiary.

“(3) For the purposes of this Part, an increase (including from nil) in an amount assessable to a trustee under section 98 in respect of a beneficiary's share of, or under section 99 or 99A in respect of the whole or a part of, the net income of a trust is a tax detriment to the trustee.

“(4) The amount of the tax detriment is equal to the amount of the increase or reduction or, where paragraph (1) (c) applies, the sum of the amounts of the reduction and increase.

Company deemed to be treated as a resident of a listed country or an unlisted country for the purposes of the tax law of that country

“331. If the tax law of a listed country or an unlisted country adopts some criterion other than treatment as a resident as the criterion for applying a worldwide source tax base to a company, then, sections 332 and 333 have effect, in relation to that tax law, as if that criterion were the same as treatment as a resident of the listed country or the unlisted country for the purposes of that tax law.

Companies that are residents of listed countries

“332. (1) For the purposes of this Part, a company is a resident of a listed country at a particular time if, and only if, the company is, in accordance with subsection (2), a resident of a particular listed country at that time.

“(2) For the purposes of this Part, a company is a resident of a particular listed country at a particular time if, and only if, both of the following conditions are satisfied at that time:

- (a) the company is not a Part X Australian resident;
- (b) the company is treated as a resident of the listed country for the purposes of the tax law of the listed country.

Companies that are residents of unlisted countries

“333. (1) For the purposes of this Part, a company is a resident of an unlisted country at a particular time if, and only if:

- (a) the company is, in accordance with subsection (2), a resident of a particular unlisted country at that time; or
- (b) paragraph (a) does not apply and the company is at that time neither:
 - (i) a Part X Australian resident; nor
 - (ii) a resident of a particular listed country.

“(2) For the purposes of this Part, a company is a resident of a particular unlisted country (in this section called the ‘**unlisted country of residence**’) at a particular time if, and only if:

- (a) the company is not a Part X Australian resident at that time; and
- (b) the company is not treated as a resident of a listed country at that time for the purposes of the tax law of the listed country; and
- (c) any of the following subparagraphs applies:

- (i) both of the following conditions are satisfied at that time:
 - (A) the company is treated as a resident of the unlisted country of residence for the purposes of the tax law of the unlisted country of residence;
 - (B) the company is not treated as a resident of any other unlisted country for the purposes of the tax law of the unlisted country;
- (ii) both of the following conditions are satisfied at that time:
 - (A) the company is treated as a resident of the unlisted country of residence and at least one other unlisted country for the purposes of the tax laws of each of those unlisted countries;
 - (B) the company is incorporated in the unlisted country of residence;
- (iii) both of the following conditions are satisfied at that time:
 - (A) the company is not treated as a resident of any unlisted country for the purposes of the tax law of the unlisted country;

- (B) the company's management and control is solely or principally located in the unlisted country of residence.
- (iv) all of the following conditions are satisfied at that time:
 - (A) the company is not treated as a resident of any unlisted country for the purposes of the tax law of the unlisted country;
 - (B) the company's management and control is not solely or principally located in the unlisted country of residence;
 - (C) the company is incorporated in the unlisted country of residence.

Member of a non-portfolio company group

"334. A company is a member of a non-portfolio company group if it is a member of a group of companies for the purposes of section 160AFB.

References extend to pre-commencement matters and things

"335. Unless otherwise expressly provided, references in this Part are to matters and things whether occurring before or after the commencement of this Part.

"Division 2—Types of Entity

"Subdivision A—Australian Entities

Australian entity

"336. For the purposes of this Part, each of the following is an Australian entity:

- (a) an Australian partnership;
- (b) an Australian trust;
- (c) an entity (other than a partnership or trust) that is a Part X Australian resident.

Australian partnership

"337. For the purposes of this Part, a partnership is an Australian partnership at a particular time if at least one of the partners is an Australian entity at that time.

Australian trust

"338. For the purposes of this Part, a trust is an Australian trust at a particular time (in this section called the **'test time'**) if:

- (a) at any time in the period of 12 months immediately before the test time:
 - (i) any trustee of the trust was a Part X Australian resident;
- or

- (ii) the central management and control of the trust was in Australia; or
- (b) the trust is a corporate unit trust for the purposes of Division 6B of Part III, or a public trading trust for the purposes of Division 6C of Part III, in relation to the year of income of the trust in which the test time occurs.

“Subdivision B—Controlled Foreign Entities (CFEs)”

Controlled foreign entity (CFE)

“339. Each of the following is a CFE (or controlled foreign entity):

- (a) a CFC (or controlled foreign company);
- (b) a CFP (or controlled foreign partnership);
- (c) a CFT (or controlled foreign trust).

Controlled foreign company (CFC)

“340. A company is a CFC at a particular time if, at that time, the company is a resident of a listed country or of an unlisted country and any of the following paragraphs applies:

- (a) at that time, there is a group of 5 or fewer Australian 1% entities the aggregate of whose associate-inclusive control interests in the company is not less than 50%;
- (b) both of the following subparagraphs apply:
 - (i) at that time, there is a single Australian entity (in this paragraph called the ‘**assumed controller**’) whose associate-inclusive control interest in the company is not less than 40%;
 - (ii) at that time, the company is not controlled by a group of entities not being or including the assumed controller or any of its associates;
- (c) at that time, the company is controlled by a group of 5 or fewer Australian entities, either alone or together with associates (whether or not any associate is also an Australian entity).

Controlled foreign partnership (CFP)

“341. A partnership is a CFP at a particular time if:

- (a) the partnership is not an Australian partnership at that time; and
- (b) at least one of the partners is a CFE at that time.

Controlled foreign trust (CFT)

“342. A trust is a CFT at a particular time if, at that time, the trust is not an Australian trust and:

- (a) there is an eligible transferor in respect of the trust; or

- (b) there is a group of 5 or fewer Australian 1% entities the aggregate of whose associate-inclusive control interests in the trust is not less than 50%.

“Subdivision C—Eligible Transferors in relation to Trusts

Interpretation

“343. In this Subdivision, unless the contrary intention appears:

‘actual transfer’, in relation to property or services, means a transfer of the property or services other than a transfer that is taken to have been made because of subsection 345 (1), (2), (5), (6), (8), (10) or (11);

‘property’ includes money;

‘scheme’ has the same meaning as in Division 6AAA of Part III;

‘services’ has the same meaning as in Division 6AAA of Part III;

‘transfer’ has the same meaning as in Division 6AAA of Part III;

‘underlying transfer’, in relation to a transfer of property or services to a trust, means:

- (a) if that transfer was an actual transfer—the actual transfer; or
- (b) if that transfer was taken to have been made because of subsection 345 (1)—the actual transfer referred to in that subsection; or
- (c) if that transfer was taken to have been made because of subsection 345 (2)—the actual transfer referred to in paragraph 345 (2) (d); or
- (d) if that transfer was taken to have been made because of subsection 345 (5)—the actual transfer referred to in paragraph 345 (5) (b); or
- (e) if that transfer was taken to have been made because of the application of subsection 345 (6) or (8) to an actual transfer—the actual transfer; or
- (f) if that transfer was taken to have been made because of the application of subsection 345 (6) or (8) to a transfer that was taken to have been made because of subsection 345 (1)—the actual transfer referred to in subsection 345 (1); or
- (g) if that transfer was taken to have been made because of the application of subsection 345 (6) or (8) to a transfer that was taken to have been made because of subsection 345 (5)—the actual transfer referred to in paragraph 345 (5) (b); or
- (h) if that transfer was taken to have been made because of subsection 345 (10)—the actual transfer referred to in paragraph 345 (10) (b); or
- (j) if that transfer was taken to have been made because of one or more applications of subsection 345 (11) to an actual transfer—the actual transfer; or
- (k) if that transfer was taken to have been made because of one or

more applications of subsection 345 (11) to a transfer (in this paragraph called the ‘**deemed transfer**’) that was taken to have been made because of subsection 345 (1), (2), (5), (6), (8) or (10)—the actual transfer that, under a preceding paragraph of this definition, is the underlying transfer in relation to the deemed transfer.

References to transfer of property or services

“344. (1) A reference in this Subdivision to the transfer of property or services to a trust includes a reference to the transfer of property or services by way of the creation of the trust.

“(2) For the purposes of this Subdivision, where an entity acquires property that did not previously exist, the property is taken to have existed immediately before the acquisition and to have been acquired from the entity who created the property.

“(3) For the purposes of this Subdivision, property or services are to be taken to have been transferred to an entity if the property or services have been applied for the benefit of, or in accordance with the directions of, the entity.

“(4) Without limiting the generality of subsection (3), a reference in that subsection to the application of property or services for the benefit of an entity includes a reference to the application of property or services in the discharge, in whole or in part, of a debt due by the entity.

“(5) A reference in this Subdivision to a transfer of property or services to an entity includes a reference to a transfer made before the commencement of this Subdivision.

“(6) A reference in this Subdivision to the transfer of property or services to a trust does not include a reference to a transfer made by the trustee of the estate of a deceased person under:

- (a) the terms of the deceased person’s will or codicil; or
- (b) an order of a court that varied or modified the provisions of a deceased person’s will or codicil;

unless:

- (c) the transfer was made in or as a result of the exercise (by the trustee or any other person) of a power of appointment or any other discretion; or
- (d) under subsection 345 (1), the property or services are taken to have been transferred by an entity other than the trustee, instead of by the trustee; or
- (e) under subsection 345 (5), the Commissioner treats the property or services as having been (to any extent) transferred by an entity other than the trustee, instead of by the trustee.

Deemed transfers of property or services

“345. (1) For the purposes of this Subdivision, where an entity (in this subsection called the **‘prime entity’**) causes another entity to actually transfer property or services to a trust, the prime entity (instead of the other entity) is to be taken to have transferred the property or services to the trust.

“(2) For the purposes of this Subdivision, where:

- (a) the trustee of a trust issues units in the trust to an entity (in this subsection called the **‘first entity’**) in the first entity’s capacity as a manager, underwriter or dealer in relation to the marketing or placement of the units; and
- (b) in the course of the marketing or placement of the units, the units are disposed of by the first entity to another entity (in this subsection called the **‘second entity’**); and
- (c) at a particular time (in this subsection called the **‘second entity’s transfer time’**), the second entity transfers property or services to the first entity as consideration for the acquisition of the units; and
- (d) the first entity has actually transferred, or actually transfers, property or services (in this subsection called the **‘original property or services’**) to the trust for the sole purpose of acquiring the units;

the second entity is taken to have transferred the original property or services (instead of the first entity) at the second entity’s transfer time.

“(3) A reference in subsection (2) to a unit in a trust is a reference to an interest (however described) in any of the income or property of the trust.

“(4) Subsections (1) and (2) do not limit the operation of subsection (5).

“(5) Where, under a scheme:

- (a) an entity (in this subsection called the **‘scheme entity’**) actually transfers property or services to another entity; and
- (b) property or services are actually transferred to a trust at a particular time otherwise than by the scheme entity;

the Commissioner may, for the purposes of this Subdivision, treat the property or services mentioned in paragraph (b) as having been transferred by the scheme entity (instead of by any other entity) to the trust at that time.

“(6) Where:

- (a) apart from subsections (8), (10) and (11), a partnership transfers property or services to a trust at a particular time (in this subsection called the **‘transfer time’**); and

(b) at a later time (in this subsection called the ‘**cessation time**’), the partnership ceases to exist for the purposes of this Act;
then, for the purpose of determining whether an entity that was a partner in the partnership immediately before the cessation time is an eligible transferor in relation to the trust at a time after the cessation time, each such partner is to be taken to have transferred the original property or services to the trust at the transfer time.

“(7) Nothing in subsection (6) affects the application of this Subdivision to the transfer made by the partnership concerned.

“(8) For the purposes of this Subdivision, if:

- (a) apart from this subsection and subsections (6), (10) and (11), a discretionary trust (in this subsection called the ‘**transferor trust**’) transfers property or services (in this subsection called the ‘**original property or services**’) to another trust (in this subsection called the ‘**transferee trust**’) at a particular time (in this subsection called the ‘**transfer time**’); and
- (b) at a later time (in this subsection called the ‘**cessation time**’), the transferor trust commences to be wound up or ceases to exist for the purposes of this Act; and
- (c) apart from this subsection and subsections (6), (10) and (11), one or more other entities transferred property or services to the transferor trust at or before the transfer time;

each of those other entities is to be taken to have transferred the original property or services to the transferee trust at the transfer time.

“(9) Nothing in subsection (8) affects the application of this Subdivision to the transfer mentioned in paragraph (8) (a).

“(10) For the purposes of this Subdivision, where:

(a) any of the following subparagraphs applies:

- (i) any of the following events occurs in relation to a company (which company is in this subsection called the ‘**transferor**’):
 - (A) the company passes a resolution for its winding-up;
 - (B) an order is made for the winding-up of the company;
 - (C) any similar event;
- (ii) a partnership (in this subsection also called the ‘**transferor**’) ceases to exist for the purposes of this Act;
- (iii) either of the following sub-subparagraphs applies in relation to the trustee of a trust (in this subsection also called the ‘**transferor**’):
 - (A) the trust commences to be wound-up;

(B) the trust estate ceases to exist for the purposes of this Act; and

(b) an actual transfer of property or services is made to a trust (in this subsection called the ‘**transferee**’) as a consequence of the transferor being wound-up or ceasing to exist;

the transferor is taken to have transferred to the transferee the property or services concerned.

“(11) Where:

(a) the following subparagraphs apply to an entity (in this subsection called the ‘**defunct entity**’):

- (i) the defunct entity is a company, partnership or trust;
- (ii) the defunct entity transferred property or services (in this subsection called the ‘**original property or services**’) to a trust (including a transfer that was taken to have been made because of another application or applications of this subsection) at a particular time (in this subsection called the ‘**transfer time**’);
- (iii) if the defunct entity is a company—the company passes a resolution for its winding-up, an order is made for the winding-up of the company or a similar event occurs;
- (iv) if the defunct entity is a partnership—the partnership ceases to exist for the purposes of this Act;
- (v) if the defunct entity is a trust—the trust commences to be wound up or ceases to exist for the purposes of this Act; and

(b) the Commissioner is satisfied that an entity (in this subsection called the ‘**successor entity**’) has benefited or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting (either directly or indirectly through one or more interposed companies, partnerships or trusts) as a result of a transfer of property or services made by the defunct entity or a transfer of property or services made as a consequence of the defunct entity being wound up or ceasing to exist; and

(c) the Commissioner is of the opinion that it is appropriate to apply this subsection to the successor entity;

then, for the purpose of determining whether the successor entity is an eligible transferor in relation to the trust referred to in subparagraph (a) (ii) at a time after the transfer time, the successor entity is to be taken to have transferred the original property or services to that trust.

Circumstances in which a transfer of property or services is an eligible business transaction

“346. An underlying transfer of property or services to a trust is an eligible business transaction if, and only if, at or about the time of the transfer, identical or similar property or services were transferred by the transferor in the ordinary course of business to ordinary clients or

customers under arm's length transactions in similar circumstances and subject to identical or similar terms and conditions as those that applied in relation to the underlying transfer of the property or services concerned.

Eligible transferor in relation to a discretionary trust

“347. (1) An entity (in this section called the ‘**transferor entity**’) is an eligible transferor in relation to a discretionary trust at a particular time (in this section called the ‘**test time**’) if the trust is not a public unit trust at the test time and:

(a) all of the following subparagraphs apply:

- (i) the transferor entity transferred property or services to the trust at a time (in this subparagraph called the ‘**transfer time**’) at or after the IP time and before the test time;
- (ii) if the underlying transfer was made in the course of carrying on a business—the underlying transfer was not an eligible business transaction;
- (iii) if the underlying transfer was made under an arm's length transaction otherwise than in the course of carrying on a business—the transferor entity was in a position, at any time after the transfer time and before the test time, to control the trust; or

(b) all of the following subparagraphs apply:

- (i) the transferor entity transferred property or services to the trust at any time before the IP time;
- (ii) the underlying transfer was not an eligible business transaction;
- (iii) at any time after the IP time and before the test time, the entity was in a position to control the trust;

and, at the test time, the transferor entity is an Australian entity or a CFE.

“(2) For the purposes of this section, an entity is taken to be in a position to control a trust if, and only if:

- (a) a group in relation to the entity had the power by means of the exercise by the group of any power of appointment or revocation or otherwise, to obtain, with or without the consent of any other entity, the beneficial enjoyment of the corpus or income of the trust; or
- (b) a group in relation to the entity was able in any manner whatsoever, whether directly or indirectly, to control the application of the corpus or income of the trust; or
- (c) a group in relation to the entity was capable under a scheme of gaining the enjoyment or the control referred to in paragraph (a) or (b); or

- (d) a trustee of the trust was accustomed or under an obligation (whether formally or informally) or might reasonably be expected to act in accordance with the directions, instructions or wishes of a group in relation to the entity; or
- (e) a group in relation to the entity was able to remove or appoint the trustee, or any of the trustees, of the trust.

“(3) A reference in subsection (2) to a group in relation to an entity is a reference to any of the following:

- (a) the entity acting alone;
- (b) an associate of the entity acting alone;
- (c) the entity and one or more associates of the entity acting together;
- (d) 2 or more associates of the entity acting together.

Eligible transferor in relation to a non-discretionary trust or a public unit trust

“348. (1) An entity is an eligible transferor in relation to a non-discretionary trust or a public unit trust at a particular time (in this section called the ‘test time’) if:

- (a) the transferor entity transferred property or services to the trust at or after the IP time and before the test time; and
- (b) the underlying transfer was made for no consideration or for a consideration less than the arm’s length amount in relation to the underlying transfer; and
- (c) it is not the case that the sole purpose of the underlying transfer was the acquisition of units in the trust where the parties to the underlying transfer were at arm’s length with each other in relation to the underlying transfer and the trust was a public unit trust at the test time;

and, at the test time, the transferor entity is an Australian entity or a CFE.

“(2) For the purposes of subsection (1), the arm’s length amount in relation to a transfer of property or services to a trust is the amount that the trustee could reasonably be expected to have been required to pay to obtain the property or services concerned from the transferor under a transaction where the parties were dealing with each other at arm’s length in relation to the transaction.

“Division 3—Control Interests, Attribution Interests, Attributable Taxpayers and Attribution Percentages

“Subdivision A—Control Interests

Associate-inclusive control interest in a company or trust

“349. (1) Subject to this section, the associate-inclusive control interest that an entity (in this section called the ‘lower entity’) holds in a company or trust at a particular time is the aggregate of:

- (a) the direct control interest in the company or trust that the lower entity holds at that time; and
- (b) the indirect control interests in the company or trust that the lower entity holds at that time; and
- (c) the direct control interests in the company or trust held at that time by associates of the lower entity; and
- (d) the indirect control interests in the company or trust held at that time by associates of the lower entity.

“(2) In calculating the associate-inclusive control interest that the lower entity holds in the company or trust:

- (a) an indirect control interest of the lower entity is not to be counted under paragraph (1) (b) to the extent to which it is calculated by reference to:
 - (i) a direct control interest in the company or trust that is taken into account under paragraph (1) (c); or
 - (ii) an indirect control interest in the company or trust that is taken into account under paragraph (1) (d); and
- (b) an indirect control interest of an associate of the lower entity is not to be counted under paragraph (1) (d) to the extent to which it is calculated by reference to:
 - (i) a direct control interest in the company or trust that is taken into account under paragraph (1) (a) or (c); or
 - (ii) an indirect control interest in the company or trust that is taken into account under paragraph (1) (b) or (d).

“(3) If, apart from this subsection, both of the following things would be counted in calculating the associate-inclusive control interest that the lower entity holds in the company or trust:

- (a) the holding of a direct control interest by the lower entity or any other entity;
 - (b) an entitlement to acquire that direct control interest;
- only one of those things is to be taken into account.

“(4) For the purpose of determining any of the following matters:

- (a) whether the aggregate of the associate-inclusive control interests that a group of entities holds in a company is not less than 50%;
- (b) whether a single Australian entity has an associate-inclusive control interest in a company of not less than 40%;
- (c) whether the aggregate of the associate-inclusive control interests that a group of entities holds in a trust is not less than 50%;

- (d) whether the associate-inclusive control interest that an Australian entity holds in a CFC is not less than 10%;
- (e) whether the associate-inclusive control interest that an Australian entity holds in a company is not less than 1%;

if, apart from this subsection, an entity, or each of 2 or more entities, would hold a direct control interest, or control tracing interest, in another entity (in this subsection called the **'higher entity'**) equal to 100%:

- (f) only one of those entities is to be taken to hold a direct control interest, or control tracing interest, as the case may be, in the higher entity equal to 100%; and
- (g) no other entity (whether or not the entity would, apart from this subsection hold a direct control interest, or control tracing interest, of 100%) is to be taken to hold any direct control interest, or control tracing interest, as the case may be, in the higher entity.

“(5) For the purpose of calculating the aggregate of the associate-inclusive control interests that a group of entities holds in a company or trust:

- (a) if a particular direct control interest or indirect control interest that an entity holds in another entity would be counted more than once because the entity is an associate of one or more other entities in the group, that interest is to be counted only once; and
- (b) if both of the following things would, but for this subsection, be counted in calculating the aggregate of the associate-inclusive control interests that a group of entities holds in a company or trust:
 - (i) the holding of a direct control interest by an entity;
 - (ii) an entitlement to acquire that direct control interest;only one of those things is to be counted.

“(6) If it is necessary for the purposes of this section to decide:

- (a) which one of 2 things is to be taken into account for the purposes of subsection (3) or (5); or
- (b) which one of 2 or more entities is to be chosen for the purposes of paragraph (4) (f);

the Commissioner may make that decision.

Direct control interest in a company

“350. (1) Subject to subsection (7), an entity holds a direct control interest in a company at a particular time equal to the percentage that the entity holds, or is entitled to acquire, at that time of:

- (a) the total paid-up share capital of the company; or

- (b) the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:
 - (i) the making of distributions of capital or profits of the company to its shareholders;
 - (ii) the constituent document of the company;
 - (iii) any variation of the share capital of the company; or
 - (c) the total rights to distributions of capital or profits of the company to its shareholders on winding-up; or
 - (d) the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up;
- or, if different percentages are applicable under the preceding paragraphs, the greater or greatest of those percentages.

“(2) If the percentage of total rights to vote or participate in decision-making differs as between differing types of decision-making, the highest of those percentages applies for the purposes of paragraph (1) (b).

“(3) For the purposes of the application of subsection (1) to a company, the percentage that an entity holds, or is entitled to acquire, at a particular time (in this subsection called the ‘**test time**’) in a statutory accounting period of the company, of the total rights to distributions of capital or profits of the company to its shareholders on winding-up is to be worked out by:

- (a) ascertaining whichever of the following is applicable:
 - (i) the capital of the company as at the end of the statutory accounting period;
 - (ii) the profits of the company for the statutory accounting period; and
- (b) assuming that the rights to such distributions that the entity holds, or is entitled to acquire, at the test time were the same at all other times during the statutory accounting period; and
- (c) ascertaining the percentage concerned:
 - (i) at the end of the statutory accounting period instead of at the test time; and
 - (ii) on that assumption.

“(4) For the purposes of the application of subsection (1) to a company, the percentage that an entity holds, or is entitled to acquire, at a particular time (in this subsection called the ‘**test time**’) in a statutory accounting period of the company, of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up, is to be worked out by:

- (a) ascertaining whichever of the following is applicable:
 - (i) the capital of the company as at the end of the statutory accounting period;
 - (ii) the profits of the company for the statutory accounting period; and

- (b) assuming that the rights to such distributions that the entity holds, or is entitled to acquire, at the test time were the same at all other times during the statutory accounting period; and
- (c) ascertaining the percentage concerned:
 - (i) at the end of the statutory accounting period instead of at the test time; and
 - (ii) on that assumption.

“(5) Eligible finance shares in a company are to be ignored for the purposes of the application of subsection (1) to the company.

“(6) If, at a particular time, a company is controlled by a group of 5 or fewer Australian entities, either alone or together with associates (whether or not any associate is also an Australian entity), each Australian entity in that group of 5 or fewer holds a direct control interest in the company equal to 100%.

“(7) An entity that holds a direct control interest in a company at a particular time because of subsection (6) is not to be taken to hold any direct control interest in the company at that time because of subsection (1).

Direct control interest in a trust

“351. (1) An entity that is a beneficiary in a trust holds a direct control interest in the trust at a particular time equal to:

- (a) the percentage of the income of the trust represented by the share of the income to which the beneficiary is entitled, or that the beneficiary is entitled to acquire; or
- (b) the percentage of the corpus of the trust represented by the share of the corpus to which the beneficiary is entitled, or that the beneficiary is entitled to acquire;

or, if those percentages differ, the greater of those percentages.

“(2) For the purposes of the application of subsection (1) to a trust:

- (a) the percentage of the income of the trust represented by the share of the income to which the beneficiary is entitled, or that the beneficiary is entitled to acquire; or
- (b) the percentage of the corpus of the trust represented by the share of the corpus to which the beneficiary is entitled, or that the beneficiary is entitled to acquire;

at a particular time (in this subsection called the ‘test time’) in a year of income of the trust, is to be worked out by:

- (c) ascertaining whichever of the following is applicable:
 - (i) the income of the trust for the year of income;
 - (ii) the corpus of the trust as at the end of the year of income; and

- (d) assuming that the share to which the entity is entitled, or that the entity is entitled to acquire, at the test time was the same at all other times during the year of income; and
- (e) ascertaining the percentage concerned:
 - (i) at the end of the year of income instead of at the test time; and
 - (ii) on that assumption.

“(3) Each entity that is an eligible transferor in relation to a trust at a particular time holds a direct control interest in the trust at that time equal to 100%.

“(4) An entity that holds a direct control interest in a trust at a particular time because of subsection (3) is not to be taken to hold any direct control interest in the trust at that time because of subsection (1).

Indirect control interest in a company or trust

“352. (1) An indirect control interest that an entity (in this section called the ‘**bottom entity**’) holds in a company or trust at a particular time is calculated in accordance with this section.

“(2) An interposed entity is not to be taken into account in calculating an indirect control interest unless the entity is a CFE.

“(3) If there is only one entity interposed between the bottom entity and the company or trust, the indirect control interest is calculated by multiplying the control tracing interest that the bottom entity holds in the interposed entity by the control tracing interest that the interposed entity holds in the company or trust.

“(4) If there are 2 entities interposed between the bottom entity and the company or trust, the indirect control interest is calculated:

- (a) by multiplying the control tracing interest that the bottom entity holds in the first interposed entity by the control tracing interest that the first interposed entity holds in the second interposed entity; and
- (b) by multiplying the result of the calculation referred to in paragraph (a) by the control tracing interest that the second interposed entity holds in the company or trust.

“(5) If there are 3 or more entities interposed between the bottom entity and the company or trust, the indirect control interest is calculated:

- (a) by multiplying the control tracing interest that the bottom entity holds in the first interposed entity by the control tracing interest that the first interposed entity holds in the second interposed entity; and
- (b) by multiplying the result of the calculation referred to in paragraph (a) by the control tracing interest that the second interposed entity holds in the third interposed entity;

and so on, ending with a multiplication by the control tracing interest that the last interposed entity holds in the company or trust.

“(6) For the purposes of this section, an entity (in this subsection called the ‘**second entity**’) is interposed between 2 other entities (in this subsection called the ‘**first entity**’ and the ‘**third entity**’ respectively) if, and only if:

- (a) the first entity has a control tracing interest in the second entity;
and
- (b) the second entity has a control tracing interest in the third entity.

Control tracing interest in a company

“353. (1) Subject to this section, an entity (in this subsection called the ‘**lower entity**’) holds a control tracing interest in a company at a particular time equal to the direct control interest in the company that the lower entity holds at that time.

“(2) An entity (in this subsection called the ‘**lower entity**’) holds a control tracing interest in a company at a particular time equal to 100% if:

- (a) the aggregate of the direct control interests in the company held at that time by the lower entity and its associates is not less than 50%; or
- (b) both of the following conditions are satisfied:
 - (i) the aggregate of the direct control interests in the company held at that time by the lower entity and its associates is not less than 40%;
 - (ii) at that time, the company is not controlled by a group of entities not being or including the lower entity or any of its associates; or
- (c) at that time, the company is controlled by the lower entity, either alone or together with associates.

Control tracing interest in a CFP

“354. Each partner in a CFP holds a control tracing interest in the CFP equal to 100%.

Control tracing interest in a CFT

“355. (1) An entity that is an eligible transferor at a particular time in relation to a CFT holds a control tracing interest in the CFT at that time equal to 100%.

“(2) Subject to subsection (4), an entity (in this subsection called the ‘**lower entity**’) that is a beneficiary in a CFT holds a control tracing interest in the trust at a particular time equal to:

- (a) the percentage of the income of the CFT represented by the share of the income to which the lower entity is entitled, or that the lower entity is entitled to acquire; or
- (b) the percentage of the corpus of the CFT represented by the share of the corpus to which the lower entity is entitled, or that the lower entity is entitled to acquire;

or, if those percentages differ, the greater of those percentages.

“(3) For the purposes of the application of subsection (2) to a trust:

- (a) the percentage of the income of the trust represented by the share of the income to which the beneficiary is entitled, or that the beneficiary is entitled to acquire; or
- (b) the percentage of the corpus of the trust represented by the share of the corpus to which the beneficiary is entitled, or that the beneficiary is entitled to acquire;

at a particular time (in this subsection called the ‘test time’) in a year of income of the trust, is to be worked out by:

- (c) ascertaining whichever of the following is applicable:
 - (i) the income of the trust for the year of income;
 - (ii) the corpus of the trust as at the end of the year of income; and
- (d) assuming that the share to which the entity is entitled, or that the entity is entitled to acquire, at the test time was the same at all other times during the year of income; and
- (e) ascertaining the percentage concerned:
 - (i) at the end of the year of income instead of at the test time; and
 - (ii) on that assumption.

“(4) If the percentage calculated under subsection (2) is not less than 50%, the lower entity holds a control tracing interest in the CFT equal to 100%.

“(5) An entity that holds a control tracing interest in a CFT at a particular time because of subsection (1) is not to be taken to hold any control tracing interest in the CFT at that time because of subsection (2) or (4).

“Subdivision B—Attribution Interests

Direct attribution interest in a CFC or CFT

“356. (1) An entity holds a direct attribution interest in a CFC at a particular time equal to the percentage that the entity holds, or is entitled to acquire, at that time of:

- (a) the total paid-up share capital of the CFC; or
- (b) the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:

- (i) the making of distributions of capital or profits of the CFC to its shareholders;
 - (ii) the constituent document of the CFC;
 - (iii) any variation of the share capital of the CFC; or
 - (c) the total rights to distributions of capital or profits of the CFC to its shareholders on winding-up; or
 - (d) the total rights to distributions of capital or profits of the CFC to its shareholders, otherwise than on winding-up;
- or, if different percentages are applicable under the preceding paragraphs, the greater or greatest of those percentages.

“(2) For the purposes of the application of subsection (1) to a company, the percentage that an entity holds, or is entitled to acquire, at a particular time (in this subsection called the ‘test time’) in a statutory accounting period of the company, of the total rights to distributions of capital or profits of the company to its shareholders on winding-up is to be worked out by:

- (a) ascertaining whichever of the following is applicable:
 - (i) the capital of the company as at the end of the statutory accounting period;
 - (ii) the profits of the company for the statutory accounting period; and
- (b) assuming that the rights to such distributions that the entity holds, or is entitled to acquire, at the test time were the same at all other times during the statutory accounting period; and
- (c) ascertaining the percentage concerned:
 - (i) at the end of the statutory accounting period instead of at the test time; and
 - (ii) on that assumption.

“(3) For the purposes of the application of subsection (1) to a company, the percentage that an entity holds, or is entitled to acquire, at a particular time (in this subsection called the ‘test time’) in a statutory accounting period of the company, of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up, is to be worked out by:

- (a) ascertaining whichever of the following is applicable:
 - (i) the capital of the company as at the end of the statutory accounting period;
 - (ii) the profits of the company for the statutory accounting period; and
- (b) assuming that the rights to such distributions that the entity holds, or is entitled to acquire, at the test time were the same at all other times during the statutory accounting period; and

(c) ascertaining the percentage concerned:

- (i) at the end of the statutory accounting period instead of at the test time; and
- (ii) on that assumption.

“(4) Eligible finance shares in a company are to be ignored for the purposes of the application of subsection (1) to the company.

“(5) An entity that is an eligible transferor at a particular time in relation to a CFT holds a direct attribution interest in the CFT at that time equal to 100%.

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

- (a) the eligible transferor is a natural person (other than a natural person in the capacity of a trustee); and
- (b) the CFT is a non-resident family trust in relation to the natural person.

“(7) An entity (in this subsection called the ‘**lower entity**’) that is a beneficiary in a CFT holds a direct attribution interest in the CFT at a particular time equal to:

- (a) the percentage of the income of the CFT represented by the share of the income to which the lower entity is entitled, or that the lower entity is entitled to acquire; or
- (b) the percentage of the corpus of the CFT represented by the share of the corpus to which the lower entity is entitled, or that the lower entity is entitled to acquire;

or, if those percentages differ, the greater of those percentages.

“(8) An entity that holds a direct attribution interest in a CFT at a particular time because of subsection (5) is not to be taken to hold any direct attribution interest in the CFT at that time because of subsection (7).

Indirect attribution interest in a CFC or CFT

“357. (1) An indirect attribution interest that an entity (in this section called the ‘**bottom entity**’) holds in a CFC or CFT (in this section called the ‘**top entity**’) at a particular time is calculated in accordance with this section.

“(2) An interposed entity is not to be taken into account in calculating an indirect attribution interest unless the entity is a CFE.

“(3) If there is only one entity interposed between the bottom entity and the top entity, the indirect attribution interest is calculated by multiplying the attribution tracing interest that the bottom entity holds in the interposed entity by the attribution tracing interest that the interposed entity holds in the top entity.

“(4) If there are 2 entities interposed between the bottom entity and the top entity, the indirect attribution interest is calculated:

- (a) by multiplying the attribution tracing interest that the bottom entity holds in the first interposed entity by the attribution tracing interest that the first interposed entity holds in the second interposed entity; and
- (b) by multiplying the result of the calculation referred to in paragraph (a) by the attribution tracing interest that the second interposed entity holds in the top entity.

“(5) If there are 3 or more entities interposed between the bottom entity and the top entity, the indirect attribution interest is calculated:

- (a) by multiplying the attribution tracing interest that the bottom entity holds in the first interposed entity by the attribution tracing interest that the first interposed entity holds in the second interposed entity; and
- (b) by multiplying the result of the calculation referred to in paragraph (a) by the attribution tracing interest that the second interposed entity holds in the third interposed entity;

and so on, ending with a multiplication by the attribution tracing interest that the last interposed entity holds in the top entity.

“(6) For the purposes of this section, an entity (in this subsection called the ‘second entity’) is interposed between 2 other entities (in this subsection called the ‘first entity’ and the ‘third entity’ respectively) if, and only if:

- (a) the first entity has an attribution tracing interest in the second entity; and
- (b) the second entity has an attribution tracing interest in the third entity.

Attribution tracing interest in a CFC

“358. An entity holds an attribution tracing interest in a CFC at a particular time equal to the direct attribution interest in the CFC that the entity holds at that time.

Attribution tracing interest in a CFP

“359. An entity that is a partner in a CFP holds an attribution tracing interest in the CFP at a particular time equal to the percentage that the entity holds, or is entitled to acquire, at that time of:

- (a) the total interests in the profits of the CFP; or
- (b) the total interests in the CFP property;

or, if those percentages differ, the greater of those percentages.

Attribution tracing interest in a CFT

“360. (1) An entity that is an eligible transferor at a particular time in relation to a CFT holds an attribution tracing interest in the CFT at that time equal to 100%.

“(2) Subsection (1) does not apply if:

- (a) the eligible transferor is a natural person (other than a natural person in the capacity of a trustee); and
- (b) the CFT is a non-resident family trust in relation to the natural person.

“(3) An entity (in this subsection called the ‘**lower entity**’) that is a beneficiary in a CFT holds an attribution tracing interest in the CFT at a particular time equal to:

- (a) the percentage of the income of the CFT represented by the share of the income to which the lower entity is entitled, or that the lower entity is entitled to acquire; or
- (b) the percentage of the corpus of the CFT represented by the share of the corpus to which the lower entity is entitled, or that the lower entity is entitled to acquire;

or, if those percentages differ, the greater of those percentages.

“(4) An entity that holds an attribution tracing interest in a CFT at a particular time because of subsection (1) is not to be taken to hold any attribution tracing interest in the CFT at that time because of subsection (3).

“Subdivision C—Attributable Taxpayers and Attribution Percentages

Attributable taxpayer in relation to a CFC or a CFT

“361. (1) An entity (in this subsection called the ‘**test entity**’) is an attributable taxpayer in relation to a CFC at a particular time if, at that time:

- (a) the test entity is an Australian entity whose associate-inclusive control interest in the CFC is at least 10%; or
- (b) all of the following subparagraphs apply:
 - (i) the CFC is a CFC at that time only because of paragraph 340 (c);
 - (ii) the CFC is controlled by any group of 5 or fewer Australian entities, either alone or together with associates (whether or not any associate is also an Australian entity);
 - (iii) the test entity is an Australian 1% entity and is included in that group of 5 or fewer Australian entities.

“(2) An entity (in this subsection called the ‘**test entity**’) is an attributable taxpayer in relation to a CFT at a particular time if, at that time, the test entity is an Australian entity whose associate-inclusive control interest in the CFT is at least 10%.

Attribution percentage of an attributable taxpayer

“362. (1) Subject to this section, the attribution percentage of an attributable taxpayer in relation to a CFC or CFT at a particular time is the sum of:

- (a) the direct attribution interest in the CFC or CFT held by the taxpayer at that time; and
- (b) the aggregate of the indirect attribution interests in the CFC or CFT held by the taxpayer at that time.

“(2) If, apart from this subsection, both of the following things would be counted in calculating the attribution percentage of an attributable taxpayer in relation to a CFC or CFT at a particular time:

- (a) the holding of a direct attribution interest in an entity by any other entity;
- (b) an entitlement to acquire that direct attribution interest;

only one of those things is to be taken into account.

“(3) If:

- (a) in calculating the percentage that would be the attribution percentage of an attributable taxpayer (apart from this subsection and subsection (5)) in relation to a CFC at a particular time (in this subsection called the ‘**test time**’) regard was had to an attribution tracing interest of an eligible transferor in relation to a CFT, being an attribution tracing interest determined under subsection 360 (1); and
- (b) the attribution percentage referred to in paragraph (a) is greater than it would have been apart from subsection 360 (1); and
- (c) there are other eligible transferors in relation to the CFT at the test time; and
- (d) the attributable taxpayer gives to the Commissioner, in accordance with a form approved, in writing, by the Commissioner, such information as is required by the form to be given;

the Commissioner may reduce the attribution percentage referred to in paragraph (a) by such amount as the Commissioner considers reasonable in the circumstances.

“(4) If:

- (a) in calculating the percentage that would be the attribution percentage of an attributable taxpayer (apart from this subsection and subsection (5)) in relation to a CFT (in this subsection called the ‘**attributing CFT**’) at a particular time (in this subsection called the ‘**test time**’) regard was had to:
 - (i) a direct attribution interest of the attributable taxpayer in relation to the attributing CFT, being direct attribution interest determined under subsection 356 (2); or
 - (ii) an attribution tracing interest of an eligible transferor in relation to another CFT (in this subsection called the ‘**interposed CFT**’); and

- (b) the attribution percentage referred to in paragraph (a) is greater than it would have been apart from subsection 356 (2) or 360 (1), as the case may be; and
- (c) at the test time, there are other eligible transferors in relation to the attributing CFT or the interposed CFT, as the case may be; and
- (d) the attributable taxpayer gives to the Commissioner such information, and produces to the Commissioner such documents, as the Commissioner requires in connection with the operation of this subsection;

the Commissioner may reduce the attribution percentage referred to in paragraph (a) by such amount as the Commissioner considers reasonable in the circumstances.

“(5) If, apart from this subsection, the aggregate of the attribution percentages of all the attributable taxpayers in relation to a CFC or CFT at a particular time would exceed 100%, the attribution percentage of each of those attributable taxpayers is the percentage calculated using the formula:

$$\frac{\text{Individual percentage}}{\text{Total percentage}} \times 100$$

where:

Individual percentage means the percentage that would, apart from this subsection, be the attribution percentage of the attributable taxpayer concerned;

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

“Division 4—Attribution Accounts

Attribution account entity

“363. Each of the following is an attribution account entity:

- (a) a company that is not a Part X Australian resident;
- (b) a partnership;
- (c) a trust.

Attribution account percentage

“364. The attribution account percentage of a taxpayer in relation to an entity is the sum of the taxpayer’s direct attribution account interest and indirect attribution account interest or interests in the entity.

Attribution account payment

“365. (1) Each of the following is an attribution account payment:

- (a) a dividend paid by a company to a shareholder;

- (b) the individual interest of a partner in the net income (within the meaning of section 90) of a partnership of a year of income;
- (c) where a beneficiary of a trust is presently entitled to a share of the income of the trust—that share of the net income (within the meaning of section 95) of the trust of a year of income;
- (d) the whole or part of the net income of a trust of a year of income that is assessable to the trustee under section 99 or 99A;
- (e) an amount of trust property that would be included in the assessable income of a beneficiary of a year of income under section 99B if:
 - (i) the beneficiary were a resident, within the meaning of section 6, at a time during the year of income; and
 - (ii) paragraph 99B (2) (c) were replaced by a paragraph referring to any attribution account payment under paragraph (c) or (d) of this subsection.

“(2) The attribution account payment is taken to be made:

- (a) in a paragraph (1) (b) case—by the partnership to the partner; and
 - (b) in a paragraph (1) (c) or (e) case—by the trust to the beneficiary; and
 - (c) in a paragraph (1) (d) case—by the trust to the trustee;
- and, in any such case, to be made at the end of the year of income.

“(3) Where:

- (a) an attribution credit arises for a company in relation to a taxpayer under paragraph 371 (1) (b) as a result of a change of residence whereby the company becomes a Part X Australian resident; and
- (b) the company makes an attribution account payment consisting of a frankable dividend, within the meaning of Part IIIAA, that has been franked in accordance with section 160AQF; and
- (c) immediately before the attribution account payment is made, there is an attribution surplus for the company in relation to the taxpayer that is attributable to the attribution credit;

then, for the purposes of applying section 23AI and Divisions 4 and 5 of this Part in relation to the taxpayer, the attribution account payment is taken to be reduced to the extent that it is franked.

Direct attribution account interest in a company

“366. (1) An entity holds a direct attribution account interest in a company at a particular time equal to the percentage that the entity holds, or is entitled to acquire, at that time of:

- (a) the total paid-up share capital of the company; or

- (b) the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:
 - (i) the making of distributions of capital or profits of the company to its shareholders;
 - (ii) the constituent document of the company;
 - (iii) any variation of the share capital of the company; or
 - (c) the total rights to distributions of capital or profits of the company to its shareholders on winding-up; or
 - (d) the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up;
- or, if different percentages are applicable under the preceding paragraphs, the greater or greatest of those percentages.

“(2) If the percentage of total rights to vote or participate in decision-making differs as between differing types of decision-making, the highest of those percentages applies for the purposes of paragraph (1) (b).

“(3) For the purposes of the application of subsection (1) to a company, the percentage that an entity holds, or is entitled to acquire, at a particular time (in this subsection called the ‘test time’) in a statutory accounting period of the company, of the total rights to distributions of capital or profits of the company to its shareholders on winding-up is to be worked out by:

- (a) ascertaining whichever of the following is applicable:
 - (i) the capital of the company as at the end of the statutory accounting period;
 - (ii) the profits of the company for the statutory accounting period; and
- (b) assuming that the rights to such distributions that the entity holds, or is entitled to acquire, at the test time were the same at all other times during the statutory accounting period; and
- (c) ascertaining the percentage concerned:
 - (i) at the end of the statutory accounting period instead of at the test time; and
 - (ii) on that assumption.

“(4) For the purposes of the application of subsection (1) to a company, the percentage that an entity holds, or is entitled to acquire, at a particular time (in this subsection called the ‘test time’) in a statutory accounting period of the company, of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up, is to be worked out by:

- (a) ascertaining whichever of the following is applicable:
 - (i) the capital of the company as at the end of the statutory accounting period;
 - (ii) the profits of the company for the statutory accounting period; and

- (b) assuming that the rights to such distributions that the entity holds, or is entitled to acquire, at the test time were the same at all other times during the statutory accounting period; and
- (c) ascertaining the percentage concerned:
 - (i) at the end of the statutory accounting period instead of at the test time; and
 - (ii) on that assumption.

“(5) Eligible finance shares in a company are to be ignored for the purposes of the application of subsection (1) to the company.

Direct attribution account interest in a partnership

“367. (1) An entity that is a partner in a partnership holds a direct attribution account interest in the partnership at a particular time equal to the percentage that the partner holds, or is entitled to acquire, of:

- (a) the total interests in the profits of the partnership; or
- (b) the total interests in the property of the partnership;

or, if those percentages differ, the greater of those percentages.

“(2) For the purposes of the application of subsection (1) to a partnership:

- (a) the percentage that the partner holds, or is entitled to acquire, of the total interests in the profits of the partnership; or
- (b) the percentage that the partner holds, or is entitled to acquire, of the total interests in the property of the partnership;

at a particular time (in this subsection called the ‘test time’) in an accounting period of the partnership is to be worked out by:

- (c) ascertaining whichever of the following is applicable:
 - (i) the profits of the partnership for the accounting period;
 - (ii) the property of the partnership as at the end of the accounting period; and
- (d) assuming that the percentage that the partner holds, or that the partner is entitled to acquire, at the test time was the same at all other times during the accounting period; and
- (e) ascertaining the percentage concerned:
 - (i) at the end of the accounting period instead of at the test time; and
 - (ii) on that assumption.

Direct attribution account interest in a trust

“368. (1) A beneficiary in a trust holds a direct attribution account interest in the trust at a particular time equal to:

- (a) the percentage of the income of the trust represented by the share of the income to which the beneficiary is entitled, or that the beneficiary is entitled to acquire; or

- (b) the percentage of the corpus of the trust represented by the share of the corpus to which the beneficiary is entitled, or that the beneficiary is entitled to acquire;

or, if those percentages differ, the greater of those percentages.

“(2) For the purposes of the application of subsection (1) to a trust:

- (a) the percentage of the income of the trust represented by the share of the income to which the beneficiary is entitled, or that the beneficiary is entitled to acquire; or
- (b) the percentage of the corpus of the trust represented by the share of the corpus to which the beneficiary is entitled, or that the beneficiary is entitled to acquire;

at a particular time (in this subsection called the ‘**test time**’) in an accounting period of the trust, is to be worked out by:

- (c) ascertaining whichever of the following is applicable:
 - (i) the income of the trust for the accounting period;
 - (ii) the corpus of the trust as at the end of the accounting period; and
- (d) assuming that the share to which the entity is entitled, or that the entity is entitled to acquire, at the test time was the same at all other times during the accounting period; and
- (e) ascertaining the percentage concerned:
 - (i) at the end of the accounting period instead of at the test time; and
 - (ii) on that assumption.

“(3) Each entity that is an eligible transferor in relation to a trust at a particular time holds a direct attribution account interest in the trust at that time equal to:

- (a) if paragraph (b) does not apply—100%; or
- (b) if, because there are 2 or more eligible transferors in relation to the trust, the Commissioner reduces an attribution percentage under subsection 362 (3) or (4) or subsection 362 (5) applies—such lower percentage as the Commissioner considers reasonable in the circumstances.

“(4) An entity that holds a direct attribution account interest in a trust at a particular time because of subsection (3) is not taken to hold any direct attribution account interest in the trust at that particular time because of subsection (1).

Indirect attribution account interest in an entity

“369. (1) The indirect attribution account interest that an entity (in this section called the ‘**bottom entity**’) holds in another entity (in this section called the ‘**top entity**’) is calculated in accordance with this section.

“(2) An interposed entity is not to be taken into account in calculating the indirect attribution account interest unless the entity is an attribution account entity.

“(3) If there is only one entity interposed between the bottom entity and the top entity, the indirect attribution account interest is calculated by multiplying the direct attribution account interest that the bottom entity holds in the interposed entity by the direct attribution account interest that the interposed entity holds in the top entity.

“(4) If there are 2 entities interposed between the bottom entity and the top entity, the indirect attribution account interest is calculated:

- (a) by multiplying the direct attribution account interest that the bottom entity holds in the first interposed entity by the direct attribution account interest that the first interposed entity holds in the second interposed entity; and
- (b) by multiplying the result of the calculation in paragraph (a) by the direct attribution account interest that the second interposed entity holds in the top entity.

“(5) If there are 3 or more entities interposed between the bottom entity and the top entity, the indirect attribution account interest is calculated:

- (a) by multiplying the direct attribution account interest that the bottom entity holds in the first interposed entity by the direct attribution account interest that the first interposed entity holds in the second interposed entity; and
- (b) by multiplying the result of the multiplication referred to in paragraph (a) by the direct attribution account interest that the second interposed entity holds in the third interposed entity;

and so on, ending with a multiplication by the direct attribution account interest that the last interposed entity holds in the top entity.

“(6) For the purposes of this section, an entity (in this subsection called the ‘**second entity**’) is interposed between 2 other entities (in this subsection called the ‘**first entity**’ and the ‘**third entity**’ respectively) if, and only if:

- (a) the first entity has a direct attribution account interest in the second entity; and
- (b) the second entity has a direct attribution account interest in the third entity.

Attribution surplus

“370. An attribution surplus for an attribution account entity in relation to a taxpayer exists at a particular time if the entity’s total attribution credits arising before that time in relation to the taxpayer exceed its total attribution debits arising before that time in relation to the taxpayer.

Attribution credit

“371. (1) An attribution credit arises for an attribution account entity (in this section called the ‘**eligible entity**’) in relation to a taxpayer if:

- (a) an amount is included in the taxpayer’s assessable income under section 456 in respect of the attributable income of the eligible entity for a statutory accounting period; or
- (b) an amount is included in the taxpayer’s assessable income under section 457 as a result of a change of residence by the eligible entity; or
- (c) an amount is included in the taxpayer’s assessable income under section 458 in respect of a dividend and the eligible entity is:
 - (i) the CFC referred to in subsection 458 (1) that receives the dividend; or
 - (ii) the CFT referred to in subsection 458 (3); or
 - (iii) the ultimate recipient referred to in subsection 458 (4) or (5); or
- (d) an attribution account payment that requires an attribution debit for another entity in relation to the taxpayer is made to the eligible entity.

“(2) Subject to subsections (3) and (4), the amount of the attribution credit is equal to the amount included in assessable income or to the amount of the attribution debit, as the case may be.

“(3) Where:

- (a) the attribution credit arises under subparagraph (1) (c) (i) as a result of an amount being included in the taxpayer’s assessable income under subsection 458 (1) in respect of a dividend paid to a CFC; and
- (b) the CFC is or will be liable to pay an amount of foreign tax on the dividend or on amounts that include the dividend;

then the amount of the attribution credit is reduced by the amount of foreign tax, to the extent that it is attributable to so much of the dividend as equals the amount included in the taxpayer’s assessable income.

“(4) Where:

- (a) the attribution credit arises under paragraph (1) (d) in relation to an attribution account payment consisting of a non-portfolio dividend paid to the eligible entity, where the eligible entity is a company; and
- (b) the eligible entity is or will be liable to pay an amount of foreign tax on the attribution account payment or on amounts that include the attribution account payment;

then the amount of the attribution credit is reduced by the amount calculated using the formula:

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

where:

Attribution account percentage means the taxpayer's attribution account percentage for the attribution account entity;

Foreign tax means the amount of foreign tax, to the extent that it is attributable to the attribution account payment.

“(5) The attribution credit arises:

- (a) in a paragraph (1)(a) case—at the end of the statutory accounting period referred to in that paragraph; or
- (b) in a paragraph (1)(b) case—at the time of the change of residence referred to in that paragraph; or
- (c) in a paragraph (1)(c) case—when the dividend referred to in that paragraph is paid; or
- (d) in a paragraph (1)(d) case—when the attribution account payment referred to in that paragraph is made.

“(6) Where, apart from this subsection, an attribution credit would arise in relation to an attribution account entity for an Australian partnership or an Australian trust in respect of an amount included in the assessable income of the partnership or trust of a year of income under section 456, 457 or 458, then, subject to subsection (7):

- (a) the attribution credit does not arise for the partnership or trust; and
- (b) an attribution credit arises in relation to the attribution account entity for:
 - (i) any taxpayer for whom, as a result of the amount being so included, a tax detriment would arise in circumstances referred to in paragraphs 460 (2) (a) and (b) or paragraphs 460 (3) (a) and (b); and
 - (ii) any taxpayer where, as a result of the amount being so included, a tax detriment would arise for the trustee of a trust in which the taxpayer is a beneficiary, in respect of an amount assessable to the trustee under section 98 in respect of the taxpayer's share of the net income of the trust, in circumstances referred to in paragraph 460 (4) (a); and
 - (iii) any taxpayer in the capacity of trustee of a trust, where, as a result of the amount being so included, a tax detriment would arise for the taxpayer in respect of an amount assessable to the taxpayer under section 99 or 99A, in circumstances referred to in paragraph 460 (4) (a); and

- (c) the amount of the attribution credit referred to in paragraph (b) equals the amount of the tax detriment, as reduced by any application of section 460; and
- (d) the attribution credit referred to in paragraph (b) arises at the time when the attribution credit referred to in paragraph (a) would, but for this subsection, have arisen.

“(7) Subsection (6) does not apply to an Australian trust that is, in relation to the year of income referred to in that subsection:

- (a) a corporate unit trust within the meaning of Division 6B of Part III; or
- (b) a public trading trust within the meaning of Division 6C of that Part; or
- (c) an eligible entity within the meaning of Part IX.

Attribution debit

“372. (1) An attribution debit arises for an attribution account entity (in this section called the ‘**eligible entity**’) in relation to a taxpayer if:

- (a) the eligible entity makes an attribution account payment to the taxpayer or to another attribution account entity; and
- (b) immediately before the eligible entity makes the attribution account payment, there is an attribution surplus for the eligible entity in relation to the taxpayer.

“(2) Subject to subsections (3) and (4), the amount of the debit is the lesser of:

- (a) the attribution surplus; and
- (b) whichever of the following is applicable:
 - (i) if the attribution account payment is made to the taxpayer—the attribution account payment;
 - (ii) in any other case—the taxpayer’s attribution account percentage (for the attribution account entity to which the payment is made) of the attribution account payment.

“(3) Where:

- (a) the attribution account payment is a non-portfolio dividend; and
- (b) the eligible entity, the taxpayer and the entity to which the payment is made (if the payment is not made to the taxpayer) are members of a non-portfolio company group when the payment is made;

subsection (2) applies as if the attribution account payment were reduced by the exempting profits percentage of the payment in relation to the taxpayer.

“(4) Where:

- (a) the attribution account payment is made to an attribution account entity that is a trust; and
- (b) the attribution surplus, for the eligible entity, is in relation to the taxpayer in the capacity of trustee of the trust (because it is a surplus that resulted from an attribution credit or credits that arose under subparagraph 371 (6) (b) (iii));

then the amount of the attribution debit is the lesser of:

- (c) the attribution surplus; and
- (d) any amount assessable to the taxpayer under section 99 or 99A in relation to the net income of the trust of the year of income in which the attribution account payment is made.

“(5) The attribution debit arises when the attribution account payment is made.

Grossed-up amount of an attribution debit

“373. The grossed-up amount in relation to an attribution debit is:

- (a) where subparagraph 372 (2) (b) (i) applied in relation to the debit—the amount of the debit; or
- (b) where subparagraph 372 (2) (b) (ii) applied in relation to the debit—the amount of the debit, divided by the attribution account percentage referred to in that subparagraph.

“Division 5—Attributed Tax Accounts

Attributed tax account surplus

“374. An attributed tax account surplus for an attribution account entity in relation to a taxpayer exists at a particular time if the entity’s total attributed tax account credits arising before that time in relation to the taxpayer exceed its total attributed tax account debits arising before that time in relation to the taxpayer.

Attributed tax account credit

“375. (1) An attributed tax account credit arises for an attribution account entity in relation to a taxpayer if:

- (a) on the assumption that the reference in section 160AFCA to notional allowable deductions under section 393 did not include a reference to deductions in respect of Australian tax, the taxpayer would be taken by that section to have paid, and to have been personally liable for, an amount of foreign tax in respect of an amount included in the taxpayer’s assessable income under section 456 in respect of a statutory accounting period of the entity; or
- (b) on the assumption that the reference to Australian tax were omitted from paragraph 160AFCA (c), the taxpayer would be taken by that paragraph to have paid, and to have been

- personally liable for, an amount of foreign tax as a result of a change of residence by a CFC to which section 457 applies; or
- (c) the taxpayer is taken by paragraph 160AFCB (d) to have paid, and to have been personally liable for, an amount of foreign tax as a result of a change of residence by a CFC to which section 457 applies; or
 - (d) disregarding subparagraph 160AFCC (d) (iii), the taxpayer would be taken by section 160AFCC to have paid, and to have been personally liable for, an amount of foreign tax in respect of a dividend paid by the entity; or
 - (e) the entity receives an attribution account payment that requires an attributed tax account debit for another entity in relation to the taxpayer.

“(2) The amount of the credit is equal to the amount of the foreign tax, or to the amount of the debit, as the case may be.

“(3) The attributed tax account credit arises:

- (a) in a paragraph (1)(a) case—at the end of the statutory accounting period referred to in that paragraph; or
- (b) in a paragraph (1)(b) or (c) case—at the time of the change of residence referred to in that paragraph; or
- (c) in a paragraph (1)(d) case—when the dividend referred to in that paragraph is paid; or
- (d) in a paragraph (1)(e) case—when the attribution account payment referred to in that paragraph is made.

Attributed tax account debit

“376. (1) An attributed tax account debit arises for an attribution account entity in relation to a taxpayer if:

- (a) the entity makes an attribution account payment to another attribution account entity or to the taxpayer; and
- (b) the attribution account payment requires an attribution debit for the entity in relation to the taxpayer; and
- (c) immediately before the entity makes the attribution account payment, there is an attributed tax account surplus for the entity in relation to the taxpayer.

“(2) The amount of the attributed tax account debit is the amount calculated using the formula:

$$\frac{\text{Attribution debit}}{\text{Attribution surplus}} \times \text{Attributed tax account surplus}$$

where:

Attribution debit means the amount of the attribution debit;

Attribution surplus means the amount of the attribution surplus, for the entity making the attribution account payment, in relation to the taxpayer immediately before the attribution debit arose;

Attributed tax account surplus means the amount of the attributed tax account surplus.

“(3) The attributed tax account debit arises when the attribution account payment is made.

“Division 6—Exempting Receipts etc.

Exempting receipt of an unlisted country company

“377. (1) Where a company is a resident of an unlisted country during the whole or part of an accounting period (which whole or part is in this subsection called the ‘**qualifying period**’) of the company, each of the following is an exempting receipt of the company in relation to the qualifying period in relation to a taxpayer:

- (a) income or profits derived by the company in the qualifying period in or in connection with carrying on business in a listed country at or through a permanent establishment of the company in that listed country, where:
 - (i) the income or profits are not eligible designated concession income in relation to any listed country in relation to the qualifying period; and
 - (ii) the income or profits are subject to tax in any listed country in a tax accounting period:
 - (A) ending before the end of the qualifying period; or
 - (B) commencing during the qualifying period;
- (b) income derived by the company in the qualifying period that is included in the assessable income of the company of a year of income;
- (c) a profit of a capital nature derived by the company in the qualifying period in respect of the disposal of a taxable Australian asset to which Part IIIA applies, to the extent that an amount is included in the assessable income of the company of a year of income under Part IIIA in respect of the disposal;
- (d) if a non-portfolio dividend is paid to the company in the qualifying period by a company that is a resident of a listed country:
 - (i) where, on the making of the payment, an attribution debit arises for the company in relation to the taxpayer—so much (if any) of the dividend as exceeds the grossed-up amount of the attribution debit; or
 - (ii) in any other case—the whole of the dividend;
- (e) so much of a frankable dividend, within the meaning of Part IIIAA, paid to the company in the qualifying period as has been franked in accordance with section 160AQF;

- (f) the exempting profits percentage, in relation to the taxpayer, of a non-portfolio dividend paid to the company in the qualifying period by a company that is a resident of an unlisted country;
- (g) an amount that is an exempting receipt of the company in relation to the qualifying period in relation to the taxpayer under subsection (2).

“(2) Where:

- (a) a partnership (in this subsection called the ‘**main partnership**’) or trust (in this subsection called the ‘**main trust**’) derives income or profits (in this subsection called the ‘**notional exempting receipt**’) that, if the main partnership or main trust were a company, would be an exempting receipt of the company in relation to an accounting period, in relation to a taxpayer, under paragraph (1) (a), (b) or (c); and

(b) either:

(i) a company is entitled to:

- (A) a share of after-tax profits of the main partnership that is attributable to the notional exempting receipt; or
- (B) a share of after-tax profits of another partnership that is attributable to the notional exempting receipt because of a distribution of the profits of the main partnership, or income of the main trust, either directly or indirectly through one or more such distributions by interposed partnerships or trusts; or

(ii) a company receives a distribution of:

- (A) income of the main trust that is attributable to the notional exempting receipt; or
- (B) income of another trust that is attributable to the notional exempting receipt because of a distribution of profits of the main partnership, or income of the main trust, either directly or indirectly through one or more such distributions by interposed partnerships or trusts;

then the share or distribution is an exempting receipt of the company in relation to the accounting period in relation to the taxpayer.

Exempting profits

“378. (1) The exempting profits in relation to a taxpayer, at a particular time, of a company resident in an unlisted country are so much of the distributable profits, at that time, of the company as are attributable to exempting receipts of the company in relation to any accounting period in relation to the taxpayer.

“(2) For the purpose of determining under subsection (1) the amount of the exempting profits of a company in relation to a taxpayer where

a dividend has been previously paid, that dividend is taken to have been paid out of exempting profits and other distributable profits in proportion to the respective amounts of those profits.

Exempting profits percentage

“379. The exempting profits percentage, in relation to a taxpayer, of a dividend paid by a company resident in an unlisted country is the percentage calculated using the formula:

$$\frac{\text{Exempting profits}}{\text{Distributable profits}} \times 100$$

where:

Exempting profits means the amount of the exempting profits of the company in relation to the taxpayer immediately before the dividend is paid;

Distributable profits means the amount of the distributable profits of the company immediately before the dividend is paid.

Exempting receipt of a section 6 resident company

“380. Each of the following is an exempting receipt of a company (in this section called the ‘**Australian company**’) that is a resident within the meaning of section 6:

- (a) if a non-portfolio dividend is paid to the Australian company by another company that is a resident of a listed country:
 - (i) where, on the making of the payment, an attribution debit arises for the other company in relation to the Australian company—so much (if any) of the dividend as exceeds the amount of the attribution debit; or
 - (ii) in any other case—the whole of the dividend;
- (b) the exempting profits percentage, in relation to the Australian company, of a non-portfolio dividend paid to the Australian company by another company that is a resident of an unlisted country.

“Division 7—Calculation of Attributable Income of CFC

“Subdivision A—Basic Principles

Separate attributable income for each attributable taxpayer

“381. Where, at the end of a statutory accounting period (in this Division called the ‘**eligible period**’) of a company:

- (a) the company is a CFC; and
- (b) there are one or more attributable taxpayers in relation to the company;

the attributable income of the company (in this Division called the ‘**eligible CFC**’) for the eligible period is calculated separately for each

such attributable taxpayer (in this Division called the ‘eligible taxpayer’) in accordance with this Division.

Attributable income is taxable income calculated on certain assumptions

“382. (1) The attributable income is the amount that would be the eligible CFC’s taxable income for the eligible period if certain assumptions were made.

“(2) For the purposes of describing those assumptions, amounts of assessable income, allowable deductions and exempt income that are to be taken into account in calculating the taxable income are referred to respectively as notional assessable income, notional allowable deductions and notional exempt income.

Basic assumptions

“383. The assumptions are:

- (a) that the eligible CFC is a taxpayer and a resident, within the meaning of section 6, during the whole of the eligible period; and
- (b) that the eligible period is a year of income, being the year of income of the eligible taxpayer in which the eligible period ends; and
- (c) that this Act is modified in accordance with Subdivisions B to D; and
- (d) whichever of the assumptions in section 384 or 385 applies.

Additional assumption for unlisted country CFC

“384. (1) Where the eligible CFC is a resident of an unlisted country at the end of the eligible period, it is to be assumed:

- (a) that the only amounts of notional assessable income are those to which subsection (2) applies; and
- (b) that all other income is notional exempt income.

“(2) The amounts of notional assessable income are:

- (a) where the eligible CFC does not pass the active income test for the eligible period in relation to the eligible taxpayer—amounts that would be included in its notional assessable income for the eligible period under this Act as modified in accordance with Subdivisions B to D if the only income or other amounts derived by it during the eligible period, and any earlier statutory accounting period, were adjusted tainted income (within the meaning of section 386); and
- (b) amounts included in the notional assessable income of the eligible CFC for the eligible period under section 102AAZD of this Act as modified in accordance with Subdivisions B to D; and

- (c) amounts included in the notional assessable income of the eligible CFC for the eligible period under Division 6 of Part III of this Act as so modified; and
- (d) amounts that would be included in the notional assessable income of the eligible CFC for the eligible period under Division 5 of Part III of this Act, as modified in accordance with Subdivisions B to D of this Division, in relation to any partnership if its net income included only:
 - (i) where the eligible CFC does not pass the active income test for the eligible period in relation to the eligible taxpayer—amounts that would be included if the partnership derived only adjusted tainted income (within the meaning of section 386); and
 - (ii) amounts included under section 102AAZD of this Act as modified in accordance with Subdivisions B to D of this Division; and
 - (iii) amounts included under Division 6 of Part III of this Act as so modified.

Additional assumption for listed country CFC

“385. (1) Where the eligible CFC is a resident of a listed country at the end of the eligible period, it is to be assumed:

- (a) that the only amounts of notional assessable income are those to which subsection (2) applies; and
- (b) that all other income is notional exempt income.

“(2) Subject to subsection (4), the amounts of notional assessable income are:

- (a) amounts that would be included in the notional assessable income of the eligible CFC for the eligible period under this Act as modified in accordance with Subdivisions B to D if the only income or other amounts derived during the eligible period, and any earlier statutory accounting period, by the eligible CFC were:
 - (i) where the eligible CFC does not pass the active income test for the eligible period in relation to the eligible taxpayer—adjusted tainted income (within the meaning of section 386) that is eligible designated concession income in relation to the listed country or any other listed country; and
 - (ii) income or other amounts that:
 - (A) are not eligible designated concession income of the eligible CFC in relation to the listed country or any other listed country; and
 - (B) are not treated as derived from sources in the listed country for the purposes of the tax law of the listed country; and

- (C) are not subject to tax in the listed country or any other listed country in a tax accounting period ending before the end of the eligible period or commencing during the eligible period; and
- (b) amounts included in the notional assessable income of the eligible CFC for the eligible period under section 102AAZD of this Act as modified in accordance with Subdivisions B to D; and
- (c) amounts included in the notional assessable income of the eligible CFC for the eligible period under Division 6 of Part III of this Act as so modified, where either of the following conditions (but not necessarily the same condition) is satisfied in relation to the listed country and each other listed country:
 - (i) the amounts are not subject to tax in that listed country in a tax accounting period ending before the end of the eligible period or commencing during the eligible period;
 - (ii) the amounts are subject to tax in that listed country in such a tax accounting period and are designated concession income in relation to the listed country; and
- (d) amounts that would be included in the notional assessable income of the eligible CFC for the eligible period under Division 5 of Part III of this Act, as modified in accordance with Subdivisions B to D of this Division, in relation to any partnership if its net income included only:
 - (i) where the eligible CFC does not pass the active income test for the eligible period in relation to the eligible taxpayer—amounts that would be included if the partnership derived only adjusted tainted income (within the meaning of section 386) that is eligible designated concession income in relation to the listed country or any other listed country; and
 - (ii) amounts that would be included if the partnership derived only income or other amounts that:
 - (A) are not eligible designated concession income of the partnership in relation to the listed country or any other listed country; and
 - (B) are not treated as derived from sources in the listed country for the purposes of the tax law of the listed country; and
 - (C) are not subject to tax in the listed country or any other listed country in a tax accounting period ending before the end of the eligible period or commencing during the eligible period; and
 - (iii) amounts included under section 102AAZD of this Act as modified in accordance with Subdivisions B to D of this Division; and

(iv) amounts included under Division 6 of Part III of this Act as so modified, where either of the following conditions (but not necessarily the same condition) is satisfied in relation to the listed country and each other listed country:

(A) the amounts are not subject to tax in that listed country in a tax accounting period ending before the end of the eligible period or commencing during the eligible period;

(B) the amounts are subject to tax in that listed country in such a tax accounting period and are designated concession income in relation to the listed country.

“(3) For the purposes of paragraph (2) (c) or (d), a reference in that paragraph to an amount being not subject to tax or subject to tax, as the case may be, includes a reference to another amount included in the net income of a partnership or trust, to which the first-mentioned amount is attributable, being not subject to tax or subject to tax.

“(4) Where the sum of the amounts to which paragraph (2) (a) would otherwise apply does not exceed the lesser of:

(a) \$50,000; and

(b) 5% of the gross turnover of the eligible CFC for the eligible period;

then that paragraph does not apply to those amounts.

Adjusted tainted income

“386. (1) The references in sections 384 and 385 to adjusted tainted income are references to amounts that would be passive income, tainted sales income or tainted services income if certain modifications were made to the provisions of Division 8.

“(2) The modifications are:

(a) that paragraphs 446 (1) (k), (m) and (n) are replaced with the following:

‘(k) amounts derived from the disposal of tainted assets;

(m) amounts derived from the disposal of tainted commodity investments;

(n) amounts derived that are attributable to currency exchange rate fluctuations, except where under section 439 the amounts would, if they were currency exchange gains, relate to an active income transaction;’; and

(b) that paragraph 446 (1) (k) as so replaced does not apply to an amount derived from the disposal of a tainted asset in the circumstances referred to in paragraphs 450 (2) (a) to (c) or (5) (a) to (c); and

- (c) that paragraph 446 (1) (n) as so replaced does not apply to an amount derived where, if it were a currency exchange gain, paragraphs 450 (3) (a) and (b) would apply to it; and
- (d) that the reference in subsection 450 (7) to net gains that accrued to the company in respect of the disposal of tainted assets is replaced with a reference to amounts derived by the company from the disposal of tainted assets.

Reduction of attributable income because of interim dividends

“387. (1) Where:

- (a) during the eligible period, the eligible CFC pays a dividend to the eligible taxpayer or to another entity; and
- (b) if the dividend is paid to the eligible taxpayer—the whole or part of the dividend is included in the assessable income of the eligible taxpayer of a year of income; and
- (c) if the dividend is paid to another entity—an amount is included in the assessable income of the eligible taxpayer of a year of income under section 458 in respect of the dividend; and
- (d) the whole or part of the grossed-up assessable component of the dividend, or of the grossed-up 458 component of the dividend, as the case requires, may reasonably be regarded as having been paid out of the attributable income of the eligible CFC for the eligible period;

then, for the purposes of this Part, the attributable income of the eligible CFC for the eligible period in relation to the eligible taxpayer is reduced by an amount equal to the whole or the part of the grossed-up assessable component of the dividend, or of the grossed-up 458 component of the dividend, as the case requires.

“(2) In this section:

‘grossed-up assessable component’, in relation to a dividend the whole or part of which is included in the assessable income of the eligible taxpayer, means the amount of the whole or the part divided by the eligible taxpayer’s attribution percentage for the eligible CFC at the time of payment of the dividend;

‘grossed-up 458 component’, in relation to a dividend in respect of which an amount is included in the assessable income of the eligible taxpayer under section 458, means:

- (a) where the amount is included under subsection 458 (1) or (3)—the amount of the dividend, divided by the formula component **AP** referred to in that subsection; or
- (b) where the amount is included under subsection 458 (4)—the amount of the dividend, divided by the formula component **AP × IP** referred to in that subsection; or
- (c) where the amount is included under subsection 458 (5)—the amount of the dividend, divided by the formula component **AP × IT** referred to in that subsection.

“Subdivision B—General Modifications of Australian Tax Law

Double tax agreements to be disregarded

“388. In calculating the attributable income of the eligible CFC, the *Income Tax (International Agreements) Act 1953* is to be disregarded, except for the purpose of references in this Act to that Act.

Certain provisions to be disregarded in calculating attributable income

“389. For the purpose of applying this Act in calculating the attributable income of the eligible CFC, the following provisions are to be disregarded:

- (a) except for the purposes of a reference in any other provision of this Part—sections 6AC, 20, 23AH, 23AI, 23AJ, 38 to 43 (inclusive) and 128D, subsection 136AF (1A) and sections 136A, 456, 457, 458, 459 and 461;
- (b) except for the purposes of a reference in Division 6AAA of Part III or in any other provision of this Part—Part IIIAA.

Elections to be made by eligible taxpayer

“390. (1) For the purpose of applying this Act in calculating the attributable income of the eligible CFC, any declaration, election or selection that may be made, any notice that may be given or any option that may be exercised, by the eligible CFC apart from this section is not to be made, given or exercised by the eligible CFC but instead may be made, given or exercised by the eligible taxpayer.

“(2) The eligible taxpayer may make the declaration, election or selection, give the notice or exercise the option in the eligible taxpayer’s return of income of the year of income in which the eligible period ends or within such further period after the lodgment of the return as the Commissioner allows.

“(3) Subsection (1) does not apply to an election under the CGT roll-over provisions.

Income and expenses to be expressed in Australian currency

“391. (1) For the purpose of applying this Act in calculating the attributable income of the eligible CFC, any amount (in this section called an ‘eligible amount’) of income wherever derived or of expenditure wherever incurred is to be expressed in Australian currency.

“(2) Where, according to the accounts of the eligible CFC for the eligible period, some or all of the eligible amounts of the eligible CFC are not expressed in Australian currency, then any such eligible amount is to be converted:

- (a) if there is a single or predominant foreign currency in which eligible amounts of the eligible CFC are expressed in the accounts and paragraph (b) does not apply:

- (i) where the eligible amount is expressed in that currency—to Australian currency at a rate equal to:
 - (A) if sub-subparagraph (B) does not apply—the average of the exchange rates applicable from time to time during the eligible period; or
 - (B) if the eligible taxpayer elects in accordance with subsection (3)—the exchange rate applicable on the last day of the eligible period; or
- (ii) in any other case—first to the single or predominant currency using any reasonable method and then to Australian currency in accordance with whichever of sub-subparagraph (i) (A) or (B) applies; or
- (b) if the eligible amount is an amount of foreign tax paid by the eligible CFC:
 - (i) if the foreign tax was paid by deduction from another amount—to Australian currency, or to another currency and then to Australian currency, according to the method applicable under paragraph (a) or (c) for the conversion of the amount from which it was deducted; or
 - (ii) in any other case—to Australian currency at the rate of exchange applicable at the time when the foreign tax was paid; or
- (c) if neither paragraph (a) nor (b) applies—to Australian currency using any reasonable method.

“(3) The eligible taxpayer may, in the eligible taxpayer’s first return of income in which an amount is required to be included in the assessable income of the eligible taxpayer under section 456 in relation to the attributable income of the eligible CFC for a statutory accounting period, or within such further period after the lodgment of the return as the Commissioner allows, elect that sub-subparagraph (2) (a) (i) (B) is to apply in relation to the eligible CFC.

“(4) Where the taxpayer does so, that sub-subparagraph applies instead of sub-subparagraph (2) (a) (i) (A) in calculating the attributable income of the eligible CFC in relation to the eligible taxpayer for the statutory accounting period and for all subsequent statutory accounting periods.

Notional assessable amounts are to be pre-tax

“392. (1) An amount included in the notional assessable income of the eligible CFC is an amount before the payment of any foreign tax or Australian tax in respect of the amount.

“(2) Where the eligible CFC is taken by subsection 393 (2) to have paid an amount of foreign tax in respect of a dividend included in its notional assessable income, the dividend is, for the purposes of this Division, taken to be increased by the amount of that tax.

Notional allowable deduction for taxes paid

“393. (1) Foreign tax or Australian tax paid by the eligible CFC in respect of amounts included in the notional assessable income of the eligible CFC for the eligible period, whether paid before, during or after that period, is a notional allowable deduction from the notional assessable income of the eligible CFC for the eligible period.

“(2) Where:

- (a) a non-portfolio dividend is included in the notional assessable income of the eligible CFC for the eligible period; and
- (b) the eligible taxpayer is a company; and
- (c) the eligible CFC would be taken by section 160AFC to have paid, and to have been personally liable for, an amount of foreign tax in respect of the dividend if it were a requirement of that section (in addition to the other requirements of that section), for companies to be a pair of companies in a dividend series, that each be related to the eligible taxpayer;

then, for the purposes of subsection (1) of this section, the eligible CFC is taken to have paid that amount of foreign tax in respect of the dividend.

“(3) Except as mentioned in subsection (2), the eligible CFC is not taken by section 160AFC to have paid an amount of foreign tax in respect of the dividend for the purposes of subsection (1).

Notional allowable deduction for eligible finance share dividends

“394. Where:

- (a) the eligible CFC pays an eligible finance share dividend during or after the eligible period; and
- (b) if, on the assumption that the dividend were instead a payment of the interest, referred to in paragraph 327 (d), to which it may reasonably be regarded as equivalent, an amount (in this section called the ‘**interest equivalent**’) of that interest accruing during the eligible period would be a notional allowable deduction for the eligible period;

then the interest equivalent is a notional allowable deduction for the eligible period.

Expenditure incurred to produce income or profits in later statutory accounting periods

“395. In determining whether expenditure incurred by the eligible CFC during the eligible period for the purpose of gaining or producing income or profits in a later statutory accounting period is a notional allowable deduction under a particular provision, it is to be assumed that:

- (a) there will be a requirement under this Division to calculate the attributable income of the eligible CFC for that later statutory accounting period; and
- (b) for that purpose, the eligible CFC will always be a resident of the listed country or unlisted country, as the case may be.

Modified application of sections 25A and 52

“396. (1) For the purpose of applying this Act in calculating the attributable income of an eligible CFC, sections 25A and 52 do not apply in respect of the disposal of a non-taxable Australian asset of the eligible CFC.

“(2) A reference in subsection (1) to a non-taxable Australian asset is a reference to an asset other than a taxable Australian asset (within the meaning of Part IIIA).

“(3) The residency assumption is to be ignored in determining whether an asset is a taxable Australian asset for the purposes of this section.

Modified application of trading stock provisions

“397. For the purpose of applying this Act in calculating the attributable income of the eligible CFC, Subdivision B of Division 2 of Part III has effect as if the value of any article of trading stock to be taken into account at the beginning or end of a year of income were its cost price.

Modified application of depreciation provisions

“398. (1) Where property has been held by the eligible CFC in a non-attributable income period in relation to the application of a depreciation provision to the property (in relation to the eligible CFC and the eligible taxpayer) prior to the eligible period, subsection (2) applies.

“(2) Such amount as the Commissioner considers appropriate to take account of the holding of the property as mentioned in subsection (1) is, under the depreciation provision:

- (a) a notional allowable deduction to the eligible CFC; or
 - (b) included in the notional assessable income of the eligible CFC;
- as the case requires, for the eligible period in relation to the eligible taxpayer, in substitution for any amount that would otherwise be so included or allowable.

“(3) For the purpose of exercising his or her power under subsection (2) to determine a notional allowable deduction in relation to sections 54 to 62, the Commissioner must assume that the property was used by the eligible CFC during any non-attributable income period wholly and exclusively for the purpose of producing notional assessable income.

Modifications of net income of partnerships and trusts

“399. (1) If, in calculating the attributable income of the eligible CFC, it is necessary to determine the net income of a partnership or trust under section 90 or 95, it is to be assumed that:

- (a) the modifications of this Act in this Division (other than excluded modifications) apply to the partnership or the trust in the same way as they apply to the eligible CFC (except where a provision modified only applies to companies); and
- (b) for the purpose of applying those modifications, the partnership or trust is taken to be a resident of the same listed or unlisted country as the eligible CFC; and
- (c) the Act is further modified by disregarding subsections 160M (13) and (14); and
- (d) for the purpose of applying Part IIIA of the Act in accordance with the preceding paragraphs, the trust is a resident trust estate, or a resident unit trust, as the case may be.

“(2) In this section:

‘**excluded modifications**’ means modifications made by paragraphs 402 (2) (a) and 403 (b) and sections 404 and 411 to 418 (inclusive).

Modified application of Division 13 of Part III

“400. In calculating the attributable income of the eligible CFC:

- (a) for the purposes of section 136AC, the eligible CFC is to be treated as a resident or a non-resident, within the meaning of that section, without regard to the residency assumption; and
- (b) section 136AF applies as if:
 - (i) the reference in subsection 136AF (1) to the application of section 136AD in relation to a taxpayer were a reference both to:
 - (A) the application of that section in relation to any CFC in calculating its attributable income or in relation to any trust estate in calculating its attributable income under Division 6AAA of Part III; and
 - (B) the actual application of that section in relation to any taxpayer in calculating the taxable income of the taxpayer apart from this Part; and
 - (ii) the references in paragraphs 136AF (1) (a) and (b) to assessable income or allowable deductions in relation to the relevant taxpayer were references to notional assessable income or notional allowable deductions in relation to the eligible CFC.

Reduction of disposal consideration where attributed income not distributed

“401. (1) Where:

- (a) it is necessary, for the purposes of applying a provision of this Act in calculating the attributable income of the eligible CFC in relation to the eligible taxpayer, to take into account the amount of consideration received, entitled to be received or taken to be received, by the eligible CFC in respect of the disposal of an asset, being an interest in an attribution account entity (in this section called the ‘disposal entity’); and
- (b) immediately before the disposal takes place, either or both of the following conditions are satisfied:
 - (i) there is an attribution surplus for the disposal entity in relation to the eligible taxpayer;
 - (ii) there is an attribution surplus for one or more other attribution account entities in relation to the eligible taxpayer, where each such entity is one in which the eligible taxpayer has an indirect attribution account interest held through the disposal entity;

then:

- (c) for the purpose of calculating the attributable income, the consideration that, apart from this section, would be taken into account under the provision referred to in paragraph (a) in respect of the disposal is, subject to subsection (3), taken to be reduced by the grossed-up amount of the attribution surplus, or the sum of the grossed-up amounts of the attribution surpluses, as the case requires; and
- (d) for the purposes of this Act, attribution debits and credits arise in accordance with subsection (5); and
- (e) for the purposes of this Act, attributed tax account debits and credits arise in accordance with subsection (6).

“(2) For the purposes of this section, where the provision referred to in paragraph (1)(a) is in Part IIIA of this Act, as applied in accordance with this Division, references in this section to the disposal of an asset are references to the disposal of an asset within the meaning of Part IIIA of this Act as so applied.

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

- (a) a reference to the grossed-up amount of an attribution surplus is a reference to the amount of the surplus divided by the eligible taxpayer’s attribution account percentage for the eligible CFC; and
- (b) where the disposal of the asset causes the eligible taxpayer’s attribution account percentage for an attribution account entity in relation to which there is an attribution surplus to be reduced by a proportion, then only that proportion of the attribution

surplus is, subject to this subsection, to be taken into account under that paragraph; and

- (c) where there is only one attribution surplus referred to in that paragraph and (after any application of paragraph (b) of this subsection) its grossed-up amount exceeds the consideration in respect of the disposal, then the surplus is only to be taken into account to the extent that its grossed-up amount equals the consideration; and
- (d) where there are 2 or more attribution surpluses referred to in paragraph (1) (c) and (after any application of paragraph (b) of this subsection) the sum of their grossed-up amounts exceeds the consideration in respect of the disposal, then:
 - (i) if the taxpayer specifies, in an election for the purposes of this paragraph, a part of each surplus (after any application of paragraph (b)) such that the sum of the grossed-up amounts of the parts specified equals the consideration—only the specified part of each surplus is to be taken into account under paragraph (1) (c); or
 - (ii) if subparagraph (i) does not apply—only a proportion of each surplus (after any application of paragraph (b)) is to be taken into account under paragraph (1) (c), being the proportion calculated using the formula:

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

where:

Consideration means the amount of the consideration;

Total grossed-up surplus means the sum of the grossed-up amounts of the attribution surpluses (after any application of paragraph (b)).

“(4) An election for the purposes of paragraph (3) (d) must be made in the eligible taxpayer’s return of income for the year of income in which the eligible period ends or within such further period after the lodgment of the return as the Commissioner allows.

“(5) For the purposes of this Act:

- (a) an attribution debit is taken to arise at the time of the disposal under section 372, in relation to the eligible taxpayer, for each attribution account entity (in this section called a ‘**surplus entity**’) in relation to which there is an attribution surplus to which paragraph (1) (c) applies; and
- (b) the amount of the attribution debit is equal to so much of the surplus as is taken into account under paragraph (1) (c); and
- (c) there is no grossed-up amount in relation to the attribution debit under section 373; and

- (d) an attribution credit equal to the debit is taken to arise, at the time of the disposal, under section 371 for the eligible CFC in relation to the eligible taxpayer.

“(6) For the purposes of this Act, sections 375 and 376 have effect as if:

- (a) an attribution account payment were made, by the surplus entity referred to in paragraph (5)(a) of this section, that required the attribution debit under that paragraph to arise; and
- (b) the payment were made to the eligible CFC; and
- (c) the payment were made at the time at which the attribution debit and credit arise.

“(7) In this section:

‘**interest**’, in relation to an attribution account entity, means:

- (a) if the entity is a company—an interest in shares in the company, or an entitlement to acquire such an interest; or
- (b) if the entity is a partnership—an interest of a partner in the profits or property of the partnership, or an entitlement of a partner to acquire such an interest; or
- (c) if the entity is a trust—an entitlement of a beneficiary to a share of the income or corpus of the trust, or an entitlement of a beneficiary to acquire such an entitlement.

Additional notional exempt income—unlisted or listed country CFC

“402. (1) This section applies where the eligible CFC is a resident of either a listed country or an unlisted country at the end of the eligible period.

“(2) Each of the following is notional exempt income of the eligible CFC in relation to the eligible period:

- (a) income or other amounts derived by the eligible CFC in the eligible period that are included in the assessable income of the eligible CFC of any year of income for the purposes of this Act apart from this Part;
- (b) so much of a frankable dividend, within the meaning of Part IIIAA, paid to the eligible CFC in the eligible period as has been franked in accordance with section 160AQF;
- (c) the exempting profits percentage, in relation to the eligible taxpayer, of a non-portfolio dividend paid to the eligible CFC in the eligible period by a company that is a resident of an unlisted country;
- (d) a non-portfolio dividend paid to the eligible CFC in the eligible period by another CFC that is a resident of an unlisted country, where the eligible taxpayer is an attributable taxpayer in relation to that other CFC when the dividend is paid.

“(3) Where:

- (a) a company pays a dividend to the eligible CFC in the eligible period; and
- (b) apart from this subsection, the whole or part of the dividend would be included in the notional assessable income of the eligible CFC in relation to the eligible taxpayer for the eligible period; and
- (c) on the payment of the dividend by the other company, an attribution debit arises for that other company in relation to the eligible taxpayer;

then so much (if any) of the whole or the part of the dividend as does not exceed the grossed-up amount of the attribution debit is notional exempt income of the eligible CFC for the eligible period.

Additional notional exempt income—unlisted country CFC

“403. Where the eligible CFC is a resident of an unlisted country at the end of the eligible period, each of the following is notional exempt income of the eligible CFC in relation to the eligible period:

- (a) income or profits derived by the eligible CFC in the eligible period in or in connection with carrying on business in a listed country at or through a permanent establishment of the eligible CFC in that listed country, where:
 - (i) the income or profits are not eligible designated concession income in relation to any listed country in relation to the eligible period; and
 - (ii) the income or profits are subject to tax in any listed country in a tax accounting period:
 - (A) ending before the end of the eligible period; or
 - (B) commencing during the eligible period;
- (b) a non-portfolio dividend paid to the CFC in the eligible period by a company that is a resident of a listed country.

Additional notional exempt income—listed country CFC

“404. Where the eligible CFC is a resident of a listed country at the end of the eligible period, a dividend paid to it in the eligible period by a company that is a resident of a listed country is notional exempt income.

“Subdivision C—Modifications relating to Australian Capital Gains Tax

Interpretation

“405. (1) In this Subdivision:

‘30 June 1990 non-taxable Australian asset’ has the meaning given by section 406.

“(2) An expression used in this Subdivision and in Part IIIA has the same meaning in this Subdivision as it has in that Part.

“(3) The residency assumption is to be ignored in determining whether an asset is a taxable Australian asset for the purposes of this Subdivision.

Meaning of ‘30 June 1990 non-taxable Australian asset’

“406. For the purposes of applying this Act in calculating the attributable income of the eligible CFC, a reference in this Subdivision to a 30 June 1990 non-taxable Australian asset of the eligible CFC is a reference to an asset (other than a taxable Australian asset) owned by the eligible CFC at the end of 30 June 1990.

Certain provisions of this Subdivision to be treated as provisions of Part IIIA

“407. For the purposes of the application of Part IIIA in calculating the attributable income of the eligible CFC, where the expression ‘provision of this Part’ or ‘provisions of this Part’ is used in that Part, the expression is taken to include a reference to any of the provisions of this Subdivision.

Part IIIA not to apply to disposals of taxable Australian assets

“408. For the purposes of applying this Act in calculating the attributable income of an eligible CFC, Part IIIA does not apply to a disposal of a taxable Australian asset of the eligible CFC.

Losses on disposals before end of 30 June 1990 to be disregarded

“409. For the purposes of applying this Act in calculating the attributable income of the eligible CFC, capital losses in respect of disposals of assets before the end of 30 June 1990 are to be disregarded.

Modified application of Part IIIA—general modifications

“410. For the purposes of applying this Act in calculating the attributable income of the eligible CFC, Part IIIA applies as if the following provisions were disregarded:

- (a) subsection 160M (12);
- (b) subsection 160Z (6) and paragraph 160Z (9) (c);
- (c) section 160ZFA;
- (d) section 160ZP.

30 June 1990 non-taxable Australian assets taken to have been acquired on that date

“411. (1) Subject to this section, for the purposes of applying this Act in calculating the attributable income of the eligible CFC, a 30 June 1990 non-taxable Australian asset of the eligible CFC is taken, for the purposes of Part IIIA, to have been acquired by the eligible CFC on 30 June 1990.

“(2) Where a provision of Part IIIA provides that, if a disposal of an asset occurs within 12 months after the day (in this subsection called

the ‘acquisition day’) on which the asset was acquired by a taxpayer, a reference in another provision of that Part to the indexed cost base to the taxpayer in respect of the asset is to be construed as a reference to the cost base to the taxpayer in respect of the asset, subsection (1) of this section does not apply for the purposes of determining the acquisition day for the purposes of the first-mentioned provision.

“(3) Subsection (1) does not apply for the purposes of determining the cost base to the eligible CFC of an asset.

Cost base of 30 June 1990 non-taxable Australian asset

“412. (1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, the following provisions have effect.

“(2) The eligible CFC is taken, for the purposes of Part IIIA:

(a) to have paid or given as consideration in respect of the acquisition of a 30 June 1990 non-taxable Australian asset of the eligible CFC an amount equal to:

(i) for the purpose of ascertaining whether a capital gain accrued to the eligible CFC in respect of the disposal of the asset by the eligible CFC:

(A) the market value of the asset as at the end of 30 June 1990; or

(B) if the cost base to the eligible CFC of the asset as at 30 June 1990 is greater than that market value—that cost base; or

(ii) for the purpose of ascertaining whether the eligible CFC incurred a capital loss in respect of the disposal of the asset by the eligible CFC:

(A) the market value of the asset as at the end of 30 June 1990; or

(B) if that market value is greater than the amount of the cost base to the eligible CFC of the asset as at 30 June 1990—that cost base; and

(b) to have paid or given that consideration on 30 June 1990.

“(3) In determining the cost base, indexed cost base or reduced cost base to the eligible CFC of an asset, no account is to be taken of any liability that arose before 1 July 1990 or any costs or expenditure that were incurred before 1 July 1990 unless the liability, costs or expenditure consists of consideration that, under subsection (2), is taken to have been paid or given on 30 June 1990.

Adjustment of cost base as at 30 June 1990—return of capital

“413. (1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, the following provisions have effect.

“(2) Where:

- (a) 30 June 1990 non-taxable Australian assets of the eligible CFC consist of shares in a company; and
- (b) at any time during the period commencing at the time when the eligible CFC acquired the shares and ending at the end of 30 June 1990, the company paid an amount that was not a dividend to the eligible CFC in respect of the shares;

the cost base to the eligible CFC of the shares as at 30 June 1990 is to be reduced by that amount.

“(3) Where:

- (a) a 30 June 1990 non-taxable Australian asset of the eligible CFC consists of an interest or unit in a trust; and
- (b) at any time during the period commencing at the time when the eligible CFC acquired the interest or unit and ending at the end of 30 June 1990, the trustee of the trust paid an amount to the eligible CFC in respect of the interest or unit, being an amount that would not have been notional assessable income of the eligible CFC;

the cost base to the eligible CFC of the interest or unit as at 30 June 1990 is to be reduced by so much of the amount as is not attributable to a deduction allowed under Division 10C or 10D of Part III.

Rights to acquire shares or share options

“414. (1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, the following provisions have effect.

“(2) Notwithstanding section 160ZYO, where the eligible CFC, as a shareholder, exercises rights as mentioned in subsection 160ZYO (2) and those rights are 30 June 1990 non-taxable Australian assets of the eligible CFC, the eligible CFC is taken, for the purposes of Part IIIA, to have paid or given as consideration in respect of the acquisition of the new shares or the option concerned an amount equal to:

- (a) for the purpose of ascertaining whether a capital gain accrued to the eligible CFC in respect of the disposal by the eligible CFC of the new shares or the option or the shares to which the option relates—the sum of the amount paid in respect of the exercise of the rights and:
 - (i) the market value of the rights as at the end of 30 June 1990; or
 - (ii) if the cost base to the eligible CFC of the rights as at 30 June 1990 is greater than that market value—that cost base; or
- (b) for the purpose of ascertaining whether the eligible CFC incurred a capital loss in respect of the disposal by the eligible CFC of the new shares or the option or the shares to which the option

relates—the sum of the amount paid in respect of the exercise of the rights and:

- (i) the market value of the rights as at the end of 30 June 1990; or
- (ii) if that market value is greater than the amount of the cost base to the eligible CFC of the rights as at 30 June 1990—that cost base.

“(3) So much of that consideration as is covered by subparagraph (2) (a) (i) or (ii) or (b) (i) or (ii), as the case requires, is taken to have been paid or given on 30 June 1990.

Rights to acquire units or unit options

“415. (1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, the following provisions have effect.

“(2) Notwithstanding section 160ZYQE, where the eligible CFC, as a unitholder, exercises rights as mentioned in subsection 160ZYQE (2) and those rights are 30 June 1990 non-taxable Australian assets of the eligible CFC, the eligible CFC is to be taken, for the purposes of Part IIIA, to have paid or given as consideration in respect of the acquisition of the new units or the option concerned an amount equal to:

- (a) for the purpose of ascertaining whether a capital gain accrued to the eligible CFC in respect of the disposal by the eligible CFC of the new units or the option or the units to which the option relates—the sum of the amount paid in respect of the exercise of the rights and:
 - (i) the market value of the rights as at the end of 30 June 1990; or
 - (ii) if the cost base to the eligible CFC of the rights as at 30 June 1990 is greater than that market value—that cost base; or
- (b) for the purpose of ascertaining whether the eligible CFC incurred a capital loss in respect of the disposal by the eligible CFC of the new units or the option or the units to which the option relates—the sum of the amount paid in respect of the exercise of the rights and:
 - (i) the market value of the rights as at the end of 30 June 1990; or
 - (ii) if that market value is greater than the amount of the cost base to the eligible CFC of the rights as at 30 June 1990—that cost base.

“(3) So much of that consideration as is covered by subparagraph (2) (a) (i) or (ii) or (b) (i) or (ii), as the case requires, is taken to have been paid or given on 30 June 1990.

Company-issued options to acquire unissued shares

“416. (1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, the following provisions have effect.

“(2) Notwithstanding section 160ZYV, where the eligible CFC, as a shareholder, exercises an option as mentioned in subsection 160ZYV (2) and that option is a 30 June 1990 non-taxable Australian asset of the eligible CFC, the eligible CFC is taken, for the purposes of Part IIIA, to have paid or given as consideration in respect of the acquisition of the new shares concerned an amount equal to:

(a) for the purpose of ascertaining whether a capital gain accrued to the eligible CFC in respect of the disposal by the eligible CFC of the new shares—the sum of the amount paid in respect of the exercise of the option and:

(i) the market value of the option as at the end of 30 June 1990; or

(ii) if the cost base to the eligible CFC of the option as at 30 June 1990 is greater than that market value—that cost base; or

(b) for the purpose of ascertaining whether the eligible CFC incurred a capital loss in respect of the disposal by the eligible CFC of the new shares—the sum of the amount paid in respect of the exercise of the option and:

(i) the market value of the option as at the end of 30 June 1990; or

(ii) if that market value is greater than the amount of the cost base to the eligible CFC of the option as at 30 June 1990—that cost base.

“(3) So much of that consideration as is covered by subparagraph (2) (a) (i) or (ii) or (b) (i) or (ii), as the case requires, is taken to have been paid or given on 30 June 1990.

Unit trust-issued options to acquire unissued units

“417. (1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, the following provisions have effect.

“(2) Notwithstanding section 160ZYXE, where the eligible CFC, as a unitholder, exercises an option as mentioned in subsection 160ZYXE (2) and that option is a 30 June 1990 non-taxable Australian asset of the eligible CFC, the eligible CFC is taken, for the purposes of Part IIIA, to have paid or given as consideration in respect of the acquisition of the new units concerned an amount equal to:

(a) for the purpose of ascertaining whether a capital gain accrued to the eligible CFC in respect of the disposal by the eligible

CFC of the new units—the sum of the amount paid in respect of the exercise of the option and:

- (i) the market value of the option as at the end of 30 June 1990; or
 - (ii) if the cost base to the eligible CFC of the option as at 30 June 1990 is greater than that market value—that cost base; or
- (b) for the purpose of ascertaining whether the eligible CFC incurred a capital loss in respect of the disposal by the eligible CFC of the new units—the sum of the amount paid in respect of the exercise of the option and:
- (i) the market value of the option as at the end of 30 June 1990; or
 - (ii) if that market value is greater than the amount of the cost base to the eligible CFC of the option as at 30 June 1990—that cost base.

“(3) So much of that consideration as is covered by subparagraph (2) (a) (i) or (ii) or (b) (i) or (ii), as the case requires, is taken to have been paid or given on 30 June 1990.

Options

“418. (1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, the following provisions have effect.

“(2) Subsection 160ZZC (3A) applies in relation to an option granted by the eligible CFC as if a reference in that subsection to 20 September 1985 were a reference to 1 July 1990.

“(3) Subsection 160ZZC (9) does not apply to an option granted to the eligible CFC.

Modified application of section 160ZZO (transfer of asset between companies in the same group)

“419. For the purposes of applying this Act in calculating the attributable income of the eligible CFC, section 160ZZO has effect as if:

- (a) paragraph (1) (a) of that section were omitted and the following paragraph were substituted:
 - “(a) either of the following subparagraphs applies:
 - (i) a company (in this section called the “**transferor**”) that is a CFC, and a resident of a listed country, at a particular time disposed of an asset at that time to another company (in this section called the “**transferee**”), where any of the following sub-subparagraphs apply:

- (A) the transferee is a resident of that listed country at that time;
 - (B) the transferee is a resident of Australia at that time;
 - (C) the transferee is a resident of a particular unlisted country at that time and, immediately before that time, the asset was used in connection with a permanent establishment of the transferor in any unlisted country at or through which the transferor carried on business immediately before that time;
- (ii) a company (in this section also called the “**transferor**”) that is a CFC, and a resident of an unlisted country, at a particular time, disposes of an asset at that time to another company, (in this section also called the “**transferee**”), where either of the following sub-subparagraphs apply:
- (A) the transferee is a resident of an unlisted country at that time;
 - (B) the transferee is a resident of Australia at that time;’; and
- (b) the residency assumption were disregarded for the purposes of section (1) (a) of that section as it applies by virtue of this section.

Modified application of section 160ZZOA (transfer of asset from subsidiary to holding company for no consideration)

“420. For the purposes of applying this Act in calculating the attributable income of the eligible CFC, section 160ZZOA applies as if:

- (a) paragraph (1) (a) of that section were omitted and the following paragraph were substituted:

‘(a) either of the following subparagraphs applies:

- (i) a company (in this section called the “**transferor**”) that is a CFC, and a resident of a listed country, at a particular time after 15 August 1989 disposed of an asset at that time to another company (in this section called the “**transferee**”), where any of the following sub-subparagraphs apply:

- (A) the transferee is a resident of that listed country at that time;
- (B) the transferee is a resident of Australia at that time;
- (C) the transferee is a resident of a particular unlisted country at that time and, immediately^{lv} before that time, the asset was

used in connection with a permanent establishment of the transferor in any unlisted country at or through which the transferor carried on business immediately before that time;

- (ii) a company (in this section also called the “transferor”) that is a CFC, and a resident of an unlisted country, at a particular time after 15 August 1989, disposed of an asset at that time to another company (in this section also called the “transferee”), where either of the following subparagraphs apply:
 - (A) the transferee is a resident of an unlisted country at that time;
 - (B) the transferee is a resident of Australia at that time; and’; and
- (b) the residency assumption were disregarded for the purposes of section (1) (a) of that section as it applies by virtue of this section.

Elections under CGT roll-over provisions

“421. For the purpose of applying this Act in calculating the attributable income of the eligible CFC for the eligible period, any election that may be made, by the eligible CFC, or by the eligible CFC and another entity, apart from this section, under any of the CGT roll-over provisions:

- (a) on or before the date of lodgment of a particular return of income; or
 - (b) within such further period as the Commissioner allows;
- is to be given instead:
- (c) before the end of the period of 2 months after the end of the eligible period; or
 - (d) within such further period as the Commissioner allows.

Adjustment of disposal consideration where change of residence by eligible CFC from unlisted to listed country

“422. (1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, in relation to the eligible period in relation to the eligible taxpayer, the following provisions have effect.

“(2) Where:

- (a) because the eligible CFC has changed residence at a particular time (in this section called the ‘residence-change time’), during the eligible period or an earlier statutory accounting period, from an unlisted country to a listed country, an amount is or has been included in the eligible taxpayer’s assessable income

under section 457 (including under that section because of paragraph 58 (1) (d) of the *Taxation Laws Amendment (Foreign Income) Act 1990*); and

- (b) during the eligible period, the eligible CFC disposes (which disposal is in this section called the **'actual disposal'**) of an asset (in this section called the **'eligible asset'**) that it has held since the residence-change time;

then the consideration in respect of the actual disposal of the eligible asset is, for the purposes of Part IIIA, adjusted in accordance with this section.

“(3) Where:

- (a) the result of making the assumption, in subparagraph 457 (2) (a) (i) of this Act or in paragraph 58 (2) (a) of the *Taxation Laws Amendment (Foreign Income) Act 1990*, that all of the eligible CFC's assets were disposed of at the residence-change time for a consideration equal to their market value was:

- (i) to increase, by a particular amount (in this section called the **'DP creation/increase amount'**), the amount that would otherwise be the distributable profits referred to in that subparagraph or paragraph; or

- (ii) to create distributable profits of a particular amount (in this section also called the **'DP creation/increase amount'**) where there would otherwise not be distributable profits; and

- (b) if the eligible asset had been disposed of by the eligible CFC at the residence-change time for its market value at that time, the eligible CFC would have made a profit (in this section called the **'eligible asset profit'**) on the disposal;

then the consideration in respect of the actual disposal of the eligible asset by the eligible CFC is reduced by the amount calculated using the formula:

$$\frac{\text{Eligible asset profit}}{\text{Total asset profits}} \times \text{DP creation/increase amount}$$

where:

Eligible asset profit means the amount of the eligible asset profit;

Total asset profits means the amount that would result if:

- (c) the eligible CFC disposed of all of its assets at the residence-change time for their market value; and
- (d) the total of the profits from only those disposals that would have resulted in a profit to the eligible CFC were calculated;

DP creation/increase amount means the DP creation/increase amount.

“(4) Where:

- (a) the result of making the assumption, in subparagraph 457 (2) (a) (i) of this Act or in paragraph 58 (2) (a) of the

Taxation Laws Amendment (Foreign Income) Act 1990, that all of the eligible CFC's assets were disposed of at the residence-change time for a consideration equal to their market value was to reduce (including to nil), by an amount (in this section called the '**DP reduction amount**'), the amount that would otherwise be the distributable profits referred to in that subparagraph or paragraph; and

- (b) if the eligible asset had been disposed of by the eligible CFC at the residence-change time for its market value at that time, the eligible CFC would have made a loss (in this section called the '**eligible asset loss**') on the disposal;

then the consideration in respect of the actual disposal of the eligible asset by the eligible CFC is increased by the amount calculated using the formula:

$$\frac{\text{Eligible asset loss}}{\text{Total asset losses}} \times \text{DP reduction amount}$$

where:

Eligible asset loss means the amount of the eligible asset loss;

Total asset losses means the amount that would result if:

- (c) the eligible CFC disposed of all of its assets at the residence-change time for their market value; and
- (d) the total of the losses from only those disposals that would have resulted in a loss to the eligible CFC were calculated;

DP reduction amount means the DP reduction amount.

Adjustment of disposal consideration where section 47A applies to rolled-over assets

"423. (1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, in relation to the eligible period in relation to the eligible taxpayer, the following provision has effect.

"(2) Where:

- (a) because of Division 17, Part IIIA does not or did not apply to the disposal of an asset by a CFC to the eligible CFC during the eligible period or an earlier statutory accounting period; and
- (b) the eligible taxpayer was an attributable taxpayer in relation to both CFCs at the time of the disposal; and
- (c) section 47A applies or applied in relation to the disposal of the asset to deem the other CFC to have paid a dividend to the eligible CFC; and
- (d) an amount in respect of the deemed dividend is included in the assessable income of the attributable taxpayer under section 458 or 459; and
- (e) the eligible CFC disposes of the asset during the eligible period;

then the consideration in respect of the disposal referred to in paragraph (e) is taken to be reduced by the lesser of:

- (f) the amount of the deemed dividend; and
- (g) the amount of any capital gain that, disregarding Division 17, would have accrued to the other CFC in respect of the disposal referred to in paragraph (a) if the consideration in respect of that disposal had been equal to the market value of the asset at the time of that disposal.

“Subdivision D—Modifications Relating to Losses

Classes of notional assessable income

“424. (1) For the purposes of this Subdivision but subject to subsection (2), each of the following amounts included in notional assessable income constitutes a single class:

- (a) interest income (within the meaning of subsection 160AE (3));
- (b) modified passive income (within the meaning of subsection 160AEA (2));
- (c) offshore banking income (within the meaning of subsection 160AE (4));
- (d) all other amounts.

“(2) Subsection (1) does not apply to an amount included in notional assessable income under Part IIIA of this Act as modified in accordance with Subdivision C.

Sometimes-exempt income etc.

“425. (1) Where an amount is not included in the eligible CFC’s notional assessable income of a particular class for a statutory accounting period (being the eligible period or an earlier period) in relation to the eligible taxpayer because:

- (a) the eligible CFC passes the active income test for the period in relation to the eligible taxpayer; or
- (b) subsection 385 (4) applies;

then the amount is sometimes-exempt income of the eligible CFC of that class for the period in relation to the eligible taxpayer.

“(2) Where an amount would, disregarding sections 430 and 431, only be a notional allowable deduction, in relation to notional assessable income of a particular class, of the eligible CFC for a statutory accounting period (being the eligible period or an earlier period) in relation to the eligible taxpayer if the eligible CFC’s sometimes-exempt income of that class for the period in relation to the eligible taxpayer were instead notional assessable income, then the amount is a sometimes-exempt deduction of the eligible CFC of that class for the period in relation to the eligible taxpayer.

“(3) Where, in relation to notional assessable income of a particular class, the eligible CFC’s sometimes-exempt deductions for a statutory accounting period (being the eligible period or an earlier period) in relation to the eligible taxpayer exceed its sometimes-exempt income for the period in relation to the taxpayer, the excess is, in relation to notional assessable income of that class, a (sometimes-exempt income) loss of the eligible CFC for the period in relation to the eligible taxpayer.

“(4) Where, in relation to notional assessable income of a particular class, an eligible CFC’s sometimes-exempt income for a statutory accounting period (being the eligible period or an earlier period) in relation to the eligible taxpayer exceeds its sometimes-exempt deductions for the period in relation to the taxpayer, the excess is, in relation to notional assessable income of that class, a (sometimes-exempt income) gain of the eligible CFC for the period in relation to the eligible taxpayer.

Creation of loss in relation to a class of notional assessable income

“426. For the purposes of this Subdivision, if:

- (a) disregarding section 430, the amount of the eligible CFC’s notional allowable deductions (other than under section 431) for a statutory accounting period (being the eligible period or an earlier period) in relation to notional assessable income of a particular class are applied as follows:
 - (i) they are applied first against any notional assessable income of the eligible CFC of that class for the period;
 - (ii) any excess is then applied against any (sometimes-exempt income) gain of that class for the period; and
- (b) there is any amount remaining;

then the amount remaining is a loss of the eligible CFC for the period in relation to notional assessable income of that class.

Certain provisions to be disregarded

“427. For the purposes of applying this Act in calculating the attributable income of the eligible CFC, paragraph 23 (q) and sections 79D, 79E, 79F, 80 to 80G (except for the purposes of a reference to any of those sections in any other provision of this Act, as applied in accordance with this Division) and 160AFD are to be disregarded.

Subdivision to apply as if there were always a requirement to calculate attributable income

“428. For the purposes of applying this Subdivision in calculating the attributable income of the eligible CFC for the eligible period, it is to be assumed that, for any earlier statutory accounting period (when the eligible CFC existed) for which there was no requirement to calculate

its attributable income in relation to the eligible taxpayer, there were such a requirement (except for the purpose of applying section 398).

Notional allowable deduction for (sometimes-exempt income) loss of a particular class

“429. The amount of any (sometimes-exempt income) loss of the eligible CFC for the eligible period in relation to notional assessable income of a particular class is a notional allowable deduction for the period from the notional assessable income of the eligible CFC of that class.

Limitation on deductions for classes of notional assessable income

“430. Where:

- (a) apart from this section, there are one or more notional allowable deductions (other than under section 431) of the eligible CFC for the eligible period in relation to notional assessable income of a particular class; and
- (b) either:
 - (i) the eligible CFC did not derive any notional assessable income of that class in the eligible period; or
 - (ii) the eligible CFC derived notional assessable income of that class in the eligible period and its amount is exceeded by the sum of the deductions;

then, for the purposes of this Division, those deductions are to be reduced respectively:

- (c) where subparagraph (b) (i) applies—to nil; or
- (d) where subparagraph (b) (ii) applies—by amounts proportionate to those deductions and equal in total to the amount of the excess referred to in that subparagraph.

Deduction etc. for previous period loss in relation to a class of notional assessable income

“431. (1) Where there are one or more losses of the eligible CFC, in relation to notional assessable income of a particular class, of any statutory accounting period before the eligible period, the losses, to the extent they have not been previously taken into account under this section in respect of any such period, are to be taken into account in accordance with this section.

“(2) The losses are to be taken into account as follows:

- (a) they are to be applied first against any (sometimes-exempt income) gain of the class for the eligible period, to the extent that the gain has not already been applied under section 426 in determining whether there is a loss for the eligible period;
- (b) any excess is then a notional allowable deduction in respect of notional assessable income of that class for the eligible period, but only to the extent that the deduction does not exceed the

amount of that notional assessable income as reduced by notional allowable deductions of that class other than under this section;

- (c) where there are 2 or more losses, they are to be taken into account in the order in which they arose.

“(3) A loss for a statutory accounting period is only to be taken into account under subsection (2) if the eligible CFC was a CFC at the end of that statutory accounting period and each following statutory accounting period before the eligible period.

“(4) A loss for a statutory accounting period is not to be taken into account under subsection (2):

- (a) where the eligible CFC is a resident of a listed country at the end of the eligible period—if the statutory accounting period is one at whose end the CFC was not a resident of a listed country or is any statutory accounting period before such a period; or
- (b) where the eligible CFC is a resident of an unlisted country at the end of the eligible period—if the statutory accounting period is one at whose end the CFC was not a resident of an unlisted country or is any statutory accounting period before such a period.

“(5) A loss for a statutory accounting period is not to be taken into account under subsection (2) if, assuming that it were a loss within the meaning of section 80 that had been incurred by the eligible CFC, it would not, because of section 80A or 80DA, be taken into account for the purpose of applying section 80 in relation to the eligible period.

“Division 8—Active Income Test

“Subdivision A—Basic Conditions for Passing the Active Income Test

Active income test

“432. (1) Subject to sections 437 and 453, for the purposes of this Part, a company is taken to pass the active income test in relation to a statutory accounting period if, and only if:

- (a) the company was in existence at the end of the statutory accounting period; and
- (b) there was no time during the statutory accounting period when the company was in existence when the company was neither a resident of a particular listed country nor of a particular unlisted country; and
- (c) the company has kept accounts for the statutory accounting period and:
 - (i) the accounts are prepared in accordance with commercially accepted accounting principles; and

- (ii) the accounts give a true and fair view of the financial position of the company; and
- (d) the company has complied with the substantiation requirements set out in section 451 in relation to the statutory accounting period; and
- (e) at all times during the statutory accounting period when the company was in existence and was a resident of a particular listed country, or of a particular unlisted country, the company carried on business in that country at or through a permanent establishment of the company in that country; and
- (f) the tainted income ratio of the company for the statutory accounting period is less than 0.05.

“(2) Subject to subsection (3), for the purposes of this section, a company is to be taken to be in existence if it has been incorporated and has not been dissolved.

“(3) For the purposes of this section, if a company was dormant, within the meaning of Part VI of the *Companies Act 1981*, throughout a particular period (in this subsection called the ‘**dormant period**’) commencing on the day on which the company was incorporated, the company is to be taken not to have been in existence during the dormant period.

“Subdivision B—Tainted Income Ratio

Tainted income ratio

“433. (1) For the purposes of this Part, if a company is a resident of a particular unlisted country at the end of a statutory accounting period, the tainted income ratio of the company for the statutory accounting period is calculated using the formula:

$$\frac{\text{Gross tainted turnover}}{\text{Gross turnover}}$$

where:

Gross tainted turnover means the gross tainted turnover of the company of the statutory accounting period;

Gross turnover means the gross turnover of the company of the statutory accounting period.

“(2) For the purposes of this Part, if a company is a resident of a particular listed country at the end of a statutory accounting period, the tainted income ratio of the company for the statutory accounting period is calculated using the formula:

$$\frac{\text{Tainted eligible designated concession income}}{\text{Eligible designated concession income}}$$

where:

Tainted eligible designated concession income means so much of the gross tainted turnover of the company of the statutory accounting

period as represents eligible designated concession income in relation to any listed country in relation to the statutory accounting period;

Eligible designated concession income means so much of the gross turnover of the company of the statutory accounting period as represents eligible designated concession income in relation to any listed country in relation to the statutory accounting period.

“(3) For the purposes of this Part, the tainted income ratio of a company for a statutory accounting period is taken to be less than 0.05 if both the numerator and the denominator in the applicable fraction are 0.

“(4) For the purposes of this Part, the tainted income ratio of a company for a statutory accounting period is to be calculated in the currency in which the profit and loss accounts and the balance-sheet of the company for the statutory accounting period are prepared.

Gross turnover

“434. (1) Subject to section 437, for the purposes of this Part, the gross turnover of a company of a statutory accounting period is the sum of:

- (a) the amount that is shown in the recognised accounts of the company for the statutory accounting period as the gross revenue derived by the company, but not including:
 - (i) amounts that are shown in those recognised accounts as amounts covered by section 436; or
 - (ii) amounts that are shown in those recognised accounts as revenue in respect of the disposal of assets (other than trading stock or commodity futures contracts, commodity forward contracts or rights or options in respect of such contracts); or
 - (iii) amounts that are shown in those recognised accounts as revenue from disposing of commodity futures contracts, commodity forward contracts or rights or options in respect of such contracts; or
 - (iv) amounts that are shown in those recognised accounts as revenue from currency exchange rate fluctuations; and
- (b) the amount that is shown in the recognised accounts of the company for the statutory accounting period as the amount (if any) by which the sum of the gains derived by the company in the statutory accounting period in respect of the disposal of assets (other than trading stock or commodity futures contracts, commodity forward contracts or rights or options in respect of such contracts) exceeds the losses incurred by the company in the statutory accounting period in respect of the disposal of such assets, but not including amounts that are shown in those recognised accounts as amounts covered by section 436; and

- (c) the amount that is shown in the recognised accounts of the company for the statutory accounting period as the amount (if any) by which the gains derived by the company in the statutory accounting period from disposing of commodity futures contracts, commodity forward contracts or rights or options in respect of such contracts exceeds the losses incurred by the company in the statutory accounting period from disposing of commodity futures contracts, commodity forward contracts or rights or options in respect of such contracts, but not including amounts that are shown in those recognised accounts as amounts covered by section 436; and
- (d) the amount that is shown in the recognised accounts of the company for the statutory accounting period as the amount (if any) by which the sum of the gains derived by the company in the statutory accounting period from currency exchange rate fluctuations exceeds the losses incurred by the company in the statutory accounting period from currency exchange rate fluctuations, but not including amounts that are shown in those recognised accounts as amounts covered by section 436.

“(2) Subject only to sections 437, 438 and 440, for the purposes of this section, where a company has prepared recognised accounts for a statutory accounting period in accordance with commercially accepted accounting principles, then, in determining whether a particular amount shown in those accounts is covered by an expression used in subsection (1) (other than an exclusion of amounts shown in those recognised accounts as amounts covered by section 436), the expression concerned is taken to have the same meaning that it has under those accounting principles.

Gross tainted turnover

“435. For the purposes of this Part, the gross tainted turnover of a company of a statutory accounting period is so much of the gross turnover of the company of the statutory accounting period as consists of:

- (a) passive income of the company of the statutory accounting period; or
- (b) tainted sales income of the company of the statutory accounting period; or
- (c) tainted services income of the company of the statutory accounting period.

Amounts excluded from active income test

“436. (1) For the purposes of the application of this Part to a company, the following amounts are, in accordance with subparagraph 434 (1) (a) (i) and paragraphs 434 (1) (b), (c) and (d), excluded from the active income test:

- (a) income or profits derived by the company that are included in the assessable income of the company of any year of income;
 - (b) income or profits derived by the company during a statutory accounting period where all of the following conditions are satisfied:
 - (i) the income or profits are derived by the company in carrying on a business at or through a permanent establishment of the company in a listed country;
 - (ii) the income or profits are not eligible designated concession income in relation to any listed country in relation to the statutory accounting period;
 - (iii) the income or profits are subject to tax in a listed country in a tax accounting period:
 - (A) ending before the end of the statutory accounting period; or
 - (B) commencing during the statutory accounting period;
 - (c) an amount that, if the company were a resident within the meaning of section 6, would, or would apart from paragraphs 99B (2) (d) and (e), have been included in the assessable income of the company under Division 6 of Part III;
 - (d) so much of a frankable dividend, within the meaning of Part IIIAA, as has been franked in accordance with section 160AQF;
 - (e) a non-portfolio dividend paid to the company by either of the following companies:
 - (i) a CFC that is a resident of an unlisted country at the time of the payment of the dividend;
 - (ii) a company that is a resident of a listed country at the time of the payment of the dividend;
 - (f) the exempting profits percentage of a non-portfolio dividend paid to the company by a company, other than a CFC, that is a resident of an unlisted country at the time of the payment of the dividend.
- “(2) Where:
- (a) the company receives an attribution account payment, being a dividend, from another entity; and
 - (b) the whole or part (in this subsection called the ‘eligible amount’) of the attribution account payment is not excluded from the active income test, in relation to the company in relation to the statutory accounting period, under subsection (1); and
 - (c) on the making of the attribution account payment by the other entity, an attribution debit arises for that entity in relation to a taxpayer;

then, for the purposes of this Part, so much of the eligible amount as does not exceed the grossed-up amount of the attribution debit is, in accordance with subparagraph 434 (1) (a) (i), excluded (in addition to any other amount that is excluded under subsection (1)) from the active income test in relation to the company in relation to the taxpayer.

“Subdivision C—Treatment of Partnership Income

Treatment of partnership income

“437. (1) For each partnership in which a company is a partner at any time during a statutory accounting period, the following modifications apply for the purposes of determining the effect of that partnership on the question whether the company is taken to pass the active income test in relation to the statutory accounting period:

- (a) the partnership is to be treated as an entity separate from the company;
- (b) in spite of anything in section 432, the company is not taken to pass the active income test in relation to the statutory accounting period unless:
 - (i) the partnership has kept accounts for the statutory accounting period and:
 - (A) the accounts are prepared in accordance with commercially accepted accounting principles; and
 - (B) the accounts give a true and fair view of the financial position of the partnership; and
 - (ii) the partnership has complied with the substantiation requirements set out in section 452 in relation to the statutory accounting period;
- (c) for the purposes of this Division, the notional gross tainted turnover of the partnership of the statutory accounting period, or the notional gross turnover of the partnership of the statutory accounting period, is the amount that would be the gross tainted turnover, or the gross turnover, as the case requires, of the partnership of the statutory accounting period if:
 - (i) except for the purposes of determining the associates of the partnership—the partnership were a company; and
 - (ii) a reference in this Division to the recognised accounts of the partnership were a reference to the accounts referred to in paragraph (b) of this subsection that are prepared by the partnership for the statutory accounting period; and
 - (iii) the partnership were a resident of the same particular listed country or particular unlisted country, of which the company was a resident;
- (d) the gross tainted turnover of the company of the statutory

accounting period is to be increased by the amount calculated using the formula:

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

where:

Notional gross tainted turnover of partnership means the notional gross tainted turnover of the partnership for the statutory accounting period;

Partner's interest means the company's percentage interest in the profits of the partnership for the statutory accounting period;

- (e) the gross turnover of the company of the statutory accounting period is to be increased by the amount calculated using the formula:

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

where:

Notional gross turnover of partnership means the notional gross turnover of the partnership for the statutory accounting period;

Partner's interest means the company's percentage interest in the profits of the partnership for the statutory accounting period.

“(2) If:

- (a) a company is a partner in one or more partnerships at any time during a statutory accounting period; and
- (b) apart from this subsection, paragraph 432 (1) (e) does not apply in relation to the company in relation to the statutory accounting period; and
- (c) at all times during the statutory accounting period when:
 - (i) a particular one of those partnerships was in existence; and
 - (ii) the company was in existence (within the meaning of section 432) and was a resident of a particular listed country, or of a particular unlisted country;

the partnership carried on business in that country at or through a permanent establishment of the partnership in that country; subsection 432 (1) has effect as if paragraph 432 (1) (e) had applied in relation to the company in relation to the statutory accounting period.

“Subdivision D—General Interpretive Provisions

Roll-overs—asset disposals

“438. (1) This section applies in determining the application of paragraph 434 (1) (b) and section 445 in relation to a non-taxable Australian asset of a company.

“(2) If a CGT roll-over provision applies to:

- (a) the disposal of the asset by an entity (in this section called the ‘transferor’) to the company (in this section called the ‘transferee’); or
- (b) the disposal of the asset by the company (in this section also called the ‘transferor’) to another entity (in this section also called the ‘transferee’);

the following provisions have effect:

- (c) the transferee is taken to have paid, as consideration to acquire the asset, the sum of:
 - (i) the consideration (if any) paid or payable by the transferor to acquire the asset; and
 - (ii) the expenditure (if any) incurred by the transferor in making capital improvements to the asset; and
- (d) the transferor is not taken to have:
 - (i) derived any gains; or
 - (ii) incurred any loss;in respect of the disposal of the asset.

“(3) For the purposes of this section, in determining whether a CGT roll-over provision applies to the disposal of an asset, Part IIIA has the effect that it would have if:

- (a) the company had failed the active income test in relation to the statutory accounting period concerned; and
- (b) Part IIIA were being applied to calculate the attributable income of the company for the statutory accounting period in relation to any taxpayer.

“(4) A reference in this section to a non-taxable Australian asset of a company is a reference to an asset of the company that is not a taxable Australian asset within the meaning of Part IIIA.

When currency exchange gains or losses relate to active income transactions

“439. (1) For the purposes of this Part, a currency exchange gain, or a currency exchange loss, of a company for a statutory accounting period is to be taken to relate to an active income transaction if, and only if:

- (a) the gain or loss was realised under any of the following transactions:
 - (i) a transaction that:
 - (A) gives rise to income, gains or a loss of the company; and
 - (B) is not taken into account in determining the passive income, tainted sales income or tainted services income of the company;

- (ii) a transaction for the purchase of goods from an entity that, at the time the gain or loss was realised, was not an associate of the company;
 - (iii) a transaction for the purchase of a unit of property where:
 - (A) if the company were a resident within the meaning of section 6, depreciation would be allowable to the company under section 54 in respect of any year of income; and
 - (B) the unit of property is for use by the company exclusively or principally for the purpose of producing income other than passive income, tainted sales income or tainted services income;
 - (iv) if the company is an AFI subsidiary that carried on financial intermediary business at the time the gain or loss was realised—a transaction under which money was lent to the company;
 - (v) a transaction that was entered into by the company for the sole purpose of eliminating or reducing the risk of adverse financial consequences that might result for the company, under a transaction covered by any of the preceding subparagraphs, from currency exchange rate fluctuations; or
- (b) both of the following subparagraphs apply:
- (i) the gain or loss was realised in the course of carrying on a business of currency dealing;
 - (ii) the gain or loss was realised under a transaction and, at the time the gain or loss was realised, no other party to the transaction was:
 - (A) an associate of the company; or
 - (B) a Part X Australian resident.

“(2) In determining whether an amount is passive income for the purposes of this section, paragraph 446 (1) (n) is to be disregarded.

Asset disposals—revaluations and arm’s length amounts

“440. In determining, for the purposes of this Part, whether a company passes the active income test, the following provisions apply in relation to an asset of the company (other than trading stock):

- (a) the effect of an asset revaluation is to be disregarded;
- (b) subject to section 438, if:
 - (i) any consideration paid or payable by the company in respect of the acquisition of the asset; or
 - (ii) any consideration paid or payable to the company in respect of the disposal of the asset; or

- (iii) any expenditure incurred by the company in making capital improvements to the asset; or
- (iv) any other amount payable to or by the company that is relevant to determining the revenue, gains or losses concerned;

is not equal to the amount (in this paragraph called the ‘**arm’s length amount**’) that the parties to the transaction concerned could have been reasonably expected to have paid if the parties had been acting at arm’s length in relation to the transaction—the amount of the consideration or expenditure is to be taken to be equal to the arm’s length amount.

Hire-purchase and other property financing transactions

“441. (1) For the purposes of this Part, in determining whether a company passes the active income test:

- (a) a hire-purchase transaction or any other transaction for the financing of the acquisition of property is to be treated as a loan of money; and
- (b) income derived under the transaction is to be treated as interest.

“(2) Nothing in subsection (1) limits the generality of the expressions ‘interest’, ‘loan’ or ‘payment in the nature of interest’.

Assumption of rights of lender under a loan

“442. In determining whether a company passes the active income test, if the company assumes the rights of a lender under a loan, this Part has effect, after that assumption, as if:

- (a) the company had provided the loan to the borrower; and
- (b) in a case where that assumption was made in the course of carrying on a particular business—interest, or a payment in the nature of interest, derived by the company from the loan had been derived from a loan made in the course of carrying on that business.

Net tainted commodity gains

“443. For the purposes of this Part:

- (a) net tainted commodity gains are to be taken to have accrued to a company in a statutory accounting period if, and only if, the sum of the tainted commodity gains of the company for the statutory accounting period exceeds the sum of the tainted commodity losses of the company for the statutory accounting period; and
- (b) the amount of the net tainted commodity gains is equal to the amount of the excess.

Net tainted currency exchange gains

“444. For the purposes of this Part:

- (a) net tainted currency exchange gains are to be taken to have accrued to a company in a statutory accounting period if, and only if, the sum of the tainted currency exchange gains of the company for the statutory accounting period exceeds the sum of any tainted currency exchange losses of the company for the statutory accounting period; and
- (b) the amount of the net tainted currency exchange gains is equal to the amount of the excess.

Net gains—disposal of tainted assets

“445. For the purposes of this Part:

- (a) net gains are to be taken to have accrued to a company in a statutory accounting period in relation to the disposal of tainted assets owned by the company if, and only if, the sum of the gains of the company in relation to the disposal of tainted assets during the statutory accounting period exceeds the sum of the losses (if any) of the company in relation to the disposal of tainted assets during the statutory accounting period; and
- (b) the amount of the net gains is equal to the amount of the excess.

“Subdivision E—Passive Income, Tainted Sales Income and Tainted Services Income

Passive income

“446. (1) Subject to this Division, for the purposes of this Part, the following amounts are passive income of a company of a statutory accounting period:

- (a) dividends (within the meaning of section 6) paid to the company in the statutory accounting period;
- (b) unit trust dividends (within the meaning of Division 6B or 6C of Part III) paid to the company in the statutory accounting period;
- (c) a distribution made to the company where the distribution is taken to be a dividend because of section 47;
- (d) tainted interest income derived by the company in the statutory accounting period;
- (e) annuities derived by the company in the statutory accounting period;
- (f) tainted rental income derived by the company in the statutory accounting period;
- (g) tainted royalty income derived by the company in the statutory accounting period;

- (h) an amount derived by the company in the statutory accounting period as consideration for the assignment, in whole or in part, of any copyright, patent, design, trade mark or other like property or right;
- (j) income derived from carrying on a business of trading in tainted assets;
- (k) net gains that accrued to the company in the statutory accounting period in respect of the disposal of tainted assets;
- (m) net tainted commodity gains that accrued to the company during the statutory accounting period;
- (n) net tainted currency exchange gains that accrued to the company during the statutory accounting period.

“(2) In spite of anything in subsection (1), the passive income of a life assurance company of a statutory accounting period is calculated using the formula:

$$\frac{\text{Adjusted passive income}}{\text{income}} \times \frac{\text{Tainted calculated liabilities}}{\text{Calculated liabilities}}$$

where:

Adjusted passive income means the amount that, apart from this subsection, would be the passive income of the company of the statutory accounting period;

Tainted calculated liabilities means so much of the calculated liabilities of the company at the end of the statutory accounting period as is referable to life assurance policies that give rise to tainted services income of the company of any statutory accounting period;

Calculated liabilities means so much of those calculated liabilities as is referable to all life assurance policies.

“(3) In subsection (2):

‘**calculated liabilities**’ has the same meaning as in Division 8 of Part III.

“(4) In spite of anything in subsection (1), the passive income of a general insurance company of a statutory accounting period is calculated using the formula:

$$\frac{\text{Adjusted passive income}}{\text{income}} \times \frac{\text{Tainted calculated liabilities}}{\text{Calculated liabilities}}$$

where:

Adjusted passive income means the amount that, apart from this subsection, would be the passive income of the company of the statutory accounting period;

Tainted calculated liabilities means so much of the calculated liabilities of the company at the end of the statutory accounting period as is referable to general insurance policies that give rise to tainted services income of the company of any statutory accounting period;

Calculated liabilities means so much of those calculated liabilities as is referable to all general insurance policies.

“(5) In subsection (4):

‘**calculated liabilities**’, in relation to a general insurance company, has the same meaning as it has in Division 8 of Part III when used in relation to a life assurance company;

‘**general insurance policy**’ includes a reinsurance policy, but does not include a life assurance policy.

Tainted sales income

“447. (1) Subject to this Division, for the purposes of this Part, the following amounts are tainted sales income of a company of a statutory accounting period:

- (a) income from the sale of goods by the company where both of the following conditions are satisfied:
 - (i) the goods were sold to the company by another entity;
 - (ii) either of the following sub-subparagraphs applies at the time of the sale of the goods to the company:
 - (A) the seller of the goods to the company was an associate of the company and a Part X Australian resident;
 - (B) the goods were sold to the company by an associate of the company who was not a Part X Australian resident, in the course of a business carried on by the associate at or through a permanent establishment of the associate in Australia;
- (b) income from the sale of goods by the company where both of the following conditions are satisfied:
 - (i) the goods were sold to the company by another entity;
 - (ii) either of the following sub-subparagraphs applies at the time of the purchase of the goods from the company:
 - (A) the purchaser of the goods from the company was an associate of the company and a Part X Australian resident;
 - (B) the purchaser of the goods from the company was an associate of the company who was not a Part X Australian resident and the purchase was made in the course of a business carried on by the purchaser at or through a permanent establishment of the purchaser in Australia.

“(2) Where:

- (a) a company provides any of the following services:
 - (i) drinks and meals;

- (ii) accommodation in a hotel, motel, guest-house or similar place;
- (iii) the provision of, or the use of facilities for, entertainment, recreation or instruction; and
- (b) if subparagraph (a) (ii) or (iii) applies—the transaction for the provision of the services includes the sale of goods of a kind that are commonly supplied in connection with the services concerned;

the tainted sales income of the company does not include income from the sale of:

- (c) if subparagraph (a) (i) applies—the drink or food concerned; or
- (d) if subparagraph (a) (ii) or (iii) applies—the goods referred to in paragraph (b).

“(3) The tainted sales income of a company of a statutory accounting period does not include passive income of the company of the statutory accounting period.

“(4) The tainted sales income of a company of a statutory accounting period does not include income from the sale of goods by the company where the company substantially altered the goods with the result that the market value of the goods was substantially enhanced.

“(5) If, apart from this subsection, goods are purchased or sold by 2 or more entities acting jointly, subsection (1) is to be applied successively as if each such entity were the sole purchaser or seller, as the case may be.

Tainted services income

“448. (1) Subject to this Division, for the purposes of this Part, the following amounts are tainted services income of a company of a statutory accounting period:

- (a) income (other than premium income) from the provision of services by the company to an entity who was:
 - (i) an associate of the company; or
 - (ii) a Part X Australian resident;at the time the income was derived;
- (b) income (other than premium income) from the provision of services by the company to an entity who was not a Part X Australian resident at the time the income was derived, in connection with a business carried on by the entity at that time at or through a permanent establishment of the entity in Australia;
- (c) income consisting of life assurance premiums in respect of a life assurance policy where, at the time the policy was entered into, the owner of the policy was:
 - (i) an associate of the company; or

- (ii) a Part X Australian resident;
 - (d) income consisting of premiums (other than life assurance premiums) in respect of insurance (other than reinsurance) where any of the following conditions are satisfied at the time the policy was entered into:
 - (i) any insured person was:
 - (A) an associate of the company; or
 - (B) a Part X Australian resident;
 - (ii) any insured property was situated in Australia;
 - (iii) any insured event was an event which could happen only in Australia;
 - (e) income consisting of premiums in respect of reinsurance where any of the following conditions are satisfied at the time the policy was entered into:
 - (i) the insurer whose risks are directly covered by the reinsurance was:
 - (A) an associate of the company; or
 - (B) a Part X Australian resident;
 - (ii) both of the following sub-subparagraphs apply:
 - (A) the risks of a particular insurer are covered indirectly by the reinsurance (through one or more interposed contracts of reinsurance);
 - (B) that insurer is an associate of the company;
 - (iii) both of the following sub-subparagraphs apply:
 - (A) the risks of a particular insured are covered indirectly by the reinsurance (through one or more interposed contracts of insurance or reinsurance);
 - (B) that insured is an associate of the company.
- “(2) The tainted services income of a company of a statutory accounting period does not include income from the sale of goods by the company.
- “(3) Where:
- (a) a company provides services directly related to goods sold by the company; and
 - (b) either of the following conditions is satisfied:
 - (i) the company substantially altered the goods with the result that the market value of the goods was substantially enhanced;
 - (ii) the company did not acquire the goods from another entity;
- the tainted services income of the company does not include income from the provision of those services.

“(4) Where a company provides any of the following services:

- (a) drinks and meals;
- (b) accommodation in a hotel, motel, guest-house or similar place;
- (c) the provision of, or of the use of facilities for, entertainment, recreation or instruction;

the tainted services income of the company does not include income from the provision of those services.

“(5) The tainted services income of a company of a statutory accounting period does not include the passive income of the company of the statutory accounting period.

“(6) The tainted services income of a company of a statutory accounting period does not include income where:

- (a) the income is not passive income of the company of the statutory accounting period; and
- (b) the income is covered by any of the following subparagraphs:
 - (i) income derived by the company by way of rent in respect of a lease of land;
 - (ii) royalties derived by the company;
 - (iii) income derived from carrying on a business of trading in assets;
 - (iv) gains that accrued to the company in the statutory accounting period in respect of the disposal of assets;
 - (v) gains that accrued to the company in the statutory accounting period from disposing of commodity investments;
 - (vi) currency exchange gains that accrued to the company in the statutory accounting period;
 - (vii) in the case of a life assurance company—an amount that, apart from subsection 446 (2), would be passive income of the company of the statutory accounting period;
 - (viii) in the case of a general insurance company—the amount that, apart from subsection 446 (4), would be passive income of the company of the statutory accounting period.

“(7) If, apart from this subsection, services are provided to 2 or more entities acting jointly, this section is to be applied successively as if each such entity were the sole recipient.

***“Subdivision F—Special Rules Relating to AFI Subsidiaries
Carrying On Financial Intermediary Business***

AFI subsidiaries—interest income

“449. (1) The passive income of a company of a statutory accounting period does not include tainted interest income where, at the time the income was derived, the company was an AFI subsidiary whose sole or principal business was financial intermediary business.

“(2) The tainted services income of a company of a statutory accounting period does not include income where the following conditions are satisfied:

- (a) at the time the income was derived, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
- (b) the income consisted of interest, or a payment in the nature of interest, derived by the company from a loan made in the course of carrying on that business;
- (c) the loan was made to the Commonwealth.

“(3) The passive income, or the tainted services income, of a company of a statutory accounting period does not include income where the following conditions are satisfied:

- (a) at the time the income was derived, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
- (b) the income consisted of interest, or a payment in the nature of interest, derived by the company from a deposit with a central bank.

“(4) In the application of subsection 448 (1) to income derived by a company, where the following conditions are satisfied:

- (a) at the time the income was derived, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
- (b) the income consisted of interest, or a payment in the nature of interest, derived by the company from a loan made in the course of carrying on that business;

a reference in that subsection to the time the income was derived is to be read as a reference to the time the loan was made.

AFI subsidiaries—asset disposals and currency transactions

“450. (1) The passive income, or the tainted services income, of a company of a statutory accounting period does not include income where the following conditions are satisfied:

- (a) at the time the income was derived, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
- (b) the income was derived from carrying on a business of trading in any or all of the following tainted assets:
 - (i) non-share futures contracts;
 - (ii) non-share forward contracts;
 - (iii) interest rates swap contracts;
 - (iv) currency swap contracts;
 - (v) forward exchange rate contracts;

- (vi) forward interest rate contracts;
- (vii) a right or option in respect of such a contract;
- (viii) any similar financial instrument.

“(2) For the purposes of this Part, in determining the net gains that accrued to a company in a statutory accounting period in respect of the disposal of tainted assets, where the following conditions are satisfied in relation to the disposal of a tainted asset:

- (a) at the time of the disposal of the tainted asset, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
 - (b) the disposal was made in the course of carrying on that business;
 - (c) the tainted asset is covered by paragraph (1) (b);
- the disposal of the tainted asset is to be disregarded.

“(3) For the purposes of this Part, in determining the net tainted currency exchange gains that accrued to a company during a statutory accounting period, where the following conditions are satisfied in relation to a particular currency exchange gain or a particular currency exchange loss:

- (a) at the time the currency exchange gain or the currency exchange loss, as the case may be, was realised, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
- (b) the currency exchange gain, or the currency exchange loss, as the case may be, was realised:
 - (i) in the course of carrying on that business; and
 - (ii) in the course of currency dealing;

that currency exchange gain or that currency exchange loss, as the case requires, is to be disregarded.

“(4) The passive income of a company of a statutory accounting period does not include income where the following conditions are satisfied:

- (a) at the time the income was derived, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
- (b) the income was derived from carrying on a business of trading in either of the following tainted assets:
 - (i) loans (including deposits with a bank or other financial institution);
 - (ii) debenture stock, bonds, debentures, certificates of entitlement, bills of exchange, promissory notes or other securities.

“(5) For the purposes of this Part (other than subsection (7)), in determining the net gains that accrued to a company in a statutory

accounting period in respect of the disposal of tainted assets, where the following conditions are satisfied in relation to the disposal of a tainted asset:

- (a) at the time of the disposal of the tainted asset, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
- (b) the disposal was made in the course of carrying on that business;
- (c) the tainted asset is covered by paragraph (4) (b);

the disposal of the tainted asset is to be disregarded.

“(6) For the purposes of this Part, the tainted services income of a company of a statutory accounting period includes income from trading in assets where the following conditions are satisfied:

- (a) at the time the income was derived, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
- (b) the assets are covered by paragraph (4) (b);
- (c) the assets were acquired from, or disposed of to, another entity where either of the following conditions are satisfied at the time of the acquisition or disposal:
 - (i) the entity was:
 - (A) an associate of the company; or
 - (B) a Part X Australian resident;
 - (ii) the entity was not a Part X Australian resident, but the acquisition or disposal was in connection with a business carried on by the entity at or through a permanent establishment of the entity in Australia.

“(7) For the purposes of this Part, the tainted services income of a company of a statutory accounting period includes net gains that accrued to the company in the statutory accounting period in respect of the disposal of tainted assets, where the following conditions are satisfied:

- (a) at the time of the disposal of the tainted asset, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
- (b) the disposal was made in the course of carrying on that business;
- (c) the tainted asset is covered by paragraph (4) (b);
- (d) the tainted asset was acquired from, or disposed of to, another entity where either of the following conditions are satisfied at the time of the acquisition or disposal:
 - (i) the entity was:
 - (A) an associate of the company; or
 - (B) a Part X Australian resident;
 - (ii) the entity was not a Part X Australian resident, but the acquisition or disposal was in connection with a business

carried on by the entity at or through a permanent establishment of the entity in Australia.

“(8) For the purposes of this Part, the tainted services income of a company of a statutory accounting period includes factoring income where the following conditions are satisfied:

- (a) at the time the income was derived, the company was an AFI subsidiary whose sole or principal business was financial intermediary business;
- (b) the debt to which the factoring income relates was acquired from, or disposed of to, another entity where either of the following conditions are satisfied at the time of the acquisition or disposal:
 - (i) the entity was:
 - (A) an associate of the company; or
 - (B) a Part X Australian resident;
 - (ii) the entity was not a Part X Australian resident, but the acquisition or disposal was in connection with a business carried on by the entity at or through a permanent establishment of the entity in Australia.

“Subdivision G—Substantiation Requirements

Active income test—substantiation requirements for company

“451. (1) The substantiation requirements for a company in relation to a statutory accounting period are as follows:

- (a) the company must keep (in Australia or elsewhere) such accounting records (in this section called the ‘**general accounting records**’) as correctly record and explain the matters, transactions, acts and operations that are relevant to the preparation of the recognised accounts of the company for the statutory accounting period;
- (b) the general accounting records must be so kept as to enable the recognised accounts of the company for the statutory accounting period to be prepared;
- (c) the company must retain, for the retention period in relation to the statutory accounting period:
 - (i) the recognised accounts of the company for the statutory accounting period; and
 - (ii) the general accounting records of the company for the statutory accounting period;
- (d) the company must comply with a request made in a notice given to it under subsection (2) in relation to the statutory accounting period.

“(2) An entity that is an attributable taxpayer in relation to a company, being a CFC, as at the end of a statutory accounting period

of the company may, by notice in writing served on the company (in this section called the ‘taxpayer’s notice’), request the company:

- (a) to give to the taxpayer, within the period and in the manner specified in the taxpayer’s notice, copies of such of the following documents as are specified in the notice:
 - (i) the recognised accounts of the company for the statutory accounting period;
 - (ii) the general accounting records of the company for the statutory accounting period; or
- (b) to prepare a document containing particulars of the basis of the calculation of the tainted income ratio of the company for the statutory accounting period and to give to the taxpayer, within the period and in the manner specified in the taxpayer’s notice, a copy of that document; or
- (c) if the company was a partner in a partnership at any time during the statutory accounting period:
 - (i) to obtain from the partnership, in accordance with a request made in a notice given to the partnership by the company under subsection 452 (2), copies of specified documents; and
 - (ii) to give those copies to the taxpayer, within the period and in the manner specified in the taxpayer’s notice.

“(3) The period specified in the taxpayer’s notice must end:

- (a) later than 60 days after the date of service of the taxpayer’s notice; and
- (b) before the end of the retention period in relation to the statutory accounting period.

“(4) Upon written application made by the taxpayer within the period specified in the taxpayer’s notice, the Commissioner may, by notice in writing served on the taxpayer, extend the period specified in the taxpayer’s notice.

“(5) Where:

- (a) an application under subsection (4) is made before the end of the period specified in the taxpayer’s notice; and
- (b) at the end of the period, the Commissioner has not notified the taxpayer of the Commissioner’s decision on the application;

the following provisions have effect:

- (c) if the Commissioner’s decision is not notified to the taxpayer before the end of the retention period in relation to the statutory accounting period concerned—the Commissioner is taken to have extended the period under subsection (4) to the end of the retention period;
- (d) if the Commissioner’s decision is notified to the taxpayer before the end of the retention period in relation to the statutory

accounting period concerned—the Commissioner is taken to have extended the period under subsection (4) to the end of the day (in this subsection called the ‘**decision day**’) on which the Commissioner’s decision is notified to the taxpayer;

- (e) if the Commissioner decides to extend the period—subject to subsection (6), the extended period must end after the decision day.

“(6) The period as extended under subsection (4) must end before the end of the retention period in relation to the statutory accounting period.

“(7) A reference in this section to the period specified in the taxpayer’s notice is a reference to the period as extended under subsection (4).

“(8) A refusal or failure to comply with the taxpayer’s notice is not an offence.

“(9) Subsection 262A (4) does not apply to records kept or obtained under or for the purposes of this section.

Active income test—substantiation requirements for partnership

“452. (1) The substantiation requirements for a partnership in relation to a statutory accounting period are as follows:

- (a) the partnership must keep (in Australia or elsewhere) such accounting records (in this section called the ‘**general accounting records**’) as correctly record and explain the matters, transactions, acts and operations that are relevant to the preparation of the recognised accounts of the partnership for the statutory accounting period;
- (b) the general accounting records must be so kept as to enable the recognised accounts of the partnership for the statutory accounting period to be prepared;
- (c) the partnership must retain, for the retention period in relation to the statutory accounting period:
 - (i) the recognised accounts of the partnership for the statutory accounting period; and
 - (ii) the general accounting records of the partnership for the statutory accounting period;
- (d) the partnership must comply with a request made in a notice given to it under subsection (2) in relation to the statutory accounting period.

“(2) A company that is a CFC at the end of a statutory accounting period of the company may, by notice in writing served on a partnership in which the company was a partner at any time during the statutory accounting period, request the partnership:

- (a) to give to the company, within the period and in the manner specified in the notice, copies of such of the following documents as are specified in the notice:
 - (i) the recognised accounts of the partnership for the statutory accounting period;
 - (ii) the general accounting records of the partnership for the statutory accounting period; or
- (b) to prepare a document containing particulars of the basis of the calculation of:
 - (i) the notional gross tainted turnover of the partnership for the statutory accounting period; and
 - (ii) the notional gross turnover of the partnership for the statutory accounting period;and to give to the company, within the period and in the manner specified in the notice, a copy of that document.

“(3) The period specified in the notice must end:

- (a) later than 30 days after the date of service of the notice; and
- (b) before the end of the retention period in relation to the statutory accounting period.

“(4) Upon written application made by the company within the period specified in the notice, the Commissioner may, by notice in writing served on the company, extend the period specified in the notice.

“(5) Where:

- (a) an application under subsection (4) is made before the end of the period specified in the notice; and
- (b) at the end of the period, the Commissioner has not notified the company of the Commissioner’s decision on the application;

the following provisions have effect:

- (c) if the Commissioner’s decision is not notified to the company before the end of the retention period in relation to the statutory accounting period concerned—the Commissioner is taken to have extended the period under subsection (4) to the end of the retention period;
- (d) if the Commissioner’s decision is notified to the company before the end of the retention period in relation to the statutory accounting period concerned—the Commissioner is taken to have extended the period under subsection (4) to the end of the day (in this subsection called the ‘**decision day**’) on which the Commissioner’s decision is notified to the company;
- (e) if the Commissioner decides to extend the period—subject to subsection (6), the extended period must end after the decision day.

“(6) The period as extended under subsection (4) must end before the end of the retention period in relation to the statutory accounting period.

“(7) A reference in this section to the period specified in the notice is a reference to the period as extended under subsection (4).

“(8) A refusal or failure to comply with the notice is not an offence.

“(9) Subsection 262A (4) does not apply to records kept or obtained under or for the purposes of this section.

Active income test—substantiation requirements for attributable taxpayer

“453. (1) Where:

(a) the Commissioner has reason to believe that:

- (i) a taxpayer is an attributable taxpayer in relation to a company, being a CFC, at the end of a statutory accounting period of the CFC; and
- (ii) the application of a provision of this Division to the company may be relevant to the assessment of the taxpayer; and

(b) any of the following subparagraphs applies:

- (i) the taxpayer has claimed (whether in a return of income or otherwise) that the company has passed the active income test in relation to the statutory accounting period;
- (ii) the taxpayer’s return of income of any year of income has been prepared on the basis that the company has passed the active income test in relation to the statutory accounting period;
- (iii) the Commissioner has reason to believe that the company has passed the active income test in relation to the statutory accounting period;

the Commissioner may, by notice in writing served on the taxpayer (in this section called the ‘**Commissioner’s notice**’), request the taxpayer:

- (c) to obtain from the company, in accordance with a request made in a notice given to the company under subsection 451 (2), copies of such documents as are specified in the Commissioner’s notice; and
- (d) if any of those copies are not in the English language—to make translations of those copies; and
- (e) to produce to the Commissioner, within the period and in the manner specified in the Commissioner’s notice:
 - (i) in all cases—those copies; and
 - (ii) if paragraph (d) applies—those translations.

- “(2) The period specified in the Commissioner’s notice must end:
- (a) later than 90 days after the date of service of the notice; and
 - (b) before the end of the retention period in relation to the statutory accounting period.

“(3) Upon written application made by the taxpayer within the period specified in the Commissioner’s notice, the Commissioner may, by notice in writing served on the taxpayer, extend the period specified in the Commissioner’s notice.

“(4) Where:

- (a) an application under subsection (3) is made before the end of the period specified in the Commissioner’s notice; and
- (b) at the end of the period, the Commissioner has not notified the taxpayer of the Commissioner’s decision on the application;

the following provisions have effect:

- (c) if the Commissioner’s decision is not notified to the taxpayer before the end of the retention period in relation to the statutory accounting period concerned—the Commissioner is taken to have extended the period under subsection (3) to the end of the retention period;
- (d) if the Commissioner’s decision is notified to the taxpayer before the end of the retention period in relation to the statutory accounting period concerned—the Commissioner is taken to have extended the period under subsection (3) to the end of the day (in this subsection called the ‘**decision day**’) on which the Commissioner’s decision is notified to the taxpayer;
- (e) if the Commissioner decides to extend the period—subject to subsection (5), the extended period must end after the decision day.

“(5) The period as extended under subsection (3) must end before the end of the retention period in relation to the statutory accounting period.

“(6) A reference in this section to the period specified in the Commissioner’s notice is a reference to the period as extended under subsection (3).

“(7) A refusal or failure to comply with the notice is not an offence.

“(8) If the taxpayer refuses or fails to comply with the notice, then, for the purposes of the application of this Part (other than this Division) to the taxpayer, the company is taken not to have passed the active income test in relation to the statutory accounting period concerned.

Assessment on assumption—retention of accounts etc. and compliance with information notices

“454. (1) Where:

- (a) a statutory accounting period of a company has ended; and

- (b) the retention period in relation to the statutory accounting period has not ended;

an assessment may be made of a taxpayer on the assumption that, after the assessment is made, the following requirements will be complied with in relation to the statutory accounting period:

- (c) the requirements set out in paragraphs 451 (1) (c) and (d) that are applicable to the company;
- (d) the requirements set out in paragraphs 452 (1) (c) and (d) that are applicable to a partnership in which the company was a partner at any time during the statutory accounting period.

“(2) Where:

- (a) the assessment is made; and
- (b) after the making of the assessment, the Commissioner becomes aware that the requirements were not complied with in relation to the statutory accounting period;

then, in spite of anything in section 170, the Commissioner may amend the assessment at any time for the purpose of ensuring that the assessment is made as if subsection (1) of this section were disregarded.

Amendment of assessments

“455. Where:

- (a) an assessment has been made in relation to a year of income; and
- (b) a provision of this Subdivision that is relevant to the assessment is dependent on a circumstance that occurs or may occur after the end of the year of income;

section 170 does not prevent the amendment of the assessment at any time for the purpose of giving effect to this Act in relation to the occurrence of that circumstance after the end of the year of income.

“Division 9—Attribution of Attributable Income and Other Amounts

Assessability in respect of CFC’s attributable income

“456. (1) Subject to subsection (2), where a CFC has attributable income for a statutory accounting period in respect of an attributable taxpayer, the taxpayer’s attribution percentage of the attributable income is included in the assessable income of the taxpayer of the year of income in which the end of the statutory accounting period occurs.

“(2) Where section 457 applies in relation to the attributable taxpayer in relation to one or more changes of residence by the CFC during the statutory accounting period, then only so much of the attributable income of the CFC as relates to:

- (a) where the CFC is a resident of an unlisted country at the end of the period:

- (i) any part of the period when the CFC was a resident of a listed country; or
 - (ii) the part of the period, since the change of residence or last change of residence, as the case requires, when the CFC was a resident of the unlisted country; or
- (b) where the CFC is a resident of a listed country at the end of the period—any part of the period when the CFC was a resident of the listed country or any other listed country;
- is to be taken into account under subsection (1).

Assessability where CFC changes residence from unlisted country to listed country or to Australia

“457. (1) Where at any time (in this section called the ‘**residence-change time**’) a company that:

- (a) is a CFC; and
- (b) has an attributable taxpayer;

ceases to be resident in an unlisted country and becomes:

- (c) a resident of a listed country; or
- (d) a Part X Australian resident;

then the attributable taxpayer’s assessable income of the year of income in which the residence-change time occurs includes the amount calculated under subsection (2).

“(2) The amount is calculated using the formula:

(Attribution percent × Adjusted distributable profits) – Attribution surplus
where:

Attribution percent means the attributable taxpayer’s attribution percentage, at the residence-change time, in relation to the CFC;

Adjusted distributable profits means:

- (a) where the application of subsection (1) is the first or only application of the subsection in relation to the CFC and the attributable taxpayer:

- (i) if paragraph (1) (c) applies—the amount that would be the CFC’s distributable profits at the residence-change time if:

- (A) all the CFC’s assets were disposed of at that time for a consideration equal to their market value; and

- (B) exempting profits of the CFC in relation to the attributable taxpayer were not taken into account; or

- (ii) if paragraph (1) (d) applies—the amount that would be the CFC’s distributable profits at the residence-change time if exempting profits of the CFC in relation to the attributable taxpayer were not taken into account; and

(b) in any other case:

- (i) if paragraph (1) (c) applies—so much of the amount that would be the CFC's distributable profits at the residence-change time on the assumptions in subparagraph (a) (i) of this subsection as is attributable to the period since the residence-change time referred to in the previous application of subsection (1) in relation to the CFC and the attributable taxpayer; or
- (ii) if paragraph (1) (d) applies—so much of the amount that would be the CFC's distributable profits at the residence-change time on the assumption in subparagraph (a) (ii) of this subsection as is attributable to the period since the residence-change time referred to in the previous application of subsection (1) in relation to the CFC and the attributable taxpayer;

Attribution surplus means:

- (c) where the application of subsection (1) is the first or only application of the subsection in relation to the CFC and the attributable taxpayer—the amount of any attribution surplus for the CFC in relation to the attributable taxpayer immediately before the residence-change time; and
- (d) in any other case—so much of any attribution surplus, for the CFC in relation to the attributable taxpayer immediately before the residence-change time, as has not been taken into account in any previous application of subsection (1).

Assessability in respect of certain dividends paid by a CFC

“458. (1) Subject to subsection (2), where:

- (a) a CFC that is a resident of an unlisted country pays a non-portfolio dividend to another CFC; and
- (b) when the dividend is paid, a taxpayer is an attributable taxpayer in relation to both CFCs;

the assessable income of the taxpayer of the year of income in which the payment is made includes an amount calculated using the formula:

$$AP \times (D - GD - EPP - T)$$

where:

AP [Attribution Percentage] means the taxpayer's attribution percentage for the CFC receiving the dividend;

D [Dividend] means the amount of the dividend;

GD [Grossed-up Debit] means the grossed-up amount of any attribution debit, that arose as a result of the payment, in relation to the taxpayer for the CFC paying the dividend;

EPP [Exempting Profits Percentage] means:

- (c) where the taxpayer and both CFCs are members of a non-portfolio company group when the dividend is paid—the

exempting profits percentage, in relation to the taxpayer, of the dividend; and

(d) in any other case—nil;

T [Tax] means any foreign tax paid by deduction from the dividend by or on behalf of the CFC receiving the dividend, multiplied by the percentage of the dividend represented by the formula component **D – GD – EPP**.

“(2) Subsection (1) does not apply where:

- (a) the dividend is taxed in a listed country at the country’s normal company tax rate; or
- (b) the CFC receiving the dividend is a resident of an unlisted country, unless the payment of the dividend arose out of, or was made in the course of, a scheme (within the meaning of section 177A) that:
 - (i) was by way of or in the nature of dividend stripping; or
 - (ii) had substantially the effect of a scheme (within the meaning of that section) by way of or in the nature of dividend stripping.

“(3) Subject to subsection (6), where:

- (a) a CFC that is a resident of an unlisted country pays a dividend to a CFT; and
- (b) the dividend would be a non-portfolio dividend if the CFT were a company and the shares in respect of which the dividend was paid were held by the trustee as beneficial owner; and
- (c) when the dividend is paid, a taxpayer is an attributable taxpayer in relation to the CFC and the CFT;

the assessable income of the taxpayer of the year of income in which the payment is made includes an amount calculated using the formula:

$$AP \times (D - GD - T)$$

where:

AP [Attribution Percentage] means the taxpayer’s attribution percentage for the CFT;

D [Dividend] means the amount of the dividend;

GD [Grossed-up Debit] means the grossed-up amount of any attribution debit, that arose as a result of the payment, in relation to the taxpayer for the CFC;

T [Tax] means any foreign tax paid by deduction from the dividend by or on behalf of the CFT, multiplied by the percentage of the dividend represented by the formula component **D – GD**.

“(4) Subject to subsections (6) and (7), where:

- (a) a CFC (in this subsection called the ‘**paying entity**’) that is a resident of an unlisted country pays a dividend to a partnership; and

- (b) when the dividend is paid, a CFC or a CFT (which CFC or CFT is in this subsection called the ‘ultimate recipient’) has either or both of the following:
 - (i) a direct interest in the profits of the partnership by virtue of being a partner in the partnership;
 - (ii) an indirect interest in the profits of the partnership by virtue of the holding or successive holding of interests in profits of interposed Australian partnerships or present entitlements to shares of the income of interposed Australian trusts (or any combination thereof); and
- (c) if the partnership were a company, the dividend would be a non-portfolio dividend; and
- (d) when the dividend is paid, a taxpayer is an attributable taxpayer in relation to the paying entity and the ultimate recipient;

the assessable income of the taxpayer of the year of income in which the payment is made includes an amount calculated using the formula:

$$AP \times IP \times (D - GD - T)$$

where:

AP [Attribution Percentage] means the taxpayer’s attribution percentage for the ultimate recipient;

IP [Interest in Partnership] means the percentage of the total interests in the profits of the partnership represented by the sum of the direct and indirect interests of the ultimate recipient;

D [Dividend] means the amount of the dividend;

GD [Grossed-up Debit] means the grossed-up amount of any attribution debit, that arose as a result of the payment, in relation to the taxpayer for the paying entity;

T [Tax] means any foreign tax paid by deduction from the dividend by or on behalf of the partnership, multiplied by the percentage of the dividend represented by the formula component **D – GD**.

“(5) Subject to subsections (6) and (7), where:

- (a) a CFC (in this subsection called the ‘paying entity’) that is a resident of an unlisted country pays a dividend to an Australian trust; and
- (b) when the dividend is paid, a CFC or a CFT (which CFC or CFT is in this subsection called the ‘ultimate recipient’) has either or both of the following:
 - (i) a direct interest in the income of the Australian trust by virtue of being presently entitled to a share of that income;
 - (ii) an indirect interest in the income of the Australian trust by virtue of the holding or successive holding of interests in profits of interposed Australian partnerships or present entitlements to shares of the income of interposed Australian trusts (or any combination thereof); and

(c) the dividend would be a non-portfolio dividend if the Australian trust were a company and the shares in respect of which the dividend was paid were held by the trustee as beneficial owner; and

(d) when the dividend is paid, a taxpayer is an attributable taxpayer in relation to the paying entity and the ultimate recipient;

the assessable income of the taxpayer of the year of income in which the payment is made includes an amount calculated using the formula:

$$AP \times IT \times (D - GD - T)$$

where:

AP [Attribution Percentage] means the taxpayer's attribution percentage for the ultimate recipient;

IT [Interest in Trust] means the percentage of the income of the Australian trust represented by the sum of the direct and indirect interests of the ultimate recipient;

D [Dividend] means the amount of the dividend;

GD [Grossed-up Debit] means the grossed-up amount of any attribution debit, that arose as a result of the payment, in relation to the taxpayer for the paying entity;

T [Tax] means any foreign tax paid by deduction from the dividend by or on behalf of the Australian trust, multiplied by the percentage of the dividend represented by the formula component **D - GD**.

“(6) Subsection (3), (4) or (5) does not apply where:

(a) in a subsection (3) case—the dividend; or

(b) in a subsection (4) or (5) case—any amount that would, as a result of the payment of the dividend, be included in the tax base of the CFC or CFT, or of any partnership or trust, referred to in paragraph (4) (b) or (5) (b), in respect of the holding of any interest or present entitlement referred to in that paragraph;

is taxed in a listed country at the country's normal company tax rate.

“(7) Subsection (4) or (5) does not apply where:

(a) the ultimate recipient referred to in that subsection is a CFC; and

(b) when the dividend referred to in that subsection is paid, that CFC and the paying entity referred to in that subsection are each resident in an unlisted country;

unless the payment of the dividend arose out of, or was made in the course of, a scheme (within the meaning of section 177A) that:

(c) was by way of or in the nature of dividend stripping; or

(d) had substantially the effect of a scheme (within the meaning of that section) by way of or in the nature of dividend stripping.

“(8) A reference in subsection (4) or (5) to income of an Australian trust, in relation to a year of income, does not include a reference to income of a trust that is, in relation to the year of income:

- (a) a corporate unit trust within the meaning of Division 6B of Part III; or
- (b) a public trading trust within the meaning of Division 6C of that Part; or
- (c) an eligible entity within the meaning of Part IX.

Assessability in respect of certain dividends deemed to be paid by a CFC under section 47A

“459. (1) Subject to subsection (4), where:

- (a) under section 47A, the whole or a part of a distribution payment in relation to a distribution time for a distribution benefit is taken to be a dividend paid at the distribution time by the first company to the recipient of the benefit; and
- (b) section 458 does not apply to the payment of the dividend; and
- (c) at the distribution time, the recipient is:
 - (i) a CFC that is a resident of a listed country; or
 - (ii) a CFT; and
- (d) at the distribution time, the taxpayer is an attributable taxpayer in relation to the first company and the recipient of the dividend;

the assessable income of the taxpayer of the year of income in which the distribution time occurred includes an amount calculated using the formula:

$$AP \times D$$

where:

AP [Attribution Percentage] means the taxpayer's attribution percentage for the CFC or CFT receiving the dividend;

D [Dividend] means the amount of the dividend.

“(2) Subject to subsection (4), where:

- (a) under section 47A, the whole or a part of a distribution payment in relation to a distribution time for a distribution benefit is taken to be a dividend paid at the distribution time by the first company to the recipient of the benefit; and
- (b) section 458 does not apply to the payment of the dividend; and
- (c) the recipient is a partnership; and
- (d) a CFC that is a resident of a listed country or a CFT (which CFC or CFT is in this subsection called the ‘ultimate recipient’) has either or both of the following:
 - (i) a direct interest in the profits of the partnership by virtue of being a partner in the partnership;
 - (ii) an indirect interest in the profits of the partnership by virtue of the holding or successive holding of interests in profits of interposed Australian partnerships or present entitlements to shares in the income of interposed Australian trusts (or any combination thereof); and

(e) at the distribution time, a taxpayer is an attributable taxpayer in relation to the first company and the ultimate recipient;
the assessable income of the taxpayer of the year of income in which the distribution time occurred includes an amount calculated using the formula:

$$AP \times IP \times D$$

where:

AP [Attribution Percentage] means the taxpayer's attribution percentage for the ultimate recipient;

IP [Interest in Partnership] means the percentage of the total interests in the profits of the partnership represented by the sum of the direct and indirect interests of the ultimate recipient;

D [Dividend] means the amount of the dividend.

“(3) Subject to subsection (4), where:

(a) under section 47A, the whole or a part of a distribution payment in relation to a distribution time for a distribution benefit is taken to be a dividend paid at the distribution time by the first company to the recipient of the benefit; and

(b) section 458 does not apply to the payment of the dividend; and

(c) the recipient is an Australian trust; and

(d) a CFC that is a resident of a listed country or a CFT (which CFC or CFT is in this subsection called the ‘ultimate recipient’) has either or both of the following:

(i) a direct interest in the income of the Australian trust by virtue of being presently entitled to a share of that income;

(ii) an indirect interest in the income of the Australian trust by virtue of the holding or successive holding of interests in profits of interposed Australian partnerships or present entitlements to shares of the income of interposed Australian trusts (or any combination thereof); and

(e) at the distribution time, a taxpayer is an attributable taxpayer in relation to the first company and the ultimate recipient;

the assessable income of the taxpayer of the year of income in which the distribution time occurred includes an amount calculated using the formula:

$$AP \times IT \times D$$

where:

AP [Attribution Percentage] means the taxpayer's attribution percentage for the ultimate recipient;

IT [Interest in Trust] means the percentage of the income of the Australian trust represented by the sum of the direct and indirect interests of the ultimate recipient;

D [Dividend] means the amount of the dividend.

“(4) Subsection (1), (2) or (3) does not apply where the dividend referred to in that subsection is taxed in a listed country at the country’s normal company tax rate.

“(5) In this section:

‘distribution benefit’ has the same meaning as in section 47A;

‘distribution payment’ has the same meaning as in section 47A;

‘distribution time’ has the same meaning as in section 47A;

‘first company’ has the same meaning as in section 47A.

Only resident partners, beneficiaries etc. liable to be assessed as a result of attribution

“460. (1) This section applies where an amount is included under section 456, 457, 458 or 459 in the assessable income of an Australian partnership or an Australian trust of a year of income, except where the Australian trust is, in relation to the year of income:

- (a) a corporate unit trust within the meaning of Division 6B of Part III; or
- (b) a public trading trust within the meaning of Division 6C of that Part; or
- (c) an eligible entity within the meaning of Part IX.

“(2) Where:

- (a) as a result of the amount being so included, there is, apart from this subsection, a tax detriment for:
 - (i) a partner in the Australian partnership; or
 - (ii) a partner in another partnership (in this subsection called the **‘ultimate partnership’**), where the tax detriment occurred because there were one or more partnerships or trusts (but not companies) interposed between the partner and the Australian partnership or the Australian trust; and
- (b) the partner is not, in respect of his or her interest in the net income or partnership loss of the Australian partnership or the ultimate partnership, in the capacity of trustee of a trust; and
- (c) the tax detriment would be reduced by an amount if it were recalculated on the assumption that section 92 applied only to so much of the partner’s interest in the net income or partnership loss of the Australian partnership or the ultimate partnership as is attributable to periods when the partner was a Part X Australian resident;

then, for the purposes of this Act, the tax detriment is taken to be reduced by that amount.

“(3) Where:

- (a) as a result of the amount being included as mentioned in subsection (1), there is, apart from this subsection, a tax detriment for:
 - (i) a beneficiary in the Australian trust; or
 - (ii) a beneficiary in another trust (in this subsection called the ‘**ultimate trust**’), where the tax detriment occurred because there were one or more partnerships or trusts (but not companies) interposed between the beneficiary and the Australian partnership or the Australian trust; and
- (b) the beneficiary is not a partnership and is not, in respect of his or her share of the net income of the Australian trust or the ultimate trust, in the capacity of trustee of another trust; and
- (c) the tax detriment would be reduced by an amount if it were recalculated on the assumption that sections 97, 98A and 100 applied only to so much of the beneficiary’s share of the net income of the Australian trust or the ultimate trust as is attributable to periods when the beneficiary was a Part X Australian resident;

then, for the purposes of this Act, the tax detriment is taken to be reduced by that amount.

“(4) Where:

- (a) as a result of the amount being included as mentioned in subsection (1), there is, apart from this subsection, a tax detriment for:
 - (i) the trustee of the Australian trust; or
 - (ii) the trustee of another trust (in this subsection called the ‘**ultimate trust**’), where the tax detriment occurred because there were one or more partnerships or trusts (but not companies) interposed between the trustee and the Australian partnership or the Australian trust; and
- (b) the tax detriment would be reduced by an amount if it were recalculated on the assumption that:
 - (i) section 98 applied only to so much of a beneficiary’s share of the net income of the Australian trust or the ultimate trust as is attributable to periods when the beneficiary was a Part X Australian resident; and
 - (ii) sections 99 and 99A applied only to the Australian trust or the ultimate trust if it were a resident trust estate within the meaning of Division 6 of Part III;

then, for the purposes of this Act, the tax detriment is taken to be reduced by that amount.

“(5) Where the partner referred to in paragraph (2)(a), the beneficiary referred to in paragraph (3)(a) or any beneficiary referred to in subparagraph (4)(b)(i) is a CFC, then subsection (2), (3) or (4),

as the case requires, does not apply in relation to the partner or beneficiary.

“Division 10—Post-attribution Asset Disposals

Reduction of disposal consideration where attributed income not distributed

“461. (1) Where:

- (a) it is necessary, for the purposes of applying a provision of this Act in the assessment of a taxpayer for a year of income, to take into account the amount of consideration received, entitled to be received or taken to have been received, by the taxpayer in respect of the disposal of an asset, being an interest in an attribution account entity (in this section called the ‘**disposal entity**’); and
- (b) immediately before the disposal takes place, either or both of the following conditions are satisfied:
 - (i) there is an attribution surplus for the disposal entity in relation to the taxpayer;
 - (ii) there is an attribution surplus for one or more other attribution account entities in relation to the taxpayer, where each such entity is one in which the taxpayer has an indirect attribution account interest held through the disposal entity;

then, for the purposes of this Act:

- (c) the consideration that, apart from this section, would be taken into account under the provision referred to in paragraph (a) in respect of the disposal is, subject to subsection (3), taken to be reduced by the amount of the attribution surplus, or the sum of the attribution surpluses, as the case requires; and
- (d) an attribution debit is taken to arise at the time of the disposal under section 372, in relation to the taxpayer, for each attribution account entity (in this section called a ‘**surplus entity**’) in relation to which there is an attribution surplus to which paragraph (1) (c) applies; and
- (e) the amount of the attribution debit is equal to so much of the surplus as is taken into account under paragraph (1) (c); and
- (f) there is no grossed-up amount in relation to the attribution debit under section 373; and
- (g) section 376 has effect as if an attribution account payment were made by the surplus entity, at the time of the disposal, that required the attribution debit under paragraph (1) (d) of this section to arise.

“(2) For the purposes of this section, where the provision referred to in paragraph (1) (a) is in Part IIIA, references in this section to the

disposal of an asset are references to the disposal of an asset within the meaning of that Part.

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

- (a) where the disposal of the asset causes the taxpayer’s attribution account percentage for a surplus entity to be reduced by a proportion, then only that proportion of the attribution surplus for the entity is, subject to this subsection, to be taken into account under that paragraph; and
- (b) where there is only one attribution surplus referred to in that paragraph and (after any application of paragraph (a) of this subsection) it exceeds the consideration in respect of the disposal, then only so much of the surplus as does not exceed the consideration is to be taken into account under paragraph (1) (c); and
- (c) where there are 2 or more attribution surpluses referred to in paragraph (1) (c) and (after any application of paragraph (a) of this subsection) their sum exceeds the consideration in respect of the disposal, then:
 - (i) if the taxpayer specifies, in an election for the purposes of this paragraph, a part of each surplus (after any application of paragraph (a)) such that the sum of the amounts specified equals the consideration—only the specified part of each surplus is to be taken into account under paragraph (1) (c); or
 - (ii) if subparagraph (i) does not apply—only a proportion of each surplus (after any application of paragraph (a)) is to be taken into account under paragraph (1) (c), being the proportion calculated using the formula:

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

where:

Consideration means the amount of the consideration;

Total surplus means the sum of the attribution surpluses (after any application of paragraph (a)).

“(4) An election for the purposes of paragraph (3) (c) must be made in the taxpayer’s return of income for the year of income referred to in paragraph (1) (a) or within such further period after the lodgment of the return as the Commissioner allows.

“(5) In this section:

‘interest’, in relation to an attribution account entity, means:

- (a) if the entity is a company—an interest in shares in the company, or an entitlement to acquire such an interest; or

- (b) if the entity is a partnership—an interest of a partner in the profits or property of the partnership, or an entitlement of a partner to acquire such an interest; or
- (c) if the entity is a trust—an entitlement of a beneficiary to a share of the income or corpus of the trust, or an entitlement of a beneficiary to acquire such an entitlement.

“Division 11—Keeping of Records

Keeping of records—section 456

“462. Subject to this Division, where:

- (a) a person is an attributable taxpayer in relation to a CFC at the end of a statutory accounting period of the CFC; and
- (b) the CFC has attributable income for the statutory accounting period in respect of the person;

the person must keep records (in Australia or elsewhere) containing particulars of:

- (c) the acts, transactions and other circumstances that resulted in the person being an attributable taxpayer in relation to the CFC at that time; and
- (d) the basis of the calculation of:
 - (i) the direct attribution interest; and
 - (ii) the aggregate of the indirect attribution interests; in the CFC held by the person at that time; and
- (e) the basis of the calculation of the attribution percentage of the person in relation to the CFC at that time; and
- (f) the basis of the calculation of the amount (including a nil amount) included in the assessable income of the person under section 456 in relation to the CFC’s attributable income for the statutory accounting period in respect of the person.

Keeping of records—section 458

“463. (1) Subject to this Division, where:

- (a) subsection 458 (1) applies to the payment of a dividend by a CFC to another CFC (which other CFC is in this subsection called the ‘recipient’); and
- (b) at the time of the payment of the dividend, a person is an attributable taxpayer in relation to both CFCs;

the person must keep records (in Australia or elsewhere) containing particulars of:

- (c) the acts, transactions and other circumstances that resulted in the person being an attributable taxpayer in relation to each CFC at that time; and
- (d) the basis of the calculation of:
 - (i) the direct attribution interest; and

- (ii) the aggregate of the indirect attribution interests;
in the recipient held by the person at that time; and
- (e) the basis of the calculation of the attribution percentage of the person in relation to the recipient at that time; and
- (f) the basis of the calculation of the amount (including a nil amount) included in the assessable income of the person under subsection 458 (1) in relation to the payment of the dividend.

“(2) Subject to this Division, where:

- (a) subsection 458 (3) applies to the payment of a dividend by a CFC to a CFT; and
- (b) at the time of the payment of the dividend, a person is an attributable taxpayer in relation to the CFC and the CFT;

the person must keep records (in Australia or elsewhere) containing particulars of:

- (c) the acts, transactions and other circumstances that resulted in the person being an attributable taxpayer in relation to the CFC and the CFT at that time; and
- (d) the basis of the calculation of:
 - (i) the direct attribution interest; and
 - (ii) the aggregate of the indirect attribution interests;
in the CFT held by the person at that time; and
- (e) the basis of the calculation of the attribution percentage of the person in relation to the CFT at that time; and
- (f) the basis of the calculation of the amount (including a nil amount) included in the assessable income of the person under subsection 458 (3) in relation to the payment of the dividend.

“(3) Subject to this Division, where:

- (a) subsection 458 (4) applies to the payment of a dividend by a CFC to a partnership; and
- (b) at the time of the payment of the dividend, a person is an attributable taxpayer in relation to the CFC and the ultimate recipient referred to in that subsection;

the person must keep records (in Australia or elsewhere) containing particulars of:

- (c) the acts, transactions and other circumstances that resulted in the person being an attributable taxpayer in relation to the CFC and the ultimate recipient at that time; and
- (d) the basis of the calculation of:
 - (i) the direct attribution interest; and
 - (ii) the aggregate of the indirect attribution interests;
in the ultimate recipient held by the person at that time; and
- (e) the basis of the calculation of the attribution percentage of the person in relation to the ultimate recipient at that time; and

- (f) the basis of the calculation of the amount (including a nil amount) included in the assessable income of the person under subsection 458 (4) in relation to the payment of the dividend.

“(4) Subject to this Division, where:

- (a) subsection 458 (5) applies to the payment of a dividend by a CFC to an Australian trust; and
- (b) at the time of the payment of the dividend, a person is an attributable taxpayer in relation to the CFC and the ultimate recipient referred to in that subsection;

the person must keep records (in Australia or elsewhere) containing particulars of:

- (c) the acts, transactions and other circumstances that resulted in the person being an attributable taxpayer in relation to the CFC and the ultimate recipient at that time; and
- (d) the basis of the calculation of:
 - (i) the direct attribution interest; and
 - (ii) the aggregate of the indirect attribution interests; in the ultimate recipient held by the person at that time; and
- (e) the basis of the calculation of the attribution percentage of the person in relation to the ultimate recipient at that time; and
- (f) the basis of the calculation of the amount (including a nil amount) included in the assessable income of the person under subsection 458 (5) in relation to the payment of the dividend.

Keeping of records—section 459

“464. (1) Subject to this Division, where:

- (a) subsection 459 (1) applies to the payment of a dividend by a CFC (in this subsection called the ‘**payer**’) to another CFC or to a CFT (which other CFC or CFT is in this subsection called the ‘**recipient**’); and
- (b) at the time of the payment of the dividend, a person is an attributable taxpayer in relation to the payer and the recipient;

the person must keep records (in Australia or elsewhere) containing particulars of:

- (c) the acts, transactions and other circumstances that resulted in the person being an attributable taxpayer in relation to the payer and the recipient at that time; and
- (d) the basis of the calculation of:
 - (i) the direct attribution interest; and
 - (ii) the aggregate of the indirect attribution interests; in the recipient held by the person at that time; and
- (e) the basis of the calculation of the attribution percentage of the person in relation to the recipient at that time; and

- (f) the basis of the calculation of the amount (including a nil amount) included in the assessable income of the person under subsection 459 (1) in relation to the payment of the dividend.

“(2) Subject to this Division, where:

- (a) subsection 459 (2) applies to the payment of a dividend by a CFC to a partnership; and
- (b) at the time of the payment of the dividend, a person is an attributable taxpayer in relation to the CFC and the ultimate recipient referred to in that subsection;

the person must keep records (in Australia or elsewhere) containing particulars of:

- (c) the acts, transactions and other circumstances that resulted in the person being an attributable taxpayer in relation to the CFC and the ultimate recipient at that time; and
- (d) the basis of the calculation of:
 - (i) the direct attribution interest; and
 - (ii) the aggregate of the indirect attribution interests; in the ultimate recipient held by the person at that time; and
- (e) the basis of the calculation of the attribution percentage of the person in relation to the ultimate recipient at that time; and
- (f) the basis of the calculation of the amount (including a nil amount) included in the assessable income of the person under subsection 459 (2) in relation to the payment of the dividend.

“(3) Subject to this Division, where:

- (a) subsection 459 (3) applies to the payment of a dividend by a CFC to an Australian trust; and
- (b) at the time of the payment of the dividend, a person is an attributable taxpayer in relation to the CFC and the ultimate recipient referred to in that subsection;

the person must keep records (in Australia or elsewhere) containing particulars of:

- (c) the acts, transactions and other circumstances that resulted in the person being an attributable taxpayer in relation to the CFC and the ultimate recipient at that time; and
- (d) the basis of the calculation of:
 - (i) the direct attribution interest; and
 - (ii) the aggregate of the indirect attribution interests; in the ultimate recipient held by the person at that time; and
- (e) the basis of the calculation of the attribution percentage of the person in relation to the ultimate recipient at that time; and
- (f) the basis of the calculation of the amount (including a nil amount) included in the assessable income of the person under subsection 459 (3) in relation to the payment of the dividend.

Offence of failing to keep records

“465. A person who contravenes section 462, 463 or 464 is guilty of an offence punishable on conviction by a fine not exceeding \$3,000.

Manner in which records required to be kept

“466. A person who is required by this Division to keep records must:

- (a) keep the records in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and
- (b) keep the records so as to enable the person's liability under this Act to be readily ascertained.

Circumstances where records not required to be kept—reasonable excuse etc.

“467. This Division does not require a person to keep a record of information if:

- (a) the person did not know, and had no reasonable grounds to suspect, that section 462 or subsection 463 (1), (2), (3) or (4) or 464 (1), (2) or (3), as the case requires, was applicable to the person; or
- (b) the person did not know that, and made all reasonable efforts to ascertain whether, section 462 or subsection 463 (1), (2), (3) or (4) or 464 (1), (2) or (3), as the case requires, was applicable to the person; or
- (c) the person did not know, and made all reasonable efforts to obtain, the information.

Treatment of partnerships

“468. (1) Subject to subsections (2) and (3), the following provisions apply to a partnership as if the partnership were a person:

- (a) sections 462 to 467 (inclusive);
- (b) subsections 262A (4) and (5), in so far as those subsections apply to records kept under or for the purposes of this Division;
- (c) Part III of the *Taxation Administration Act 1953*, in so far as that Part of that Act relates to the provisions covered by paragraph (a) or (b) of this subsection.

“(2) Where, by virtue of subsection (1), an offence is taken to have been committed by a partnership, that offence is taken to have been committed by each of the partners.

“(3) In a prosecution of a person for an offence by virtue of subsection (2), it is a defence if the person proves that the person:

- (a) did not aid, abet, counsel or procure the act or omission by virtue of which the offence was taken to have been committed; and

- (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, an act or omission by virtue of which the offence is taken to have been committed.”.

Division 2—Application and Transitional

Interpretation

50. (1) In this Division:

“**amended Act**” means the Principal Act as amended by this Act;

“**Principal Act**” has the same meaning as in Division 1;

“**1990-91 income year**” means the year of income commencing on 1 July 1990.

(2) Expressions used in this Division that are also used in Part X of the amended Act have the same respective meanings as in that Part.

Application of amendments

51. (1) The amendments made by sections 7, 11 to 15 (inclusive) and 28 to 35 (inclusive) apply to assessments in respect of income of the 1990-91 income year and of all subsequent years of income.

(2) The amendment made by section 10 applies to assessments in respect of income of the 1990-91 income year and of all subsequent years of income, and that amendment is to be disregarded for the purpose of interpreting section 79D of the Principal Act in relation to any other assessment.

(3) The amendment made by paragraph 37 (a) applies to a company that becomes a resident, within the meaning of section 6 of the amended Act, on or after 1 July 1989.

(4) The amendment made by paragraph 37 (b) applies to a trust estate that becomes a resident trust estate on or after 29 June 1990.

(5) The amendment made by paragraph 37 (c) applies to a unit trust that becomes a resident unit trust on or after 29 June 1990.

(6) The definition of “exempting receipt” (in relation to a company that is a resident of an unlisted country) in section 377 of the amended Act applies to amounts derived by, or dividends paid to, the company during accounting periods of the company that end after 30 June 1990.

(7) The amendments made by sections 20 to 26 (inclusive) apply to assessments in respect of income of the 1990-91 income year and of all subsequent years of income.

(8) The definition of “exempting receipt” (in relation to a company that is a resident within the meaning of section 6 of the amended Act) in section 380 of the amended Act applies to dividends paid to the company during its 1990-91 income year or any subsequent year of income.

(9) Subdivision D of Division 7 of Part X of the amended Act does not apply to a statutory accounting period before that commencing on 1 July 1983.

(10) Subject to this Division, section 456 of the amended Act applies where the statutory accounting period of the CFC referred to in that section begins on or after 1 July 1990.

(11) Subject to this Division, section 457 of the amended Act applies where the residence-change time referred to in that section occurs during a statutory accounting period of the CFC that begins on or after 1 July 1990.

(12) Subject to this Division, sections 458 and 459 of the amended Act apply to dividends paid during the 1990-91 income year, or any subsequent year of income, of the taxpayer.

(13) Subject to this Division, section 462 of the amended Act applies where the statutory accounting period of the CFC referred to in that section begins on or after 1 July 1990.

Transitional—section 108 of the amended Act

52. (1) In addition to the effect that it has apart from this section, section 108 of the amended Act also has, and is taken to have had, the effect that it would have if:

(a) the following subsections were inserted before section (1):

“(1A) Subject to subsection (1B), if:

(a) a company:

(i) pays an amount to an associated person by way of an advance or loan; or

(ii) pays or credits an amount on behalf of, or for the individual benefit of, an associated person; and

(b) the payment or credit was made:

(i) after 30 June 1989 and before 4 June 1990; and

(ii) during a statutory accounting period of the company; and

(c) the company is a CFC at any time during the statutory accounting period; and

(d) the company is a resident of an unlisted country at any time during the statutory accounting period;

so much (if any) of the amount paid or credited as, in the opinion of the Commissioner, represents a distribution of profits is taken, for the purposes of this Act, to be a dividend paid by the company:

(e) to the associated person as a shareholder in the company; and

(f) out of profits derived by the company; and

(g) on the last day of the statutory accounting period.

“(1B) If:

(a) either of the following subparagraphs applies:

(i) by virtue of subsection (1A), the whole or a part of the amount paid or credited is included in the assessable income of a taxpayer of a year of income under section 44;

(ii) by virtue of subsection (1A), an amount is included in the assessable income of a taxpayer of a year of income under section 458 in respect of the amount paid or credited; and

(b) the taxpayer’s return of income for the year of income was not prepared on the basis that the amount paid or credited had the consequence specified in subsection (1A);

that subsection has effect in relation to the taxpayer and in relation to the amount paid or credited as if the reference in that subsection to the purposes of this Act were a reference to the purposes of this Act (other than Division 18, section 365 and Division 6 of Part X).”; and

(b) subsection (1) did not apply to a payment or credit to which subsection (1A) applies; and

(c) the reference in paragraph (2) (a) to subsection (1) included a reference to subsection (1A); and

(d) the following subsections were added at the end:

“(5) For the purposes of this section, the question whether a company is a resident of an unlisted country is to be determined in the same manner in which that question is determined for the purposes of Part X.

“(6) In this section:

‘CFC’ has the same meaning as in Part X;

‘statutory accounting period’ has the same meaning as in Part X.”.

(2) Where:

(a) because of subsection (1), a company is taken by section 108 of the amended Act to have paid a dividend; and

(b) section 458 of the amended Act does not apply to include an amount in the assessable income of a taxpayer of a year of income in respect of the dividend only because it is not a non-portfolio dividend;

then an amount equal to the amount that would have been included if the dividend had been a non-portfolio dividend is included in the assessable income of the taxpayer of the year of income under this section.

Transitional—section 160AFD of the amended Act

53. (1) Section 160AFD of the amended Act applies as if the only overall foreign loss in respect of each class of assessable foreign income in any of the 7 years of income before the 1990-91 income year were a loss of an amount calculated in accordance with this section.

(2) The amount of the overall foreign loss for each class for the year of income is calculated by:

(a) working out, by making the following assumptions:

- (i)** that section 160AFD of the Principal Act had not been repealed and replaced by this Act;
- (ii)** that, subject to subsection (3) of this section, references in that section to income of a class of a year of income derived from a foreign source did not include references to income that would have been exempt from tax if sections 23AH and 23AJ of the amended Act, and any other provision of the amended Act relevant to the operation of those sections, had been included in the Principal Act at all previous times;

what would have been, for the year of income, the overall foreign loss (if any) in respect of each class of income derived from a foreign source that would have been available to reduce foreign income of that class of the 1990-91 income year derived from that source; and

(b) treating:

- (i)** each overall foreign loss in respect of interest income or offshore banking income derived from a foreign source as an overall foreign loss in respect of assessable foreign income that is respectively interest income, or offshore banking income, within the meaning of section 160AFD of the amended Act; and
- (ii)** each overall foreign loss in respect of other income derived from a foreign source that consists of a business (other than one carried on at or through one or more permanent establishments), commercial or investment activity as an overall foreign loss in respect of assessable foreign income that is passive income within the meaning of section 160AFD of the amended Act; and
- (iii)** each overall foreign loss in respect of other income derived from any other foreign source as an overall foreign loss in respect of assessable foreign income that is not interest income, offshore banking income or passive income, within the meaning of section 160AFD of the amended Act; and

(c) adding together all of the amounts worked out under paragraph

(b) for each class of assessable foreign income for the year of income.

(3) Where the overall foreign loss in respect of a class of income for the year of income worked out under paragraph (2) (a) would be less if the assumption in subparagraph (2) (a) (ii) were not made, then the assumption is not to be made in working out that loss.

Transitional—section 319 of the amended Act

54. Where, before the end of 30 June 1991, a company makes an election under section 319 of the amended Act:

- (a) subsection 319 (4) and paragraph 319 (5) (b) of the amended Act do not apply to the company in relation to the election; and
- (b) the first statutory accounting period of the company using the new day specified in the election is the first period of 12 months finishing at the end of the new day, where the new day occurs after 30 June 1991; and
- (c) subject to any further application of section 319, later statutory accounting periods are the successive periods of 12 months finishing at the end of the new day; and
- (d) sections 456 and 462 of the amended Act apply only to the statutory accounting periods of the company referred to in paragraphs (b) and (c) of this section; and
- (e) section 457 of the amended Act applies only where the residence-change time referred to in that section occurs during a statutory accounting period of the company referred to in paragraph (b) or (c) of this section; and
- (f) for the purposes of any provision of Part X of the amended Act that requires reference to a statutory accounting period of the company before the first one using the new day:
 - (i) the part of the year beginning on 1 July 1990 and ending immediately before the first statutory accounting period using the new day is taken to be a statutory accounting period; and
 - (ii) earlier periods of 12 months are statutory accounting periods.

Transitional—section 458 of the amended Act

55. (1) In addition to its application apart from this section, section 458 of the amended Act also has the effect in relation to a taxpayer that it would have if:

- (a) subsection 458 (1) of the amended Act only applied to dividends paid to a CFC on or after 1 July 1989 and before the commencement of the 1990-91 income year of the taxpayer; and

- (b) it were an additional requirement of subsection 458 (1) of the amended Act that the CFC to which the dividend referred to in that subsection is paid must be a resident of a listed country when the dividend is paid; and
- (c) where the ultimate recipient referred to in subsection 458 (4) or (5) of the amended Act is a CFC:
 - (i) that subsection only applied to dividends paid on or after 1 July 1989 and before the commencement of the 1990-91 income year of the taxpayer; and
 - (ii) it were an additional requirement of that subsection that the CFC must be a resident of a listed country when the dividend referred to in that subsection is paid; and
- (d) where subsection 458 (3) of the amended Act applies or the ultimate recipient referred to in subsection 458 (4) or (5) is a CFT—that subsection only applied to dividends paid on or after 1 July 1989 and before the commencement of the 1990-91 year of income of the taxpayer; and
- (e) paragraph 458 (2) (b) and subsection 458 (7) of the amended Act were omitted; and
- (f) any amount that would, in respect of the payment of a dividend, be included in the assessable income of the taxpayer under section 458 of the amended Act, as it applies in accordance with the assumptions made in paragraphs (a) to (e) of this section, were required to be included in the assessable income of the 1990-91 income year of the taxpayer instead of in the year of income when the dividend is paid.

(2) Where, because of subsection (1), an amount is included in the taxpayer's assessable income under section 458 of the amended Act, then the attribution credit under section 371 of that Act in respect of the amount arises at the commencement of the 1990-91 income year of the taxpayer, rather than at the time referred to in paragraph 371 (5) (c) of that Act.

Transitional—section 459 of the amended Act

56. In addition to its application apart from this section, section 459 of the amended Act also has the effect in relation to a taxpayer that it would have if:

- (a) subsection 459 (1) of the amended Act only applied to dividends paid before the commencement of the 1990-91 income year of the taxpayer; and
- (b) where the ultimate recipient referred to in subsection 459 (2) or (3) of the amended Act is a CFC—that subsection only applied to dividends paid before the commencement of the 1990-91 income year of the taxpayer; and
- (c) any amount that would, in respect of the payment of a dividend, be included in the assessable income of the taxpayer under

section 459 of the amended Act, as it applies in accordance with the assumptions made in paragraphs (a) and (b) of this subsection, were required to be included in the assessable income of the 1990-91 income year of the taxpayer instead of in the year of income when the dividend is paid.

Transitional—CFT distributions

57. (1) In this section:

“eligible trust distribution” means any property of a trust, where the following conditions are satisfied:

- (a) the property is paid to or applied for the benefit of a beneficiary of the trust;
- (b) the property represents income or profits of the trust, of any accounting period, that have not been subject to tax in a listed country.

(2) If a particular part of an item of income or profit derived by a trust would, under subsection 102AAE(2) of the amended Act, be treated as if it were subject to tax in a listed country in a tax accounting period, then it is treated for the purposes of subsection (1) of this section as if it were so subject to tax.

(3) Where:

- (a) a CFT makes an eligible trust distribution to a CFC that is a resident of a listed country; and
- (b) when the distribution is made, a taxpayer is an attributable taxpayer in relation to the CFT and the CFC; and
- (c) the distribution is made on or after 29 June 1990 and before the beginning of the first statutory accounting period in respect of which section 456 of the amended Act would, in accordance with subsection 51(10) of this Act, apply in relation to the CFC and the attributable taxpayer if the requirements of that section were satisfied;

then:

- (d) the assessable income of the attributable taxpayer of the 1990-91 income year includes an amount equal to the attributable taxpayer's attribution percentage, for the CFC at the time when the distribution is made, of the amount of the distribution; and
- (e) subsection (7) applies in relation to the distribution.

(4) Where:

- (a) a CFT makes an eligible trust distribution to a partnership; and
- (b) when the distribution is made, a CFC that is a resident of a listed country has either or both of the following:
 - (i) a direct interest in the profits of the partnership by virtue of being a partner in the partnership;

- (ii) an indirect interest in the profits of the partnership by virtue of the holding or successive holding of interests in profits of interposed Australian partnerships or present entitlements to shares of the income of interposed Australian trusts (or any combination thereof); and
- (c) when the distribution is made, a taxpayer is an attributable taxpayer in relation to the CFT and the CFC; and
- (d) the distribution is made on or after 29 June 1990 and before the beginning of the first statutory accounting period in respect of which section 456 of the amended Act would, in accordance with subsection 51(10) of this Act, apply in relation to the CFC and the attributable taxpayer if the requirements of that section were satisfied;

then:

- (e) the assessable income of the attributable taxpayer of the 1990-91 income year includes an amount calculated using the formula:

Attribution percentage × **Interest in partnership** × **Distribution**

where:

Attribution percentage means the attributable taxpayer's attribution percentage for the CFC;

Interest in partnership means the percentage of the total interests in the profits of the partnership represented by the sum of the direct and indirect interests of the CFC;

Distribution means the amount of the distribution; and

- (f) subsection (7) applies in relation to the distribution.

(5) Where:

- (a) a CFT makes an eligible trust distribution to an Australian trust; and
- (b) when the distribution is made, a CFC that is a resident of a listed country has either or both of the following:
 - (i) a direct interest in the income of the Australian trust by virtue of being presently entitled to a share of that income;
 - (ii) an indirect interest in the income of the Australian trust by virtue of the holding or successive holding of interests in profits of interposed Australian partnerships or present entitlements to shares of the income of interposed Australian trusts (or any combination thereof); and
- (c) when the distribution is made, a taxpayer is an attributable taxpayer in relation to the CFT and the CFC; and
- (d) the distribution is made on or after 29 June 1990 and before the beginning of the first statutory accounting period in respect of which section 456 of the amended Act would, in accordance

with subsection 51 (10) of this Act, apply in relation to the CFC and the attributable taxpayer if the requirements of that section were satisfied;

then:

- (e) the assessable income of the attributable taxpayer of the 1990-91 income year includes an amount calculated using the formula:

Attribution percentage × Interest in trust × Distribution

where:

Attribution percentage means the taxpayer's attribution percentage for the CFC;

Interest in trust means the percentage of the income of the Australian trust represented by the sum of the direct and indirect interests of the CFC;

Distribution means the amount of the distribution; and

- (f) subsection (7) applies in relation to the distribution.

- (6) Subsection (3), (4) or (5) does not apply where:

- (a) in a subsection (3) case—the eligible trust distribution; or
- (b) in a subsection (4) or (5) case—any amount that would, as a result of the making of the eligible trust distribution, be included in the tax base of the CFC, or of any partnership or trust referred to in paragraph (4) (b) or (5) (b), in respect of the holding of any interest or present entitlement referred to in that paragraph;

is taxed in a listed country at the country's normal company tax rate.

(7) Where an amount is included in the attributable taxpayer's assessable income of the 1990-91 income year under subsection (3), (4) or (5) in respect of the eligible trust distribution, the following provisions have effect:

- (a) for the purposes of the amended Act, but subject to the remainder of this subsection, the amount is taken to be included in the attributable taxpayer's assessable income under subsection 458 (1), (4) or (5), where subsection (3), (4) or (5) respectively of this section applies, as if it were in respect of a dividend paid by a CFC at the same time as the eligible trust distribution;
- (b) section 160AFCC of the amended Act applies in relation to the amount as if that section read as follows:

“160AFCC. If:

- (a) an amount (in this section called the ‘**notional section 458 amount**’) is taken to be included in the assessable income of a taxpayer, being a company, of the year of income commencing on 1 July 1990 under subsection 458 (1), as a result of the application of subsection 57 (7)

of the *Taxation Laws Amendment (Foreign Income) Act 1990* in relation to an eligible trust distribution (within the meaning of the latter subsection) made to a CFC; and

- (b) when the eligible trust distribution was made, the CFC was related to the taxpayer;

then the taxpayer is taken, for the purposes of this Division, to have paid, and to have been personally liable for, in respect of the notional section 458 amount, an amount of foreign tax calculated using the formula:

$$\text{Notional section 458 amount} \times \frac{\text{Foreign tax}}{\text{Distribution}}$$

where:

Notional section 458 amount means the notional section 458 amount;

Foreign tax means the amount of foreign tax (other than under a tax law of the listed country of which the CFC is a resident) paid by the CFC in respect of the eligible trust distribution;

Distribution means the amount of the eligible trust distribution.”;

- (c) for the purposes of the amended Act, the attribution credit under section 371 of that Act in respect of the amount arises:

- (i) where the eligible trust distribution is made after the commencement of the 1990-91 income year of the attributable taxpayer—when the distribution is made; or
- (ii) in any other case—at the commencement of the 1990-91 income year of the attributable taxpayer;

instead of at the time referred to in subsection 371 (5) of that Act;

- (d) the provisions of section 375 of the amended Act are to be disregarded, but:

- (i) an attributed tax account credit is taken to arise under that section, at the time referred to in subparagraph (c) (i) or (ii) of this subsection, for the CFC in respect of any amount of foreign tax that the attributable taxpayer is taken, by section 160AFCC of the amended Act (as it applies in accordance with paragraph (b) of this subsection), to have paid, and to have been personally liable for, in respect of the eligible trust distribution; and
- (ii) the amount of the attributed tax account credit is equal to the amount of the foreign tax.

Transitional—change of CFC residence from unlisted to listed country

58. (1) Where:

- (a) at a time (in this section called the “residence-change time”) on or after 1 July 1989, a company that:

- (i) is a CFC; and
- (ii) has an attributable taxpayer;

ceases to be a resident of an unlisted country and becomes a resident of a listed country; and

- (b) the residence-change time is before the beginning of the first statutory accounting period in respect of which section 456 of the amended Act would, in accordance with subsection 51 (10) of this Act, apply in relation to the company and the attributable taxpayer if the requirements of that section were satisfied;

the following provisions have effect:

- (c) an amount (in this subsection called the “**adjusted profits amount**”) equal to the attributable taxpayer’s attribution percentage, at the residence-change time, of the CFC’s adjusted distributable profits, within the meaning of subsection (2), is included in the attributable taxpayer’s assessable income of the 1990-91 income year;
- (d) for the purposes of the amended Act, but subject to the remainder of this subsection, the adjusted profits amount is taken to be included in the attributable taxpayer’s assessable income under section 457 as if the change in residence were one to which that section applied;
- (e) section 160AFCB of the amended Act applies in relation to the adjusted profits amount as if it read as follows:

“160AFCB. (1) If:

- (a) an amount (in this subsection called the ‘**adjusted profits amount**’) is taken to be included in the assessable income of the taxpayer, being a company, of the year of income commencing on 1 July 1990 under section 457, as a result of the application of subsection 58 (1) of the *Taxation Laws Amendment (Foreign Income) Act 1990* in relation to a company that is a CFC at the residence-change time referred to in that subsection; and
- (b) at the residence-change time, the CFC was related to the taxpayer;

the following provisions have effect:

- (c) the taxpayer is taken, for the purposes of this Division, to have paid and to have been personally liable for, in respect of the adjusted profits amount, in the year of income, an amount of foreign tax equal to the taxpayer’s attribution percentage, at the residence-change time, of the total foreign tax and Australian tax paid by the CFC that is attributable to the adjusted distributable profits referred to in subsection 58 (1) of that Act;
- (d) if those adjusted distributable profits include a non-portfolio dividend paid to the CFC by a foreign company

that, at the time of the payment of the dividend, was related to the taxpayer—the taxpayer is taken, for the purposes of this Division, to have paid, and to have been personally liable for, in respect of the adjusted profits amount, in the year of income, an amount of foreign tax equal to the taxpayer's attribution percentage at the residence-change time, of the amount (if any) of foreign tax that the CFC would have been taken to have paid, and to have been personally liable for, because of section 160AFC in respect of the dividend if:

- (i) the CFC had been an Australian company at the time of the payment of the dividend; and
 - (ii) it were a requirement of that section (in addition to the other requirement of that section), for companies to be a pair of companies in a dividend series, that they be related to the taxpayer referred to in this section.”;
- (f) for the purposes of the amended Act, the attribution credit under section 371 of that Act in respect of the amount arises:
 - (i) where the residence-change time is after the commencement of the 1990-91 income year of the attributable taxpayer—at the residence-change time; or
 - (ii) in any other case—at the commencement of the 1990-91 income year of the attributable taxpayer;instead of at the time referred to in subsection 371 (5) of that Act;
- (g) for the purposes of the amended Act, an attributed tax account credit is taken to arise under section 375 of that Act, at the time referred to in subparagraph (f) (i) or (ii) of this subsection, for the CFC in relation to the adjusted profits amount if:
 - (i) on the assumption that the reference to Australian tax were omitted from paragraph (c) of section 160AFCB of the amended Act (being that section as it applies in relation to the adjusted profits amount in accordance with paragraph (e) of this subsection), the attributable taxpayer would be taken by that paragraph to have paid, and to have been personally liable for, an amount of foreign tax; or
 - (ii) the attributable taxpayer is taken by paragraph (d) of that section (as it applies in relation to the adjusted profits amount in accordance with paragraph (e) of this subsection) to have paid, and to have been personally liable for, an amount of foreign tax;and the amount of the credit is equal to the amount of the foreign tax.

(2) For the purposes of paragraph (1)(c), the CFC's adjusted distributable profits are:

- (a) where the application of subsection (1) is the first or only application of the subsection in relation to the CFC and the attributable taxpayer—the amount that would be the CFC's distributable profits at the residence-change time if:
 - (i) all the CFC's assets were disposed of at that time for a consideration equal to their market value; and
 - (ii) exempting profits of the CFC in relation to the attributable taxpayer were not taken into account; or
- (b) in any other case—so much of the amount that would be the CFC's distributable profits at the residence-change time on the assumptions in paragraph (a) of this subsection as is attributable to the period since the residence-change time referred to in the previous application of subsection (1) in relation to the CFC and the attributable taxpayer.

Transitional—change of CFC residence from unlisted country to Australia

59. Where, if:

- (a) a company that is a Part X Australian resident at a particular time were instead a resident of a listed country at that time; and
- (b) subsection 58 (2) read as follows:

“(2) For the purposes of paragraph (1)(c), the CFC's adjusted distributable profits are:

- (a) where the application of subsection (1) is the first or only application of the subsection in relation to the CFC and the attributable taxpayer—the amount that would be the CFC's distributable profits at the residence-change time if the CFC's exempting profits in relation to the attributable taxpayer were not taken into account; or
- (b) in any other case—so much of the amount that would be the CFC's distributable profits at the residence-change time on the assumption in paragraph (a) as is attributable to the period since the residence-change time referred to in the previous application of subsection (1) in relation to the CFC and the attributable taxpayer.”;

there would be an adjusted profits amount in relation to the company included in a taxpayer's assessable income of a year of income as a result of the application of paragraph 58 (1)(c), then:

- (c) that amount is included in the taxpayer's assessable income of the year of income; and
- (d) paragraphs 58 (1)(d) to (g), and the amended Act as applied in accordance with those paragraphs, have effect in relation to the amount as if:

- (i) paragraph 58 (1) (c) applied to the amount; and
- (ii) at any time when the company is a Part X Australian resident, it were instead a resident of a listed country.

Transitional—regulations

60. The first regulations made for the purposes of a provision of the Principal Act inserted by this Act may be expressed:

- (a) to have been in effect at all relevant times before the date of notification of the regulations; or
- (b) to apply in relation to a period any part of which occurred before the date of notification of the regulations; or
- (c) to take effect from:
 - (i) a specified date; or
 - (ii) a specified time on a specified date;before the date of notification of the regulations.

Amendment of assessments

61. Section 170 of the Principal Act does not prevent the amendment of an assessment made before the commencement of this section for the purpose of giving effect to this Act.

**PART 3—AMENDMENT OF THE INCOME TAX
(INTERNATIONAL AGREEMENTS) ACT 1953**

Principal Act

62. In this Part, “Principal Act” means the *Income Tax (International Agreements) Act 1953*.

Interpretation

63. Section 3 of the Principal Act is amended by omitting subsection (5) and substituting the following subsections:

- “(5) For the purposes of this Act:
- (a) all income that is passive income constitutes a single class of income; and
 - (b) all income that is offshore banking income constitutes a single class of income; and
 - (c) all income not being passive income or offshore banking income constitutes a single class of income; and
 - (d) an amount of income that is deemed, for the purposes of any provision of this Act or of the Assessment Act, to be attributable to any other income, being income of a particular class, is to be taken to be income of that class.

“(6) An expression used in subsection (5) and in Division 18 of Part III of the Assessment Act has the same meaning in that subsection as it has in that Division.”.

Application of amendments

64. The amendments made by this Part apply to assessments in respect of income of the year of income commencing on 1 July 1990 and of all subsequent years of income.

PART 4—AMENDMENT OF THE TAXATION ADMINISTRATION ACT 1953

Principal Act

65. In this Part, “Principal Act” means the *Taxation Administration Act 1953*.

Interpretation

66. Section 8J of the Principal Act is amended:

- (a) by inserting in paragraph (2) (k) “or 264A (1) (d) or (e)” after “264 (1) (b)”;
- (b) by inserting after paragraph (2) (k) the following paragraph:
“(kaa) subparagraph 451 (2) (c) (ii) or paragraph 453 (1) (e) of the *Income Tax Assessment Act 1936*”.

NOTES

1. No. 27, 1936, as amended. For previous amendments, see No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 70, 87 and 148; 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; Nos. 80 and 117, 1975; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; Nos. 57, 126 and 127, 1977; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; Nos. 12, 19, 27, 43, 62, 146, 147 and 149, 1979; Nos. 19, 24, 57, 58, 124, 133, 134 and 159, 1980; Nos. 61, 92, 108, 109, 110, 111, 154 and 175, 1981; Nos. 29, 38, 39, 76, 80, 106 and 123, 1982; Nos. 14, 25, 39, 49, 51, 54 and 103, 1983; Nos. 14, 42, 47, 63, 76, 115, 124, 165 and 174, 1984; No. 123, 1984 (as amended by No. 65, 1985); Nos. 47, 49, 104, 123, 168 and 174, 1985; No. 173, 1985 (as amended by No. 49, 1986); Nos. 41, 46, 48, 51, 109, 112 and 154, 1986; No. 49, 1986 (as amended by No. 141, 1987); No. 52, 1986 (as amended by No. 141, 1987); No. 90, 1986 (as amended by No. 141, 1987); Nos. 23, 58, 61, 120, 145 and 163, 1987; No. 62, 1987 (as amended by No. 108, 1987); No. 108, 1987 (as amended by No. 138, 1987); No. 138, 1987 (as amended by No. 11, 1988); No. 139, 1987 (as amended by Nos. 11 and 78, 1988); Nos. 8, 11, 59, 75, 78, 80, 87, 95, 97, 127 and 153, 1988; Nos. 2, 11, 56, 70, 75, 97, 105, 107, 129, 163 and 167, 1989; No. 97, 1989 (as amended by No. 105, 1989); and Nos. 20, 35, 37, 45, 57, 58, 60 and 61, 1990.

NOTES—continued

2. No. 82, 1953, as amended. For previous amendments, see No. 25, 1958; No. 88, 1959; Nos. 19 and 29, 1960; No. 71, 1963; No. 112, 1964; No. 105, 1965; No. 17, 1966; Nos. 39 and 86, 1967; No. 3, 1968; No. 24, 1969; No. 48, 1972; Nos. 11 and 216, 1973; No. 129, 1974; No. 119, 1975; Nos. 52, 55 and 143, 1976; No. 134, 1977; No. 87, 1978; Nos. 23 and 127, 1980; Nos. 28, 110, 143 and 154, 1981; Nos. 51 and 57, 1983; Nos. 123 and 125, 1984; Nos. 168 and 173, 1985; Nos. 49, 51 and 112, 1986; and No. 165, 1989.
3. No. 1, 1953, as amended. For previous amendments, see Nos. 28, 39, 40 and 52, 1953; No. 18, 1955; No. 39, 1957; No. 95, 1959; No. 17, 1960; No. 75, 1964; No. 155, 1965; No. 93, 1966; No. 120, 1968; No. 216, 1973; No. 133, 1974; No. 37, 1976; Nos. 19 and 59, 1979; Nos. 39 and 117, 1983; No. 123, 1984; No. 65, 1985 (as amended by No. 193, 1985); Nos. 4, 47, 104, 123 and 168, 1985; Nos. 41, 46, 48, 112, 144 and 154, 1986; No. 49, 1986 (as amended by No. 141, 1987); Nos. 120 and 145, 1987; No. 62, 1987 (as amended by No. 108, 1987); No. 108, 1987 (as amended by No. 138, 1987); No. 138, 1987 (as amended by No. 11, 1988); Nos. 95 and 97, 1988; Nos. 97, 105, 107, 124, 163 and 167, 1989; and No. 20, 1990.

*[Minister's second reading speech made in—
House of Representatives on 13 September 1990
Senate on 17 October 1990]*