



# **Financial Corporations (Transfer of Assets and Liabilities) Act 1993**

**Act No. 97 of 1993 as amended**

This compilation was prepared on 12 May 2003  
taking into account amendments up to Act No. 16 of 2003

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

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

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**An Act making provision relating to the transfer of  
assets and liabilities from and to certain financial  
corporations**

**Part 1—Preliminary**

**1 Short title** [see Note 1]

This Act may be cited as the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*.

**2 Commencement** [see Note 1]

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

## Part 2—General provisions

### 3 Interpretation

In this Part, unless the contrary intention appears:

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

**ADI authority** means an authority under subsection 9(3) of the *Banking Act 1959*.

**asset** means property, or a right, of any kind, and includes:

- (a) any legal or equitable estate or interest (whether present or future, vested or contingent, tangible or intangible, in real or personal property) of any kind; and
- (b) any chose in action; and
- (c) any right, interest or claim of any kind including rights, interests or claims in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing); and
- (d) any asset within the meaning of Part IIIA of the *Income Tax Assessment Act 1936*; and
- (e) a CGT asset within the meaning of the *Income Tax Assessment Act 1997*.

**eligible foreign ADI** means an ADI:

- (a) that is a foreign ADI for the purposes of the *Banking Act 1959*; and
- (b) that:
  - (i) was granted its ADI authority before this Act commenced; or
  - (ii) is or was granted its ADI authority after this Act commenced pursuant to an application made before this



Act commenced, or made after this Act commenced but before 1 July 2003.

**eligible local ADI** means a local ADI that was granted its ADI authority on or before 18 June 1993.

**eligible money market corporation** has the meaning given by section 4.

**eligible subsidiary**, in relation to an eligible local ADI or eligible money market corporation, means a body that:

- (a) is incorporated under a law of the Commonwealth, of a State or a Territory relating to companies; and
- (b) is a financial corporation that is a registered entity under the *Financial Sector (Collection of Data) Act 2001*; and
- (c) is a subsidiary of the eligible local ADI or money market corporation.

**financial corporation** means a financial corporation within the meaning of paragraph 51(xx) of the Constitution.

**foreign corporation** means a foreign corporation within the meaning of paragraph 51(xx) of the Constitution.

**interest**, in relation to land, includes:

- (a) a legal or equitable estate or interest in the land; or
- (b) a right, power or privilege over, or in relation to, the land.

**liability** includes a duty or obligation of any kind (whether arising under an instrument or otherwise, and whether actual, contingent or prospective).

**local ADI** means an ADI that is incorporated under a law of the Commonwealth, a State or a Territory relating to companies.

**newly established local ADI** means a local ADI that:

- (a) was granted its ADI authority before this Act commenced but after 18 June 1993; or
- (b) is or was granted its ADI authority after this Act commenced pursuant to an application made before this Act commenced, or made after this Act commenced but before 1 July 2003.

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*receiving corporation* has the meaning given by section 5.

*subsidiary* has the same meaning as in the *Corporations Act 2001*.

*transfer*, in relation to an asset or liability, means an act as a result of which the asset or liability:

- (a) ceases to be vested in a person; and
- (b) becomes vested in another person.

*transferring corporation* has the meaning given by section 5.

#### 4 Eligible money market corporation

For the purposes of this Act, a body corporate is an *eligible money market corporation* if it:

- (a) is incorporated under a law of the Commonwealth, of a State or a Territory relating to companies; and
- (b) is, under the *Financial Sector (Collection of Data) Act 2001*, a registered entity included in the category for money market corporations.

#### 5 Transferring and receiving corporations

If a financial corporation is proposing to transfer, or transfers, an asset or liability to another financial corporation, then, for the purposes of this Act;

- (a) the first-mentioned corporation is the *transferring corporation*; and
  - (b) the other corporation is the *receiving corporation*;
- in relation to the transfer.

#### 6 Object of Act

The object of this Act is to facilitate, in accordance with Commonwealth Government policy, the transfer of assets and liabilities from certain subsidiaries of a foreign corporation that is:

- (a) an eligible foreign ADI; or

- (b) the holding company (within the meaning of the *Corporations Act 2001*) of an eligible foreign ADI or of a newly established local ADI;

to the foreign corporation or one of the subsidiaries referred to in paragraph (b) (as the case may be) if the assets and liabilities are reasonably required to be so transferred for the proper organisation of the activities in Australia of the transferring corporation and the receiving corporation, following the grant of an ADI authority to the receiving corporation.

## **7 Application of Act**

- (1) This Act applies only as provided in this section.
- (2) Subject to subsection (6), if:
  - (a) an eligible local ADI is a subsidiary of a foreign corporation; and
  - (b) the foreign corporation is an eligible foreign ADI; and
  - (c) the eligible local ADI or one of its eligible subsidiaries (if any) is proposing to transfer, or transfers, an asset or liability to the foreign corporation;this Act applies in relation to the transfer.
- (3) Subject to subsection (6), if:
  - (a) an eligible local ADI is a subsidiary of a foreign corporation (*parent corporation*); and
  - (b) the eligible local ADI or one of its eligible subsidiaries (if any) is proposing to transfer, or transfers, an asset or liability to an eligible foreign ADI that is a subsidiary of the parent corporation;this Act applies in relation to the transfer.
- (4) Subject to subsection (6), if:
  - (a) an eligible money market corporation is a subsidiary of a foreign corporation; and
  - (b) the foreign corporation is an eligible foreign ADI; and

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- (c) the eligible money market corporation or one of its eligible subsidiaries (if any) is proposing to transfer, or transfers, an asset or liability to the foreign corporation;  
this Act applies in relation to the transfer.
- (5) Subject to subsection (6), if:
  - (a) an eligible money market corporation is a subsidiary of a foreign corporation; and
  - (b) the eligible money market corporation or one of its eligible subsidiaries (if any) is proposing to transfer, or transfers, an asset or liability to a newly established local ADI that is a wholly-owned subsidiary (within the meaning of the *Corporations Act 2001*) of the foreign corporation;  
this Act applies in relation to the transfer.
- (6) This Act applies in relation to the transfer of an asset or liability only if:
  - (a) the Treasurer determines in writing that the transfer is reasonably required for the proper organisation of the activities in Australia of the transferring corporation and of the receiving corporation, following the grant of an ADI authority to the receiving corporation; and
  - (b) within the prescribed period (*see* subsection (7)) in relation to the transfer, the transferring corporation gives notice in writing of the proposed transfer, identifying the asset or liability to be transferred, to:
    - (i) the Treasurer; and
    - (ii) if the law of a State or Territory requires that the transfer be registered—the person authorised under that law to register the transfer; and
  - (c) the transfer is effected before 1 July 2006.
- (7) For the purposes of paragraph (6)(b), the prescribed period in relation to the transfer of an asset or liability is:
  - (a) if the receiving corporation was in possession of an ADI authority on the day on which this Act commences—the period of 6 months from that day; or

- (b) if paragraph (a) does not apply—the period of 6 months from the day on which the receiving corporation is granted an ADI authority.

## **8 Extension of Act to external Territories**

This Act extends to every external Territory.

## **9 Transfer of asset etc. not to require consent etc. of third party**

If:

- (a) a financial corporation is proposing to transfer an asset or liability to another financial corporation; and
- (b) apart from this Act, the transferring corporation or receiving corporation would be required (whether under an instrument or otherwise):
  - (i) to obtain the consent or approval of a third person in a particular respect; or
  - (ii) to give particular information to a third person;

the transfer may be validly effected without the consent or approval being obtained, or the information given, as the case requires.

## **10 Exemption from taxes etc.**

If, apart from this section, a transferring corporation or a receiving corporation would be liable to pay a tax or fee under:

- (a) a law of the Commonwealth (other than the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*); or
- (b) a law of a State or Territory;

in respect, or as a result, of the transfer of an asset or liability or in respect of the registration of such a transfer, that corporation is exempted from paying the tax or fee.

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**11 Compensation for acquisition of property**

- (1) If, apart from this section, the transfer of an asset or liability from a financial corporation to another financial corporation would result in an acquisition of property from a person by one of those corporations otherwise than on just terms, there is payable to the person by that corporation such reasonable amount of compensation as is agreed on between the person and that corporation or, failing agreement, as is determined by a court of competent jurisdiction.
- (2) Any damages or compensation recovered or other remedy given in a proceeding that is commenced otherwise than under this section is to be taken into account in assessing compensation payable in a proceeding that is commenced under this section and arises out of the same event or transaction.
- (3) In this section:  
*acquisition of property* and *just terms* have the same respective meanings as in paragraph 51(xxxi) of the Constitution.

**12 Delegation**

The Treasurer may by signed instrument delegate his or her powers under paragraph 7(6)(a) to:

- (a) APRA, or a member of APRA's board of management; or
- (b) an APRA staff member, within the meaning of the *Australian Prudential Regulation Authority Act 1998*.

## **Part 3—Income tax relief for transfers**

### **Division 1—Preliminary**

#### **13 Object of Part**

The object of this Part is to provide income tax relief for transfers by modifying the effect of certain provisions of the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*.

#### **14 Part to be treated as if it were a provision of the income tax law**

- (1) An expression used in this Part and in the *Income Tax Assessment Act 1936* has the same meaning in this Part as it has in that Act.
- (2) For the purposes of the application of the *Income Tax Assessment Act 1936* to a taxpayer, the provisions of this Part are to be treated as if they were provisions of that Act.

## Division 2—General relief

### 15 Asset transfers—general

#### *Tax treatment of transferring corporation*

- (1) In determining:
- (a) whether an amount is included in the assessable income of the transferring corporation under section 25, 25A, 26BB, 26C, 82Y or 159GS of the *Income Tax Assessment Act 1936* or section 6-5 or 15-15 of the *Income Tax Assessment Act 1997*; or
  - (b) whether an amount is allowable as a deduction to the transferring corporation under section 51, 52, 70B, 82Z or 159GS of the *Income Tax Assessment Act 1936* or section 8-1 of the *Income Tax Assessment Act 1997*;
- in respect of a transfer of an asset, the transferring corporation is to be treated as if the transfer had not occurred.

#### *Receiving corporation not entitled to a deduction for expenditure incurred in acquiring asset*

- (2) A deduction is not allowable to the receiving corporation under section 51 of the *Income Tax Assessment Act 1936* or section 8-1 of the *Income Tax Assessment Act 1997* in respect of expenditure incurred in the acquisition of an asset as the result of a transfer. However, this subsection does not apply to the acquisition of trading stock.

#### *Receiving corporation to inherit transferring corporation's cost base*

- (3) If an asset is transferred, then, in determining:
- (a) whether an amount is included in the assessable income of the receiving corporation under section 25, 25A, 26BB, 26C or 82Y or Division 16E of Part III of the *Income Tax Assessment Act 1936* or section 6-5 or 15-5 of the *Income Tax Assessment Act 1997*; or



(b) whether an amount is allowable as a deduction to the receiving corporation under section 51, 52, 70B or 82Z or Division 16E of Part III of the *Income Tax Assessment Act 1936* or section 8-1 of the *Income Tax Assessment Act 1997*; in respect of the holding, or any subsequent disposal, of the asset, the receiving corporation is to be treated as if it had acquired the asset for an amount equal to what would have been the asset's cost base to the transferring corporation for the purposes of working out under the *Income Tax Assessment Act 1997* whether the transferring corporation made a capital gain from the transfer.

## **16 Liability transfers—general**

### *Tax treatment of transferring corporation*

- (1) In determining:
- (a) whether an amount is included in the assessable income of the transferring corporation under section 25 or 82Y of the *Income Tax Assessment Act 1936* or section 6-5 of the *Income Tax Assessment Act 1997*; or
  - (b) whether an amount is allowable as a deduction to the transferring corporation under section 51 or 82Z of the *Income Tax Assessment Act 1936* or section 8-1 of the *Income Tax Assessment Act 1997*;
- in respect of a transfer of a liability, the transferring corporation is to be treated as if the transfer had not occurred.

### *Receiving corporation not assessable in respect of assumption of liability*

- (2) An amount is not to be included in the assessable income of the receiving corporation under section 25 or 82Y of the *Income Tax Assessment Act 1936* or section 6-5 of the *Income Tax Assessment Act 1997* in respect of the assumption of the liability as a result of the transfer.

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*Assumption of liability by receiving corporation*

- (3) If a liability is transferred, then, in determining:
- (a) whether an amount is included in the assessable income of the receiving corporation under section 25 or 82Y or Division 16E of Part III of the *Income Tax Assessment Act 1936* or section 6-5 of the *Income Tax Assessment Act 1997*; or
  - (b) whether an amount is allowable as a deduction to the receiving corporation under section 51 or 82Z or Division 16E of Part III of the *Income Tax Assessment Act 1936* or section 8-1 of the *Income Tax Assessment Act 1997*;
- in respect of the subsistence, or any subsequent transfer, of the liability, the receiving corporation is to be treated as if:
- (c) it had been paid or given consideration for the original transfer; and
  - (d) the amount of the consideration were equal to the amount (if any) of the consideration paid or given to the transferring corporation in respect of the assumption by the transferring corporation of the liability.

## **Division 3—Securities**

### **17 Securities—adjustment of cost base**

#### *Adjustment where security is transferred*

- (1) If:
- (a) a security is transferred; and
  - (b) either:
    - (i) one or more amounts (other than periodic interest) are or were included in the transferring corporation's assessable income under section 25 or Division 16E of Part III of the *Income Tax Assessment Act 1936* or section 6-5 of the *Income Tax Assessment Act 1997* in respect of the security; or
    - (ii) one or more amounts (other than periodic interest) are or were allowable as deductions to the transferring corporation under section 51 or Division 16E of Part III of the *Income Tax Assessment Act 1936* or section 8-1 of the *Income Tax Assessment Act 1997* in respect of the security;

those Acts have effect as if the amount that, apart from this subsection, would have been the consideration paid or given by the receiving corporation in respect of the acquisition of the security as the result of the transfer were:

- (c) increased by the amount, or the sum of the amounts, covered by subparagraph (b)(i); and
- (d) reduced by the amount, or the sum of the amounts, covered by subparagraph (b)(ii).

#### *Adjustment where liability under security is transferred*

- (2) If:
- (a) a liability under a security is transferred; and
  - (b) one or more amounts (other than periodic interest) are or were allowable as deductions to the transferring corporation under section 51 or Division 16E of Part III of the *Income*

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**Division 3** Securities

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*Tax Assessment Act 1936* or section 8-1 of the *Income Tax Assessment Act 1997* in respect of the security;

those Acts have effect as if the amount that, apart from this subsection, would have been the consideration paid or given to the receiving corporation in respect of the assumption of the liability as the result of the transfer were increased by the amount, or the sum of the amounts, covered by paragraph (b).

*Definitions*

(3) In this section:

***periodic interest*** has the same meaning as in Division 16E of Part III of the *Income Tax Assessment Act 1936*.

***security*** has the same meaning as in Division 16E of Part III of the *Income Tax Assessment Act 1936*.

## **Division 4—Capital gains and capital losses**

### **18 Additional roll-over relief**

There is a roll-over under Subdivision 126-B of the *Income Tax Assessment Act 1997* (which normally applies only to certain transfers between companies in the same wholly-owned group) if:

- (a) the trigger event is a transfer to which this Act applies; and
- (b) the requirements of that Subdivision are met, disregarding:
  - (i) subsections 126-50(1), (5), (6), (7), (8) and (9) of that Act; and
  - (ii) section 126-55 of that Act.

This is in addition to that Subdivision's effect apart from this section.

### **19 For the receiving corporation, asset has necessary connection with Australia**

Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* apply to an asset acquired by the receiving corporation as a result of a transfer as if the asset had, while it is an asset of the receiving corporation, the necessary connection with Australia.

### **20 Transfer of net capital loss**

- (1A) In addition to its effect apart from this section, the *Income Tax Assessment Act 1997* also has the effect it would have if sections 170-110 to 170-145 (which are about transferring net capital losses within wholly-owned company groups) of that Act were replaced by the provisions in Part 1 of Schedule 2 to this Act (which are a modified version of the rules in those sections) and the provisions in Part 2 of that Schedule were added at the end of Subdivision 170-B of that Act.
- (1B) Subsection (1) does not enable a net capital loss to be transferred in the 1998-99 year of income or a later year of income.

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- (1) In addition to its effect apart from this section, section 160ZP of the *Income Tax Assessment Act 1936* also has the effect it would have if both of the changes set out in subsections (2) and (3) of this section were made.
- (2) The first change is that paragraphs 160ZP(7)(a), (b) and (ba) of the *Income Tax Assessment Act 1936* are to be replaced by the following paragraphs:
  - “(a) assuming that:
    - (i) an asset (within the meaning of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*) had been transferred by a transferring corporation within the meaning of that Act (the **loss company**) to a receiving corporation within the meaning of that Act (the **gain company**) on the last day of a particular year of income of the loss company (the **notional transfer year**); and
    - (ii) the requirements of paragraphs 7(6)(a) and (b) of that Act were satisfied in relation to that transfer;  
that Act would have applied to that transfer; and
  - (b) the loss company incurred in respect of a year of income (the **loss year**) a net capital loss that, apart from this section, would be taken into account in ascertaining whether a net capital gain accrued to the loss company, or the loss company incurred a net capital loss, in respect of the next succeeding year of income; and
  - (ba) the loss year is:
    - (i) the year of income in which that Act commenced; or
    - (ii) an earlier year of income; and
  - (bb) both the following conditions are satisfied in relation to a year of income (the **gain year**) of the gain company:
    - (i) either:
      - (A) the gain year ends at the end of the notional transfer year; or
      - (B) the gain year corresponds to the year of income of the loss company next following the notional transfer year;

- (ii) the gain year is:
  - (A) the year of income in which that Act commenced; or
  - (B) one of the 10 following years of income; and”.
- (3) The second change is that paragraphs 160ZP(7)(d) and (e) and subsection 160ZP(8) of the *Income Tax Assessment Act 1936* are to be omitted.

## Division 5—Trading stock

### 21 Transfers of trading stock

*Trading stock on hand at beginning of year of income*

(1) If:

- (a) a transfer of trading stock occurred during a year of income of the transferring corporation; and
- (b) the trading stock was on hand at the beginning of that year of income;

then:

- (c) section 28 of the *Income Tax Assessment Act 1936* or section 70-35 of the *Income Tax Assessment Act 1997* has effect as if the trading stock were not on hand at the beginning of the year of income; and
- (d) section 51 of the *Income Tax Assessment Act 1936* or section 8-1 of the *Income Tax Assessment Act 1997* has effect as if:
  - (i) the receiving corporation had incurred expenditure in the acquisition of the trading stock; and
  - (ii) the amount of that expenditure were equal to the value of the trading stock as at the end of the immediately preceding year of income of the transferring corporation (being the value that applies for the purposes of section 31 of the *Income Tax Assessment Act 1936* or section 70-45 of the *Income Tax Assessment Act 1997*); and
  - (iii) that expenditure had been so incurred immediately after the transfer; and
- (e) section 36 of the *Income Tax Assessment Act 1936* and sections 70-90 and 70-95 of the *Income Tax Assessment Act 1997* do not apply in relation to the transfer of the trading stock.



*Trading stock not on hand at beginning of year of income*

- (2) If:
- (a) a transfer of trading stock occurred during a year of income of the transferring corporation; and
  - (b) the trading stock was not on hand at the beginning of that year of income;
- then:
- (c) a deduction is not allowable under the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* to the transferring corporation in respect of expenditure incurred in the acquisition of the trading stock; and
  - (d) section 51 of the *Income Tax Assessment Act 1936* or section 8-1 of the *Income Tax Assessment Act 1997* has effect as if:
    - (i) the receiving corporation had incurred expenditure in the acquisition of the trading stock; and
    - (ii) the amount of that expenditure were equal to the amount of the expenditure mentioned in paragraph (c); and
    - (iii) that expenditure had been so incurred immediately after the transfer; and
  - (e) section 36 of the *Income Tax Assessment Act 1936* and sections 70-90 and 70-95 of the *Income Tax Assessment Act 1997* do not apply in relation to the transfer of the trading stock.

## Division 6—Bad debts

### 22 Deductions for bad debts

#### *General*

- (1) In relation to a transfer of a debt, these rules about deductions for bad debts have effect as shown in the table:
- (a) section 25-35 of the *Income Tax Assessment Act 1997*;
  - (b) subsection 63(1A) of the *Income Tax Assessment Act 1936*.

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**Effect of rules about deductions for bad debts**

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<b>Case</b>	<b>If:</b>	<b>then those rules have effect as if:</b>
1	the debt was included in the transferring corporation's assessable income of a year of income	the debt had been included in the receiving corporation's assessable income of that year of income
2	the debt is in respect of money lent by the transferring corporation in the ordinary course of its business of lending money	the debt were in respect of money lent by the receiving corporation in the ordinary course of a business of lending money
3	the transferring corporation bought the debt in the ordinary course of its business of lending money	the receiving corporation had bought the debt in the ordinary course of a business of lending money

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#### *Modification of tests for receiving corporation to deduct bad debt*

- (2) In relation to a transfer of a debt, Subdivisions 165-C, 166-C and 175-C of the *Income Tax Assessment Act 1997* have effect as if the debt had been incurred at the time of the transfer.

Note: Those Subdivisions are about companies deducting bad debts.

*Easing of restrictions on transferring corporation*

- (3) If:
- (a) this Act applies to one or more transfers of assets by the transferring corporation to the receiving corporation; and
  - (b) an entity incurs a debt to the transferring corporation in a year of income (the *debt year*); and
  - (c) the debt year is the income year in which this section (as originally enacted) commenced or an earlier income year; and
  - (d) Subdivision 165-C or 175-C, or both, of the *Income Tax Assessment Act 1997* prevent the transferring corporation from deducting an amount for the debt for an income year (the *deduction year*); and
  - (e) the transferring corporation did not, at any time in the deduction year, derive income from:
    - (i) a business of a kind that it did not carry on; or
    - (ii) a transaction of a kind that it had not entered into in the course of its business operations;
 before the transfer, or the earliest of the transfers, occurred;
- neither Subdivision 165-C nor 175-C of that Act prevents the transferring corporation from deducting that amount.

Note: Subdivision 165-C of the *Income Tax Assessment Act 1997* is about the conditions that a company needs to satisfy before it can deduct a bad debt.

Subdivision 175-C of that Act is about the Commissioner preventing a company from getting certain tax benefits through its unused bad debts.

*Limit on deductions for partly written-off debt*

- (4) If this Act applies to the transfer of a debt that has been partly written off, the maximum that the receiving corporation can deduct for the debt for one or more years of income under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997* is worked out using the formula:

Amount of the debt – Unrecouped deductions

where:

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*unrecouped deductions* means the total of the amounts that the transferring corporation has deducted or can deduct for any year of income under:

(a) section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*;  
or

(b) section 51 or 63 of the *Income Tax Assessment Act 1936*;  
reduced by the total of any amounts included in its assessable income in respect of the debt under:

(c) Subdivision 20-A of the *Income Tax Assessment Act 1997*; or

(d) subsection 63(3) of the *Income Tax Assessment Act 1936*.

## **Division 7—Interest withholding tax**

### **23 Exemption from interest withholding tax**

- (1) In addition to its effect apart from this section, section 128F of the *Income Tax Assessment Act 1936* also has the effect it would have if the change set out in subsection (2) of this section were made.
- (2) The change is that paragraphs (1)(a) and (b) of section 128F of the *Income Tax Assessment Act 1936* (being that section in the form that applies under item 16 of Schedule 5 to the *Taxation Laws Amendment Act (No. 2) 1997*) are to be replaced by the following paragraphs:
  - “(a) the liability to pay the interest was transferred to the company by another company (the *transferor*);
  - (b) the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* applies to the transfer;
  - (c) before the transfer, this section applied to interest paid by the transferor in discharge of the liability;
  - (ca) the transferor issued the debentures;
  - (cb) the debentures were issued on or before 18 June 1993;
  - (cc) the interest was not paid in respect of a debenture resulting from a ‘roll-over’, after 18 June 1993, of the whole or a part of a previous debenture;
  - (cd) the interest was not paid in respect of the period of extension of the period of a debenture, being an extension occurring after 18 June 1993;”.

## Division 8—Tax losses

### Subdivision A—Tax losses and the Income Tax Assessment Act 1936

#### 24 Transfer of tax loss from transferring corporation to receiving corporation

- (1A) This section does not enable a right to a deduction for an amount of a loss to be transferred in the 1997-98 year of income or a later year of income.
- (1) In addition to its effect apart from this section, section 80G of the *Income Tax Assessment Act 1936* also has the effect it would have if all of the changes set out in subsections (2), (3) and (4) of this section were made.
- (2) The first change is that paragraphs 80G(6)(a), (b) and (ba) of the *Income Tax Assessment Act 1936* are to be replaced by the following paragraphs:
- “(a) assuming that:
- (i) an asset (within the meaning of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*) had been transferred by a transferring corporation within the meaning of that Act (the *loss company*) to a receiving corporation within the meaning of that Act (the *income company*) on the last day of a particular year of income of the loss company (the *notional transfer year*); and
  - (ii) the requirements of paragraphs 7(6)(a) and (b) of that Act were satisfied in relation to that transfer; that Act would have applied to that transfer; and
- (b) the loss company is taken to have incurred a loss for the purposes of section 79E or 80 in a year of income (the *loss year*); and
- (ba) the loss year is:
- (i) the year of income in which that Act commenced; or

- (ii) an earlier year of income; and
- (bb) both the following conditions are satisfied in relation to a year of income (the *income year*) of the income company:
  - (i) either:
    - (A) the income year ends at the end of the notional transfer year; or
    - (B) the income year corresponds to the year of income of the loss company next following the notional transfer year;
  - (ii) the income year is:
    - (A) the year of income in which that Act commenced; or
    - (B) one of the 10 following years of income; and”.
- (3) The second change is that paragraphs 80G(6)(d) and (e) and subsections 80G(7), (8), (10) and (14) of the *Income Tax Assessment Act 1936* are to be omitted.
- (4) The third change is that paragraphs 80G(6)(f) and (g) of the *Income Tax Assessment Act 1936* are to be replaced by the following paragraphs:
  - “(f) if the loss year is the same year of income as the income year—the year of income immediately preceding the loss year; or
  - (g) if the income year is a year of income later than the loss year—the loss year.”.

## **25 Transfer of tax loss—modification of *substantial continuity of ownership test***

- (1) This section applies if, under subsection 80G(6) of the *Income Tax Assessment Act 1936* (as that subsection has effect because of this Division), a loss, or a part of a loss, is taken to have been incurred by the income company in a particular year of income (the *normal year*).
- (2) For the purposes of the application of section 80A of the *Income Tax Assessment Act 1936* to the income company, the loss, or the

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part of the loss, as the case may be, is to be treated as if it had been incurred in the income year instead of in the normal year.

(3) In this section:

*income company* has the same meaning as in section 80G of the *Income Tax Assessment Act 1936* (as that section has effect because of this Division).

*income year* has the same meaning as in section 80G of the *Income Tax Assessment Act 1936* (as that section has effect because of this Division).

**26 Deduction for tax loss—modification of *substantial continuity of ownership test etc.***

(1) If:

- (a) this Act applies to one or more transfers by the transferring corporation to the receiving corporation; and
- (b) the transferring corporation is taken (otherwise than because of section 80G of the *Income Tax Assessment Act 1936*) to have incurred a loss in a year of income (the *loss year*) for the purposes of section 79E, 79F, 80, 80AAA or 80AA of that Act; and
- (c) the loss year is the year of income in which this section commenced or an earlier year of income; and
- (d) section 80A or 80DA, or both, of that Act prevent a deduction from being allowable under that Act to the transferring corporation for a year of income (the *deduction year*) in respect of that loss; and
- (e) the transferring corporation did not, at any time in the deduction year, derive income from:
  - (i) a business of a kind that it did not carry on; or
  - (ii) a transaction of a kind that it had not entered into in the course of its business operations;

before the transfer, or the earliest of the transfers, occurred; sections 80A and 80DA of the *Income Tax Assessment Act 1936* do not prevent a deduction from being allowable to the transferring corporation in respect of that loss.



- (2) This section does not apply to assessments for the 1997-98 year of income and later years of income.

## **Subdivision B—Tax losses and the Income Tax Assessment Act 1997**

### **26A Application of this Subdivision**

This Subdivision applies to assessments for the 1997-98 income year or a later income year.

### **26B Transfer of tax loss from transferring corporation to receiving corporation**

In addition to its effect apart from this section, the *Income Tax Assessment Act 1997* also has the effect it would have if Subdivision 170-A (which is about transferring tax losses within wholly-owned company groups) of that Act were replaced by Subdivision 170-A (which is a modified version of the rules in that Subdivision) in Schedule 1 to this Act.

### **26C Deduction for tax loss—easing of restrictions on transferring corporation**

- (1) If:
- (a) this Act applies to one or more transfers by the transferring corporation to the receiving corporation; and
  - (b) the transferring corporation is taken (otherwise than because of a transfer of a tax loss under section 80G of the *Income Tax Assessment Act 1936* or Subdivision 170-A of the *Income Tax Assessment Act 1997*) to have incurred a tax loss for a year of income (the *loss year*); and
  - (c) the loss year is the income year in which section 26 of this Act commenced or an earlier income year; and
  - (d) Subdivision 165-A or 175-A, or both, of the *Income Tax Assessment Act 1997* prevent the transferring corporation from deducting an amount of that tax loss for an income year (the *deduction year*); and
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- (e) the transferring corporation did not, at any time in the deduction year, derive income from:
- (i) a business of a kind that it did not carry on; or
  - (ii) a transaction of a kind that it had not entered into in the course of its business operations;
- before the transfer, or the earliest of the transfers, occurred; neither Subdivision 165-A nor 175-A of that Act prevents the transferring corporation from deducting that amount.

Note: Subdivision 165-A of the *Income Tax Assessment Act 1997* is about the conditions that a company needs to satisfy before it can deduct a tax loss from an earlier income year.

Subdivision 175-A of the *Income Tax Assessment Act 1997* is about the Commissioner preventing a company from getting certain tax benefits through its unused tax losses.

- (2) Subsection (1) operates on the basis described in subsection (3) if:
- (a) the head company of a consolidated group or MEC group incurred a tax loss because of Subdivision 707-A of the *Income Tax Assessment Act 1997*; and
  - (b) the company (the *real loss-maker*) that incurred the tax loss apart from that Subdivision is a member of the group in the deduction year; and
  - (c) disregarding section 701-1 (the single entity rule) of that Act, this Act applies to one or more transfers by the real loss-maker to the receiving corporation.

Note: In certain cases, Subdivision 707-A of the *Income Tax Assessment Act 1997* treats the head company of a consolidated group or MEC as incurring a tax loss actually incurred by an entity that becomes a member of the group.

- (3) Subsection (1) operates as if:
- (a) the head company were the transferring corporation in relation to each transfer described in paragraph (1)(a) and this Act applied to each of those transfers; and
  - (b) the head company incurred the tax loss for the income year for which the real loss-maker incurred it (apart from Subdivision 707-A of the *Income Tax Assessment Act 1997*); and

(c) each reference in that subsection to Subdivision 165-A of that Act were a reference to that Subdivision as its operation is affected by Subdivision 707-B of that Act, and by Subdivision 719-F of that Act (if relevant).

Note 1: Subdivision 707-B of the *Income Tax Assessment Act 1997* affects the operation of Subdivision 165-A of that Act in relation to the deduction of a tax loss incurred by the head company of a consolidated group or MEC group because of Subdivision 707-A of that Act.

Note 2: Subdivision 719-F of the *Income Tax Assessment Act 1997* affects the operation of Subdivision 165-A of that Act in relation to the deduction of a tax loss incurred by the head company of a MEC group because of Subdivision 707-A of that Act.

(4) An expression used in this section and in the *Income Tax Assessment Act 1997* has the same meaning in this section as it has in that Act. This subsection does not apply to the expressions *deduction year*, *loss year*, *this Act* and *transfer*.

## **Division 9—Continuity of partnerships**

### **27 Transfer of an interest in a partnership does not affect continuity of partnership**

- (1) This section applies if an interest in a partnership is transferred.
- (2) For the purposes of the *Income Tax Assessment Act 1936*, the transfer does not affect the continuity of the partnership.

## **Schedule 1—Tax losses and the Income Tax Assessment Act 1997**

### **Subdivision 170-A—Transfer of tax losses from a transferring corporation to a receiving corporation**

#### **Guide to Subdivision 170-A**

#### **170-1 What this Subdivision is about**

A transferring corporation (within the meaning of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*) can transfer a tax loss to a receiving corporation (within the meaning of that Act) so that the receiving corporation can deduct it. The corporations must be related in such a way that that Act would apply to a transfer of assets from the transferring corporation to the receiving corporation.

#### **Table of sections**

170-5 Basic principles for transferring tax losses

##### **Effect of transferring a tax loss**

170-10 When a company can transfer a tax loss

170-15 Income company is taken to have incurred transferred loss

170-20 Who can deduct transferred loss

170-23 When income company must maintain same owners and control

170-25 Tax treatment of payment for transferred tax loss

##### **Conditions for transfer**

170-28 The *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* must apply to asset transfer from loss company to income company

170-32 The loss year

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- 170-35 The loss company
- 170-50 Transfer by written agreement
- 170-55 Losses must be transferred in order they are incurred
- 170-60 Income company cannot transfer transferred tax loss

**Effect of agreement to transfer more than can be transferred**

- 170-65 Agreement transfers as much as can be transferred
- 170-70 Amendment of assessments

**Special rules for transfer from head company of consolidated group or MEC group**

- 170-75 Transfer of a tax loss incurred by the head company because of Subdivision 707-A

**170-5 Basic principles for transferring tax losses**

- (1) A transferring corporation (within the meaning of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*) can transfer a tax loss to a receiving corporation (within the meaning of that Act) so that the receiving corporation can deduct it.
- (2) The corporations must be related in such a way that that Act would apply to a transfer of assets from the transferring corporation to the receiving corporation.
- (3) The receiving corporation need not have enough assessable income to offset the transferred tax loss.
- (4) The tax loss is transferred by an agreement between the 2 corporations.
- (5) Special rules extend the scope of this Subdivision to let the head company of a consolidated group or MEC group transfer in some cases a tax loss the company incurred because of Subdivision 707-A. The rules do this by modifying the basis on which other provisions of this Subdivision operate.

**Effect of transferring a tax loss****170-10 When a corporation can transfer a tax loss**

- (1) A transferring corporation within the meaning of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* (the **loss company**) can transfer an amount of its \*tax loss for an income year of the loss company (the **loss year**) to a receiving corporation within the meaning of that Act (the **income company**) if the conditions in this Subdivision are met.
- (2) The amount transferred can be the whole or part of the \*tax loss.  
 Note: A PDF cannot transfer a tax loss, except one for a period before it became a PDF: see section 195-10.
- (3) However, the \*loss company cannot transfer so much of the \*tax loss as the loss company has deducted, or can deduct, for an income year before the one in which the amount is transferred.

**170-15 Income company is taken to have incurred transferred loss**

- (1) If an amount of a \*tax loss is transferred, the \*amount is taken to be a tax loss incurred by the \*income company in the \*loss year.
- (2) However, if the \*loss year is the same as the income year of the \*income company for which the amount is transferred (the **transfer year**), the \*income company is taken to have incurred the \*tax loss in the income year before the loss year.  
 Note: This rule is needed because Division 36 allows a tax loss to be deducted only if it was incurred in an *earlier* income year.

**170-20 Who can deduct transferred loss**

- (1) If an amount of a \*tax loss is transferred, the \*income company can deduct the amount in accordance with section 36-15 (which is about how to deduct a tax loss), but only if Subdivision 165-A (as modified by section 170-23) and Subdivision 175-A do not prevent it from doing so.  
 Note: Subdivision 165-A is about the conditions that a company needs to satisfy before it can deduct a tax loss from an earlier income year.
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Subdivision 175-A is about the Commissioner preventing a company from getting certain tax benefits through its unused tax losses.

- (2) The \*loss company can no longer deduct the transferred amount and is taken not to have incurred the \*tax loss to the extent of that amount.

**170-23 When income company must maintain same owners and control**

- (1) Ordinarily, Subdivision 165-A prevents a company from deducting for an income year (the *deduction year*) a tax loss if there has been a change in the ownership or control of the company between the *loss year* and the deduction year.

Note: Subdivision 165-A is about the conditions that a company needs to satisfy before it can deduct a tax loss from an earlier income year.

- (2) However, subsection (3) modifies that Subdivision so that the \*income company is prevented from deducting for the deduction year a transferred amount of a \*tax loss only if there has been a change in ownership or control in the income company between the *transfer year* and the deduction year.
- (3) That Subdivision applies to the transferred amount as if all references to “\*loss year” in that Subdivision were references to “\*transfer year”.

**170-25 Tax treatment of consideration for transferred tax loss**

- (1) If the loss company receives any consideration from the income company for the amount of the tax loss:
  - (a) that consideration is neither assessable income nor exempt income of the loss company; and
  - (b) the loss company does not make a capital gain because of the receipt of the consideration.

Note: However, the consideration may affect how section 170-210 modifies the cost base of direct and indirect interests in the loss company.

- (2) If the income company gives any consideration to the loss company for the amount of the tax loss:



- (a) the income company cannot deduct the amount or value of the consideration; and
- (b) the income company does not make a capital loss because of the giving of the consideration.

Note: However, the consideration may affect how section 170-215 modifies the cost base of direct and indirect interests in the income company.

### **Conditions for transfer**

#### **170-28 *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* must apply to asset transfer from loss company to income company**

If it were assumed that:

- (a) an asset (within the meaning of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*) had been transferred by the \*loss company to the \*income company on the last day of a particular income year of the \*loss company (the *notional transfer year*); and
- (b) the requirements of paragraphs 7(6)(a) and (b) of that Act were satisfied in relation to that transfer;

then it must be the case that that Act would have applied to that transfer.

#### **170-32 The loss year**

The \*loss year must be either:

- (a) the income year in which the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* commenced; or
- (b) an earlier income year.

#### **170-33 The transfer year**

- (1) The \*transfer year must either:
  - (a) end at the end of the \*notional transfer year; or
  - (b) correspond to the income year of the \*loss company that next follows the \*notional transfer year.

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- (2) Also, the \*transfer year must be one of the 10 income years after the income year in which the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* commenced.

**170-35 The loss company**

If the \*loss year and the \*transfer year are the same, it must be the case that the \*loss company was *not* required to calculate the \*tax loss under section 165-70 or 175-35.

**170-50 Transfer by written agreement**

- (1) The transfer must be made by a written agreement between the \*loss company and the \*income company.
- (2) The agreement must:
- (a) specify the \*transfer year (which may be earlier than the income year in which the agreement is made); and
  - (b) specify the amount of the \*tax loss being transferred; and
  - (c) be signed by the public officer of each company; and
  - (d) be made on or before the day of lodgment of the \*income company's \*income tax return for the \*transfer year, or within such further time as the Commissioner allows.

Note: The agreement will usually be made in the next income year *after* the one in which the tax loss is transferred.

**170-55 Losses must be transferred in order they are incurred**

- (1) If the \*loss company has 2 or more \*tax losses (other than \*film losses) that it can transfer in the \*transfer year, it can transfer them only in the order in which it incurred them.
- (2) If the \*loss company has 2 or more \*film losses that it can transfer in the \*transfer year, it can transfer them only in the order in which it incurred them.

**170-60 Income company cannot transfer transferred tax loss**

The \*income company cannot transfer an amount of a \*tax loss transferred to it, or any part of the amount.

**Effect of agreement to transfer more than can be transferred**

**170-65 Agreement transfers as much as can be transferred**

- (1) If the amount specified in an agreement exceeds the maximum amount that the \*loss company can transfer to the \*income company in the \*transfer year, only that maximum amount is taken to have been transferred.
- (2) One reason why an agreement might specify more than can be transferred is that an assessment has been amended since the agreement.

**170-70 Amendment of assessments**

The Commissioner may amend an assessment to disallow a deduction for a transferred amount of a \*tax loss:

- (a) if the agreement to transfer the tax loss is ineffective because the \*loss company did not actually incur the loss; or
- (b) to the extent that section 170-65 reduces the transferred amount of a tax loss because the loss company did not actually incur some of it.

The Commissioner may do so despite section 170 (Amendment of assessments) of the *Income Tax Assessment Act 1936*.

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**Special rules for transfer from head company of consolidated group or MEC group**

**170-75 Transfer of a tax loss incurred by the head company because of Subdivision 707-A**

- (1) The other sections of this Subdivision operate in relation to the actual or proposed transfer of a \*tax loss on the basis described in this section if:
    - (a) the \*head company of a \*consolidated group or \*MEC group incurred the tax loss because of Subdivision 707-A; and
    - (b) the company (the *real loss-maker*) that incurred the tax loss apart from Subdivision 707-A is a \*member of the group at the end of the income year for which it is proposed to transfer the loss under this Subdivision.
  
  - (2) The other sections of this Subdivision, except section 170-28, operate as if:
    - (a) the \*head company were a transferring corporation within the meaning of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*; and
    - (b) the head company had incurred the \*tax loss for the income year for which the real loss-maker incurred the tax loss (apart from Subdivision 707-A).
- Note: This has the effect that (because of subsection 170-10(1)) those sections operate as if the head company were the loss company and the loss year were the income year for which the real loss-maker incurred the loss.
- (3) Section 170-28 operates as if:
    - (a) the real loss-maker were the \*loss company; and
    - (b) section 701-1 (the single entity rule) could not affect whether the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* would have applied to the transfer described in section 170-28.

## **Schedule 2—Net capital losses and the Income Tax Assessment Act 1997**

### **Part 1—Replacement of sections 170-110 to 170-145**

#### **Effect of transferring a net capital loss**

##### **170-110 When a corporation can transfer a net capital loss**

- (1) A transferring corporation within the meaning of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* (the **loss company**) can transfer an amount of its \*net capital loss for an income year of the loss company (the **capital loss year**) to a receiving corporation within the meaning of that Act (the **gain company**) if the conditions in this Subdivision are met.
- (2) The amount transferred can be the whole or part of the \*net capital loss.  

Note: A PDF cannot transfer a net capital loss, except one for a period before it became a PDF: see section 195-30 of the *Income Tax Assessment Act 1997*.
- (3) However, the \*loss company cannot transfer so much of the \*net capital loss as the loss company has applied, or can apply, in working out its \*net capital gain or \*net capital loss for an income year before the one in which the amount is transferred.

##### **170-115 Who can apply transferred loss**

- (1) If an amount of a \*net capital loss is transferred, the gain company can apply the amount in working out its \*net capital gain for the income year of the gain company for which the amount is transferred or for a later income year. The income year for which the gain company applies the amount is called the **application year**.

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Note: A company's net capital gain or net capital loss for an income year is usually worked out under section 102-5.

- (2) The loss company can no longer apply the transferred amount and is taken not to have made the \*net capital loss to the extent of that amount.

**170-120 Gain company is taken to have made transferred loss**

- (1) If an amount of a \*net capital loss is transferred, the amount is taken to be a \*net capital loss of the gain company for the capital loss year.
- (2) However, if the capital loss year is the same as the application year, the amount is taken to be a \*capital loss of the gain company for the application year.

**170-125 Tax treatment of consideration for transferred net capital loss**

- (1) If the loss company receives consideration from the gain company for the transferred amount:
  - (a) the consideration is neither assessable income nor exempt income of the loss company; and
  - (b) the loss company does not make a \*capital gain because of receiving the consideration.

Note: However, the consideration may affect how section 170-220 modifies the cost base of direct and indirect interests in the loss company.

- (2) If the gain company gives consideration to the loss company for the transferred amount:
  - (a) the gain company cannot deduct the consideration; and
  - (b) the gain company does not make a \*capital loss because of giving the consideration.

Note: However, the consideration may affect how section 170-225 modifies the cost base of direct and indirect interests in the gain company.

## **Conditions for transfer**

### **170-128 *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* must apply to asset transfer from loss company to gain company**

If it were assumed that:

- (a) an asset (within the meaning of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*) had been transferred by the loss company to the gain company on the last day of a particular income year of the loss company (the *notional transfer year*); and
- (b) the requirements of paragraphs 7(6)(a) and (b) of that Act were satisfied in relation to that transfer;

then it must be the case that that Act would have applied to that transfer.

### **170-132 The loss year**

The \*loss year must be either:

- (a) the income year in which the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* commenced; or
- (b) an earlier income year.

### **170-133 The transfer year**

- (1) The \*transfer year must either:
  - (a) end at the end of the \*notional transfer year; or
  - (b) correspond to the income year of the \*loss company that next follows the \*notional transfer year.
- (2) Also, the \*transfer year must be one of the 10 income years after the income year in which the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* commenced.

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**170-135 The loss company**

- (1) It must be the case that the loss company was *not* required to calculate the \*net capital loss:
  - (a) under section 165-114 (because of a change in ownership or control); or
  - (b) under section 175-75 (because of an injected capital gain or loss).
- (2) Also, it must be the case that neither Subdivision 165-CA nor Subdivision 175-CA would have prevented the loss company from applying the \*net capital loss in working out its \*net capital gain for the application year if it had made enough capital gains in that year.

Note 1: Subdivision 165-CA deals with the consequences of changing ownership or control of a company. Subdivision 175-CA deals with using a company's net capital losses to avoid income tax.

Note 2: A company's net capital gain or net capital loss for an income year is usually worked out under section 102-5.

**170-140 The gain company**

- (1) If the capital loss year and the application year are *not* the same, the gain company must not be prevented by Subdivision 165-CA or 175-CA from applying the transferred amount in working out its \*net capital gain for the application year.
  - Note 1: Subdivision 165-CA deals with the consequences of changing ownership or control of a company. Subdivision 175-CA deals with using a company's net capital losses to avoid income tax.
  - Note 2: A company's net capital gain or net capital loss for an income year is usually worked out under section 102-5.
- (2) If the capital loss year and the application year *are* the same, it must be the case that the gain company was *not* required to calculate its own \*net capital gain or \*net capital loss for the application year:
  - (a) under Subdivision 165-CB (because of a change in ownership or control); or
  - (b) under section 175-75 (because of an injected capital gain or loss).



Note: In deciding whether paragraph (b) applies, remember that the transferred amount is taken to be a capital loss of the gain company for the application year (because of subsection 170-120(2)).

### **170-145 Maximum amount that can be transferred**

*Loss company can only transfer what it cannot use itself*

- (1) The amount transferred cannot exceed the amount of the loss company's \*net capital loss that, apart from the transfer, the loss company would carry forward to the next income year after the application year.

Note: If the capital loss year and the application year are the same, the loss company would carry forward the whole of the net capital loss, because section 102-5 does not allow a net capital loss to be applied in the income year in which it was made.

Example: In the application year the loss company has:

- a net capital loss from an earlier income year of \$25,000; and
- other capital losses totalling \$10,000; and
- capital gains totalling \$20,000;

Of the \$25,000 loss, the loss company can transfer to the gain company no more than:

$$\$25,000 - (\$20,000 - \$10,000) = \$15,000$$

## Part 2—Addition of provisions at the end of Subdivision 170-B

### Special rules for transfer from head company of consolidated group or MEC group

#### 170-175 Transfer of a net capital loss made by the head company because of Subdivision 707-A

- (1) The other sections of this Subdivision operate in relation to the actual or proposed transfer of a \*net capital loss on the basis described in this section if:
  - (a) the \*head company of a \*consolidated group or \*MEC group made the net capital loss because of Subdivision 707-A; and
  - (b) the company (the *real loss-maker*) that made the net capital loss apart from Subdivision 707-A is a \*member of the group at the end of the income year for which it is proposed to transfer the loss under this Subdivision.
- (2) The other sections of this Subdivision, except section 170-128, operate as if:
  - (a) the \*head company were a transferring corporation within the meaning of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*; and
  - (b) the head company had made the \*net capital loss for the income year for which the real loss-maker made the net capital loss (apart from Subdivision 707-A).

Note: This has the effect that (because of subsection 170-110(1)) those sections operate as if the head company were the loss company and the capital loss year were the income year for which the real loss-maker made the loss.

- (3) Section 170-128 operates as if:
  - (a) the real loss-maker were the \*loss company; and
  - (b) section 701-1 (the single entity rule) could not affect whether the *Financial Corporations (Transfer of Assets and*

*Liabilities) Act 1993* would have applied to the transfer described in section 170-28.

- (4) Subsection 170-135(2) operates as if the reference in it to Subdivision 165-CA were a reference to that Subdivision as it operates given the effect of Subdivision 707-B, and Subdivision 719-F if relevant, on the operation of Subdivision 165-A.

Note: Subdivision 165-CA determines whether a net capital loss can be applied by reference to whether Subdivision 165-A would permit the deduction of a tax loss for the same income year as the net capital loss. Subdivisions 707-B and 719-F affect the operation of Subdivision 165-A in relation to losses made by a company because of Subdivision 707-A.



**Table of Acts**

**Notes to the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993***

**Note 1**

The *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* as shown in this compilation comprises Act No. 97, 1993 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequential and Transitional) Act 2001*, see Act No. 55, 2001.

For all relevant other information pertaining to application, saving or transitional provisions see Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Financial Corporations (Transfer of Assets and Liabilities) Act 1993</i>	97, 1993	22 Dec 1993	22 Dec 1993	
<i>Income Tax (Consequential Amendments) Act 1997</i>	39, 1997	17 Apr 1997	1 July 1997	—
<i>Taxation Laws Amendment Act (No. 2) 1997</i>	95, 1997	30 June 1997	S. 4 and Schedule 5 (items 14–16): Royal Assent(a)	S. 4 and Sch. 5 (items 15, 16)
<i>Financial Laws Amendment Act 1997</i>	107, 1997	30 June 1997	Schedule 4 (items 1, 1A): 22 Dec 1996 (b) Schedule 4 (item 2): Royal Assent (b)	S. 2(2A) (ad. by 24, 2000, Sch. 5 [item 2])
<b>as amended by</b>				
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000</i>	24, 2000	3 Apr 2000	Schedule 5 (items 2, 4): 30 June 1997 (c)	—

Notes to the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Law Improvement Act 1997</i>	121, 1997	8 July 1997	Section 4: Royal Assent (d) Schedule 2 (items 38, 39): (d) Schedule 5 (items 95–99): (d) Schedule 8 (item 52): (d)	S. 4 and Sch. 5 (item 99)
<i>Taxation Laws Amendment Act (No. 1) 1998</i>	16, 1998	16 Apr 1998	Schedule 9: Royal Assent (e)	Sch. 9 (item 2)
<i>Tax Law Improvement Act (No. 1) 1998</i>	46, 1998	22 June 1998	Schedule 2 (items 540–545): (f) Schedule 3 (items 22–24): (f)	S. 4, Sch. 2 (item 545) and Sch. 3 (item 24)
<i>Financial Sector Reform (Consequential Amendments) Act 1998</i>	48, 1998	29 June 1998	Schedule 1 (items 48–63): 1 July 1998 (see <i>Gazette</i> , 1998, No. S316) (g)	—
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act 1998</i>	54, 1998	29 June 1998	Schedule 18 (item 46): 1 July 1998 (see <i>Gazette</i> 1998, No. S316) (h)	—
<i>New Business Tax System (Integrity and Other Measures) Act 1999</i>	169, 1999	10 Dec 1999	Schedule 5 (items 16–19): 22 Feb 1999 (i)	—
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000</i>	24, 2000	3 Apr 2000	Schedule 4 (items 1, 3): 1 July 1998 (j) Schedule 4 (items 2, 4–6, 8–11): 22 Dec 1998 (j) Schedule 4 (item 7): Royal Assent (j) Schedule 12 (items 1–3): 3 Apr 2000 (j)	Sch. 12 (items 1–3)
<i>Corporations (Repeals, Consequential and Transitional) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (items 187–189): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (k)	Ss. 4–14

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001</i>	121, 2001	24 Sept 2001	Ss. 1–3: Royal Assent Remainder: 1 July 2002 (see s. 2(2) and <i>Gazette</i> 2002 No. GN24)	—
<i>Financial Corporations (Transfer of Assets and Liabilities) Amendment Act 2002</i>	33, 2002	30 May 2002	1 July 2001	—
<i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i>	117, 2002	2 Dec 2002	Schedule 14 (items 1, 2): (l)	—
<i>New Business Tax System (Consolidation and Other Measures) Act) 2003</i>	16, 2003	11 Apr 2003	Schedule 20 (items 1–8): (m)	Sch. 20 (item 8) [see Table A]

## Act Notes

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- (a) The *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* was amended by Schedule 5 (item 14) only of the *Taxation Laws Amendment Act (No. 2) 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (b) The *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* was amended by Schedule 4 only of the *Financial Laws Amendment Act 1997*, subsections 2(1) and (2A) of which provide follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (2A) Items 1 and 1A of Schedule 4 are taken to have commenced on 22 December 1996.
- (c) The *Financial Laws Amendment Act 1997* was amended by Schedule 5 (items 2 and 4) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000*, subsection 2(5) of which provides as follows:
- (5) Items 2 and 4 of Schedule 5 are taken to have commenced on 30 June 1997, immediately after the commencement of section 2 of the *Financial Laws Amendment Act 1997*.
- (d) The *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* was amended by Schedule 2 (items 38 and 39), Schedule 5 (items 95–98) and Schedule 8 (item 52) only of the *Tax Law Improvement Act 1997*, subsections 2(1)–(3) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (2) Schedule 1 commences on 1 July 1997 immediately after the commencement of the *Income Tax Assessment Act 1997*.
  - (3) Each of the other Schedules (except Schedule 12) commences immediately after the commencement of the immediately preceding Schedule.
- (e) The *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* was amended by Schedule 9 only of the *Taxation Laws Amendment Act (No. 1) 1998*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (f) The *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* was amended by Schedule 2 (items 540–544) and Schedule 3 (items 22, 23) only of the *Tax Law Improvement Act (No. 1) 1998*, subsections 2(1)–(3) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (2) Schedule 2 (except item 3 of it) commences immediately after the commencement of Schedule 1.
  - (3) Schedule 3 commences immediately after the commencement of Schedule 2 (except item 4 of it).

Schedule 1 commenced on 22 June 1998.

- (g) The *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* was amended by Schedule 1 (items 48–63) only of the *Financial Sector Reform (Consequential Amendments) Act 1998*, subsection 2(2) of which provides as follows:
- (2) Subject to subsections (3) to (14), Schedules 1, 2 and 3 commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*.



## Act Notes

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- (h) The *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* was amended by Schedule 18 (item 46) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1998*, subsection 2(2)(p) of which provides as follows:
- (2) The following provisions of this Act commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*:
    - (p) Schedule 18, other than the items amending the *Australian Prudential Regulation Authority Act 1998*.
- (i) The *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* was amended by Schedule 5 (items 16–19) only of the *New Business Tax System (Integrity and Other Measures) Act 1999*, subsection 2(2) of which provides as follows:
- (2) Schedule 5 is taken to have commenced on 22 February 1999.
- (j) The *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* was amended by Schedule 4 only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 2000*, subsections 2(1), (3), (4), (5) (12) and (13) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (3) Items 1 and 3 of Schedule 4 are taken to have commenced on 1 July 1998, immediately after the commencement of items 51 and 58 of Schedule 1 to the *Financial Sector Reform (Consequential Amendments) Act 1998*.
  - (4) Items 2, 4, 5, 6, 8, 9, 10 and 11 of Schedule 4 are taken to have commenced on 22 December 1998.
  - (5) Items 2 and 4 of Schedule 5 are taken to have commenced on 30 June 1997, immediately after the commencement of section 2 of the *Financial Laws Amendment Act 1997*.
  - (12) Part 1 of Schedule 12 commences:
    - (a) after all of the Acts listed in subsection (13) have received the Royal Assent; and
    - (b) on the day that is the last day on which any of those Acts received the Royal Assent.
  - (13) These are the relevant Acts for the purposes of paragraph (12)(a):
    - (a) this Act;
    - (b) each of the Acts referred to in the definition of **Validation Act** in item 1 of Schedule 12 to this Act.
- (k) The *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* was amended by Schedule 3 (items 187–189) only of the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.
- (l) The *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* was amended by Schedule 14 (items 1 and 2) only of the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002*, subsection 2(1) (item 9) of which provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

## Act Notes

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### Commencement information

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Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
9. Schedules 6 to 15	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002</i>	24 October 2002

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(m) Subsection 2(1) (item 13) of the *New Business Tax System (Consolidation and Other Measures) Act 2003* provides as follows:

Provision(s)	Commencement	Date/Details
13. Schedules 20 to 23	Immediately after the commencement of Schedule 1 to the <i>New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002</i>	24 October 2002

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## Table of Amendments

### Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 3.....	am. No. 107, 1997 (as am. by No. 24, 2000); Nos. 46 and 48, 1998; No. 24, 2000; Nos. 55 and 121, 2001; No. 33, 2002
S. 4.....	am. No. 24, 2000; No. 121, 2001
S. 6.....	am. No. 48, 1998; No. 55, 2001
S. 7.....	am. No. 107, 1997; No. 48, 1998; No. 24, 2000; No. 55, 2001; No. 33, 2002
S. 10.....	am. No. 39, 1997
S. 12.....	am. No. 54, 1998
S. 13.....	am. No. 39, 1997
S. 15.....	am. Nos. 39 and 121, 1997; No. 46, 1998
Ss. 16, 17.....	am. No. 39, 1997
S. 18.....	rs. No. 46, 1998 am. No. 117, 2002
S. 19.....	rs. No. 46, 1998
Heading to s. 20.....	rs. No. 46, 1998
S. 20.....	am. No. 46, 1998; No. 24, 2000; No. 33, 2002; No. 16, 2003
S. 21.....	am. Nos. 39 and 121, 1997
S. 22.....	am. No. 121, 1997; No. 16, 1998
S. 23.....	am. No. 95, 1997
Heading to Subdiv. A of Div. 8.....	ad. No. 39, 1997
S. 24.....	am. No. 39, 1997; No. 24, 2000; No. 33, 2002
S. 26.....	am. No. 39, 1997
Subdiv. B of Div. 8 (ss. 26A–26C).....	ad. No. 39, 1997
Ss. 26A, 26B.....	ad. No. 39, 1997
S. 26C.....	ad. No. 39, 1997 am. No. 16, 2003
Schedule 1.....	ad. No. 39, 1997 am. No. 169, 1999; No. 24, 2000; No. 33, 2002; No. 16, 2003
S. 170-1.....	ad. No. 39, 1997
S. 170-5.....	ad. No. 39, 1997 am. No. 16, 2003
S. 170-10.....	ad. No. 39, 1997
S. 170-15.....	ad. No. 39, 1997
S. 170-20.....	ad. No. 39, 1997
S. 170-23.....	ad. No. 39, 1997
S. 170-25.....	ad. No. 39, 1997 rs. No. 169, 1999

## Table of Amendments

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
S. 170-28 .....	ad. No. 39, 1997
S. 170-32 .....	ad. No. 39, 1997
S. 170-33 .....	ad. No. 39, 1997 am. No. 24, 2000; No. 33, 2002
S. 170-35 .....	ad. No. 39, 1997
S. 170-50 .....	ad. No. 39, 1997
S. 170-55 .....	ad. No. 39, 1997
S. 170-60 .....	ad. No. 39, 1997
S. 170-65 .....	ad. No. 39, 1997
S. 170-70 .....	ad. No. 39, 1997
S. 170-75.....	ad. No. 16, 2003
Schedule 2 .....	ad. No. 46, 1998 am. No. 169, 1999; No. 24, 2000; No. 33, 2002; No. 16, 2003
Heading to Part 1.....	ad. No. 16, 2003
S. 170-110 .....	ad. No. 46, 1998
S. 170-115 .....	ad. No. 46, 1998
S. 170-120 .....	ad. No. 46, 1998
Heading to s. 170-125 .....	am. No. 169, 1999
S. 170-125 .....	ad. No. 46, 1998 am. No. 169, 1999
S. 170-128 .....	ad. No. 46, 1998
S. 170-132 .....	ad. No. 46, 1998
S. 170-133 .....	ad. No. 46, 1998 am. No. 24, 2000; No. 33, 2002
S. 170-135 .....	ad. No. 46, 1998
S. 170-140 .....	ad. No. 46, 1998
S. 170-145 .....	ad. No. 46, 1998 am. No. 169, 1999
Part 2 .....	ad. No. 16, 2003
S. 170-175.....	ad. No. 16, 2003

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**Table A**

**Table A**

**Application, saving or transitional provisions**

*Taxation Laws Amendment Act (No. 2) 1997* (No. 95, 1997)

**4 Amendment of income tax assessments**

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

**Schedule 5**

**15 Application of amendments to post-1995 debentures**

The amendments made by this Part apply in respect of a debenture issued on or after 1 January 1996.

**16 Transitional—continued application of old law to pre-commencement debentures**

Without limiting item 15, if:

- (a) a debenture was issued on or after 1 January 1996 but before the commencement of this Part; and
- (b) assuming section 128F of the *Income Tax Assessment Act 1936* had not been amended by this Part, that section would apply in respect of interest paid in respect of the debenture;

then:

- (c) that section applies in respect of the interest as if the section had not been so amended; and
- (d) section 159GZL of that Act applies in respect of the interest as if it had not been amended by this Part.

## **Table A**

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*Tax Law Improvement Act 1997* (No. 121, 1997)

### **4 Application of amendments**

An amendment made by an item in a Schedule (except Schedule 1) applies to assessments for the 1997-98 income year and later income years, unless otherwise indicated in that Schedule.

### **Schedule 5**

#### **99 Application of amendments**

- (1) The amendments of section 21 of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* apply in relation to years of income after the 1996-97 year of income.
- (2) However, the amendments of paragraphs 21(1)(e) and (2)(e) apply in relation to years of income after the 1995-96 year of income.

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*Taxation Laws Amendment Act (No. 1) 1998* (No. 16, 1998)

### **Schedule 9**

#### **2 Application of amendment**

The amendment made by item 1 applies to assessments for the 1997-98 year of income and later years of income.

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*Tax Law Improvement Act (No. 1) 1998* (No. 46, 1998)

### **4 Application of amendments**

An amendment made by an item in a Schedule (except an item in Schedule 1 or in Part 1 of any of Schedules 2 to 8) applies to assessments for the 1998-99 income year and later income years, unless otherwise indicated in the Schedule in which the item appears.

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**Table A**

**Schedule 2**

**545 Application**

The amendment made by item 541 applies to a transfer in the 1998-99 income year or a later income year.

**Schedule 3**

**24 Application**

The amendment made by item 23 applies to assessments for the 1997-98 year of income and later years of income.

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*Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1)*  
2000 (No. 24, 2000)

**Schedule 12**

**Part 1—Transitional provisions for validation of  
determinations relating to financial sector  
supervisory levies**

**1 Definitions**

In this Part:

**Collection Act** means the *Financial Institutions Supervisory Levies Collection Act 1998*.

**deferred payment day** means the day that is 6 weeks after the day on which this Part commences.

**Imposition Act** means any of the following Acts:

- (a) the *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998*;
- (b) the *General Insurance Supervisory Levy Imposition Act 1998*;
- (c) the *Life Insurance Supervisory Levy Imposition Act 1998*;

## **Table A**

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(d) the *Retirement Savings Account Providers Supervisory Levy Imposition Act 1998*;

(e) the *Superannuation Supervisory Levy Imposition Act 1998*.

**levy paying entity** has the same meaning as in the Collection Act.

**Validation Act** means any of the following Acts:

(a) the *Authorised Non-operating Holding Companies Supervisory Levy Determination Validation Act 2000*;

(b) the *General Insurance Supervisory Levy Determination Validation Act 2000*;

(c) the *Life Insurance Supervisory Levy Determination Validation Act 2000*;

(d) the *Retirement Savings Account Providers Supervisory Levy Determination Validation Act 2000*;

(e) the *Superannuation Supervisory Levy Determination Validation Act 2000*.

## **2 Deferral of date for paying levy**

- (1) This item applies to a levy paying entity if, because of section 4 of a Validation Act:
- (a) the entity is liable to pay levy imposed by an Imposition Act; and
  - (b) the levy payable by the entity would, apart from this item, have been due and payable under section 9 of the Collection Act before the deferred payment day.
- (2) The levy payable by the entity is taken to be due and payable on the deferred payment day, despite section 9 of the Collection Act.

Note: This provision affects the calculation of late payment penalty (if any) under section 10 of the Collection Act.

## **3 No retrospective criminal liability**

Nothing in this Part or the Validation Acts is taken to make a person criminally liable in respect of acts or omissions of the person before the day on which this Part commences, if the person would not have been so liable had this Part and the Validation Acts not been enacted.



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**Table A**

*New Business Tax System (Consolidation and Other Measures) Act 2003*  
(No. 16, 2003)

**Schedule 20**

**8 Application**

- (1) The amendments of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* made by this Schedule apply to assessments for the income year including 1 July 2002 and later income years.
- (2) In this item:  
*income year* has the same meaning as in the *Income Tax Assessment Act 1997*.