



Financial Corporations (Transfer of Assets and Liabilities) Act 1993

Act No. 97 of 1993 as amended

This compilation was prepared on 20 December 2006
taking into account amendments up to Act No. 168 of 2006

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

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

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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
- (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.

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

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(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
 - (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.

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- (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;
before effecting the transfer of the asset or liability;
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.

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 (the Australian Prudential Regulation Authority); or
- (aa) an APRA member, within the meaning of the *Australian Prudential Regulation Authority Act 1998*; 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.

14A Modified operation of this Part in relation to transfers from subsidiary members of consolidated groups etc.

Object

- (1) The object of this section is to modify the operation of other provisions of this Part in relation to a transfer of an asset or liability from a subsidiary member of a consolidated group or MEC group to a receiving corporation so that, where appropriate:
 - (a) relevant provisions affect the income tax position of the head company of the group in relation to the transfer; and
 - (b) the effect of the relevant provisions on the income tax position of the receiving corporation is worked out by reference to income tax attributes of the head company, including ones it has because of the following provisions of the *Income Tax Assessment Act 1997*:
 - (i) section 701-1 (the *single entity rule*);
 - (ii) section 701-5 (the *entry history rule*);
 - (iii) section 701-10 (the *head company tax cost setting rule*).

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- Note 1: The single entity rule has the effect that a subsidiary member of a consolidated group or MEC group is taken to be part of the head company.
- Note 2: The entry history rule treats things that happened in relation to an entity before it became a subsidiary member of a consolidated group or MEC group as having happened in relation to the head company.
- Note 3: The head company tax cost setting rule sets the amount taken to be the cost to the head company of assets that became assets of the head company because of the single entity rule when an entity became a subsidiary member of the consolidated group or MEC group.

Circumstances in which this section has effect

- (2) This section modifies the way in which a provision of this Part (except this Division) operates in relation to a transfer of an asset or liability from a financial corporation that (ignoring the single entity rule) is a subsidiary member of a consolidated group or MEC group to the receiving corporation.

Modified operation of the provision

- (3) If the head company of the group is not a financial corporation, the provision operates in relation to the head company in the way in which it would operate in relation to the transferring corporation apart from this subsection.

Note: This ensures that, even though the head company is not the transferring corporation (because it is not a financial corporation), the provision operates as though it were. On this basis, the provision may affect the head company and/or the receiving corporation.

- (4) So far as the provision affects the receiving corporation, it does so on the basis that the single entity rule, the entry history rule and the head company tax cost setting rule affect the head company of the group.

Note 1: This subsection ensures that, where the effect of the provision on the receiving corporation depends on the transferring corporation, the results of those rules in relation to the head company are taken into account in determining the effect of the provision on the receiving corporation. Some examples of this are as follows:

- (a) the head company tax cost setting rule affects subsection 15(3) and section 18 by setting the head company's cost base for assets an entity brought into the group when the entity became a subsidiary member of the group;
- (b) the entry history rule affects paragraph 16(3)(d) by treating the head company as having been paid, for assuming a liability that

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was brought into the group by an entity becoming a subsidiary member, the amount paid to the entity for assuming the liability;

- (c) the entry history rule affects subsections 17(1) and 22(4) and table item 1 in subsection 22(1) by treating the head company as having included in its assessable income amounts included in the assessable income of an entity that later became a subsidiary member of the group;
- (d) the entry history rule affects subsections 17(1) and (2) and 22(4) by treating deductions allowable to an entity before becoming a subsidiary member of the group as having been allowable to the head company.

Note 2: This subsection also ensures that, if the head company is a financial corporation, the receiving corporation is affected by the provision operating in relation to the head company of the group as the transferring corporation (because the single entity rule operates to treat the subsidiary member of the group as part of the head company, so the transfer is treated as being from that company).

Provisions whose operation is not modified

- (5) To avoid doubt, this section does not affect the operation of the following provisions:
 - (b) section 23;
 - (c) Division 8.

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 25A, 26BB, 26C or 159GS of the *Income Tax Assessment Act 1936* or section 6-5, 15-15 or 775-15 of the *Income Tax Assessment Act 1997*; or
 - (b) whether an amount is allowable as a deduction to the transferring corporation under section 52, 70B or 159GS of the *Income Tax Assessment Act 1936* or section 8-1 or 775-30 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 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 25A, 26BB, 26C or Division 16E of Part III of the *Income Tax Assessment Act 1936* or section 6-5, 15-15 or 775-15 of the *Income Tax Assessment Act 1997*; or
 - (b) whether an amount is allowable as a deduction to the receiving corporation under section 52, 70B or Division 16E of Part III of the *Income Tax Assessment Act 1936* or

section 8-1 or 775-30 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.

Note: For transitional provisions about former sections 82Y and 82Z of the *Income Tax Assessment Act 1936*, see Part 2 of Schedule 4 to the *New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003*.

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 6-5 or 775-15 of the *Income Tax Assessment Act 1997*; or
 - (b) whether an amount is allowable as a deduction to the transferring corporation under section 8-1 or 775-30 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 6-5 or 775-15 of the *Income Tax Assessment Act 1997* in respect of the assumption of the liability as a result of the transfer.

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 Division 16E of Part III of the *Income Tax Assessment Act 1936* or section 6-5 or 775-15 of the *Income Tax Assessment Act 1997*; or

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- (b) whether an amount is allowable as a deduction to the receiving corporation under Division 16E of Part III of the *Income Tax Assessment Act 1936* or section 8-1 or 775-30 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.

Note: For transitional provisions about former sections 82Y and 82Z of the *Income Tax Assessment Act 1936*, see Part 2 of Schedule 4 to the *New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003*.

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 former section 25, or under Division 16E of Part III, of the *Income Tax Assessment Act 1936* or under 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 former section 51, or under Division 16E of Part III, of the *Income Tax Assessment Act 1936* or under 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 former section 51, or under Division 16E of Part III, of the *Income Tax Assessment Act 1936* or under section 8-1 of

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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 is taxable Australian property

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 is, while it is an asset of the receiving corporation, taxable Australian property.

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 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 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 70-45 of the *Income Tax Assessment Act 1997*); and
 - (iii) that expenditure had been so incurred immediately after the transfer; and
- (e) 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 1997* to the transferring corporation in respect of expenditure incurred in the acquisition of the trading stock; and
 - (d) 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) 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*.

Effect of rules about deductions for bad debts		
Case	If:	then those rules have effect as if:
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

Modification of tests for receiving corporation to deduct bad debt

- (2) In relation to a transfer of a debt, Subdivisions 165-C, 166-C, 175-C, 709-D and 719-I 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) any one or more of Subdivisions 165-C, 175-C, 709-D and 719-I 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;
- none of those Subdivisions 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.

Subdivision 709-D of that Act is about the conditions that must be met for an entity to deduct a bad debt that has for a period been owed to a member of a consolidated group and has for another period been owed to an entity that was not a member of that group for the period.

Subdivision 719-I of that Act is about the conditions that must be met for an entity to deduct a bad debt that has for a period been owed to a member of a MEC group.

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 63 or former section 51 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) former 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 or debt interests;”.

Division 8—Tax losses

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.

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 former section 80G of the *Income Tax Assessment Act 1936* or under 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 former 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
- (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.

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])
as amended by				
<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, Consequentials and Transitionals) 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 [see Note 1]

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)
<i>Australian Prudential Regulation Authority Amendment Act 2003</i>	42, 2003	24 June 2003	Schedules 1–3: 1 July 2003 (see <i>Gazette</i> 2003, No. S230) Remainder: Royal Assent	Sch. 3
<i>New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003</i>	133, 2003	17 Dec 2003	17 Dec 2003	Sch. 4 (item 77(3))
<i>Tax Laws Amendment (2004 Measures No. 2) Act 2004</i>	83, 2004	25 June 2004	Schedule 2 (items 1, 65, 66): Royal Assent	Sch. 2 (items 1, 66)
<i>New International Tax Arrangements (Managed Funds and Other Measures) Act 2005</i>	21, 2005	21 Mar 2005	21 Mar 2005	Sch. 3 (item 47(3))
<i>Tax Laws Amendment (2005 Measures No. 5) Act 2005</i>	162, 2005	19 Dec 2005	Schedule 3 (items 4–7): Royal Assent	Sch. 3 (item 33)
<i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>	101, 2006	14 Sept 2006	Schedule 2 (items 50–79) and Schedule 6 (items 1, 6–11): Royal Assent	Sch. 6 (items 1, 6–11)
<i>Tax Laws Amendment (2006 Measures No. 4) Act 2006</i>	168, 2006	12 Dec 2006	Schedule 3 (items 3–5): 13 Dec 2005 Remainder: Royal Assent	—

Act Notes

- (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 and 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*.
- (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:

Act Notes

- (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) Subsection 2(1) (item 9) of the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002* 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.

Commencement information

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

Act Notes

(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

Table of Amendments

Table of Amendments

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

Provision affected	How affected
Part 2	
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; No. 101, 2006
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; No. 42, 2003
Part 3	
Division 1	
S. 13	am. No. 39, 1997
S. 14A	ad. No. 83, 2004 am. No. 101, 2006
Division 2	
S. 15	am. Nos. 39 and 121, 1997; No. 46, 1998; No. 133, 2003; No. 101, 2006
Note to s. 15	ad. No. 133, 2003
S. 16	am. No. 39, 1997; No. 133, 2003; No. 101, 2006
Note to s. 16	ad. No. 133, 2003
Division 3	
S. 17	am. No. 39, 1997; No. 101, 2006
Division 4	
S. 18	rs. No. 46, 1998 am. No. 117, 2002
Heading to s. 19	am. No. 168, 2006
S. 19	rs. No. 46, 1998 am. No. 168, 2006
Heading to s. 20	rs. No. 46, 1998
S. 20	am. No. 46, 1998; No. 24, 2000; No. 33, 2002; No. 16, 2003 rep. No. 101, 2006
Division 5	
S. 21	am. Nos. 39 and 121, 1997; No. 101, 2006
Division 6	
S. 22	am. No. 121, 1997; Nos. 16 and 46, 1998; No. 162, 2005; No. 101, 2006
Note to s. 22(3)	am. No. 162, 2005
Division 7	
S. 23	am. No. 95, 1997; No. 21, 2005

Table of Amendments

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

Provision affected	How affected
Division 8	
Subdivision A	
Subdiv. A of Div 8.....	rep. No. 101, 2006
Heading to Subdiv. A of Div. 8	ad. No. 39, 1997 rep. No. 101, 2006
S. 24	am. No. 39, 1997; No. 24, 2000; No. 33, 2002 rep. No. 101, 2006
S. 25	rep. No. 101, 2006
S. 26	am. No. 39, 1997 rep. No. 101, 2006
Subdivision B	
Subdiv. B of Div. 8	ad. No. 39, 1997
S. 26A	ad. No. 39, 1997
S. 26B	ad. No. 39, 1997 rep. No. 101, 2006
S. 26C.....	ad. No. 39, 1997 am. No. 16, 2003; No. 101, 2006
Schedule 1	
Schedule 1	ad. No. 39, 1997 am. No. 169, 1999; No. 24, 2000; No. 33, 2002; No. 16, 2003 rep. No. 101, 2006
Subdivision 170–A	
S. 170-1	ad. No. 39, 1997 rep. No. 101, 2006
S. 170-5	ad. No. 39, 1997 am. No. 16, 2003 rep. No. 101, 2006
S. 170-10	ad. No. 39, 1997 rep. No. 101, 2006
S. 170-15	ad. No. 39, 1997 rep. No. 101, 2006
S. 170-20	ad. No. 39, 1997 rep. No. 101, 2006
S. 170-23	ad. No. 39, 1997 rep. No. 101, 2006
S. 170-25	ad. No. 39, 1997 rs. No. 169, 1999 rep. No. 101, 2006
S. 170-28	ad. No. 39, 1997 rep. No. 101, 2006
S. 170-32	ad. No. 39, 1997 rep. No. 101, 2006
S. 170-33	ad. No. 39, 1997 am. No. 24, 2000; No. 33, 2002 rep. No. 101, 2006

Table of Amendments

ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
Provision affected	How affected		
S. 170-35	ad. No. 39, 1997 rep. No. 101, 2006		
S. 170-50	ad. No. 39, 1997 rep. No. 101, 2006		
S. 170-55	ad. No. 39, 1997 rep. No. 101, 2006		
S. 170-60	ad. No. 39, 1997 rep. No. 101, 2006		
S. 170-65	ad. No. 39, 1997 rep. No. 101, 2006		
S. 170-70	ad. No. 39, 1997 rep. No. 101, 2006		
S. 170-75	ad. No. 16, 2003 rep. No. 101, 2006		
Schedule 2			
Schedule 2	ad. No. 46, 1998 am. No. 169, 1999; No. 24, 2000; No. 33, 2002; No. 16, 2003 rep. No. 101, 2006		
Part 1			
Heading to Part 1	ad. No. 16, 2003 rep. No. 101, 2006		
S. 170-110	ad. No. 46, 1998 rep. No. 101, 2006		
S. 170-115	ad. No. 46, 1998 rep. No. 101, 2006		
S. 170-120	ad. No. 46, 1998 rep. No. 101, 2006		
Heading to s. 170-125	am. No. 169, 1999 rep. No. 101, 2006		
S. 170-125	ad. No. 46, 1998 am. No. 169, 1999 rep. No. 101, 2006		
S. 170-128	ad. No. 46, 1998 rep. No. 101, 2006		
S. 170-132	ad. No. 46, 1998 rep. No. 101, 2006		
S. 170-133	ad. No. 46, 1998 am. No. 24, 2000; No. 33, 2002 rep. No. 101, 2006		
S. 170-135	ad. No. 46, 1998 rep. No. 101, 2006		
S. 170-140	ad. No. 46, 1998 rep. No. 101, 2006		
S. 170-145	ad. No. 46, 1998 am. No. 169, 1999 rep. No. 101, 2006		

Table of Amendments

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

Provision affected	How affected
Part 2	
Part 2.....	ad. No. 16, 2003 rep. No. 101, 2006
S. 170-175.....	ad. No. 16, 2003 rep. No. 101, 2006

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

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.

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.

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.

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.

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

Schedule 12

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*;
- (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:

Table A

- (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.

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*.

Australian Prudential Regulation Authority Amendment Act 2003
(No. 42, 2003)

Schedule 3

1 Definitions

In this Schedule:

amended Act means the *Australian Prudential Regulation Authority Act 1998* as in force after the commencement of the amendments.

commencement of the amendments means the commencement of the amendments made by Schedule 1.

old Act means the *Australian Prudential Regulation Authority Act 1998* as in force immediately before the commencement of the amendments.

2 APRA's corporate existence is continued

- (1) The body corporate that was, immediately before the commencement of the amendments, the Australian Prudential Regulation Authority (*APRA*) continues in existence after that commencement by force of this item under the corporate structure provided for by the amended Act.

Financial Corporations (Transfer of Assets and Liabilities) Act 1993

41

Table A

Note: Rights, liabilities and obligations as between APRA and other people, and things done by or on behalf of APRA, or in relation to APRA, are therefore not affected by the restructure of APRA.

- (2) However, this does not imply that any person who, immediately before the commencement of the amendments, was a member of APRA's Board, or was APRA's Chief Executive Officer, continues to hold office after that commencement.

Note: These people cease to hold office on the commencement of the amendments because of the repeal of the provisions under which they were appointed.

3 Continued protection from liability

Section 58 of the old Act continues to apply in relation to conduct, before the commencement of the amendments, of APRA's Board, a member of APRA's Board or an agent of a member of APRA's Board.

Note: The reference to a member of APRA's Board covers APRA's Chief Executive Officer.

4 Continued effect of certain delegations

- (1) A delegation in force, immediately before the commencement of the amendments, under subsection 15(1) or (2) of the old Act continues to have effect after that commencement as if it were a delegation under APRA's seal under that subsection of the amended Act. If the delegation was to one or more members of APRA's Board, it continues to have effect as if it were a delegation to any APRA member.
- (2) A direction in force, immediately before the commencement of the amendments, under subsection 15(3) of the old Act continues to have effect after that commencement, in relation to a delegation to which subitem (1) applies, as if it were a direction given by APRA under that subsection of the amended Act.
- (3) A delegation to one or more members of APRA's Board in force, immediately before the commencement of the amendments, under a provision amended by Schedule 2 continues to have effect after that commencement as if it were a delegation under the amended provision to any APRA member.

Note: Delegations in favour of APRA, or APRA staff members, are not affected by the Schedule 2 amendments.

Table A

5 Continued effect of determinations of terms and conditions for staff and consultants

A determination of terms and conditions in force, immediately before the commencement of the amendments, under subsection 45(2) or 47(2) of the old Act continues to have effect after that commencement as if it were a determination by APRA under that subsection of the amended Act.

6 Continued effect of approvals under paragraph 56(5)(b)

An approval in force, immediately before the commencement of the amendments, under paragraph 56(5)(b) of the old Act continues to have effect after that commencement as if it were an approval by APRA under that paragraph of the amended Act.

7 Continued or extended effect of certain regulations

- (1) Regulations in force, immediately before the commencement of the amendments, under paragraph (k) of the definition of *Act covered by this section* in subsection 56(1) of the old Act continue to have effect after that commencement as if they were made under paragraph (o) of the definition of *prudential regulation framework law* in subsection 3(1) of the amended Act, but only as that paragraph applies for the purposes of section 56 of the amended Act.
- (2) Regulations in force, immediately before the commencement of the amendments, under paragraph 56(5)(a) of the old Act have effect after that commencement (in addition to the effect they continue to have for that paragraph of the amended Act) as if they were also made under subsection 10A(1) of the amended Act.

8 Delegations by ASIC to APRA staff members

- (1) Subsection 102(2A) of the *Australian Securities and Investments Commission Act 2001* has effect after the commencement of the amendments as if the reference in that subsection to the Chief Executive Officer of APRA were instead a reference to APRA.
- (2) For the purposes of that subsection as it continues to have effect, an agreement to a delegation, in force under that subsection immediately

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before the commencement of the amendments, continues to have effect after that commencement as if it were given by APRA.

New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003 (No. 133, 2003)

Schedule 4

77 Transitional—Division 3B of Part III of the *Income Tax Assessment Act 1936*

- (3) Despite the amendments made by this Schedule that omit references to sections 82Y and 82Z of the *Income Tax Assessment Act 1936* from sections 15 and 16 of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*, sections 15 and 16 of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* continue to apply, in relation to the former sections 82Y and 82Z of the *Income Tax Assessment Act 1936*, as if those amendments had not been made.

Tax Laws Amendment (2004 Measures No. 2) Act 2004 (No. 83, 2004)

Schedule 2

1 Application

Except as provided otherwise, the amendments made by this Schedule apply on and after 1 July 2002.

66 Application

The amendment of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* made by this Part applies for assessments for the year of income including 1 July 2002 and later years of income.

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New International Tax Arrangements (Managed Funds and Other Measures)
Act 2005 (No. 21, 2005)

Schedule 3

47 Application

- (3) The amendment made by Part 3 of this Schedule applies to debentures or debt interests that:
- (a) are issued after 18 June 1993; and
 - (b) are transferred on or after the Assent day.

Tax Laws Amendment (2005 Measures No. 5) Act 2005 (No. 162, 2005)

Schedule 3

33 Application

The amendments made by this Schedule apply on and after 1 July 2002.

Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006
(No. 101, 2006)

Schedule 6

1 Application of Schedule 1 and 2 amendments

Except as mentioned in items 2 and 3, the repeals and amendments made by Schedules 1 and 2 apply:

- (a) so far as they affect assessments—to assessments for the 2006-07 income year and all later income years; and
- (b) otherwise—to acts done or omitted to be done, or states of affairs existing, after the commencement of the repeals and amendments.

6 Object

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The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or
- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

7 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example 1: On 31 July 1999, Greg Ltd lodged its annual return under former section 160ARE of the *Income Tax Assessment Act 1936*. The return stated that the company had a credit on its franking account and that no franking deficit tax was payable for the 1998-99 franking year. Under former section 160ARH of that Act, the Commissioner was taken to have made an assessment consistent with the return.

Following an audit undertaken after the repeal of Part IIIAA of that Act, the Commissioner concludes that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year, and had a franking account deficit for that franking year. As a result, the Commissioner considers that franking deficit tax and a penalty by way of additional tax are payable.

The Commissioner can amend the assessment under former section 160ARN of that Act, because item 7 of this Schedule disregards the repeal of that section for the purposes of making an assessment in relation to the 1998-99 franking year. Item 7 will also

Table A

disregard the repeal of Division 11 of former Part IIIAA to the extent necessary for the Commissioner to assess Greg Ltd's liability to a penalty by way of additional tax.

Despite the repeal of sections 160ARU and 160ARV, item 9 will ensure that the general interest charge will accrue on the unpaid franking deficit tax and penalty until they are paid.

Item 7 will also preserve Greg Ltd's right, under former section 160ART of that Act, to object against the Commissioner's amended assessment (including the penalty), since the objection is the exercise of a right in relation to a franking year that ended before the repeal of Part IIIAA.

Example 2: During the 1997-98 income year, Duffy Property Ltd withheld amounts from its employees' wages as required by former Divisions 1AAA and 2 of Part VI of the *Income Tax Assessment Act 1936*. The company failed to notify the Commissioner of those amounts, and failed to remit them to the Commissioner.

Following an audit undertaken after the repeal of those Divisions, the Commissioner discovers that the withheld amounts have not been remitted. The company's records are incomplete and the Commissioner is unable to completely ascertain the extent of its liability for the withheld amounts. Under section 222AGA of that Act, the Commissioner makes an estimate of the liability.

Item 7 will disregard the repeal of section 220AAZA of that Act (which empowered the Commissioner to recover the amount of the estimate). Even though the estimate is made after the repeal, it relates to amounts withheld before the repeal.

8 Saving of provisions about effect of assessments

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

9 Saving of provisions about general interest charge, failure to notify penalty or late reconciliation statement penalty

If:

- (a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:

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- (i) general interest charge, failure to notify penalty or late reconciliation statement penalty (all within the meaning of the *Income Tax Assessment Act 1936*); or
 - (ii) interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and
- (b) in a particular case, the period in respect of which the charge, penalty or interest is payable (whether under the provision or under the *Taxation Administration Act 1953*) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

10 Repeals disregarded for the purposes of dependent provisions

If the operation of a provision (the *subject provision*) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

11 Schedule does not limit operation of section 8 of the *Acts Interpretation Act 1901*

This Schedule does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.