



Income Tax Assessment Act 1997

Act No. 38 of 1997 as amended

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Volume 2 includes: Table of Contents
Sections 40-1 to 55-10

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

Chapter 2—Liability rules of general application

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Part 2-10—Capital allowances: rules about deductibility of capital expenditure

Division 40—Capital allowances

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Guide to Division 40

40-1 What this Division is about

You can deduct an amount equal to the decline in value of a *depreciating asset* (an asset that has a limited effective life and that is reasonably expected to decline in value over the time it is used) that you hold.

That decline is generally measured by reference to the effective life of the asset.

You can also deduct amounts for certain other capital expenditure.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-10

40-10 Simplified outline of this Division

The key concepts about depreciating assets and certain other capital expenditure are outlined below (in ***bold italics***).

Simplified outline of this Division		
Item	Major topic	Provisions
	<i>Subordinate topics</i> Rules	
1	Rules about depreciating assets	
1.1	<i>Core provisions</i> <i>Depreciating assets</i> are assets with a limited effective life that are reasonably expected to decline in value. Broadly, the <i>effective life</i> of a depreciating asset is the period it can be used to produce income. The <i>decline in value</i> is based on the cost and effective life of the depreciating asset, not its actual change in value. It begins at <i>start time</i> , when you begin to use the asset (or when you have it installed ready for use). It continues while you use the asset (or have it installed). Usually, the owner of a depreciating asset <i>holds</i> the asset and can therefore claim deductions for its decline in value. Sometimes the economic owner will be different to the legal owner and the economic owner will be the holder.	Subdivision 40-B
1.2	<i>Cost</i> The <i>cost</i> of a depreciating asset includes both: <ul style="list-style-type: none"> • expenses you incur to start holding the asset; and • additional expenses that contribute to its present condition and location (e.g. improvements). 	Subdivision 40-C
1.3	<i>Balancing adjustments</i> When you stop holding a depreciating asset you may have to include an amount in your assessable income, or deduct an amount under a <i>balancing adjustment</i> . The adjustment reconciles the decline with the actual change in value.	Subdivision 40-D

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Simplified outline of this Division		
Item	Major topic <i>Subordinate topics</i> Rules	Provisions
1.4	<i>Low-value and software development pools</i> Low-cost assets and assets depreciated to a low value may be placed in a low value pool , which is treated as a single depreciating asset. You can also pool in-house software expenditure in a software development pool .	Subdivision 40-E
1.5	<i>Primary production depreciating assets</i> You can deduct amounts for capital expenditure on: <ul style="list-style-type: none"> • water facilities over 3 income years; or • horticultural plants over a period that relates to the effective life of the plant. 	Subdivision 40-F
2	Rules about other capital expenditure	
2.1	<i>Capital expenditure of primary producers and other landholders</i> You can deduct amounts for capital expenditure on: <ul style="list-style-type: none"> • landcare operations immediately; or • electricity and telephone lines over 10 income years. 	Subdivision 40-G
2.2	<i>Capital expenditure that is immediately deductible</i> You can get an immediate deduction for certain capital expenditure on: <ul style="list-style-type: none"> • exploration or prospecting; and • rehabilitation of mine and quarry sites; and • paying petroleum taxes; and • environmental protection activities. 	Subdivision 40-H
2.3	<i>Capital expenditure that is deductible over time</i> You can deduct amounts for certain capital expenditure associated with projects you carry on. You deduct the amount over the life of the project using a project pool . You can also deduct amounts for certain business related costs over 5 years where the amounts are not otherwise taken into account and are not denied a deduction.	Subdivision 40-I

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2 Liability rules of general application

Part 2-10 Capital allowances: rules about deductibility of capital expenditure

Division 40 Capital allowances

Section 40-15

Simplified outline of this Division		
Item	Major topic <i>Subordinate topics</i> Rules	Provisions
2.4	<i>Capital expenditure for establishing trees in carbon sink forests</i> You can deduct amounts for capital expenditure for the establishment of trees in carbon sink forests.	Subdivision 40-J

Subdivision 40-A—Objects of Division

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40-15 Objects of Division

40-15 Objects of Division

The objects of this Division are:

- (a) to allow you to deduct the *cost of a *depreciating asset; and
- (b) to spread the deduction over a period that reflects the time for which the asset can be used to obtain benefits; and
- (c) to provide deductions for certain other capital expenditure that is not otherwise deductible.

Note 1: This Division does not apply to some depreciating assets: see section 40-45.

Note 2: The application of this Division to a life insurance company is affected by sections 320-200 and 320-255.

Subdivision 40-B—Core provisions

Guide to Subdivision 40-B

40-20 What this Subdivision is about

The rules that apply to most depreciating assets are in this Subdivision. It explains:

- what a *depreciating asset* is; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- when you start deducting amounts for depreciating assets; and
- how to work out your deductions.

It also contains rules for splitting and merging depreciating assets.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Operative provisions

40-25 Deducting amounts for depreciating assets

You deduct the decline in value

- (1) You can deduct an amount equal to the decline in value for an income year (as worked out under this Division) of a *depreciating asset that you *held for any time during the year.

Note 1: Sections 40-70, 40-72 and 40-75 show you how to work out the decline for most depreciating assets. There is a limit on the decline: see subsections 40-70(3), 40-72(3) and 40-75(7).

Note 2: Small business entities can choose to both deduct and work out the amount they can deduct under Division 328.

Note 3: Generally, only one taxpayer can deduct amounts for a depreciating asset. However, if you and another taxpayer jointly hold the asset, each of you deduct amounts for it: see section 40-35.

Reduction of deduction

- (2) You must reduce your deduction by the part of the asset's decline in value that is attributable to your use of the asset, or your having it *installed ready for use, for a purpose other than a *taxable purpose.

Example: Ben holds a depreciating asset that he uses for private purposes for 30% of his total use in the income year.

If the asset declines by \$1,000 for the year, Ben would have to reduce his deduction by \$300 (30% of \$1,000).

Further reduction: leisure facilities

- (3) You may have to make a further reduction for a *depreciating asset that is a *leisure facility attributable to your use of it, or your having it *installed ready for use, for a *taxable purpose.
- (4) That reduction is the part of the *leisure facility's decline in value that is attributable to your use of it, or your having it *installed ready for use, at a time when:
- (a) its use did not constitute a *fringe benefit; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) you did not use it or *hold it for use as mentioned in paragraph 26-50(3)(b) (about using it in the course of your business or for your employees).

Exception: low-value pools

- (5) Subsections (2), (3) and (4) do not apply to *depreciating assets allocated to a low-value pool.

Despite subsection (1), you can continue to deduct an amount equal to the decline in value for an income year (as worked out under this Division) of such an asset even though you do not continue to *hold that asset.

Note: See Subdivision 40-E for low-value pools.

Exception: Use of $\frac{1}{3}$ of actual expenses method for a car

- (6) Subsections (2), (3) and (4) do not apply to a *car for an income year for which you use the “one-third of actual expenses” method. Instead, you reduce your deduction by $\frac{2}{3}$ of the car’s decline in value.

Note: See Division 28 for that method.

Meaning of taxable purpose

- (7) Subject to subsection (8), a **taxable purpose** is:

- (a) the *purpose of producing assessable income; or
- (b) the purpose of *exploration or prospecting; or
- (c) the purpose of *mining site rehabilitation; or
- (d) *environmental protection activities.

Note 1: Where you have had a deduction under this Division an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

Note 2: When this Division notionally applies under section 355-310 (about depreciating assets used for R&D activities), the taxable purpose is sometimes only the purpose of conducting R&D activities.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-30

- (8) If Division 250 applies to you and an asset that is a *depreciating asset:
- (a) if section 250-150 applies—you are taken to be using the asset for a *taxable purpose to the extent specified in a determination made under subsection 250-150(3); or
 - (b) otherwise—you are taken not to be using the asset for such a purpose.

40-30 What a *depreciating asset* is

- (1) A *depreciating asset* is an asset that has a limited *effective life and can reasonably be expected to decline in value over the time it is used, except:
- (a) land; or
 - (b) an item of *trading stock; or
 - (c) an intangible asset, unless it is mentioned in subsection (2).
- (2) These intangible assets are *depreciating assets* if they are not *trading stock:
- (a) *mining, quarrying or prospecting rights;
 - (b) *mining, quarrying or prospecting information;
 - (c) items of *intellectual property;
 - (d) *in-house software;
 - (e) *IRUs;
 - (f) *spectrum licences;
 - (g) *datacasting transmitter licences;
 - (h) *telecommunications site access rights.
- (3) This Division applies to an improvement to land, or a fixture on land, whether the improvement or fixture is removable or not, as if it were an asset separate from the land.

Note 1: Whether such an asset is a depreciating asset depends on whether it falls within the definition in subsection (1).

Note 2: This Division does not apply to capital works for which you can deduct amounts under Division 43: see subsection 40-45(2).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) Whether a particular composite item is itself a *depreciating asset* or whether its components are separate *depreciating assets* is a question of fact and degree which can only be determined in the light of all the circumstances of the particular case.

Example 1: A car is made up of many separate components, but usually the car is a depreciating asset rather than each component.

Example 2: A floating restaurant consists of many separate components (like the ship itself, stoves, fridges, furniture, crockery and cutlery), but usually these components are treated as separate depreciating assets.

- (5) This Division applies to a renewal or extension of a *depreciating asset that is a right as if the renewal or extension were a continuation of the original right.
- (6) This Division applies to a *mining, quarrying or prospecting right (the *new right*) as if it were a continuation of another mining, quarrying or prospecting right you *held if:
- (a) the other right ends; and
 - (b) the new right and the other right relate to the same area, or any difference in area is not significant.

40-35 Jointly held depreciating assets

- (1) This Division and Divisions 41, 328 and 775 apply to a *depreciating asset (the *underlying asset*) that you *hold, and that is also held by one or more other entities, as if *your interest in* the underlying asset were itself the underlying asset.

Note: Partners do not hold partnership assets: see section 40-40.

- (2) As a result, the decline in value of the underlying asset is not itself taken into account.

Example: Buford Corp owns an office block that it leases to 2 companies, Smokey Pty Ltd and Bandit Pty Ltd. Smokey and Bandit decide to install a fountain in front of the building.

They discuss it with Buford who agrees to pay half the cost (because the fountain won't be removable at the end of the lease). Smokey and Bandit split the rest of the cost between them.

Smokey and Bandit would each hold the asset under item 3 of the table in section 40-40 and Buford would hold it under item 10. They would be joint holders, so each would write-off its *interest in* the fountain.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-40

40-40 Meaning of *hold* a depreciating asset

Use this table to work out who ***holds*** a *depreciating asset. An entity identified in column 3 of an item in the table as ***not holding*** a depreciating asset cannot ***hold*** the asset under another item.

Identifying the holder of a depreciating asset		
Item	This kind of depreciating asset:	Is held by this entity:
1	A *car in respect of which a lease has been granted that was a *luxury car when the lessor first leased it	The lessee (while the lessee has the *right to use the car) and <i>not</i> the lessor
2	A *depreciating asset that is fixed to land subject to a *quasi-ownership right (including any extension or renewal of such a right) where the owner of the right has a right to remove the asset	The owner of the quasi-ownership right (while the right to remove exists)
3	An improvement to land (whether a fixture or not) subject to a *quasi-ownership right (including any extension or renewal of such a right) made, or itself improved, by any owner of the right for the owner's own use where the owner of the right has no right to remove the asset	The owner of the quasi-ownership right (while it exists)
4	A *depreciating asset that is subject to a lease where the asset is fixed to land and the lessor has the right to recover the asset	The lessor (while the right to recover exists)
5	A right that an entity legally owns but which another entity (the <i>economic owner</i>) exercises or has a right to exercise immediately, where the economic owner has a right to become its legal owner and it is reasonable to expect that: (a) the economic owner will become its legal owner; or (b) it will be disposed of at the direction and for the benefit of the economic owner	The economic owner and <i>not</i> the legal owner

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Identifying the holder of a depreciating asset		
Item	This kind of depreciating asset:	Is held by this entity:
6	<p>A *depreciating asset that an entity (the <i>former holder</i>) would, apart from this item, hold under this table (including by another application of this item) where a second entity (also the <i>economic owner</i>):</p> <p>(a) possesses the asset, or has a right as against the former holder to possess the asset immediately; and</p> <p>(b) has a right as against the former holder the exercise of which would make the economic owner the holder under any item of this table;</p> <p>and it is reasonable to expect that the economic owner will become its holder by exercising the right, or that the asset will be disposed of at the direction and for the benefit of the economic owner</p>	The economic owner and <i>not</i> the former holder
7	A *depreciating asset that is a partnership asset	The partnership and <i>not</i> any particular partner
8	<p>*Mining, quarrying or prospecting information that an entity has and that is relevant to:</p> <p>(a) *mining and quarrying operations carried on, or proposed to be carried on by the entity; or</p> <p>(b) a *business carried on by the entity that includes *exploration or prospecting for *minerals or quarry materials obtainable by such operations; whether or not it is generally available</p>	The entity
9	Other *mining quarrying or prospecting information that an entity has and that is not generally available	The entity
10	Any *depreciating asset	The owner, or the legal owner if there is both a legal and equitable owner

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2 Liability rules of general application

Part 2-10 Capital allowances: rules about deductibility of capital expenditure

Division 40 Capital allowances

Section 40-45

Example 1: Power Finance leases a luxury car to Kris who subleases it to Rachael. As lessee, item 1 makes Rachael the holder of the car. Power, as the legal owner, would normally hold the car under item 10.

However, item 1 makes it clear that Power, as lessor, does *not* hold the car. As the lessee, item 1 would normally mean that Kris held the car but, again, she is also a lessor and so is not the holder (she also doesn't have the right to use the car during the sublease).

Example 2: Sandra sells a packing machine to Jenny under a hire purchase agreement. Jenny holds the machine under item 6 because, although she is not the legal owner until she exercises her option to purchase, she possesses the machine now and can exercise an option to become its legal owner.

Jenny is reasonably expected to exercise that option because the final payment will be well below the expected market value of the machine at the end of the agreement. Sandra, as the machine's legal owner, would normally be its holder under item 10 but item 6 makes it clear that the legal owner is *not* the holder.

Note 1: Some assets may have holders under more than one item in the table.

Note 2: As well as hire purchase agreements, items 5 and 6 cover cases like assets subject to chattel mortgages, sales subject to retention of title clauses and assets subject to bare trusts.

40-45 Assets to which this Division does not apply

Eligible work related items

- (1) This Division does not apply to an asset that is an eligible work related item for the purposes of section 58X of the *Fringe Benefits Tax Assessment Act 1986* where the relevant benefit provided by the employer is an expense payment benefit or a property benefit (within the meaning of that Act).

Capital works

- (2) This Division does not apply to capital works for which you can deduct amounts under Division 43, or for which you could deduct amounts under that Division:
 - (a) but for expenditure being incurred, or capital works being started, before a particular day; or
 - (b) had you used the capital works for a purpose relevant to those capital works under section 43-140.

Note: Section 43-20 lists the capital works to which that Division applies.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Films

- (5) This Division does not apply to a *depreciating asset if you or another taxpayer has deducted or can deduct amounts for it under:
 - (a) former Division 10BA of Part III of the *Income Tax Assessment Act 1936* (about Australian films); or
 - (b) former Division 10B of Part III of that Act if the depreciating asset relates to a copyright in an Australian film within the meaning of that Division.
- (6) This Division applies to a *depreciating asset that is copyright in a *film where a company is entitled to a *tax offset under section 376-55 in respect of the film as if the asset's *cost were reduced by the amount of that offset.

40-50 Assets for which you deduct under another Subdivision

- (1) You cannot deduct an amount, or work out a decline in value, for a *depreciating asset under this Subdivision if you or another taxpayer has deducted or can deduct amounts for it under Subdivision 40-F (about primary production depreciating assets), 40-G (about capital expenditure of primary producers and other landholders) or 40-J (about capital expenditure for the establishment of trees in carbon sink forests).
- (2) You cannot deduct an amount, or work out a decline in value, for *in-house software under this Subdivision if you have allocated expenditure on the software to a software development pool under Subdivision 40-E.

40-53 Alterations etc. to certain depreciating assets

- (1) These things are not the same *depreciating asset for the purposes of section 40-50 and Subdivision 40-F:
 - (a) a depreciating asset; and
 - (b) a repair of a capital nature, or an alteration, addition or extension, to that asset that would, if it were a separate depreciating asset, be a *water facility.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-55

- (2) These things are not the same *depreciating asset for the purposes of section 40-50 and Subdivision 40-G:
- (a) a depreciating asset; and
 - (b) a repair of a capital nature, or an alteration, addition or extension, to that asset that would, if it were a separate depreciating asset, be a *landcare operation.

40-55 Use of certain car methods

You cannot deduct any amount for the decline in value of a *car for an income year if you use the “cents per kilometre” method, or the “12% of original value” method, for the car for that year.

Note: See Division 28 for those methods.

40-60 When a depreciating asset starts to decline in value

- (1) A *depreciating asset you *hold starts to decline in value from when its *start time occurs.
- (2) The **start time** of a *depreciating asset is when you first use it, or have it *installed ready for use, for any purpose.

Note: Previous use by a transition entity is ignored: see section 58-70.

- (3) However, there is another **start time** for a *depreciating asset you *hold if a *balancing adjustment event referred to in paragraph 40-295(1)(b) occurs for the asset and you start to use the asset again. Its second **start time** is when you start using it again.

40-65 Choice of methods to work out the decline in value

- (1) You have a choice of 2 methods to work out the decline in value of a *depreciating asset. You must choose to use either the *diminishing value method or the *prime cost method.

Note 1: Once you make the choice for an asset, you cannot change it: see section 40-130.

Note 2: For the diminishing value method, see sections 40-70 and 40-72. For the prime cost method, see section 40-75.

Note 3: In some cases you do not have to make the choice because you can deduct the asset’s cost: see section 40-80.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Exception: asset acquired from associate

- (2) For a *depreciating asset that you acquire from an *associate of yours where the associate has deducted or can deduct an amount for the asset under this Division, you must use the same method that the associate was using.

Note: You can require the associate to tell you which method the associate was using: see section 40-140.

Exception: holder changes but user same or associate of former user

- (3) For a *depreciating asset that you acquire from a former *holder of the asset, you must use the same method that the former holder was using for the asset if:
- (a) the former holder or another entity (each of which is the **former user**) was using the asset at a time before you became the holder; and
 - (b) while you hold the asset, the former user or an *associate of the former user uses the asset.
- (4) However, you must use the *diminishing value method if:
- (a) you do not know, and cannot readily find out, which method the former holder was using; or
 - (b) the former holder did not use a method.

Exception: low-value pools

- (5) You work out the decline in value of a *depreciating asset in a low-value pool under Subdivision 40-E rather than under this Subdivision.

Exception: also notionally deductible under R&D provisions

- (6) If:
- (a) only one of the following events has happened:
 - (i) you have deducted one or more amounts under this Division for an asset;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-70

- (ii) you have been entitled under section 355-100 (about R&D) to one or more *tax offsets because you can deduct one or more amounts under section 355-305 for an asset; but

(b) later, the other event happens for the asset;
then, for the purposes of working out the deduction for the later event, you must choose the same method that you chose for the first event.

Note 1: Deductions under section 355-305 (about decline in value of tangible depreciating assets used for R&D activities) are worked out using a notional application of this Division.

Note 2: This subsection applies with changes if you have or could have deducted an amount under former section 73BA of the *Income Tax Assessment Act 1936* for the asset (see section 40-67 of the *Income Tax (Transitional Provisions) Act 1997*).

(7) If:

- (a) the events in paragraph (6)(a) could both arise for the same period for an asset; and
 - (b) neither event has already arisen for the asset;
- then you must choose the same method for the purposes of working out the deduction for each event.

40-70 Diminishing value method

- (1) You work out the decline in value of a *depreciating asset for an income year using the ***diminishing value method*** in this way:

$$\text{Base value} \times \frac{\text{Days held}}{365} \times \frac{150\%}{\text{Asset's * effective life}}$$

where:

base value is:

- (a) for the income year in which the asset's *start time occurs—its *cost; or
- (b) for a later year—the sum of its *opening adjustable value for that year and any amount included in the second element of its cost for that year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

days held is the number of days you *held the asset in the income year from its *start time, ignoring any days in that year when you did not use the asset, or have it *installed ready for use, for any purpose.

Note 1: If you recalculate the effective life of a depreciating asset, you use that recalculated life in working out your deduction.

You can choose to recalculate effective life because of changed circumstances: see section 40-110. That section also requires you to recalculate effective life in some cases.

Note 2: The effective life of a vessel can change in some cases: see subsection 40-103(2).

Exception: intangibles

- (2) You cannot use the *diminishing value method to work out the decline in value of:
- (a) *in-house software; or
 - (b) an item of *intellectual property (except copyright in a *film); or
 - (c) a *spectrum licence; or
 - (d) a *datacasting transmitter licence; or
 - (e) a *telecommunications site access right.

Limit on decline

- (3) The decline in value of a *depreciating asset under this section for an income year cannot be more than the amount that is the asset's *base value for that income year.

40-72 Diminishing value method for post-9 May 2006 assets

- (1) You work out the decline in value of a *depreciating asset for an income year using the **diminishing value method** in this way if you started to *hold the asset on or after 10 May 2006:

$$\text{*Base value} \times \frac{\text{Days held}}{365} \times \frac{200\%}{\text{Asset's *effective life}}$$

where:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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days held has the same meaning as in subsection 40-70(1).

Note: If you recalculate the effective life of a depreciating asset, you use that recalculated life in working out your deduction.

You can choose to recalculate effective life because of changed circumstances: see section 40-110. That section also requires you to recalculate effective life in some cases.

Exception: intangibles

- (2) You cannot use the *diminishing value method to work out the decline in value of:
- (a) *in-house software; or
 - (b) an item of *intellectual property (except copyright in a *film);
or
 - (c) a *spectrum licence; or
 - (d) a *datacasting transmitter licence; or
 - (e) a *telecommunications site access right.

Limit on decline

- (3) The decline in value of a *depreciating asset under this section for an income year cannot be more than the amount that is the asset's *base value for that income year.

40-75 Prime cost method

- (1) You work out the decline in value of a *depreciating asset for an income year using the **prime cost method** in this way:
where:

$$\text{Asset's *cost} \times \frac{\text{Days held}}{365} \times \frac{100\%}{\text{Asset's *effective life}}$$

where:

days held has the same meaning as in subsection 40-70(1).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Example: Greg acquires an asset for \$3,500 and first uses it on the 26th day of the income year. If the effective life of the asset is $3\frac{1}{3}$ years, the asset would decline in value in that year by:

$$\$3,500 \times \frac{[365 - 25]}{365} \times \frac{100\%}{3\frac{1}{3}} = \$978$$

The asset's adjustable value at the end of the income year is:

$$\$3,500 - \$978 = \$2,522$$

- (2) However, you must adjust the formula in subsection (1) for an income year (the ***change year***):
- (a) for which you recalculate the *depreciating asset's *effective life; or
 - (b) after the year in which the asset's start time occurs and in which an amount is included in the second element of the asset's *cost; or
 - (c) for which the asset's *opening adjustable value is reduced under section 40-90 (about debt forgiveness); or
 - (d) in which the *remaining effective life of the asset is calculated under section 40-103; or
 - (e) for which there is a reduction to the asset's opening adjustable value under paragraph 40-365(5)(b) (about involuntary disposals) where you are using the prime cost method; or
 - (f) for which the opening adjustable value of the asset is modified under subsection 27-80(3A) or (4), 27-85(3) or 27-90(3); or
 - (g) for which there is a reduction in the asset's opening adjustable value under section 775-70; or
 - (h) for which there is an increase in the asset's opening adjustable value under section 775-75.

The adjustments apply for the change year and later years.

Note 1: For recalculating a depreciating asset's effective life: see section 40-110.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-75

Note 2: You may also adjust the formula for an income year if you had undeducted core technology expenditure for the asset at the end of your last income year commencing before 1 July 2011 (see section 355-605 of the *Income Tax (Transitional Provisions) Act 1997*).

- (3) The adjustments are:
- (a) instead of the asset's *cost, you use its *opening adjustable value for the change year plus the amounts (if any) included in the second element of its cost for that year; and
 - (b) instead of the asset's *effective life, you use its *remaining effective life.
- (4) The **remaining effective life** of a *depreciating asset is any period of its *effective life that is yet to elapse as at:
- (a) the start of the change year; or
 - (b) in the case of a roll-over under section 40-340—the time when the *balancing adjustment event occurs for the transferor.

Note: Effective life is worked out in years and fractions of years.

- (5) You must also adjust the formula in subsection (1) for an intangible *depreciating asset that:
- (a) is mentioned in an item in the table in subsection 40-95(7) (except item 5, 7 or 8); and
 - (b) you acquire from a former *holder of the asset.

The adjustment applies for the income year in which you acquire the asset and later income years.

- (6) Instead of the asset's *effective life under the table in subsection 40-95(7), you use the number of years remaining in that effective life as at the start of the income year in which you acquire the asset.

Limit on decline

- (7) The decline in value of a *depreciating asset under this section for an income year cannot be more than:
- (a) for the income year in which the asset's *start time occurs—its *cost; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) for a later year—the sum of its *opening adjustable value for that year and any amount included in the second element of its cost for that year.

40-80 When you can deduct the asset's cost [see Note 18]

Exploration or prospecting

- (1) The decline in value of a *depreciating asset you *hold is the asset's *cost if:
 - (a) you first use the asset for *exploration or prospecting for *minerals, or quarry materials, obtainable by *mining and quarrying operations; and
 - (b) when you first use the asset, you do not use it for:
 - (i) development drilling for *petroleum; or
 - (ii) operations in the course of working a mining property, quarrying property or petroleum field; and
 - (c) you satisfy one or more of these subparagraphs at the asset's *start time:
 - (i) you carry on mining operations;
 - (ii) it would be reasonable to conclude you proposed to carry on such operations;
 - (iii) you carry on a *business of, or a business that included, exploration or prospecting for minerals or quarry materials obtainable by such operations, and expenditure on the asset was necessarily incurred in carrying on that business.

Depreciating assets used for certain purposes

- (2) The decline in value of a *depreciating asset you start to *hold in an income year is the asset's *cost if:
 - (a) that cost does not exceed \$300; and
 - (b) you use the asset predominantly for the *purpose of producing assessable income that is not income from carrying on a *business; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-85

- (c) the asset is not one that is part of a set of assets that you started to hold in that income year where the total cost of the set of assets exceeds \$300; and
- (d) the total cost of the asset and any other identical, or substantially identical, asset that you start to hold in that income year does not exceed \$300.

40-85 Meaning of *adjustable value* and *opening adjustable value* of a depreciating asset

- (1) The ***adjustable value*** of a *depreciating asset at a particular time is:
 - (a) if you have not yet used it or had it *installed ready for use for any purpose—its *cost; or
 - (b) for a time in the income year in which you first use it, or have it installed ready for use, for any purpose—its cost less its decline in value up to that time; or
 - (c) for a time in a later income year—the sum of its *opening adjustable value for that year and any amount included in the second element of its cost for that year up to that time, less its decline in value for that year up to that time.

Note: The adjustable value of a depreciating asset may be modified by section 250-285.

- (2) The ***opening adjustable value*** of a *depreciating asset for an income year is its *adjustable value to you at the end of the previous income year.

Note: The opening adjustable value of a depreciating asset may be modified by one of these provisions:

- (a) Subdivision 27-B;
- (b) subsection 40-90(3);
- (c) subsection 40-285(4);
- (d) paragraph 40-365(5)(b);
- (e) section 775-70;
- (f) section 775-75;
- (g) section 355-605 of the *Income Tax (Transitional Provisions) Act 1997*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-90 Debt forgiveness

- (1) This section applies if an amount (the *debt forgiveness amount*) is applied in reduction of expenditure for a *depreciating asset in an income year under section 245-155 or 245-157.
- (2) The asset's *cost is reduced for that income year by the debt forgiveness amount.
- (3) The asset's *opening adjustable value for that income year is reduced by the debt forgiveness amount if that income year is later than the one in which its *start time occurs.

40-95 Choice of determining effective life

- (1) You must choose either:
 - (a) to use an *effective life determined by the Commissioner for a *depreciating asset under section 40-100; or
 - (b) to work out the effective life of the asset yourself under section 40-105.
- Note: If you choose to use an effective life determined by the Commissioner for a depreciating asset, a capped life may apply to the asset under section 40-102.
- (2) Your choice of an *effective life determined by the Commissioner for a *depreciating asset is limited to one in force as at:
 - (a) the time when you entered into a contract to acquire the asset, you otherwise acquired it or you started to construct it if its *start time occurs within 5 years of that time; or
 - (b) for *plant that you entered into a contract to acquire, you otherwise acquired or you started to construct before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999—the time when you entered into the contract to acquire it, otherwise acquired it or started to construct it; or
 - (c) otherwise—its *start time.
 - (3) You must make the choice for the income year in which the asset's *start time occurs.

Note: For rules about choices: see section 40-130.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-95

Exception: asset acquired from associate

- (4) For a *depreciating asset that you start to *hold where the former holder is an *associate of yours and the associate has deducted or can deduct an amount for the asset under this Division, you must use:
- (a) if the associate was using the *diminishing value method for the asset—the same *effective life that the associate was using; or
 - (b) if the associate was using the *prime cost method—an effective life equal to any period of the asset's effective life the associate was using that is yet to elapse at the time you started to hold it.

Note: You can require the associate to tell you which effective life the associate was using: see section 40-140.

- (4A) Subsection (4) does not apply to a *depreciating asset if subsection (4B) or (4C) applies to the asset.
- (4B) For a *depreciating asset that you start to *hold if:
- (a) the former holder is an *associate of yours; and
 - (b) the associate has deducted or can deduct an amount for the asset under this Division; and
 - (c) section 40-102 applied to the asset immediately before you started to hold it because an item in the tables in subsections 40-102(4) and (5) applied to it at the relevant time (the ***relevant time for the associate***) that applied to the associate under subsection 40-102(3); and
 - (d) a different item in the tables in subsections 40-102(4) and (5) applies to the asset when you start to hold it; and
 - (e) the item referred to in paragraph (d) would have applied to the asset at the relevant time for the associate if the use to which the asset were put at that time were the use (the ***new use***) to which it is put when you start to hold it;
- you must use:
- (f) if the associate was using the *diminishing value method for the asset—an *effective life equal to the *capped life that would have applied to the asset under subsection 40-102(4)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

or (5) at the relevant time for the associate if the use to which the asset were put at that time were the new use; or

- (g) if the associate was using the *prime cost method—an effective life equal to the capped life that:
 - (i) would have applied to the asset under subsection 40-102(4) or (5) at the relevant time for the associate if the use to which the asset were put at that time were the new use; and
 - (ii) is yet to elapse at the time you start to hold it.

Note 1: If paragraph (e) is not satisfied, subsection (4C) may apply to the depreciating asset.

Note 2: You can require the associate to tell you the relevant time that applied to the associate under subsection 40-102(3): see section 40-140.

(4C) For a *depreciating asset that you start to *hold if:

- (a) the former holder is an *associate of yours; and
- (b) the associate has deducted or can deduct an amount for the asset under this Division; and
- (c) section 40-102 applied to the asset immediately before you started to hold it; and
- (d) one of the following applies:
 - (i) no item in the tables in subsections 40-102(4) and (5) applies to the asset when you start to hold it;
 - (ii) subsection (4B) would apply to the asset but for paragraph (e) of that subsection not being satisfied;

you must use:

- (e) if the associate was using the *diminishing value method for the asset—the *effective life determined by the Commissioner for the asset under section 40-100 that the associate would have used if section 40-102 had not applied to the asset; or
- (f) if the associate was using the *prime cost method—an effective life equal to any period of the effective life determined by the Commissioner for the asset under section 40-100 that:
 - (i) the associate would have used if section 40-102 had not applied to the asset; and
 - (ii) is yet to elapse at the time you start to hold it.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-95

Note: You can require the associate to tell you which effective life the associate would have used if section 40-102 had not applied to the asset: see section 40-140.

Exception: holder changes but user same or associate of former user

- (5) For a *depreciating asset that you start to *hold where:
- (a) the former holder or another entity (each of which is the **former user**) was using the asset at a time before you became the holder; and
 - (b) while you hold the asset, the former user or an *associate of the former user uses the asset;
- you must use:
- (c) if the former holder was using the *diminishing value method for the asset—the same *effective life that the former holder was using; or
 - (d) if the former holder was using the *prime cost method—an effective life equal to any period of the asset's effective life the former holder was using that is yet to elapse at the time you started to hold it.
- (5A) Subsection (5) does not apply to a *depreciating asset if subsection (5B) or (5C) applies to the asset.
- (5B) For a *depreciating asset that you start to *hold if:
- (a) paragraphs (5)(a) and (b) apply; and
 - (b) section 40-102 applied to the asset immediately before you started to hold it because an item in the tables in subsections 40-102(4) and (5) applied to it at the relevant time (the **relevant time for the former holder**) that applied to the former holder under subsection 40-102(3); and
 - (c) a different item in the tables in subsections 40-102(4) and (5) applies to the asset when you start to hold it; and
 - (d) the item referred to in paragraph (c) would have applied to the asset at the relevant time for the former holder if the use to which the asset were put at that time were the use (the **new use**) to which it is put when you start to hold it;
- you must use:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (e) if the former holder was using the *diminishing value method for the asset—an *effective life equal to the *capped life that would have applied to the asset under subsection 40-102(4) or (5) at the relevant time for the former holder if the use to which the asset were put at that time were the new use; or
- (f) if the former holder was using the *prime cost method—an effective life equal to the capped life that:
 - (i) would have applied to the asset under subsection 40-102(4) or (5) at the relevant time for the former holder if the use to which the asset were put at that time were the new use; and
 - (ii) is yet to elapse at the time you start to hold it.

Note: If paragraph (d) is not satisfied, subsection (5C) may apply to the depreciating asset.

- (5C) For a *depreciating asset that you start to *hold if:
- (a) paragraphs (5)(a) and (b) apply; and
 - (b) section 40-102 applied to the asset immediately before you started to hold it; and
 - (c) one of the following applies:
 - (i) no item in the tables in subsections 40-102(4) and (5) applies to the asset when you start to hold it;
 - (ii) subsection (5B) would apply to the asset but for paragraph (d) of that subsection not being satisfied;
- you must use:
- (d) if the former holder was using the *diminishing value method for the asset—the *effective life determined by the Commissioner for the asset under section 40-100 that the former holder would have used if section 40-102 had not applied to the asset; or
 - (e) if the former holder was using the *prime cost method—an effective life equal to any period of the effective life determined by the Commissioner for the asset under section 40-100 that:
 - (i) the former holder would have used if section 40-102 had not applied to the asset; and
 - (ii) is yet to elapse at the time you start to hold it.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-95

- (6) However, you must use an **effective life* determined by the Commissioner if:
- (a) you do not know, and cannot readily find out, which effective life the former holder was using and, if subsection (5B) or (5C) applied to the asset, either of the following matters:
 - (i) the effective life the former holder would have used if section 40-102 had not applied to the asset;
 - (ii) the relevant time that applied to the former holder under subsection 40-102(3); or
 - (b) the former holder did not use an effective life.

Exception: intangible depreciating assets

- (7) The *effective life* of an intangible **depreciating asset* mentioned in this table is the period applicable to that asset under the table.

<i>Effective life of certain intangible depreciating assets</i>		
Item	For this asset:	The effective life is:
1	Standard patent	20 years
2	Innovation patent	8 years
3	Petty patent	6 years
4	Registered design	15 years
5	Copyright (except copyright in a <i>*film</i>)	The shorter of: (a) 25 years from when you acquire the copyright; or (b) the period until the copyright ends
6	A licence (except one relating to a copyright or <i>*in-house software</i>)	The term of the licence
7	A licence relating to a copyright (except copyright in a <i>*film</i>)	The shorter of: (a) 25 years from when you become the licensee; or (b) the period until the licence ends
8	<i>*In-house software</i>	4 years
9	<i>*Spectrum licence</i>	The term of the licence
10	<i>*Datacasting transmitter licence</i>	15 years

***To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Effective life of certain intangible depreciating assets

Item	For this asset:	The effective life is:
14	*Telecommunications site access right	The term of the right

- (8) The ***effective life*** of an intangible *depreciating asset that is not mentioned in the table in subsection (7) and is not an *IRU or a *mining, quarrying or prospecting right cannot be longer than the term of the asset as extended by any reasonably assured extension or renewal of that term.
- (9) The ***effective life*** of an *IRU is the *effective life of the telecommunications cable over which the IRU is granted.

Exception: mining, quarrying or prospecting rights

- (10) The ***effective life*** of a *mining, quarrying or prospecting right is the period you work out yourself by estimating the period (in years, including fractions of years) set out in column 3 of this table:

Item	For this asset:	Estimate the period until the end of:
1	A *mining, quarrying or prospecting right relating to *mining and quarrying operations (except obtaining *petroleum or quarry materials)	The life of the mine or proposed mine to which the right relates or, if there is more than one, the life of the mine that has the longest estimated life
2	A *mining, quarrying or prospecting right relating to *mining and quarrying operations to obtain *petroleum	The life of the petroleum field or proposed petroleum field to which the right relates
3	A *mining, quarrying or prospecting right relating to *mining and quarrying operations to obtain quarry materials	The life of the quarry or proposed quarry to which the right relates or, if there is more than one, the life of the quarry that has the longest estimated life

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (11) You work out the period in subsection (10):
- (a) as from the *start time of the *mining, quarrying or prospecting right; and
 - (b) by reference only to the period of time over which the reserves, reasonably estimated using an appropriate accepted industry practice, are expected to be extracted from the mine, *petroleum field or quarry.

40-100 Commissioner's determination of effective life

- (1) The Commissioner may make a written determination specifying the *effective life* of *depreciating assets. The determination may specify conditions for particular depreciating assets.
- (2) A determination may specify a day from which it takes effect for *depreciating assets specified in the determination.
- (3) A determination may operate retrospectively to a day specified in the determination if:
 - (a) there was no applicable determination at that day for the *depreciating asset covered by the determination; or
 - (b) the determination specifies a shorter *effective life for the depreciating asset covered by the determination than was previously applicable.

Criteria for making a determination

- (4) The Commissioner is to make a determination of the *effective life* of a *depreciating asset in accordance with subsections (5) and (6).
- (5) Firstly, estimate the period (in years, including fractions of years) the asset can be used by any entity for one or more of the following purposes:
 - (a) a *taxable purpose;
 - (b) the purpose of producing *exempt income or *non-assessable non-exempt income;
 - (c) the purpose of conducting *R&D activities, assuming that this is reasonably likely.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (6) Secondly, if relevant for the asset:
- (a) assume the asset will be subject to wear and tear at a rate that is reasonable for the Commissioner to assume; and
 - (b) assume the asset will be maintained in reasonably good order and condition; and
 - (c) have regard to the period within which the asset is likely to be scrapped, sold for no more than scrap value or abandoned.
- However, for paragraph (c), disregard reasons attributable to the technical risk in conducting *R&D activities if it is reasonably likely that the asset will be used for such activities.

40-102 Capped life of certain depreciating assets

- (1) If this section applies to a *depreciating asset, the *effective life* of the asset is the period (the *capped life*) that applies to the asset under subsection (4) or (5) at the relevant time (which is worked out using subsection (3)).

Working out if this section applies

- (2) This section applies to a *depreciating asset if:
- (a) you choose, under paragraph 40-95(1)(a), to use an *effective life determined by the Commissioner for the asset under section 40-100; and
 - (b) your choice is limited to a determination in force at the time mentioned in paragraph 40-95(2)(a) or (c); and
 - (c) a *capped life applies to the asset under subsection (4) or (5) at the relevant time (which is worked out using subsection (3)); and
 - (d) the capped life is shorter than the effective life mentioned in paragraph (a).
- (3) For the purposes of this section, the relevant time is:
- (a) the *start time of the *depreciating asset if:
 - (i) paragraph 40-95(2)(c) applies to you; or
 - (ii) paragraph 40-95(2)(a) applies to you and a *capped life does not apply to the asset under subsection (4) or (5) at the time mentioned in that paragraph; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (iii) paragraph 40-95(2)(a) applies to you and the capped life that applies to the asset under subsection (4) or (5) at the time mentioned in that paragraph is longer than the capped life that applies to the asset at its start time; or
- (b) if paragraph (a) does not apply—the time mentioned in paragraph 40-95(2)(a).

Capped life

- (4) If the *depreciating asset corresponds exactly to the description in column 2 of the table, the ***capped life*** of the asset is the period specified in column 3 of the table.

<i>Capped life of certain depreciating assets</i>		
Item	Kind of depreciating asset	Period
1	Aeroplane used predominantly for agricultural spraying or agricultural dusting	8 years
2	Aeroplane to which item 1 does not apply	10 years
3	Helicopter used predominantly for mustering, agricultural spraying or agricultural dusting	8 years
4	Helicopter to which item 3 does not apply	10 years
5	Bus with a *gross vehicle mass of more than 3.5 tonnes	7.5 years
6	Light commercial vehicle with a *gross vehicle mass of 3.5 tonnes or less and designed to carry a load of 1 tonne or more	7.5 years
7	Minibus with a *gross vehicle mass of 3.5 tonnes or less and designed to carry 9 or more passengers	7.5 years
8	Trailer with a *gross vehicle mass of more than 4.5 tonnes	10 years
9	Truck with a *gross vehicle mass of more than 3.5 tonnes (other than a truck that is used in *mining and quarrying operations and that is not of a kind that can be registered to be driven on a public road in the place in which the truck is operated)	7.5 years
10	Vessel for which you have a certificate under Part 2 of the <i>Shipping Reform (Tax Incentives) Act 2012</i>	10 years

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4A) Item 10 of the table in subsection 40-102(4) does not apply to a vessel if:
- (a) *ordinary income that you *derive, or your *statutory income, in relation to the vessel; or
 - (b) ordinary income that your *associate derives, or your associate's statutory income, in relation to the vessel;
- is exempt from income tax under section 51-100 for the income year for which you are working out the vessel's decline in value.
- (5) If the *depreciating asset is of a kind described in column 2 of the table and is used in the industry specified in column 3 of the table for the asset, the **capped life** of the asset is the period specified in column 4 of the table.

<i>Capped life of certain depreciating assets used in specified industries</i>			
Item	Kind of depreciating asset	Industry in which the asset is used	Period
1	Gas transmission asset	Gas supply	20 years
2	Gas distribution asset	Gas supply	20 years
3	Oil production asset (other than an electricity generation asset or an offshore platform)	Oil and gas extraction	15 years
4	Gas production asset (other than an electricity generation asset or an offshore platform)	Oil and gas extraction	15 years
5	Offshore platform	Oil and gas extraction	20 years
6	Asset (other than an electricity generation asset) used to manufacture condensate, crude oil, domestic gas, liquid natural gas or liquid petroleum gas but not if the manufacture occurs in an oil refinery	Petroleum refining	15 years
7	Harvester	Primary production sector	6 ² / ₃ years
8	Tractor	Primary production sector	6 ² / ₃ years

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-103 Effective life and remaining effective life of certain vessels

- (1) If, at a particular time, item 10 of the table in subsection 40-102(4):
- (a) starts to apply to a vessel (whether or not that item has previously applied to the vessel); or
 - (b) ceases to apply to a vessel (whether or not that item subsequently applies to the vessel);
- at that time the **effective life** of the vessel changes accordingly.
- (2) If subsection (1) applies and the decline in value of the vessel is worked out using the *prime cost method, the **remaining effective life** of the vessel just after that time is:

$$\text{Unadjusted remaining effective life} \times \frac{\text{Alternative effective life}}{\text{Unadjusted effective life}}$$

where:

alternative effective life is:

- (a) if that item starts to apply to the vessel at that time—what would have been the *effective life of the vessel just before that time if that item had applied to the vessel; or
- (b) if that item ceases to apply to the vessel at that time—what would have been the effective life of the vessel just before that time if that item had not applied to the vessel.

unadjusted effective life is what was the *effective life of the vessel just before that time.

unadjusted remaining effective life is what was the *remaining effective life of the vessel just before that time.

Example: Assume that item 10 of the table in subsection 40-102(4) ceases to apply to a vessel after having applied to the vessel for 7 years, and again starts to apply after another 4 years. Assume further that the effective life of a vessel of that kind has been determined under section 40-100 to be 20 years.

The remaining effective life of the vessel just before that item ceases to apply to the vessel is 3 years. Its alternative effective life is 20 years, and its unadjusted effective life is 10 years. Its remaining effective life just after that time is therefore 6 years.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

The remaining effective life of the vessel just before that item again starts to apply to the vessel is 2 years. Its alternative effective life is 10 years, and its unadjusted effective life is 20 years. Its remaining effective life just after that time is therefore 1 year.

40-105 Self-assessing effective life

- (1) You work out the *effective life* of a *depreciating asset yourself in accordance with this section.
 - (1A) Firstly, estimate the period (in years, including fractions of years) the asset can be used by any entity for one or more of the following purposes:
 - (a) a *taxable purpose;
 - (b) the purpose of producing *exempt income or *non-assessable non-exempt income;
 - (c) the purpose of conducting *R&D activities, assuming that this is reasonably likely.
 - (1B) Secondly, if relevant for the asset:
 - (a) have regard to the wear and tear you reasonably expect from your expected circumstances of use; and
 - (b) assume that the asset will be maintained in reasonably good order and condition.
- (2) If, in working out that period, you decide that the asset would be likely to be:
 - (a) scrapped; or
 - (b) sold for no more than scrap value or abandoned;before the end of that period, its *effective life* ends at the earlier time. However, when making your decision, disregard reasons attributable to the technical risk in conducting *R&D activities if it is reasonably likely that the asset will be used for such activities.
- (3) You work out the period mentioned in subsection (1A) or (2) beginning at the *start time of the *depreciating asset.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-110

Exception: intangibles

- (4) This section does not apply to the following intangible *depreciating assets:
- (a) assets to which an item in the table in subsection 40-95(7) applies;
 - (b) *mining, quarrying or prospecting rights.

40-110 Recalculating effective life

- (1) You may choose to recalculate the *effective life of a *depreciating asset from a later income year if the effective life you have been using is no longer accurate because of changed circumstances relating to the nature of the use of the asset.

Example: Some examples of changes in circumstances that may result in your recalculating the effective life of a depreciating asset are:

- your use of the asset turns out to be more or less rigorous than you expected (or was anticipated by the Commissioner's determination);
- there is a downturn in demand for the goods or services the asset is used to produce that will result in the asset being scrapped;
- legislation prevents the asset's continued use;
- changes in technology make the asset redundant;
- there is an unexpected demand, or lack of success, for a film.

- (2) You must recalculate a *depreciating asset's *effective life from a later income year if:
- (a) you:
 - (i) self-assessed its effective life; or
 - (ii) are using an effective life worked out under section 40-100 (about the Commissioner's determination), or 40-102 (about the capped life of certain depreciating assets), and the *prime cost method; or
 - (iii) are using an effective life because of subsection 40-95(4), (4B), (4C), (5), (5B) or (5C); and
 - (b) its *cost is increased in that year by at least 10%.

Note 1: You may conclude that the effective life is the same.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note 2: For the elements of the cost of a depreciating asset, see Subdivision 40-C.

Example 1: Paul purchases a photocopier and self-assesses its effective life at 6 years. In a later year he incurs expenditure to increase the quality of the reproductions it makes. He recalculates its effective life, but concludes that it remains the same.

Example 2: Fiona also purchases a photocopier and self-assesses its effective life at 6 years. In a later year she incurs expenditure to incorporate a more robust paper handling system. She recalculates its effective life, and concludes that it is increased to 7 years.

- (3) You must recalculate a *depreciating asset's *effective life for the income year in which you started to *hold it if:
- (a) you are using an effective life because of subsection 40-95(4), (4B), (4C), (5), (5B) or (5C); and
 - (b) the asset's *cost is increased after you started to hold it in that year by at least 10%.
- (3A) Subsections (1), (2) and (3) do not apply to a *depreciating asset that is a *mining, quarrying or prospecting right.
- (3B) You may choose to recalculate the *effective life of a *mining, quarrying or prospecting right from a later income year if the effective life you have been using is no longer accurate because of changed circumstances relating to an existing or proposed mine, *petroleum field or quarry to which that right relates.
- (4) A recalculation under this section must be done using:
- (a) if paragraph (b) does not apply—section 40-105 (about self-assessing effective life); or
 - (b) if the *depreciating asset is a *mining, quarrying or prospecting right—subsections 40-95(10) and (11).

Exception: intangibles

- (5) This section does not apply to an intangible *depreciating asset to which an item in the table in subsection 40-95(7) applies.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-115

40-115 Splitting a depreciating asset

- (1) If a *depreciating asset you *hold is split into 2 or more assets, this Division applies as if you had stopped holding the original asset and started holding the assets into which it is split.

Note 1: For the cost of the split assets, see section 40-205.

Note 2: A balancing adjustment event does not occur just because you split a depreciating asset: see section 40-295.

- (2) If you stop *holding part of a *depreciating asset, this Division applies as if, just before you stopped holding that part, you had split the original asset into the part you stopped holding and the rest of the original asset. (The rest of the original asset is then taken to be a different asset from the original asset.)

Example: Bronwyn sells Tim a part interest in a depreciating asset she owns. They become joint holders under section 40-35. She is taken to have split the underlying asset into the interest she retains and the interest Tim buys. She now holds an interest (a new depreciating asset) in the underlying asset and is taken to have stopped holding the interest sold.

- (3) If you grant or assign an interest in an item of *intellectual property, subsection (2) applies to you as if you had stopped *holding part of the item.

40-120 Replacement spectrum licences

- (1) If:
- (a) some (but not all) of a *spectrum licence you *hold is assigned or resumed; and
 - (b) your original licence is replaced by one or more other spectrum licences (possibly including a modified version of your original licence); and
 - (c) the replacement licences together cover exactly the same rights as were covered by your original licence just after the assignment or resumption;

this Division applies as if your original licence (as it existed just after the assignment or resumption) had been split into the replacement licences.

Example: MGP Communications Ltd buys a spectrum licence on 1 July 2003 for \$5 million. The licence specifies areas A, B, C and D. The company assigns the spectrum relating to area C. Area C represents 20% of the

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

market value of the overall licence. \$1m of the adjustable value is allocated to it and \$4m is allocated to the remaining licence.

The Australian Communications and Media Authority adjusts the licence to specify only areas A and B, and issues a new licence specifying area D.

Area D represents 25% of the market value of the spectrum remaining in the licence. The adjustable value of the new licence is therefore \$1m and the adjustable value of the original (modified) licence is \$3m.

- (2) If a *spectrum licence you *hold is replaced by 2 or more spectrum licences (possibly including a modified version of your original licence) that together cover exactly the same rights as your original licence, this Division applies as if the original licence had been split into the replacement licences.

40-125 Merging depreciating assets

If a *depreciating asset or assets that you *hold is or are merged into another depreciating asset, this Division applies as if you had stopped holding the original asset or assets and started holding the merged asset.

Note 1: For the cost of the merged asset, see section 40-210.

Note 2: A balancing adjustment event does not occur just because you merge depreciating assets: see section 40-295.

40-130 Choices

- (1) A choice you can make under this Division about a *depreciating asset must be made:
- (a) by the day you lodge your *income tax return for the income year to which the choice relates; or
 - (b) within a further time allowed by the Commissioner.
- (2) Your choice, once made, applies to that income year and all later income years.

Exception: recalculating effective life

- (3) However, subsection (2) does not apply to a choice to recalculate the *effective life of a *depreciating asset under section 40-110.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-135 Certain anti-avoidance provisions

These anti-avoidance provisions:

- (a) section 51AD (Deductions not allowable in respect of property under certain leveraged arrangements) of the *Income Tax Assessment Act 1936*;
- (b) Division 16D (Certain arrangements relating to the use of property) of Part III of that Act;

apply to your deductions under this Division for a *depreciating asset you *hold as if you were the owner of the asset instead of any other person.

40-140 Getting tax information from associates

- (1) If you acquire a *depreciating asset from an *associate of yours where the associate has deducted or can deduct an amount for the asset under this Division, you may give the associate a written notice requiring the associate to tell you:
 - (a) the method the associate was using to work out the decline in value of the asset; and
 - (b) the *effective life the associate was using; and
 - (c) if section 40-102 applied to the asset at any time:
 - (i) the effective life that the associate would have used if section 40-102 had not applied to the asset; and
 - (ii) the relevant time that applied to the associate under subsection 40-102(3).
- (2) The notice must:
 - (a) be given within 60 days of your acquiring the asset; and
 - (b) specify a period of at least 60 days within which the information must be given; and
 - (c) set out the effect of subsection (3).

Note: Subsections (4) and (5) explain how this subsection operates if the associate is a partnership.

Requirement to comply with notice

- (3) The *associate must not intentionally refuse or fail to comply with the notice.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Penalty: 10 penalty units.

Giving the notice to a partnership

- (4) If the *associate is a partnership:
- (a) you may give it to the partnership by giving it to any of the partners (this does not limit how else you can give it); and
 - (b) the obligation to comply with the notice is imposed on each of the partners (not on the partnership), but may be discharged by any of them.
- (5) A partner must not intentionally refuse or fail to comply with that obligation, unless another partner has already complied with it.

Penalty: 10 penalty units.

Limits on giving a notice

- (6) Only one notice can be given in relation to the same *depreciating asset.

Subdivision 40-C—Cost

Guide to Subdivision 40-C

40-170 What this Subdivision is about

Your cost of a depreciating asset is a component in working out the amounts you can deduct for it.

There are 2 elements of the cost of a depreciating asset. This Subdivision shows you how to work out those elements.

Table of sections

Operative provisions

40-175	Cost
40-180	First element of cost
40-185	Amount you are taken to have paid to hold a depreciating asset or to receive a benefit

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-175

40-190	Second element of cost
40-195	Apportionment of cost
40-200	Exclusion from cost
40-205	Cost of a split depreciating asset
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40-215	Adjustment: double deduction
40-220	Cost reduced by amounts not of a capital nature
40-225	Adjustment: acquiring a car at a discount
40-230	Adjustment: car limit

Operative provisions

40-175 Cost

The *cost* of a *depreciating asset you *hold consists of 2 elements.

Note: The cost of a depreciating asset may be modified by one of these provisions:

- Subdivision 27-B;
- subsection 40-90(2);
- paragraph 40-362(3)(c);
- paragraph 40-365(5)(a);
- section 775-70;
- section 775-75.

40-180 First element of cost

- (1) The first element is worked out as at the time when you began to *hold the *depreciating asset (except for a case to which item 3 or 4 of the table in subsection (2) applies). It is:
- (a) if an item in that table applies—the amount specified in that item; or
 - (b) otherwise—the amount you are taken to have paid to hold the asset under section 40-185.

Note 1: The first element of the cost may be modified by a later provision in this Subdivision.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note 2: Section 230-505 provides special rules for working out the amount of consideration for an asset if the asset is a Division 230 financial arrangement or a Division 230 financial arrangement is involved in that consideration.

- (2) If more than one item in this table covers the asset, apply the last item that covers it.

First element of the <i>cost</i> of a depreciating asset		
Item	In this case:	The <i>cost</i> is:
1	A *depreciating asset you *hold is split into 2 or more assets	For each of the assets into which it is split, the amount worked out under section 40-205
2	A *depreciating asset or assets that you *hold is or are merged into another depreciating asset	For the other asset, the amount worked out under section 40-210
3	A *balancing adjustment event happens to a *depreciating asset you *hold because you stop using it for any purpose expecting never to use it again, and you continue to hold it	The *termination value of the asset at the time of the event
4	A *balancing adjustment event happens to a *depreciating asset you *hold but have not used because you expect never to use it, and you continue to hold it	The *termination value of the asset at the time of the event
5	A partnership asset that was *held, just before it became a partnership asset, by one or more partners (whether or not any other entity was a joint holder) or a partnership asset to which subsection 40-295(2) applies	The *market value of the asset when the partnership started to hold it or when the change referred to in subsection 40-295(2) occurred
6	There is roll-over relief under section 40-340 for a *balancing adjustment event happening to a *depreciating asset	The *adjustable value of the asset to the transferor just before the balancing adjustment event occurred

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2 Liability rules of general application**Part 2-10** Capital allowances: rules about deductibility of capital expenditure**Division 40** Capital allowances

Section 40-180

First element of the <i>cost</i> of a depreciating asset		
Item	In this case:	The <i>cost</i> is:
7	You are the legal owner of a *depreciating asset that is hired under a *hire purchase agreement and you start *holding it because the entity to whom it is hired does not become the legal owner	The *market value of the asset when you started to hold it
8	You started to *hold the asset under an *arrangement and: (a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and (b) apart from this item, the first element of the asset's cost would exceed its *market value	The market value of the asset when you started to hold it
9	You started to *hold the asset under an *arrangement that was private or domestic in nature to you (for example, a gift)	The *market value of the asset when you started to hold it
10	The *Finance Minister has determined a cost for you under section 49A, 49B, 50A, 50B, 51A or 51B of the <i>Airports (Transitional) Act 1996</i>	The cost so determined
11	To which Division 58 (which deals with assets previously owned by an *exempt entity) applies	The amount applicable under subsections 58-70(3) and (5)
12	A *balancing adjustment event happens to a *depreciating asset because a person dies and the asset devolves to you as the person's *legal personal representative	The asset's *adjustable value on the day the person died or, if the asset is allocated to a low-value pool, so much of the *closing pool balance for the income year in which the person died as is reasonably attributable to the asset

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

First element of the *cost* of a depreciating asset

Item	In this case:	The <i>cost</i> is:
13	You started to *hold a *depreciating asset because it *passed to you as the beneficiary or a joint tenant	The *market value of the asset when you started to hold it reduced by any *capital gain that was disregarded under section 128-10 or subsection 128-15(3), whether by the deceased or by the *legal personal representative

- (3) The first element of *cost includes an amount you paid or are taken to have paid in relation to starting to *hold the *depreciating asset if that amount is directly connected with holding the asset.
- (4) The first element of *cost of a *depreciating asset does not include an amount that forms part of the second element of cost of another depreciating asset.

40-185 Amount you are taken to have paid to hold a depreciating asset or to receive a benefit

- (1) This Division applies to you as if you had paid, to *hold a *depreciating asset or for an economic benefit for such an asset, the greater of these amounts:
 - (a) the sum of the amounts that would have been included in your assessable income because you started to hold the asset or received the benefit, or because you gave something to start holding the asset or receive the benefit, if you ignored the value of anything you gave that reduced the amount actually included; or
 - (b) the sum of the applicable amounts set out in this table in relation to holding the asset or receiving the benefit.

Example 1: Gold Medals Ltd manufactures some medals for a local sporting association's annual meeting in return for a die cut stamping machine. The medals have a market value of \$20,000. The machine has an arm's length value of \$100,000 but Gold Medals has to contribute

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2 Liability rules of general application

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Division 40 Capital allowances

Section 40-185

\$75,000 towards acquiring it from the association. Gold Medals will have to include:

$$\left(\$100,000 - \$75,000 \right) = \$25,000$$

in its assessable income because of section 21A of the *Income Tax Assessment Act 1936*.

The first element of the machine's cost will be the greater of:

- the amount it paid (\$75,000) plus the market value of the non-cash benefits it provided (\$20,000), which comes to \$95,000; and
- the amount that was assessable income from receiving the machine (\$25,000) plus the amount by which that assessable income was reduced because of the payment Gold Medals made (\$75,000), which comes to \$100,000.

So, in this case, the first element of the machine's cost to Gold Medals is \$100,000.

Example 2: Laura travels overseas to purchase a purpose-built vehicle for use in her trade. The purchase of the vehicle is the sole reason for the trip. Laura incurs expenses for airfares and accommodation. These expenses are included in the cost of the vehicle because they are "in relation to starting to hold" the vehicle.

Amount you are taken to have paid to hold a depreciating asset or to receive a benefit

Item	In this case:	The amount is:
1	You pay an amount	The amount
2	You incur or increase a liability to pay an amount	The amount of the liability or increase when you incurred or increased it
3	All or part of a liability to pay an amount owed to you by another entity is terminated	The amount of the liability or part when it is terminated
4	You provide a *non-cash benefit	The *market value of the non-cash benefit when it is provided
5	You incur or increase a liability to provide a *non-cash benefit	The *market value of the non-cash benefit or the increase when you incurred or increased the liability

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Amount you are taken to have paid to hold a depreciating asset or to receive a benefit

Item	In this case:	The amount is:
6	All or part of a liability to provide a *non-cash benefit (except the *depreciating asset) owed to you by another entity is terminated	The *market value of the non-cash benefit when the liability is terminated

Note 1: Item 1 includes not only amounts actually paid but also amounts taken to have been paid. Examples include the price of the notional purchase made when trading stock is converted to a depreciating asset under section 70-110, the cost of an asset held under a hire purchase arrangement under section 240-25 and a lessor's deemed purchase price when a luxury car lease ends under subsection 242-90(3).

Note 2: Section 230-505 provides special rules for working out the amount of consideration for an asset if the asset is a Division 230 financial arrangement or a Division 230 financial arrangement is involved in that consideration.

- (2) In applying the table in subsection (1) to a liability of yours to pay an amount or provide a *non-cash benefit, don't count any part of the liability you have already satisfied.

40-190 Second element of cost

- (1) The second element is worked out after you start to *hold the *depreciating asset.
- (2) The second element is:
- (a) the amount you are taken to have paid under section 40-185 for each economic benefit that has contributed to bringing the asset to its present condition and location from time to time since you started to *hold the asset; and
 - (b) expenditure you incur that is reasonably attributable to a *balancing adjustment event occurring for the asset.

Example 1: Andrew adds a new tray and canopy to his ute. The materials and labour that go into the addition are economic benefits that Andrew received and that contribute to the ute's present condition.

The payments he makes for those economic benefits are included in the second element of the ute's cost.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Example 2: Leonie needed to replace one of her old depreciating assets that was fixed to her land with a new, more efficient one. Leonie paid a contractor a fee to demolish and remove the old asset. This resulted in a balancing adjustment event occurring for the old asset, and the fee forms part of the second element of the cost of the old asset that was demolished.

Note: The second element of the cost may be modified by a later provision in this Subdivision.

(2A) Paragraph (2)(b) does not apply to a *balancing adjustment event referred to in item 6 or 11 of the table in subsection 40-300(2).

(3) However, the second element is worked out using this table if an item in it applies. Use the last applicable item.

Second element of the <i>cost</i> of a depreciating asset		
Item	In this case:	The second element of <i>cost</i> is:
1	You received the benefit under an *arrangement and: (a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and (b) apart from this item, the second element of cost for the benefit would exceed its *market value	The market value of the benefit when you received it
2	You received the benefit under an *arrangement that was private or domestic in nature to you	The *market value of the benefit when you received it

40-195 Apportionment of cost

If you pay an amount for 2 or more things that include at least one *depreciating asset, or that include a contribution to bringing a depreciating asset to its present condition and location, you take into account as part of its *cost only that part of what you paid that is reasonably attributable to the asset.

Example: Ian buys 3 assets (one depreciating asset and 2 other assets) under the one transaction. He pays \$30,000 for the 3 assets. \$25,000 of that amount is reasonably attributable to the depreciating asset.

The first element of the depreciating asset's *cost* is \$25,000.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-200 Exclusion from cost

The *cost of a *depreciating asset that is not *plant does not include any amount that was incurred:

- (a) before 1 July 2001; or
- (b) under a contract entered into before that day.

40-205 Cost of a split depreciating asset

If you split a *depreciating asset into separate assets as mentioned in section 40-115, the first element of the *cost* of each of the separate assets is a reasonable proportion of the sum of these amounts:

- (a) the *adjustable value of the original asset just before it was split; and
- (b) the amount you are taken to have paid under section 40-185 for any economic benefit involved in splitting the original asset.

Example: Barry owns a spectrum licence that covers 3 areas: Area A, area B and area C. The licence has an adjustable value of \$160,000. He sells area A to Chris, and his costs of splitting are \$10,000. Barry is taken to have split the licence into 2 assets.

On the basis of their relative market values, Barry apportions \$170,000 to area A (that he disposed of) and to the licence he still holds for areas B and C.

40-210 Cost of merged depreciating assets

If a *depreciating asset or assets that you *hold is or are merged into another depreciating asset as mentioned in section 40-125, the first element of the *cost* of the merged asset is a reasonable proportion of the sum of:

- (a) the *adjustable value or adjustable values of the original asset or assets just before the merger; and
- (b) the amount you are taken to have paid under section 40-185 for any economic benefit involved in merging the original asset or assets.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-215

40-215 Adjustment: double deduction

Each element of the *cost of a *depreciating asset is reduced by any portion of that element of cost that you have deducted or can deduct, or that has been or will be taken into account in working out an amount you can deduct, other than under this Division, Division 41 or Division 328.

Note: This section does not apply to notional deductions under section 355-305 or 355-520 (about R&D) because those provisions are about deducting the asset's decline in value, not its cost.

40-220 Cost reduced by amounts not of a capital nature

The *cost of a *depreciating asset is reduced by any portion of it that consists of an amount that is not of a capital nature.

40-225 Adjustment: acquiring a car at a discount

- (1) You must increase the first element of the **cost** of a *car designed mainly for carrying passengers you acquire at a discount if:
 - (a) it is reasonable to conclude that any portion (the **discount portion**) of the discount is referable to you or another entity selling another asset for less than its *market value; and
 - (b) you, or another entity, has deducted or can deduct an amount for the other asset for any income year; and
 - (c) the sum of the cost of the car and the discount portion exceeds the *car limit for the *financial year in which you first use the car for any purpose.
- (2) The first element of the **cost** of the *car is increased by the discount portion.
- (3) This section does not apply to a *car that is excluded from the *car limit by subsection 40-230(2).

40-230 Adjustment: car limit

- (1) The first element of the **cost** of a *car designed mainly for carrying passengers (after applying section 40-225 and Subdivision 27-B) is

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

reduced to the *car limit for the *financial year in which you started to *hold it if its cost exceeds that limit.

- (2) However, the *car limit does not apply to a *car:
 - (a) fitted out for transporting disabled people in wheelchairs for profit; or
 - (b) whose first element of *cost exceeds that limit only because of modifications made to enable an individual with a disability to use it for a *taxable purpose.
- (3) The **car limit** for the 2000-01 *financial year is \$55,134. The limit is indexed annually.

Note: Subdivision 960-M shows you how to index amounts.
- (4) If you *hold a *car that is also held by one or more other entities, subsection (1) applies to the *cost of the car despite section 40-35. Then section 40-35 applies to the cost of the car as reduced under subsection (1).

Subdivision 40-D—Balancing adjustments

Guide to Subdivision 40-D

40-280 What this Subdivision is about

You may have to make an adjustment to your taxable income if you stop holding a depreciating asset.

The adjustment is generally based on the difference between the actual value of the asset when you stop holding it and its adjustable value.

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Section 40-285

- 40-293 Adjustments—partnership assets used for both general tax purposes and R&D activities
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Operative provisions

40-285 Balancing adjustments

- (1) An amount is included in your assessable income if:
- (a) a *balancing adjustment event occurs for a *depreciating asset you *held and:
 - (i) whose decline in value you worked out under Subdivision 40-B; or
 - (ii) whose decline in value you would have worked out under that Subdivision if you had used the asset; and
 - (b) the asset's *termination value is more than its *adjustable value just before the event occurred.

The amount included is the difference between those amounts, and it is included for the income year in which the balancing adjustment event occurred.

Note 1: The most common balancing adjustment event is where you sell the depreciating asset.

Note 2: There is a different calculation if you had used different car expense methods for a car: see section 40-370.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note 3: There is a modification to the calculation in the case of misappropriation by your employee or agent: see section 25-47.

- (2) You can deduct an amount if:
- (a) a *balancing adjustment event occurs for a *depreciating asset you *held and:
 - (i) whose decline in value you worked out under Subdivision 40-B; or
 - (ii) whose decline in value you would have worked out under that Subdivision if you had used the asset; and
 - (b) the asset's *termination value is less than its *adjustable value just before the event occurred.

The amount you can deduct is the difference between those amounts, and you can deduct it for the income year in which the balancing adjustment event occurred.

Note 1: There is a different calculation if you had used different car expense methods for a car: see section 40-370.

Note 2: The timing of a deduction allowed under this subsection is determined under Subdivision 170-D where that Subdivision applies to the balancing adjustment event.

Note 3: There is a modification to the calculation in the case of misappropriation by your employee or agent: see section 25-47.

- (3) The *adjustable value of a *depreciating asset you *hold after this section applies to it is then zero.
- (4) However, subsection (3) does not apply to a *depreciating asset for which you have a *cost under item 3 or 4 of the table in subsection 40-180(2). Instead, the asset's *opening adjustable value for the income year (the **later year**) after the one in which the *balancing adjustment event occurred is that cost plus any amounts included in the second element of that cost after the event occurred and before the start of the later year.

Note: Those items deal with a case where a balancing adjustment event happens because you still hold an asset you expected not to use.

- (5) Despite subsection (1), an amount included in your assessable income under that subsection is included for the second income year after the income year in which the *balancing adjustment event occurs if:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-290

- (a) the *depreciating asset is a vessel; and
- (b) you have a certificate for the vessel under Part 2 of the *Shipping Reform (Tax Incentives) Act 2012* that:
 - (i) applies to the day that the balancing adjustment event occurs; and
 - (ii) is not a *shipping exempt income certificate.

Note: An amount will not be included in your assessable income in relation to the balancing adjustment event if you choose roll-over relief under section 40-362.

40-290 Reduction for non-taxable use

- (1) You must reduce the amount (the ***balancing adjustment amount***) included in your assessable income, or the amount you can deduct, under section 40-285 for a *depreciating asset if your deductions for the asset have been reduced under section 40-25.
- (2) The reduction is:

$$\frac{\text{Sum of reductions}}{\text{Total decline}} \times \text{Balancing adjustment amount}$$

where:

sum of reductions is the sum of:

- (a) the reductions in your deductions for the asset under section 40-25; and
- (b) if there has been roll-over relief for the asset under section 40-340—the reductions in deductions for the asset for the transferor or an earlier successive transferor under section 40-25; and
- (c) if you *hold the asset as the *legal personal representative of an individual—the reductions in deductions for the asset for the individual under section 40-25.

total decline is the sum of:

- (a) the decline in value of the *depreciating asset since you started to *hold it; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) if there has been roll-over relief for the asset under section 40-340—the decline in value of the asset for the transferor or an earlier successive transferor; and
 - (c) if you *hold the asset as the *legal personal representative of an individual—the decline in value of the asset for the individual.
- (3) You must further reduce the amount included in your assessable income, or the amount you can deduct, under section 40-285 for a *depreciating asset (the **current asset**) if:
 - (a) the asset's *cost (for you) was worked out under section 40-205 (Cost of a split depreciating asset) or 40-210 (Cost of merged depreciating assets); and
 - (b) you used the depreciating asset from which the current asset was split, or a depreciating asset that was merged into the current asset, or had it *installed ready for use, for a purpose other than a *taxable purpose.
- (4) The further reduction is such amount as is reasonable having regard to the extent of the use referred to in paragraph (3)(b).

Exception: mining, quarrying or prospecting information

- (5) This section does not apply to *mining, quarrying or prospecting information.

40-292 Adjustments—assets used for both general tax purposes and R&D activities

- (1) This section applies if:
 - (a) a *balancing adjustment event happens in an income year (the **event year**) for an asset you *held and for which:
 - (i) you can deduct, for an income year, an amount under section 40-25, as that section applies apart from Division 355 and former section 73BC of the *Income Tax Assessment Act 1936*; or
 - (ii) you could have deducted, for an income year, an amount as described in subparagraph (i) if you had used the asset; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-292

- (b) you are entitled under section 355-100 to *tax offsets for one or more income years for deductions (the **R&D deductions**) under section 355-305 for the asset.

Note: This section applies in a modified way if you have deductions for the asset under former section 73BA or 73BH of the *Income Tax Assessment Act 1936* (see section 40-292 of the *Income Tax (Transitional Provisions) Act 1997*).

Section 40-290 to be applied as if use for conducting R&D activities were use for a taxable purpose

- (2) In applying section 40-290 (including references in that section to the reduction of deductions under section 40-25) in relation to the asset, assume that using the asset for a *taxable purpose includes using it for the purpose of conducting the *R&D activities to which the R&D deductions relate.

Increase in amounts deductible under section 40-285

- (3) If you are entitled under section 355-100 to a *tax offset for the event year in respect of deductions under Division 355 totalling at least \$20,000, any amount (the **section 40-285 amount**) you can deduct for the asset under section 40-285 (after applying subsection (2) of this section) for the event year is increased by:
- (a) if your *aggregated turnover for the event year is less than \$20 million— $\frac{1}{2}$ of the amount worked out under subsection (5) of this section; and
 - (b) otherwise— $\frac{1}{3}$ of the amount worked out under subsection (5) of this section.

Increase in amounts assessable under section 40-285

- (4) Any amount (the **section 40-285 amount**) that is included in your assessable income for the asset under section 40-285 (after applying subsection (2) of this section) for the event year is increased by $\frac{1}{3}$ of the amount worked out under subsection (5) of this section.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Component of any increase in amounts deductible or assessable

- (5) The amount is worked out as follows:

$$\frac{\text{Sum of your R\&D deductions}}{\text{Total decline in value}} \times \text{Adjusted section 40-285 amount}$$

where:

adjusted section 40-285 amount means:

- (a) if the section 40-285 amount is a deduction—the amount of the deduction; or
- (b) if the section 40-285 amount is an amount included in your assessable income—so much of the section 40-285 amount as does not exceed the total decline in value.

total decline in value means the *cost of the asset less its *adjustable value.

40-293 Adjustments—partnership assets used for both general tax purposes and R&D activities

- (1) This section applies to an *R&D partnership if:
- (a) a *balancing adjustment event happens in an income year (the **event year**) for a *depreciating asset *held by the R&D partnership and for which:
 - (i) the R&D partnership can deduct, for an income year, an amount under section 40-25, as that section applies apart from Division 355 and former section 73BC of the *Income Tax Assessment Act 1936*; or
 - (ii) the R&D partnership could have deducted, for an income year, an amount as described in subparagraph (i) if it had used the asset; and
 - (b) one or more partners of the R&D partnership are entitled under section 355-100 to *tax offsets for one or more income years for deductions (the **R&D deductions**) under section 355-520 for the asset.

Note: This section applies in a modified way if the partners have deductions for the asset under former section 73BA or 73BH of the *Income Tax Assessment Act 1936* (see section 40-293 of the *Income Tax (Transitional Provisions) Act 1997*).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-295

Section 40-290 to be applied as if use for conducting R&D activities were use for a taxable purpose

- (2) In applying section 40-290 (including references in that section to the reduction of deductions under section 40-25) in relation to the asset, assume that using the asset for a *taxable purpose includes using it for the purpose of conducting the *R&D activities to which the R&D deductions relate.

Increase in amounts deductible or assessable under section 40-285

- (3) Any amount (the **section 40-285 amount**):
- (a) that the *R&D partnership can deduct for the asset under section 40-285 (after applying subsection (2) of this section) for the event year; or
 - (b) that is included in the R&D partnership's assessable income for the asset under section 40-285 (after applying subsection (2) of this section) for the event year;
- is increased by $\frac{1}{3}$ of the following amount:

$$\frac{\text{Sum of all R\&D deductions}}{\text{Total decline in value}} \times \text{Adjusted section 40-285 amount}$$

where:

adjusted section 40-285 amount means:

- (a) if the section 40-285 amount is a deduction—the amount of the deduction; or
- (b) if the section 40-285 amount is an amount included in the *R&D partnership's assessable income—so much of the section 40-285 amount as does not exceed the total decline in value.

total decline in value means the *cost of the asset less its *adjustable value.

40-295 Meaning of *balancing adjustment event*

- (1) A **balancing adjustment event** occurs for a *depreciating asset if:
- (a) you stop *holding the asset; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) you stop using it, or having it *installed ready for use, for any purpose and you expect never to use it, or have it installed ready for use, again; or
- (c) you have not used it and:
 - (i) if you have had it installed ready for use—you stop having it so installed; and
 - (ii) you decide never to use it.

Note: A balancing adjustment event occurs under paragraph 40-295(1)(a) when you start holding a depreciating asset as trading stock.

- (2) A **balancing adjustment event** occurs for a *depreciating asset if:
 - (a) for any reason, a change occurs in the *holding of, or in the interests of entities in, the asset; and
 - (b) the entity or one of the entities that had an interest in the asset before the change has an interest in it after the change; and
 - (c) the asset was a partnership asset before the change or becomes one as a result of the change.
- (3) However, a **balancing adjustment event** does not occur for a *depreciating asset merely because you split it into 2 or more depreciating assets or you merge it with one or more other depreciating assets.

Note: A balancing adjustment event will occur if you stop holding part of a depreciating asset.

40-300 Meaning of *termination value*

- (1) The **termination value** of a *depreciating asset is worked out as at the time when the *balancing adjustment event occurs. It is:
 - (a) if an item in the table in subsection (2) applies—the amount specified in that item; or
 - (b) otherwise—the amount you are taken to have received under section 40-305 for the asset.

Note: Section 230-505 provides special rules for working out the amount of consideration for an asset if the asset is a Division 230 financial arrangement or a Division 230 financial arrangement is involved in that consideration.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) If more than one item applies, use the value under the last applicable item.

Termination value table		
Item	For this balancing adjustment event:	The termination value is:
1	You stop using a *depreciating asset, or having it *installed ready for use, for any purpose and you expect never to use it again even though you still *hold it	The *market value of the asset when you stopped using it or having it *installed ready for use
2	You decide never to use a *depreciating asset that you have not used even though you still *hold it	The *market value of the asset when you make the decision
3	You stop using *in-house software for any purpose and you expect never to use it again even though you still *hold it	Zero
4	You decide never to use *in-house software that you have not used even though you still *hold it	Zero
5	One or more partners stop holding a *depreciating asset when it becomes a partnership asset or a *balancing adjustment event referred to in subsection 40-295(2) occurs	The *market value of the asset when the partnership started to *hold it or when the balancing adjustment event occurred
6	You stop *holding a *depreciating asset under an *arrangement and: (a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and (b) apart from this item, the *termination value would be less than its *market value	The market value of the asset just before you stopped holding it
7	You stop *holding a *depreciating asset under an *arrangement that was private or domestic in nature to you (for example, a gift)	The *market value of the asset just before you stopped *holding it

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Termination value table		
Item	For this balancing adjustment event:	The termination value is:
8	A *depreciating asset is lost or destroyed	The amount or value received or receivable under an insurance policy or otherwise for the loss or destruction
9	You stop *holding a *depreciating asset because you die and the asset starts being held by the *legal personal representative	The asset's *adjustable value on the day you died or, if the asset is allocated to a low-value pool, so much of the *closing pool balance for the income year in which you died as is reasonably attributable to the asset
10	You stop *holding a *depreciating asset because it *passes directly to a beneficiary or joint tenant when you die	The *market value of the asset on the day you die
11	A *depreciating asset for which the *Finance Minister has determined an amount for you under section 52A of the <i>Airports (Transitional) Act 1996</i>	The amount so determined

- (3) The **termination value** of a *depreciating asset does not include an amount that is included in assessable income as *ordinary income under section 6-5 or as *statutory income under section 6-10 (except an amount that is statutory income under this Division).

Note: Termination value may be adjusted under Subdivision 27-B so that any GST consequences are accounted for.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-305 Amount you are taken to have received under a balancing adjustment event

- (1) This Division applies to you as if you had received, under a *balancing adjustment event, the greater of these amounts:
- (a) the sum of the amounts you have deducted or can deduct, or has been or will be taken into account in working out an amount you can deduct because of the balancing adjustment event and any amount by which the amount so deductible was reduced because of a case described in the table in this subsection; and
 - (b) the sum of the applicable amounts set out in that table:

Amount you are taken to have received under a balancing adjustment event		
Item	In this case:	The amount is:
1	You receive an amount	The amount
2	You terminate all or part of a liability to pay an amount	The amount of the liability or part when you terminate it
3	You are granted a right to receive an amount or an amount to which you are entitled is increased	The amount of the right or increase when it is granted or increased
4	You receive a *non-cash benefit	The *market value of the non-cash benefit when it is received
5	You terminate all or part of a liability to provide a *non-cash benefit	The *market value of the non-cash benefit or reduction in the non-cash benefit when the liability or part is terminated
6	You are granted a right to receive a *non-cash benefit or you become entitled to an increased non-cash benefit	The *market value of the non-cash benefit, or the increase, when it is granted or increased

Note 1: Item 1 includes not only amounts actually received but also amounts taken to have been received. Examples include the price of the notional sale made when a depreciating asset is converted to trading stock under section 70-30, the consideration for an asset held under a hire purchase arrangement under section 240-25 and a lessee's deemed consideration when a luxury car lease ends under subsection 242-90(3).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note 2: Section 230-505 provides special rules for working out the amount of consideration for an asset if the asset is a Division 230 financial arrangement or a Division 230 financial arrangement is involved in that consideration.

- (2) In applying the table in subsection (1) to a right you have to receive an amount or a *non-cash benefit, don't count any part of the right that has already been satisfied.

40-310 Apportionment of termination value

If you receive an amount for 2 or more things that include a *balancing adjustment event occurring for a *depreciating asset, you take into account as its *termination value only that part of what you received that is reasonably attributable to the asset.

40-320 Car to which section 40-225 applies

You must increase the *termination value of a *car the *cost of which was increased under section 40-225 by the discount portion for the car referred to in that section.

40-325 Adjustment: car limit

The **termination value** of a *car the *cost of which was worked out by applying section 40-230 (Car limit) is the amount worked out under subsection 40-300(1) multiplied by the fraction:

$$\frac{\text{CL} + \text{Amounts included in the second element of the *car's *cost}}{\text{Total cost of the car (ignoring the *car limit) after applying Subdivision 27-B}}$$

where:

CL is the *car limit for the *car for the *financial year in which you first used it for any purpose.

40-335 Deduction for in-house software where you will never use it

- (1) You can deduct expenditure you incurred on *in-house software if:
- (a) you incurred the expenditure with the intention of using the software for a *taxable purpose; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the expenditure relates to a unit of software that you have not used or had *installed ready for use; and
 - (c) the expenditure is not allocated to a software development pool (see Subdivision 40-E); and
 - (d) in the *current year, you have decided that you will never use the software, or have it installed ready for use.
- (2) The amount that you can deduct in the *current year is:
- (a) the total of your expenditure on the *in-house software in the current year and any previous income year; *less*
 - (b) any amount of consideration you *derive in relation to the software or any part of it (but no more than the total in paragraph (a));
- but only to the extent that, when you incurred the expenditure, you intended to use the software, or have it *installed ready for use, for a *taxable purpose.

Example: Shannon has abandoned a software project that she was working on. She could not deduct expenditure on the project for the current year or any previous income year under any other provision. Shannon can deduct it under this section, to the extent that she intended to use it, or have it installed ready for use, for a taxable purpose.

Note: If an amount of the expenditure is recouped, the amount may be included in her assessable income: see Subdivision 20-A.

40-340 Roll-over relief

Automatic roll-over relief

- (1) There is roll-over relief if:
- (a) there is a *balancing adjustment event because an entity (the ***transferor***) disposes of a *depreciating asset in an income year to another entity (the ***transferee***); and
 - (b) the disposal involves a *CGT event; and
 - (c) the conditions in an item in this table are satisfied.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

CGT roll-overs that qualify transferor for relief

Item	Type of CGT roll-over	Conditions
1	Disposal of asset to wholly-owned company	The transferor is able to choose a roll-over under Subdivision 122-A for the *CGT event.
2	Disposal of asset by partnership to wholly-owned company	The transferor is a partnership, the property is partnership property and the partners are able to choose a roll-over under Subdivision 122-B for the disposal by the partners of the *CGT assets consisting of their interests in the property.
2A	Transfer of a *CGT asset of a trust to a company under a trust restructure	The transferor and transferee are able to choose a roll-over under Subdivision 124-N for the *CGT event.
3	Marriage or relationship breakdown	There is a roll-over under Subdivision 126-A for the *CGT event.
4	Disposal of asset to another member of the same wholly-owned group	The transferor is able to choose a roll-over under Subdivision 126-B for the *CGT event.
5	*Disposal of asset between certain trusts	The trustees of the trusts choose to obtain a roll-over under Subdivision 126-G in relation to the disposal.
6	Disposal of asset as part of merger of superannuation funds	The transferor chooses a roll-over under Subdivision 310-D in relation to the disposal.

Note 1: Section 40-345 sets out what the relief is.

Note 2: This Act also applies as if there were roll-over relief under this subsection in the circumstances set out in section 620-30 (which is about a body incorporated under one law ceasing to exist and disposing of its assets to a company incorporated under another law that has not significantly different ownership).

(2) In applying an item in the table in subsection (1), disregard the following so far as they relate to the *depreciating asset you disposed of:

- (a) an exemption in Division 118 (which contains the general exemptions from CGT); and
- (b) subsection 122-25(3) (which excludes certain assets from roll-over relief under Subdivision 122-A); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) subsection 124-870(5) (which excludes certain assets from roll-over relief under Subdivision 124-N).

Choosing roll-over relief

- (3) There is also roll-over relief if:
- (a) there is a *balancing adjustment event for a *depreciating asset because of subsection 40-295(2) (about a change in the holding of, or in interests in, the asset); and
 - (b) the entity or entities that had an interest in the asset before the change (also the **transferor**) and the entity or entities that have an interest in the asset after the change (also the **transferee**) jointly choose the roll-over relief.

Example: The change could be a variation in the constitution of a partnership or in the interests of the partners.

Note 1: Section 40-345 sets out what the relief is.

Note 2: Subdivision 328-D sets out what the relief is for small business entities that calculate deductions for their depreciating assets under that Subdivision.

- (4) The choice must:
- (a) be in writing; and
 - (b) contain enough information about the transferor's holding of the property for the transferee to work out how this Division or Subdivision 328-D applies to the transferee's holding of the *depreciating asset; and
 - (c) be made within 6 months after the end of the transferee's income year in which the *balancing adjustment event occurred, or within a longer period allowed by the Commissioner.
- (5) If you die before the end of the time allowed for jointly choosing roll-over relief, the trustee of your estate may be a party to the choice.
- (6) The transferor must keep the choice or a copy of it for 5 years after the *balancing adjustment event occurred.

Penalty: 30 penalty units.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (7) The transferee must keep the choice or a copy of it until the end of 5 years after the next *balancing adjustment event occurs for the *depreciating asset.

Penalty: 30 penalty units.

Exception: Subdivision 170-D applies

- (8) There can be no roll-over relief if Subdivision 170-D (about transactions by a company that is a member of a linked group) applies to the disposal of the *depreciating asset or the change in interests in it.

40-345 What the roll-over relief is

- (1) Section 40-285 does not apply to the *balancing adjustment event for the transferor.
- (2) The transferee can deduct the decline in value of the *depreciating asset using the same method and *effective life (or *remaining effective life if that method is the *prime cost method) that the transferor was using.

40-350 Additional consequences

- (1) For the purposes of Division 45:
- (a) if the transferor, or a partnership of which the transferor was a member, leased the *depreciating asset to another entity for most of the time that the transferor or partnership *held the asset, the transferee is taken also to have done so; and
 - (b) if the transferor, or a partnership of which the transferor was a member, leased the asset to another entity for a period on or after 22 February 1999, the transferee is taken also to have done so; and
 - (c) if the main *business of the transferor, or a partnership of which the transferor was a member, was to lease assets, the main business of the transferee is taken also to have been to lease assets.
- (2) However, subsection (1) does not apply to roll-over relief under subsection 40-340(3) if the sum of the amounts specified in

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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paragraph 45-5(1)(e) or 45-10(1)(f), or subsection 45-5(4) or 45-10(4), is at least equal to the *market value of the *plant or interest concerned.

40-360 Notice to allow transferee to work out how this Division applies

- (1) This section applies if there is roll-over relief because of subsection 40-340(1).
- (2) The transferor must give the transferee a notice containing enough information about the transferor's *holding of the property for the transferee to work out how this Division applies to the transferee's holding of the *depreciating asset.
- (3) The transferor must give the notice within 6 months after the end of the transferee's income year in which the *balancing adjustment event occurred, or within a longer period allowed by the Commissioner.
- (4) The transferee must keep the notice until the end of 5 years after the earlier of these events:
 - (a) the transferee disposes of the property;
 - (b) the property is lost or destroyed.

Penalty: 30 penalty units.

40-362 Roll-over relief for holders of vessels covered by certificates under the *Shipping Reform (Tax Incentives) Act 2012*

Circumstances giving rise to roll-over relief

- (1) There is roll-over relief if:
 - (a) there is a *balancing adjustment event under section 40-295 because you cease to *hold a *depreciating asset that is a vessel (the *original vessel*); and
 - (b) on the day that the balancing adjustment event occurs, you have a certificate for the vessel under Part 2 of the *Shipping Reform (Tax Incentives) Act 2012* that:
 - (i) applies to that day; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) is not a *shipping exempt income certificate; and
- (c) there is no roll-over relief under section 40-340 relating to the original vessel; and
- (d) on the day occurring 2 years after the day you cease to hold the original vessel, you are the holder of another depreciating asset that is a vessel (the *other vessel*):
 - (i) for which you choose to apply roll-over relief in relation to the original vessel; and
 - (ii) for which you have a certificate under Part 2 of the *Shipping Reform (Tax Incentives) Act 2012* (other than a shipping exempt income certificate) that applies to the day of that choice; and
- (e) you became the holder of the other vessel during the period starting 1 year before the day you cease to hold the original vessel and ending 2 years after that day.

Choosing to apply roll-over relief

- (2) The choice must:
 - (a) be in writing; and
 - (b) be made within 6 months after the end of the second income year after the income year in which the *balancing adjustment event occurs, or within a longer period allowed by the Commissioner.

The effect of roll-over relief

- (3) If there is roll-over relief under this section:
 - (a) subsection 40-285(1) does not apply to the *balancing adjustment event in relation to the original vessel; and
 - (b) an amount is included in your assessable income if the original vessel's *termination value exceeds the sum of:
 - (i) the original vessel's *adjustable value just before the balancing adjustment event occurred; and
 - (ii) the *cost of the other vessel (disregarding paragraph (3)(c)); and
 - (c) for the purpose of applying this Act to the other vessel, its cost is reduced (but not below zero) by the difference between:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) the original vessel's termination value; and
 - (ii) the original vessel's adjustable value just before the balancing adjustment event occurred.
- (4) The amount included in your assessable income under paragraph (3)(b) is the amount of the excess mentioned in that paragraph. It is included in the second income year after the income year in which the *balancing adjustment event occurs.

40-365 Involuntary disposals

- (1) You may exclude some or all of an amount that has been included in your assessable income for a *depreciating asset (the ***original asset***) as a result of a *balancing adjustment event to the extent that you choose to treat it as an amount to be applied under subsection (5) for one or more replacement assets.
- (2) You can only make this choice if you stop *holding the asset because:
 - (a) the original asset is lost or destroyed; or
 - (b) the original asset is compulsorily acquired by an *Australian government agency; or
 - (c) the original asset is acquired by an entity (other than an Australian government agency or a *foreign government agency) under a power of compulsory acquisition conferred by a law covered under subsection (2A); or
 - (d) you dispose of the original asset to an entity (other than a foreign government agency) in circumstances meeting all of these conditions:
 - (i) the disposal takes place after a notice was served on you by or on behalf of the entity;
 - (ii) the notice invited you to negotiate with the entity with a view to the entity acquiring the asset by agreement;
 - (iii) the notice informed you that if the negotiations were unsuccessful, the asset would be compulsorily acquired by the entity;
 - (iv) the compulsory acquisition would have been under a power of compulsory acquisition conferred by a law covered under subsection (2A); or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (e) you dispose of land onto which the original asset was fixed to an entity (other than a foreign government agency) in circumstances meeting all of these conditions:
 - (i) a mining lease was compulsorily granted over the land;
 - (ii) the lease significantly affected your use of the land;
 - (iii) the lease was in force just before the disposal;
 - (iv) the entity to which you dispose of the land was the lessee under the lease; or
 - (f) you dispose of land onto which the original asset was fixed to an entity (other than a foreign government agency) in circumstances meeting all of these conditions:
 - (i) a mining lease would have been compulsorily granted over the land if you had not disposed of it;
 - (ii) that lease would have significantly affected your use of the land;
 - (iii) the entity to which you dispose of the land would have been the lessee under the lease.
- (2A) A law is covered under this subsection if it is:
- (a) an *Australian law (other than Chapter 6A of the *Corporations Act 2001*); or
 - (b) a *foreign law (other than a foreign law corresponding to Chapter 6A of the *Corporations Act 2001*).
- (3) You can only make this choice for a replacement asset if you incur the expenditure on the replacement asset, or you start to *hold it:
- (a) no earlier than one year, or within a further period the Commissioner allows, before the *balancing adjustment event occurred; and
 - (b) no later than one year, or within a further period the Commissioner allows, after the end of the income year in which the balancing adjustment event occurred.
- (4) You can only make this choice for a replacement asset if:
- (a) at the end of the income year in which you incurred the expenditure on the asset, or you started to *hold it, you used it, or had it *installed ready for use, wholly for a *taxable purpose; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) you can deduct an amount for it.
- (5) For the purposes of applying this Act to the replacement asset:
 - (a) its *cost is reduced by the amount covered by the choice for the income year in which the asset's *start time occurs; and
 - (b) if the income year is later than the one in which the asset's *start time occurs—the sum of its *opening adjustable value for that later year and any amount included in the second element of the asset's cost for that later year is reduced by the amount covered by the choice.
- (6) If you are making the choice for 2 or more replacement assets, you apportion the amount covered by the choice between those items in proportion to their *cost.

40-370 Balancing adjustments where there has been use of different car expense methods

- (1) An amount is included in your assessable income or you can deduct an amount under this section instead of section 40-285 if:
 - (a) a *balancing adjustment event occurs for a *car you *held; and
 - (b) you have deducted or can deduct an amount for the decline in value of the car for an income year under this Division; and
 - (c) you chose:
 - (i) the “cents per kilometre” method in Subdivision 28-C; or
 - (ii) the “12% of original value” method in Subdivision 28-D;for deducting your car expenses for the car for one or more other income years.

Note 1: This means if you have only used the “log book” method or the “one-third of actual expenses” method since you began using the car, you calculate the assessable amount or deductible amount under section 40-285.

Note 2: Also, if you have only used the “cents per kilometre” method or the “12% of original value” method since you began using the car, no amount is assessable or deductible under this section or section 40-285.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) Work out the amount you include in your assessable income or the amount you can deduct in this way:

Method statement

- Step 1. Subtract the *car's *adjustable value just before the *balancing adjustment event occurred from the car's *termination value.
- Step 2. Reduce the step 1 amount by the part of the *car's decline in value that is attributable to your using the car, or having it *installed ready for use, for purposes other than *taxable purposes. You do this by applying the formula in subsection 40-290(2).
- Step 3. Multiply the step 2 amount by the total number of days for which you deducted the decline in value of the *car under this Division.
- Step 4. Divide the step 3 amount by the total number of days you *held the *car.
- Step 5. The step 4 amount is a deduction if it is negative or it is included in your assessable income if it is positive.

- (3) In working out the *adjustable value for the income years for which you chose the "cents per kilometre method" or the "12% of original value" method, you are to assume the decline in value was calculated under this Division on the same basis as those income years when those methods did not apply.
- (4) In working out the reduction in step 2 for the income years for which you chose the "cents per kilometre method" or the "12% of original value" method, you must assume that:
- (a) you had not chosen either of those methods for the *car; and
 - (b) Division 28 (car expenses) had not applied to the car; and
 - (c) you used the car for *taxable purposes:
 - (i) to the extent of 20% if you used the "cents per kilometre" method; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) to the extent of one-third if you used the “12% of original value” method.

Subdivision 40-E—Low-value and software development pools

Guide to Subdivision 40-E

40-420 What this Subdivision is about

You may choose to work out the decline in value of low-cost assets (assets costing less than \$1,000) and certain other depreciating assets through a low-value pool.

You may also choose to deduct amounts for expenditure you incur on in-house software through a software development pool.

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Operative provisions

40-425 Allocating assets to a low-value pool

- (1) You may choose to allocate a *low cost asset you *hold to a low-value pool for the income year in which you start to use it, or have it *installed ready for use, for a *taxable purpose.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) A **low-cost asset** is a *depreciating asset (except a *horticultural plant) whose *cost as at the end of the income year in which you start to use it, or have it *installed ready for use, for a *taxable purpose is less than \$1,000.
- (3) You may also choose to allocate a *low-value asset to a low-value pool.
- (4) You cannot allocate a *depreciating asset to a low-value pool if:
 - (a) its *cost does not exceed \$300; and
 - (b) you use the asset predominantly for the *purpose of producing assessable income that is not income from carrying on a *business; and
 - (c) the asset is not part of a set of assets that you started to hold in that income year where the total cost of the set of assets exceeds \$300; and
 - (d) the total cost of the asset and any other identical, or substantially identical, asset that you start to hold in that income year does not exceed \$300.
- (5) A **low-value asset** is a *depreciating asset, except a *horticultural plant, you *hold:
 - (a) if you have deducted or can deduct amounts for it under this Division for a previous income year—for which you used the *diminishing value method; and
 - (b) that has an *opening adjustable value for the current year of less than \$1,000 (worked out using the diminishing value method); and
 - (c) that is not a *low-cost asset.
- (6) A *depreciating asset:
 - (a) to which Division 58 (about assets previously owned by an exempt entity) applied for an entity sale situation; and
 - (b) for which you used the *diminishing value method; and
 - (c) whose *adjustable value as at the end of the income year before the *current year is less than \$1,000;is also a **low-value asset**.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Exception: small business entities

- (7) You cannot allocate a *depreciating asset to a low-value pool if you deduct amounts for it under Subdivision 328-D (about capital allowances for small business entities).

Exception: R&D

- (8) You cannot allocate a *depreciating asset to a low-value pool if you are entitled under section 355-100 to a *tax offset for a deduction under section 355-305 for the asset for an income year starting before, or at the same time as, the allocation has effect.

Note: A similar rule applies if you deducted or could have deducted amounts under former 73BA of the *Income Tax Assessment Act 1936* (see section 40-430 of the *Income Tax (Transitional Provisions) Act 1997*).

40-430 Rules for assets in low-value pools

- (1) Once you have made a choice to allocate a *low-cost asset to a low-value pool for an income year, you must allocate all low-cost assets you start to *hold in that income year or a later one to the pool.

Note 1: This rule does not apply to low-value assets.

Note 2: If you are a small business entity for the income year and you calculate your deductions for your depreciating assets under Subdivision 328-D, you must deduct amounts for your depreciating assets under that Subdivision unless deductions for particular assets are specifically excluded by that Subdivision.

- (2) Once you allocate any *depreciating asset to a low-value pool, it must remain in the pool.

40-435 Private or exempt use of assets

When you allocate a *depreciating asset to a low-value pool, you must make a reasonable estimate of the percentage (the ***taxable use percentage***) of your use of the asset (including any past use) that will be for a *taxable purpose over:

- (a) for a *low-cost asset—its *effective life; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) for a *low-value asset—any period of its effective life that is yet to elapse at the start of the income year for which you allocate it to the pool.

40-440 How you work out the decline in value of assets in low-value pools

- (1) You work out the decline in value of *depreciating assets in a low-value pool for an income year in this way:

- Step 1. Work out the amount obtained by taking $18\frac{3}{4}\%$ of the taxable use percentage of the *cost of each *low-cost asset you allocated to the pool for that year. Add those amounts.

Step 2. Add to the step 1 amount $18\frac{3}{4}\%$ of the taxable use percentage of any amounts included in the second element of the *cost for that year of:

 - (a) assets allocated to the pool for an earlier income year; and
 - (b) *low-value assets allocated to the pool for the *current year.

Step 3. Add to the step 2 amount $37\frac{1}{2}\%$ of the sum of:

 - (a) the *closing pool balance for the previous income year; and
 - (b) the taxable use percentage of the *opening adjustable values of *low-value assets, at the start of the income year, that you allocated to the pool for that year.

Step 4. The result is the decline in value of the *depreciating assets in the pool.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The ***closing pool balance*** of a low-value pool for an income year is the sum of:
- (a) the *closing pool balance of the pool for the previous income year; and
 - (b) the taxable use percentage of the *costs of *low-cost assets you allocated to the pool for that year; and
 - (c) the taxable use percentage of the *opening adjustable values of any *low-value assets you allocated to the pool for that year as at the start of that year; and
 - (d) the taxable use percentage of any amounts included in the second element of the cost for the income year of:
 - (i) assets allocated to the pool for an earlier income year; and
 - (ii) low-value assets allocated to the pool for the *current year;

less the decline in value of the *depreciating assets in the pool worked out under subsection (1).

Note: The closing pool balance may be reduced under section 40-445 if a balancing adjustment event happens.

40-445 Balancing adjustment events

- (1) If a *balancing adjustment event happens to a *depreciating asset in a low-value pool in an income year, the *closing pool balance for that year is reduced (but not below zero) by the taxable use percentage of the asset's *termination value.
- (2) If the sum of the *termination values, or the part of it, applicable under subsection (1) exceeds the *closing pool balance of the pool for that year, the excess is included in your assessable income.

40-450 Software development pools

- (1) You may choose to allocate amounts of expenditure you incur on *in-house software in an income year to a software development pool if it is expenditure on developing, or having another entity develop, computer software.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: You cannot allocate expenditure on in-house software to a software development pool if it is expenditure on acquiring computer software or a right to use computer software.

- (2) Once you choose to create a software development pool for an income year, any amounts of the kind referred to in subsection (1) you incur after the pool is created (whether in that income year or a later one) must be allocated to a software development pool.
- (3) However, an amount of expenditure on *in-house software can only be allocated to a software development pool if you intend to use the software solely for a *taxable purpose.
- (4) You must create a separate software development pool for each income year for which you incur amounts of the kind referred to in subsection (1).

40-455 How to work out your deduction

For all the expenditure on *in-house software in a software development pool that was incurred in a particular income year (*Year 1*), you get deductions in successive income years as follows:

Deductions allowed for software development pool	
Income year	Amount of expenditure you can deduct for that year
Year 1	Nil
Year 2	40%
Year 3	40%
Year 4	20%

40-460 Your assessable income includes consideration for pooled software

- (1) If expenditure on *in-house software is (or was) in your software development pool, your assessable income includes any amount you *derive as consideration in relation to the software.
- (2) However, subsection (1) does not apply if subsection 40-340(3) (roll-over relief) applies to the change.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 40-F—Primary production depreciating assets

Guide to Subdivision 40-F

40-510 What this Subdivision is about

You can deduct amounts for capital expenditure on depreciating assets that are water facilities or horticultural plants.

The amount you can deduct is equal to the asset's decline in value during an income year (as measured under this Subdivision).

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Operative provisions

40-515 Water facilities and horticultural plants

- (1) You can deduct an amount equal to the decline in value for an income year (as worked out under this Subdivision) of a *depreciating asset that is one of these:

- (a) a *water facility;
- (b) a *horticultural plant.

Note 1: Sections 40-540 and 40-545 show you how to work out the decline.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note 2: Generally, only one taxpayer can deduct amounts for a depreciating asset. However, if you and another taxpayer jointly hold the asset, each of you deduct amounts for it: see section 40-35.

Conditions

- (2) However, the applicable condition in section 40-525 must be satisfied for the *depreciating asset.

Limit on deduction

- (3) You cannot deduct more in total than the amount of capital expenditure incurred on the *depreciating asset.

Reduction of deduction: water facilities

- (4) You must reduce your deduction for a *water facility for an income year by the part of the facility's decline in value that is attributable to the period (if any) in the income year when it was:
- (a) not wholly used in carrying on a *primary production business on land in Australia; or
 - (b) not wholly used for a *taxable purpose.
- (5) Paragraph (4)(a) does not apply to a *water facility if the expenditure incurred on the construction, manufacture, installation or acquisition of the water facility was incurred by an *irrigation water provider.

Meaning of irrigation water provider

- (6) An **irrigation water provider** is an entity whose *business is primarily and principally the supply (otherwise than by using a *motor vehicle) of water to entities for use in *primary production businesses on land in Australia.

40-520 Meaning of water facility and horticultural plant

- (1) A **water facility** is:
- (a) *plant or a structural improvement, or a repair of a capital nature, or an alteration, addition or extension, to plant or a structural improvement, that is primarily and principally for the purpose of conserving or conveying water; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) a structural improvement, or a repair of a capital nature, or an alteration, addition or extension, to a structural improvement, that is reasonably incidental to conserving or conveying water.

Example: Examples of a water facility include a dam, tank, tank stand, bore, well, irrigation channel, pipe, pump, water tower and windmill.
Examples of things reasonably incidental to conserving or conveying water include a culvert, a fence to prevent livestock entering an irrigation channel and a bridge over an irrigation channel.

- (2) A ***horticultural plant*** is a live plant or fungus that is cultivated or propagated for any of its products or parts.

40-525 Conditions

Water facilities

- (1) The capital expenditure you incurred on the construction, manufacture, installation or acquisition of the *water facility must have been incurred:
 - (a) primarily and principally for the purpose of conserving or conveying water for use in a *primary production business that you conduct on land in Australia; or
 - (b) for expenditure incurred by an *irrigation water provider—primarily and principally for the purpose of conserving or conveying water for use in primary production businesses conducted by other entities on land in Australia, being entities supplied with water by the irrigation water provider.

Note: If Division 250 applies to you and an asset that is a water facility:

- (a) if section 250-150 applies—the condition in this subsection is taken to be satisfied for the facility to the extent specified in a determination made under subsection 250-150(3); or
- (b) otherwise—the condition in this subsection is taken not to be satisfied for the facility.

Horticultural plants

- (2) One of the conditions in this table must be satisfied:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Conditions relating to horticultural plants

Item	Condition
1	You own the *horticultural plant and any holder of a lease, lesser interest or licence relating to the land does not carry on a *business of *horticulture on the land
2	The *horticultural plant is attached to land you hold under a lease, or a *quasi-ownership right granted by an *exempt Australian government agency or an *exempt foreign government agency, and: <ul style="list-style-type: none"> (a) the lease or quasi-ownership right enables you to carry on a *business of *horticulture on the land; and (b) any holder of a lesser interest or licence relating to the land does not carry on a *business of *horticulture on the land.
3	You: <ul style="list-style-type: none"> (a) hold a licence relating to the land to which the *horticultural plant is attached; and (b) carry on a *business of *horticulture on the land as a result of holding the licence.
<p>Note: If Division 250 applies to you and an asset that is a horticultural plant:</p> <ul style="list-style-type: none"> (a) if section 250-150 applies—a condition in this subsection is taken to be satisfied for the plant to the extent specified in a determination made under subsection 250-150(3); or (b) otherwise—the conditions in this subsection are taken not to be satisfied for the horticultural plant. 	

40-530 When a water facility or horticultural plant starts to decline in value

A *water facility or horticultural plant starts to decline in value in the income year worked out using this table:

Start of decline in value		
Item	This asset:	Starts to decline in value in:
1	A *water facility	the income year in which you first incur expenditure on the facility

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Start of decline in value		
Item	This asset:	Starts to decline in value in:
2	A *horticultural plant	(a) if you are the first entity to satisfy a condition in subsection 40-525(2) for the plant—the income year in which the first commercial season starts; or (b) if not—the later of the income year in which you first satisfied that condition and the income year in which the first commercial season starts

40-535 Meaning of *horticulture* and *commercial horticulture*

- (1) ***Horticulture*** includes:
 - (a) propagation and cultivation of a *horticultural plant in any environment (whether natural or artificial); and
 - (b) propagation and cultivation of seeds, bulbs, spores and similar things; and
 - (c) propagation and cultivation of fungi.
- (2) Use for ***commercial horticulture*** means use for the *purpose of producing assessable income in a *business of *horticulture.

40-540 How you work out the decline in value for water facilities

You work out the decline in value of a *water facility for an income year in this way for the income year in which you incurred the expenditure and the 2 following years:

$$\text{Expenditure} \times 33 \frac{1}{3} \%$$

where:

expenditure is the amount of capital expenditure you incurred on the construction, manufacture, installation or acquisition of the *water facility.

40-545 How you work out the decline in value for horticultural plants

- (1) The decline in value of a *horticultural plant for the income year in which it starts to decline in value is all of the capital expenditure

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

attributable to the establishment of the plant if its *effective life is less than 3 years.

- (2) You work out the decline in value for an income year of a *horticultural plant whose *effective life is 3 years or more in this way:

$$\text{Establishment expenditure} \times \frac{\text{Write-off days in income year}}{365} \times \text{Write-off rate}$$

where:

establishment expenditure is the amount of capital expenditure incurred that is attributable to the establishment of the *horticultural plant.

write-off days in income year is the number of days in the income year on which you satisfied a condition in subsection 40-525(2) for the plant and either used it for *commercial horticulture or held it ready for that use.

write-off rate is the rate shown in this table for the *horticultural plant according to its *effective life.

Write-off rate for horticultural plant		
Item	Effective life of:	The write-off rate is:
1	3 to fewer than 5 years	40%
2	5 to fewer than 6 ² / ₃ years	27%
3	6 ² / ₃ to fewer than 10 years	20%
4	10 to fewer than 13 years	17%
5	13 to fewer than 30 years	13%
6	30 years or more	7%

Limit on write-off days

- (3) Disregard your use of the *horticultural plant on a day outside the period that:
- (a) starts when the plant *can* first be used for *commercial horticulture; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) extends for the time shown in this table (depending on the plant's *effective life).

Period after which you cannot count use of horticultural plant		
Item	Effective life:	Time limit:
1	3 to fewer than 5 years	2 years and 183 days
2	5 to fewer than $6\frac{2}{3}$ years	3 years and 257 days
3	$6\frac{2}{3}$ to fewer than 10 years	5 years
4	10 to fewer than 13 years	5 years and 323 days
5	13 to fewer than 30 years	7 years and 253 days
6	30 years or more	14 years and 105 days

40-555 Amounts you cannot deduct

Water facilities

- (1) You cannot deduct an amount for any income year for capital expenditure on the acquisition of a *water facility if any person has deducted or can deduct an amount under this Subdivision for any income year for earlier capital expenditure on:
- (a) the construction or manufacture of the facility; or
 - (b) a previous acquisition of the facility.

Note: A depreciating asset and a repair of a capital nature or an alteration, addition or extension to that asset that is a water facility are not the same depreciating asset for the purposes of section 40-50 and this Subdivision: see section 40-53.

Horticultural plants

- (3) In working out your deduction under this Subdivision for a *horticultural plant, disregard expenditure incurred:
- (a) in draining swamp or low-lying land; or
 - (b) in clearing land.

40-560 Non-arm's length transactions

If you incurred capital expenditure under an *arrangement and:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and
 - (b) apart from this section, the amount of the expenditure would be more than the *market value of what it was for;
- the amount of expenditure you take into account under this Subdivision is that market value.

40-565 Extra deduction for destruction of a horticultural plant

- (1) You can deduct the amount worked out under subsection (2) for a *horticultural plant for an income year if its *effective life is 3 years or more and it is destroyed during the income year while you own it and use it for *commercial horticulture.
- (2) Work out your deduction as follows:

Method statement

- Step 1. Work out the total of the amounts you could have deducted under this Subdivision for the *horticultural plant for the period:
- (a) starting when the plant could first be used for *commercial horticulture; and
 - (b) ending when it was destroyed;
- assuming that, during that period, you satisfied a condition in section 40-525 for the plant and used it for commercial horticulture.
- Step 2. Subtract from the capital expenditure that is attributable to the establishment of the *horticultural plant:
- (a) the result from step 1; and
 - (b) any amount you received (under an insurance policy or otherwise) for the destruction.
- The remaining amount (if any) is your deduction under subsection (1).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) This deduction is in addition to any deduction for the income year under section 40-545.

40-570 How this Subdivision applies to partners and partnerships

- (1) This section applies to allocate expenditure to you for the purposes of this Subdivision if you were a partner in a partnership when it incurred capital expenditure during an income year.
- (2) For the purposes of this Subdivision, you are taken to have incurred during that income year:
 - (a) the amount of the expenditure that the partners agreed you should bear; or
 - (b) if there was no such agreement—the proportion of the expenditure equal to the proportion of your individual interest in the net income or partnership loss of the partnership for that income year.
- (3) Disregard this Subdivision when working out the net income or partnership loss of the partnership under section 90 of the *Income Tax Assessment Act 1936*.

40-575 Getting tax information if you acquire a horticultural plant

- (1) If you begin to satisfy a condition in section 40-525 for a *horticultural plant, you may give the last entity (if any) that satisfied such a condition for the plant a written notice requiring the entity to give you any or all of the following information:
 - (a) the amount of establishment expenditure for the plant;
 - (b) if the entity used the plant's *effective life to work out the decline in value of the plant—its effective life and the day on which it could first be used for *commercial horticulture.
- (2) The notice must:
 - (a) be given within 60 days of your beginning to satisfy that condition; and
 - (b) specify a period of at least 60 days within which the information must be given; and
 - (c) set out the effect of subsection (3).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: Subsections (4) and (5) explain how this subsection operates if the last owner is a partnership.

Requirement to comply with notice

- (3) The entity to whom the notice is given must not intentionally refuse or fail to comply with the notice.

Penalty: 10 penalty units.

Giving the notice to a partnership

- (4) If the entity to whom the notice is given is a partnership:
- (a) you may give it to the partnership by giving it to any of the partners (this does not limit how else you can give it); and
 - (b) the obligation to comply with the notice is imposed on each of the partners (not on the partnership), but may be discharged by any of them.
- (5) A partner must not intentionally refuse or fail to comply with that obligation, unless another partner has already complied with it.

Penalty: 10 penalty units.

Limits on giving a notice

- (6) Only one notice can be given in relation to the same *horticultural plant.

Subdivision 40-G—Capital expenditure of primary producers and other landholders

Guide to Subdivision 40-G

40-625 What this Subdivision is about

You can deduct amounts for capital expenditure you incur:

- on landcare operations; or
- on electricity connections or telephone lines.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Operative provisions

40-630 Landcare operations

- (1) You can deduct capital expenditure you incur at a time in an income year on a *landcare operation for:
- (a) land in Australia you use at the time for carrying on a *primary production business; or
 - (b) rural land in Australia you use at the time for carrying on a *business for a *taxable purpose from the use of that land (except a business of *mining and quarrying operations).

Note: If Division 250 applies to you and an asset that is land:

- (a) if section 250-150 applies—you are taken to be using the land for the purpose of carrying on a primary production business, or a business for the purpose of producing assessable income from the use of rural land (except a business of mining and quarrying operations), to the extent specified in a determination made under subsection 250-150(3); or
- (b) otherwise—you are taken not to be using the land for such a purpose.

- (1A) A *rural land irrigation water provider can deduct capital expenditure it incurs at a time in an income year on a *landcare operation for:

- (a) land in Australia that other entities use at the time for carrying on *primary production businesses; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) rural land in Australia that other entities use at the time for carrying on *businesses for a *taxable purpose from the use of that land (except a business of *mining and quarrying operations);

being entities supplied with water by the rural land irrigation water provider.

(1B) A **rural land irrigation water provider** is:

- (a) an *irrigation water provider; or
- (b) an entity whose *business is primarily and principally the supply (otherwise than by using a *motor vehicle) of water to entities for use in carrying on *businesses (except businesses of *mining and quarrying operations) using rural land in Australia.

Exception: plant

(2) However, you cannot deduct an amount under this Subdivision for capital expenditure on *plant, except:

- (a) a fence erected for a purpose described in paragraph 40-635(1)(a) or (b); or
- (b) a dam or structural improvement (except a fence) covered by paragraph (1)(c), (d), (e) or (f) of the definition of **plant** in section 45-40.

(2A) In applying paragraph (2)(b) to capital expenditure incurred by a *rural land irrigation water provider on a dam or structural improvement, the requirement in paragraph 45-40(1)(c) that the land on which the dam or structural improvement is situated be used for agricultural or pastoral operations is to be disregarded.

Exception: deduction available under Subdivision 40-F

(2B) A *rural land irrigation water provider cannot deduct an amount under this Subdivision for capital expenditure if the entity can deduct an amount for that expenditure under Subdivision 40-F.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Exception: deduction available under Subdivision 40-J

- (2C) You cannot deduct an amount under this Subdivision for capital expenditure if any entity can deduct an amount for that expenditure for any income year under Subdivision 40-J.

Reduction of deduction

- (3) You must reduce your deduction by a reasonable amount to reflect your use of the land in the income year after the time when you incurred the expenditure for a purpose other than the purpose of carrying on:
- (a) a *primary production business; or
 - (b) a *business for the *purpose of producing assessable income from the use of rural land (except a business of *mining and quarrying operations).
- (4) Subsection (3) does not apply to expenditure incurred by a *rural land irrigation water provider. Instead, a rural land irrigation water provider must reduce its deduction in relation to particular land by a reasonable amount to reflect an entity's use of the land in the income year after the rural land irrigation water provider incurred the expenditure for a purpose other than a *taxable purpose.

40-635 Meaning of *landcare operation*

- (1) ***Landcare operation*** for land means:
- (a) erecting a fence to separate different land classes on the land in accordance with an *approved management plan for the land; or
 - (b) erecting a fence on the land primarily and principally for the purpose of excluding animals from an area affected by land degradation:
 - (i) to prevent or limit extension or worsening of land degradation in the area; and
 - (ii) to help reclaim the area; or
 - (c) constructing a levee or a similar improvement on the land; or
 - (d) constructing drainage works on the land primarily and principally for the purpose of controlling salinity or assisting in drainage control; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (e) an operation primarily and principally for the purpose of:
 - (i) eradicating or exterminating from the land animals that are pests; or
 - (ii) eradicating, exterminating or destroying plant growth detrimental to the land; or
 - (iii) preventing or fighting land degradation (except by erecting fences on the land); or
- (f) a repair of a capital nature, or an alteration, addition or extension, to an asset described in paragraph (a), (b), (c) or (d) or an extension of an operation described in paragraph (e); or
- (g) constructing a structural improvement, or a repair of a capital nature, or an alteration, addition or extension, to a structural improvement, that is reasonably incidental to an asset described in paragraph (c) or (d).

Note: A depreciating asset and a repair of a capital nature or an alteration, addition or extension to that asset are not the same asset for the purposes of section 40-50 and this Subdivision: see section 40-53.

- (2) Paragraph (1)(d) does not apply to an operation draining swamp or low-lying land.

40-640 Meaning of *approved management plan*

An *approved management plan* for *land is a plan that:

- (a) shows the different classes within the land and the location of any fencing needed to separate any of the land classes to prevent land degradation; and
- (b) describes the kind of fencing and how it will prevent land degradation; and
- (c) has been prepared by, or approved in writing as a suitable plan for the land by:
 - (i) an officer of an *Australian government agency responsible for land conservation who has authority to do so; or
 - (ii) an individual who was at the time approved as a farm consultant under this Subdivision.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 40-645

40-645 Electricity and telephone lines

- (1) You can deduct amounts for capital expenditure you incur on
*connecting power to land or upgrading the connection if, when
you incur the expenditure:
 - (a) you have an interest in the land or are a share-farmer carrying
on a *business on the land; and
 - (b) you or another entity intends to use some or all of the
electricity to be supplied as a result of the expenditure in
carrying on a business on the land for a *taxable purpose at a
time when you have an interest in the land or are a
share-farmer carrying on a business on the land.
- (2) You can also deduct amounts for capital expenditure you incur on
a telephone line on or extending to land if, when you incurred the
expenditure:
 - (a) a *primary production business was carried on the land; and
 - (b) you had an interest in the land or you were a share-farmer
carrying on a primary production business on the land.
- (3) The amount you can deduct is 10% of the expenditure:
 - (a) for the income year in which you incur it; and
 - (b) for each of the next 9 income years.

Note 1: Various provisions may reduce the amount you can deduct or stop you
deducting. For example, see:

- Division 26 (limiting deductions generally); and
- section 40-650 (specifying expenditure you cannot deduct
under this Subdivision); and
- Division 245 (which may affect your entitlement to a
deduction if your debts are forgiven).

Note 2: If you recoup an amount of the expenditure, the amount will be
included in your assessable income. See Subdivision 20-A.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-650 Amounts you cannot deduct under this Subdivision

- (1) You cannot deduct amounts for capital expenditure you incur on
*connecting power to land or upgrading the connection if, during
the 12 months after electricity is first supplied to the land as a
result of the expenditure, no electricity supplied as a result of the
expenditure is used in carrying on a *business on the land for a
*taxable purpose.
- (2) If you deducted an amount for any income year under this
Subdivision for the expenditure, your assessment for that income
year may be amended under section 170 of the *Income Tax
Assessment Act 1936* to disallow the deduction.
- (3) You cannot deduct an amount for capital expenditure you incur on
*connecting power to land or upgrading the connection for:
 - (a) expenditure in providing water, light or power for use on,
access to or communication with the site of *mining and
quarrying operations; or
 - (b) a contribution to the cost of providing water, light or power
for those operations.
- (4) You cannot deduct an amount for any income year for your capital
expenditure on a part of a telephone line if:
 - (a) any entity has deducted, or can deduct, an amount for any
income year for the cost of that part under a provision of this
Act (except this Subdivision); or
 - (b) the cost of that part has been, or must be, taken into account
in working out:
 - (i) the amount of any entity's deduction (including a
deduction for a *depreciating asset) for any income year
under a provision of this Act (except this Subdivision);
or
 - (ii) the net income, or partnership loss, of a partnership
under section 90 of the *Income Tax Assessment Act
1936*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (5) However, you can deduct an amount under this Subdivision for your expenditure on a part of a telephone line even if:
 - (a) an entity that worked on installing that part has deducted, or can deduct, an amount relating to that part for any income year under this Act (except this Subdivision); or
 - (b) the cost of that part has been, or must be, taken into account:
 - (i) in working out the amount of such an entity's deduction for any income year under a provision of this Act (except this Subdivision); or
 - (ii) under section 90 of the *Income Tax Assessment Act 1936* in working out the net income, or partnership loss, of a partnership that worked on installing that part.
- (6) Subsection (5) has effect whether the entity did the work itself or through one or more employees or *agents.
- (7) If you can deduct, or have deducted, an amount for any income year under section 40-645 for your expenditure:
 - (a) an entity cannot deduct an amount for any income year under a provision of this Act (except this Subdivision) for the expenditure; and
 - (b) the expenditure cannot be taken into account to work out the amount of an entity's deduction for any income year under a provision of this Act (except this Subdivision).
- (8) Subsection (7) also applies in working out the net income, or partnership loss, of a partnership under section 90 of the *Income Tax Assessment Act 1936*.

40-655 Meaning of *connecting power to land or upgrading the connection and metering point*

- (1) Each of these operations is ***connecting power to land or upgrading the connection***:
 - (a) connecting a mains electricity cable to a *metering point on the land (whether or not the point from which the cable is connected is on the land);

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) providing or installing equipment designed to measure the amount of electricity supplied through a mains electricity cable to a metering point on the land;
 - (c) providing or installing equipment for use directly in connection with the supply of electricity through a mains electricity cable to a metering point on the land;
 - (d) work to increase the amount of electricity that can be supplied through a mains electricity cable to a metering point on the land;
 - (e) work to modify or replace equipment designed to measure the amount of electricity supplied through a mains electricity cable to a metering point on the land, if the modification or replacement results from increasing the amount of electricity supplied to the land;
 - (f) work to modify or replace equipment for use directly in connection with the supply of electricity through a mains electricity cable to the land, if the modification or replacement results from increasing the amount of electricity supplied to the land;
 - (g) work carried out as a result of a contribution to the cost of a project consisting of the connection of mains electricity facilities to that land and other land.
- (2) However, an operation described in subsection (1) done in the course of replacing or relocating mains electricity cable or equipment is **connecting power to land or upgrading the connection** only if done to increase the amount of electricity that can be supplied to a *metering point on the land.
- (3) A **metering point** on land is a point where consumption of electricity supplied to the land through a mains electricity cable is measured.

40-660 Non-arm's length transactions

If you incurred capital expenditure under an *arrangement and:

- (a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(b) apart from this section, the amount of the expenditure would be more than the *market value of what it was for;
the amount of expenditure you take into account under this Subdivision is that market value.

40-665 How this Subdivision applies to partners and partnerships

- (1) This section applies to allocate expenditure to you for the purposes of this Subdivision if you were a partner in a partnership when it incurred capital expenditure during an income year.
- (2) For the purposes of this Subdivision, you are taken to have incurred during that income year:
 - (a) the amount of the expenditure that the partners agreed you should bear; or
 - (b) if there was no such agreement—the proportion of the expenditure equal to the proportion of your individual interest in the net income or partnership loss of the partnership for that income year.
- (3) Disregard this Subdivision when working out the net income or partnership loss of the partnership under section 90 of the *Income Tax Assessment Act 1936*.

40-670 Approval of persons as farm consultants

- (1) A person may be approved in writing as a farm consultant by:
 - (a) the *Agriculture Secretary; or
 - (b) an officer of the *Agriculture Department who has been authorised in writing by the Agriculture Secretary to approve persons as farm consultants.

Note: This subsection also allows the approval of an individual as a farm consultant to be revoked. See subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The following matters must be taken into account when deciding whether to approve a person as a farm consultant:
 - (a) the person's qualifications, experience and knowledge relating to *land conservation and farm management;
 - (b) the person's standing in the professional community;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(c) any other relevant matters.

40-675 Review of decisions relating to approvals

A person may apply to the *AAT for review of a decision (as defined in the *Administrative Appeals Tribunal Act 1975*):

- (a) to refuse to approve the person as a farm consultant; or
- (b) to revoke the approval of the person as a farm consultant.

Subdivision 40-H—Capital expenditure that is immediately deductible

Guide to Subdivision 40-H

40-725 What this Subdivision is about

You get an immediate deduction for certain capital expenditure on:

- exploration or prospecting; and
- rehabilitation of mining or quarrying sites; and
- paying petroleum resource rent tax; and
- paying minerals resource rent tax; and
- environmental protection activities.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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40-765 Non-arm's length transactions

Operative provisions

40-730 Deduction for expenditure on exploration or prospecting

- (1) You can deduct expenditure you incur in an income year on *exploration or prospecting for *minerals, or quarry materials, obtainable by *mining and quarrying operations if, for that expenditure, you satisfy one or more of these paragraphs:
 - (a) you carried on mining and quarrying operations;
 - (b) it would be reasonable to conclude you proposed to carry on such operations;
 - (c) you carried on a *business of, or a business that included, exploration or prospecting for minerals or quarry materials obtainable by such operations, and the expenditure was necessarily incurred in carrying on that business.
- Note: If Division 250 applies to you and an asset that is land:
 - (a) if section 250-150 applies—you can deduct expenditure you incur in relation to the land to the extent specified in a determination made under subsection 250-150(3); or
 - (b) otherwise—you cannot deduct such expenditure.
- (2) However, you cannot deduct expenditure under subsection (1) if it is expenditure on:
 - (a) development drilling for *petroleum; or
 - (b) operations in the course of working a mining property, quarrying property or petroleum field.
- (3) Also, you cannot deduct expenditure under subsection (1) to the extent that it forms part of the *cost of a *depreciating asset.
- (4) **Exploration or prospecting** includes:
 - (a) for mining in general, and quarrying:
 - (i) geological mapping, geophysical surveys, systematic search for areas containing *minerals (except *petroleum) or quarry materials, and search by drilling or other means for such minerals or materials within those areas; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) search for ore within, or near, an ore-body or search for quarry materials by drives, shafts, cross-cuts, winzes, rises and drilling; and
 - (b) for petroleum mining:
 - (i) geological, geophysical and geochemical surveys; and
 - (ii) exploration drilling and appraisal drilling; and
 - (c) feasibility studies to evaluate the economic feasibility of mining minerals or quarry materials once they have been discovered; and
 - (d) obtaining *mining, quarrying or prospecting information associated with the search for, and evaluation of, areas containing minerals or quarry materials.
- (5) **Minerals** includes *petroleum.
- (6) **Petroleum** means:
- (a) any naturally occurring hydrocarbon or naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
 - (b) any naturally occurring mixture of:
 - (i) one or more hydrocarbons, whether in a gaseous, liquid or solid state; and
 - (ii) one or more of the following: hydrogen sulphide, nitrogen, helium or carbon dioxide;
- whether or not that substance has been returned to a natural reservoir.
- (7) **Mining and quarrying operations** means:
- (a) mining operations on a mining property for extracting *minerals (except *petroleum) from their natural site; or
 - (b) mining operations for the purpose of obtaining petroleum; or
 - (c) quarrying operations on a quarrying property for extracting quarry materials from their natural site;
- for the *purpose of producing assessable income.
- (8) **Mining, quarrying or prospecting information** is geological, geophysical or technical information that:
- (a) relates to the presence, absence or extent of deposits of *minerals or quarry materials in an area; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) is likely to help in determining the presence, absence or extent of such deposits in an area.

40-735 Deduction for expenditure on mining site rehabilitation

- (1) You can deduct for an income year expenditure you incur in that year to the extent it is on *mining site rehabilitation of:
 - (a) a site on which you:
 - (i) carried on *mining and quarrying operations; or
 - (ii) conducted *exploration or prospecting; or
 - (iii) conducted *ancillary mining activities; or
 - (b) a *mining building site.

Note 1: If an amount of the expenditure is recouped, the amount may be included in your assessable income: see Subdivision 20-A.

Note 2: If Division 250 applies to you and an asset that is land:
 - (a) if section 250-150 applies—you can deduct expenditure you incur in relation to the land to the extent specified in a determination made under subsection 250-150(3); or
 - (b) otherwise—you cannot deduct such expenditure.
- (2) However, a provision of this Act (except Division 8 (which is about deductions)) that expressly prevents or restricts the operation of that Division applies in the same way to this section.
- (3) However, you cannot deduct expenditure under subsection (1) to the extent that it forms part of the *cost of a *depreciating asset.
- (4) **Mining site rehabilitation** is an act of restoring or rehabilitating a site or part of a site to, or to a reasonable approximation of, the condition it was in before *mining and quarrying operations, *exploration or prospecting or *ancillary mining activities were first started on the site, whether by you or by someone else.
- (5) *Partly* restoring or rehabilitating such a site counts as **mining site rehabilitation** (even if you had no intention of completing the work).
- (6) For a *mining building site, the time when *ancillary mining activities were first started on the site is the earliest time when the buildings, improvements or *depreciating assets concerned were located on the site.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-740 Meaning of *ancillary mining activities* and *mining building site*

- (1) Any of the following are *ancillary mining activities*:
- (a) preparing a site for you to carry on *mining and quarrying operations;
 - (b) providing water, light or power for, access to, or communications with, a site on which you carry on, or will carry on, mining and quarrying operations;
 - (c) *minerals treatment of *minerals or minerals treatment of quarry materials, obtained by you in carrying on mining and quarrying operations;
 - (d) storing (whether before or after minerals treatment) such minerals, *petroleum or quarry materials in relation to the operation of a *depreciating asset for use primarily and principally in treating such minerals or quarry materials;
 - (e) liquefying natural gas obtained from mining and quarrying operations you carry on.
- (2) A *mining building site* is a site, or a part of a site, where there are *depreciating assets that are or were necessary for you to carry on *mining and quarrying operations. However, a *mining building site* does not include anything covered by the definition of *housing and welfare*.

40-745 No deduction for certain expenditure

Expenditure on these things is not deductible under section 40-735:

- (a) acquiring land or an interest in land or a right, power or privilege to do with land;
- (b) a bond or security, however described, for performing *mining site rehabilitation;
- (c) *housing and welfare.

40-750 Deduction for payments of petroleum resource rent tax

- (1) You can deduct a payment of *petroleum resource rent tax, or an *instalment of petroleum resource rent tax, that you make in an income year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2 Liability rules of general application

Part 2-10 Capital allowances: rules about deductibility of capital expenditure

Division 40 Capital allowances

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Note 1: If an amount of the expenditure is recouped, the amount may be included in your assessable income: see Subdivision 20-A.

Note 2: If Division 250 applies to you and an asset:

- (a) if section 250-150 applies—you can deduct expenditure you incur in relation to the asset to the extent specified in a determination made under subsection 250-150(3); or
 - (b) otherwise—you cannot deduct such expenditure.
- (2) You cannot deduct under subsection (1) a payment that you make under paragraph 99(c) of the *Petroleum Resource Rent Tax Assessment Act 1987*.
- (3) These amounts are included in your assessable income for the income year in which they are refunded, credited, paid or applied:
- (a) an amount the Commissioner pays you in total or partial discharge of a debt of the kind referred to in subsection 47(1) of the *Petroleum Resource Rent Tax Assessment Act 1987*; or
 - (b) an amount the Commissioner applies under subsection 47(2) of the *Petroleum Resource Rent Tax Assessment Act 1987* in total or partial discharge of a liability you have.

40-751 Deduction for payments of minerals resource rent tax

- (1) You can deduct a payment of *MRRT, or an instalment of MRRT payable under Division 115 in Schedule 1 to the *Taxation Administration Act 1953*, that you make in an income year.

Note: If an amount of the expenditure is recouped, the amount may be included in your assessable income: see Subdivision 20-A. Similarly, a refund of excess rehabilitation tax offsets you get under section 225-25 of the *Minerals Resource Rent Tax Act 2012* is assessable income: see section 15-85.

- (2) If you deduct an instalment of *MRRT under subsection (1), you cannot also deduct any of the following amounts when applied under Division 3 of Part IIB of the *Taxation Administration Act 1953*:
- (a) the amount of the payment of the instalment;
 - (b) the amount of a credit arising under section 115-20 in Schedule 1 to the *Taxation Administration Act 1953* in respect of the instalment.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) If you deduct a payment of *MRRT under subsection (1), you cannot also deduct the corresponding amount applied under Division 3 of Part IIB of the *Taxation Administration Act 1953*.

40-755 Environmental protection activities

- (1) You can deduct expenditure you incur in an income year for the sole or dominant purpose of carrying on *environmental protection activities.

Note: If Division 250 applies to you and an asset that is land:

- (a) if section 250-150 applies—you can deduct expenditure you incur in relation to the land to the extent specified in a determination made under subsection 250-150(3); or
- (b) otherwise—you cannot deduct such expenditure.

- (2) ***Environmental protection activities*** are any of the following activities that are carried on by or for you:

- (a) preventing, fighting or remedying:
 - (i) pollution resulting, or likely to result, from *your earning activity; or
 - (ii) pollution of or from the site of your earning activity; or
 - (iii) pollution of or from a site where an entity was carrying on any *business that you have acquired and carry on substantially unchanged as your earning activity;
- (b) treating, cleaning up, removing or storing:
 - (i) waste resulting, or likely to result, from your earning activity; or
 - (ii) waste that is on or from the site of *your earning activity; or
 - (iii) waste that is on or from a site where an entity was carrying on any business that you have acquired and carry on substantially unchanged as your earning activity.

No other activities are environmental protection activities.

- (3) ***Your earning activity*** is an activity you carried on, carry on, or propose to carry on:
- (a) for the *purpose of producing assessable income for an income year (except a *net capital gain); or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) for the purpose of *exploration or prospecting; or
 - (c) for the purpose of *mining site rehabilitation; or
 - (d) for purposes that include one or more of those purposes.
- (4) If *your earning activity is:
- (a) leasing a site you own; or
 - (b) granting a *right to use a site you own or control; or
 - (c) a similar activity involving a site;
- that site is taken to be the site of your earning activity.

Note: This means you can deduct your expenditure on environmental protection activities relating to the site, even if the pollution or waste is caused by another entity that uses the site.

40-760 Limits on deductions from environmental protection activities

Expenditure you cannot deduct

- (1) You cannot deduct an amount under section 40-755 for an income year for:
- (a) expenditure for acquiring land; or
 - (b) capital expenditure for constructing a building, structure or structural improvement; or
 - (c) capital expenditure for constructing an extension, alteration or improvement to a building, structure or structural improvement; or
 - (d) a bond or security (however described) for performing *environmental protection activities; or
 - (e) expenditure to the extent that you can deduct an amount for it under a provision of this Act outside this Subdivision.
- Note: You may be able to deduct expenditure described in paragraph (1)(b) or (c) under Division 43 (which deals with capital works).
- (2) In particular, you cannot deduct under section 40-755 expenditure to the extent that you incur it on carrying out an activity for environmental impact assessment of your project.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) However, a provision of this Act (except Division 8 (which is about deductions)) that expressly prevents or restricts the operation of that Division applies in the same way to section 40-755.

40-765 Non-arm's length transactions

If you incurred capital expenditure under an *arrangement and:

- (a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and
- (b) apart from this section, the amount of the expenditure would be more than the *market value of what it was for;

the amount of expenditure you take into account under this Subdivision is that market value.

Subdivision 40-I—Capital expenditure that is deductible over time

Guide to Subdivision 40-I

40-825 What this Subdivision is about

You can deduct amounts for certain capital expenditure associated with projects you carry on. You deduct the amounts over the life of the project using a pool.

You can also deduct amounts for certain business related costs. You deduct these amounts over 5 years if the amounts are not otherwise taken into account and are not denied a deduction.

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Operative provisions

40-830 Project pools

- (1) You can allocate *project amounts to a project pool.
- (2) You can deduct amounts for *project amounts that are allocated to the project pool.
- (3) You calculate your deduction for an income year for a project pool in this way:

$$\frac{\text{Pool value} \times 150\%}{\text{DV project pool life}}$$

where:

DV project pool life is:

- (a) the *project life of the project; or
- (b) if its project life has been recalculated—its most recently recalculated project life.

pool value is:

- (a) for the first income year that a *project amount is allocated to the pool—the sum of the project amounts allocated to the pool for that year; or
- (b) for a later income year—the sum of the pool's *closing pool value for the previous income year and any project amounts allocated to the pool for the later year.

Note: The calculation is made under subsection 40-832(3) for project amounts incurred on or after 10 May 2006 for projects that start to operate on or after that day.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) If, in an income year, you abandon, sell or otherwise dispose of a project for which you have a project pool, you can deduct for that year the sum of the pool's *closing pool value for the previous income year and any *project amounts allocated to the pool for the income year.
- (5) Your assessable income for that income year includes any amount you receive for the abandonment, sale or other disposal.
- (6) Your assessable income for an income year includes other capital amounts that you *derive in that year in relation to a *project amount allocated to your project pool or in relation to something on which the project amount is expended.
- (7) The ***closing pool value*** of a project pool for an income year is:
 - (a) for the first income year that a *project amount is allocated to the pool—the sum of the project amounts allocated to the pool for that year less the amount you could deduct for the pool for that year (apart from section 40-835); or
 - (b) for a later income year—the sum of the pool's *closing pool value for the previous income year and any project amounts allocated to the pool for the later year less the amount you could deduct for the pool for the later year (apart from section 40-835).
- (8) Your deduction for an income year cannot be more than the amount of the component “pool value” in the formula in subsection (3) for that year.

40-832 Project pools for post-9 May 2006 projects

- (1) You calculate your deduction for an income year for a project pool in this way if the project pool contains only *project amounts incurred on or after 10 May 2006 for projects that start to operate on or after that day:

$$\frac{\text{Pool value} \times 200\%}{\text{DV project pool life}}$$

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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where:

DV project pool life has the same meaning as in subsection 40-830(3).

pool value has the same meaning as in subsection 40-830(3).

- (2) If, in an income year, you abandon, sell or otherwise dispose of a project for which you have a project pool, you can deduct for that year the sum of the pool's *closing pool value for the previous income year and any *project amounts allocated to the pool for the income year.
- (3) Your assessable income for that income year includes any amount you receive for the abandonment, sale or other disposal.
- (4) Your assessable income for an income year includes other capital amounts that you *derive in that year in relation to a *project amount allocated to your project pool or in relation to something on which the project amount is expended.
- (5) Your deduction for an income year cannot be more than the amount of the component "pool value" in the formula in subsection (1) for that year.

40-835 Reduction of deduction

You must reduce your deduction under section 40-830 or 40-832 for an income year by a reasonable amount for the extent (if any) to which the project operates in the year for purposes other than *taxable purposes.

Note: If Division 250 applies to you and an asset:

- (a) if section 250-150 applies—you are taken to be using the asset for taxable purposes to the extent specified in a determination made under subsection 250-150(3); or
- (b) otherwise—you are taken not to be using the asset for such purposes.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-840 Meaning of *project amount*

- (1) An amount of *mining capital expenditure or *transport capital expenditure you incur is a ***project amount*** if:
 - (a) it does not form part of the *cost of a *depreciating asset you *hold or held; and
 - (b) you cannot deduct it under a provision of this Act outside this Subdivision; and
 - (c) it is directly connected with:
 - (i) for mining capital expenditure—carrying on the *mining and quarrying operations in relation to which the expenditure is incurred; or
 - (ii) for transport capital expenditure—carrying on the *business in relation to which the expenditure is incurred.
- (2) Another amount of capital expenditure you incur is also a ***project amount*** so far as:
 - (a) it does not form part of the *cost of a *depreciating asset you *hold or held; and
 - (b) you cannot deduct it under a provision of this Act outside this Subdivision; and
 - (c) it is directly connected with a project you carry on or propose to carry on for a *taxable purpose; and
 - (d) it is one of these:
 - (i) an amount paid to create or upgrade community infrastructure for a community associated with the project; or
 - (ii) an amount incurred for site preparation costs for depreciating assets (except, for *horticultural plants, in draining swamp or low-lying land or in clearing land); or
 - (iii) an amount incurred for feasibility studies for the project; or
 - (iv) an amount incurred for environmental assessments for the project; or
 - (v) an amount incurred to obtain information associated with the project; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (vi) an amount incurred in seeking to obtain a right to
*intellectual property; or
- (vii) an amount incurred for ornamental trees or shrubs.

40-845 Project life

You work out the *project life* of a project by estimating how long (in years, including fractions of years) it will be from when the project starts to operate until it stops operating.

40-855 When you start to deduct amounts for a project pool

You start to deduct amounts for a project pool for the first income year when the project starts to operate.

40-860 Meaning of *mining capital expenditure*

- (1) *Mining capital expenditure* is capital expenditure you incur:
 - (a) in carrying on *mining and quarrying operations; or
 - (b) in preparing a site for those operations; or
 - (c) on buildings or other improvements necessary for you to carry on those operations; or
 - (d) in providing, or in contributing to the cost of providing:
 - (i) water, light or power for use on the site of those operations; or
 - (ii) access to, or communications with, the site of those operations; or
 - (e) on buildings for use directly in connection with operating or maintaining *plant that is primarily and principally for *treating *minerals, or quarry materials, that you obtain by carrying on such operations; or
 - (f) on buildings or other improvements for use directly in connection with storing minerals or quarry materials or to facilitate *minerals treatment of them (whether the storage happens before or after the treatment).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) Capital expenditure you incur on *housing and welfare in carrying on *mining and quarrying operations (except quarrying operations) is also *mining capital expenditure*, but only if:
- (a) for residential accommodation—the accommodation is provided by you, on or adjacent to a site where you carry on those operations, for the use of:
 - (i) your employees, or someone else’s employees, who are employed or engaged in those operations, or in operations of yours that are connected with those operations; or
 - (ii) dependants of such employees; or
 - (b) for health, education, recreation or other similar facilities, or facilities for meals—the facilities:
 - (i) are on or adjacent to a site where you carry on those operations, and are principally for the benefit of the employees or dependants covered by paragraph (a); and
 - (ii) are not run for profit by any person, except in the case of facilities for meals (which may be run for profit); or
 - (c) in the case of works, including works for providing water, light, power, access or communications—the works are carried out directly in connection with the accommodation or facilities covered by this section.
- (3) However, expenditure on these is *not mining capital expenditure*:
- (a) railway lines, roads, pipelines or other facilities, for use wholly or partly for transporting *minerals or quarry materials, or their products, other than facilities used for transport wholly within the site of *mining and quarrying operations you carry on;
 - (b) works carried out in connection with, or buildings or other improvements constructed or acquired for use in connection with, establishing, operating or using a port facility or other facility for ships;
 - (c) an office building that is not at or adjacent to the site of mining and quarrying operations you carry on;
 - (d) *housing and welfare in relation to quarrying operations.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-865 Meaning of *transport capital expenditure*

- (1) ***Transport capital expenditure*** is capital expenditure you incur, in carrying on a *business for a *taxable purpose, on:
- (a) a *transport facility; or
 - (b) obtaining a right to construct or install a transport facility, or part of one, on land owned or leased by another entity or in a Petroleum Act offshore area or an Installations Act adjacent area within the meaning of section 6AA of the *Income Tax Assessment Act 1936*; or
 - (c) paying compensation for any damage or loss caused by constructing or installing a transport facility or part of one; or
 - (d) earthworks, bridges, tunnels or cuttings that are necessary for a transport facility.
- (2) ***Transport capital expenditure*** also includes capital expenditure you incur, in carrying on a *business for a *taxable purpose, by way of contribution to:
- (a) someone else's capital expenditure on a *transport facility or on anything else covered by a paragraph of subsection (1); or
 - (b) an *exempt Australian government agency's capital expenditure on railway rolling-stock.
- (3) ***Transport capital expenditure*** does *not* include expenditure on:
- (a) road vehicles or ships; or
 - (b) railway rolling-stock; or
 - (c) a thing covered by the definition of ***housing and welfare***; or
 - (d) works for providing water, light or power, in connection with a port facility or other facility for ships;
- and does not include expenditure by way of contribution to that expenditure (except expenditure by way of contribution to an *exempt Australian government agency's capital expenditure on railway rolling-stock).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-870 Meaning of *transport facility*

- (1) A ***transport facility*** is a railway, a road, a pipe-line, a port facility or other facility for ships, or another facility, that is used primarily and principally for transport of:
 - (a) *minerals or quarry materials obtained by any entity in carrying on *mining and quarrying operations; or
 - (b) *processed minerals produced from minerals or quarry materials.
- (2) However, a facility used for these is not a ***transport facility***:
 - (a) transport wholly within the site of *mining and quarrying operations;
 - (b) transport of *petroleum:
 - (i) that has been treated at a refinery; or
 - (ii) that forms part of a system of reticulation to consumers; or
 - (iii) to a particular consumer or consumers.

40-875 Meaning of *processed minerals and minerals treatment*

- (1) ***Processed minerals*** are any of the following:
 - (a) materials resulting from *minerals treatment of *minerals or quarry materials (except *petroleum);
 - (b) materials resulting from sintering or calcining;
 - (c) pellets or other agglomerated forms of iron;
 - (d) alumina and blister copper.
- (2) ***Minerals treatment*** means:
 - (a) cleaning, leaching, crushing, grinding, breaking, screening, grading or sizing; or
 - (b) concentration by a gravity, magnetic, electrostatic or flotation process; or
 - (c) any other treatment:
 - (i) that is applied to *minerals, or to quarry materials, before that concentration; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) for a mineral or materials not requiring that concentration, that would, if the mineral or materials had required concentration, have been applied before the concentration;

but does not include:

- (d) sintering or calcining; or
- (e) producing alumina, or pellets or other agglomerated forms of iron, or processing connected with such production.

40-880 Business related costs

Object

- (1) The object of this section is to make certain *business capital expenditure deductible over 5 years if:
 - (a) the expenditure is not otherwise taken into account; and
 - (b) a deduction is not denied by some other provision; and
 - (c) the business is, was or is proposed to be *carried on for a *taxable purpose.

Note: If Division 250 applies to you and an asset:

- (a) if section 250-150 applies—you can deduct an amount for capital expenditure you incur in relation to the asset to the extent specified in a determination made under subsection 250-150(3); or
- (b) otherwise—you cannot deduct an amount for such expenditure.

Deduction

- (2) You can deduct, in equal proportions over a period of 5 income years starting in the year in which you incur it, capital expenditure you incur:
 - (a) in relation to your *business; or
 - (b) in relation to a business that used to be *carried on; or
 - (c) in relation to a business proposed to be carried on; or
 - (d) to liquidate or deregister a company of which you were a *member, to wind up a partnership of which you were a partner or to wind up a trust of which you were a beneficiary, that carried on a business.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Limitations and exceptions

- (3) You can only deduct the expenditure, for a *business that you *carry on, used to carry on or propose to carry on, to the extent that the business is carried on, was carried on or is proposed to be carried on for a *taxable purpose.
- (4) You can only deduct the expenditure, for a *business that another entity used to *carry on or proposes to carry on, to the extent that:
 - (a) the business was carried on or is proposed to be carried on for a *taxable purpose; and
 - (b) the expenditure is in connection with:
 - (i) your deriving assessable income from the business; and
 - (ii) the business that was carried on or is proposed to be carried on.
- (5) You cannot deduct anything under this section for an amount of expenditure you incur to the extent that:
 - (a) it forms part of the *cost of a *depreciating asset that you *hold, used to hold or will hold; or
 - (b) you can deduct an amount for it under a provision of this Act other than this section; or
 - (c) it forms part of the cost of land; or
 - (d) it is in relation to a lease or other legal or equitable right; or
 - (e) it would, apart from this section, be taken into account in working out:
 - (i) a profit that is included in your assessable income (for example, under section 6-5 or 15-15); or
 - (ii) a loss that you can deduct (for example, under section 8-1 or 25-40); or
 - (f) it could, apart from this section, be taken into account in working out the amount of a *capital gain or *capital loss from a *CGT event; or
 - (g) a provision of this Act other than this section would expressly make the expenditure non-deductible if it were not of a capital nature; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (h) a provision of this Act other than this section expressly prevents the expenditure being taken into account as described in paragraphs (a) to (f) for a reason other than the expenditure being of a capital nature; or
 - (i) it is expenditure of a private or domestic nature; or
 - (j) it is incurred in relation to gaining or producing *exempt income or *non-assessable non-exempt income.
- (6) The exceptions in paragraphs (5)(d) and (f) do not apply to expenditure you incur to preserve (but not enhance) the value of goodwill if the expenditure you incur is in relation to a legal or equitable right and the value to you of the right is solely attributable to the effect that the right has on goodwill.
- (7) You cannot deduct an amount under paragraph (2)(c) in relation to a *business proposed to be *carried on unless, having regard to any relevant circumstances, it is reasonable to conclude that the business is proposed to be carried on within a reasonable time.
- (8) You cannot deduct anything under this section for an amount of expenditure that, because of a market value substitution rule, was excluded from the *cost of a *depreciating asset or the *cost base or *reduced cost base of a *CGT asset.

Note: Some examples of market value substitution rules are subsection 40-180(2) (table item 8), subsection 40-190(3) (table item 1) and sections 40-765 and 112-20.
- (9) You cannot deduct anything under this section for an amount of expenditure you incur:
 - (a) by way of returning an amount you have received (except to the extent that the amount was included in your assessable income or taken into account in working out an amount so included); or
 - (b) to the extent that, for another entity, the amount is a *return on or of:
 - (i) an *equity interest; or
 - (ii) a *debt interest that is an obligation of yours.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-885 Non-arm's length transactions

If you incurred capital expenditure, or received an amount, under an *arrangement and:

- (a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and
- (b) apart from this section:
 - (i) the amount of the expenditure would be more than the *market value of what it was for; or
 - (ii) the amount you received would be less than the market value of what it was for;

the amount of expenditure, or the amount received, you take into account under this Subdivision is that market value.

Subdivision 40-J—Capital expenditure for the establishment of trees in carbon sink forests

Guide to Subdivision 40-J

40-1000 What this Subdivision is about

You can deduct amounts for capital expenditure incurred for establishing trees that meet the requirements for constituting a carbon sink forest.

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40-1030	Extra deduction for destruction of trees in carbon sink forest
40-1035	Getting information if you acquire a carbon sink forest

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Operative provisions

40-1005 Deduction for expenditure for establishing trees in carbon sink forests

- (1) You can deduct an amount for an income year if:
- (a) you or another entity incurred capital expenditure that is covered under section 40-1010 in relation to particular trees; and
 - (b) you satisfy a condition in subsection (5) for the trees for at least part of the income year; and
 - (c) you are carrying on a *business in the income year; and
 - (d) you use the land occupied by the trees for the primary and principal purpose of *carbon sequestration by the trees (see section 40-1015); and
 - (e) your purposes in using the land occupied by the trees do not include any of the following:
 - (i) felling the trees;
 - (ii) using the trees for *commercial horticulture; and
 - (f) you do not use the land in connection with:
 - (i) a *managed investment scheme; or
 - (ii) a *forestry managed investment scheme.
- (2) The amount of the deduction is worked out under this formula:

$$\text{Establishment expenditure} \times \frac{\text{Write-off days in income year}}{365} \times \text{Write-off rate}$$

where:

establishment expenditure is the amount of expenditure mentioned in subsection (1).

write-off days in income year is the number of days in the income year:

- (a) that occur within the period:
 - (i) starting on the first day of the income year in which the trees are established; and
 - (ii) ending 14 years and 105 days after that day; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) on which you use the land occupied by the trees for the primary and principal purpose of *carbon sequestration by the trees; and
- (c) on which you satisfy a condition in subsection (5) for the trees.

write-off rate is 7%.

- (3) You cannot deduct more in total than the amount of capital expenditure incurred for establishing the trees up to the time at which they are established.
- (5) The conditions are as follows:

Conditions for deduction for establishing trees in carbon sink forest	
Item	Condition
1	You own the trees and any holder of a lease, lesser interest or licence relating to the land occupied by the trees does not use the land for the primary and principal purpose of *carbon sequestration by the trees.
2	<p>The trees occupy land you hold under a lease, or a *quasi-ownership right granted by an *exempt Australian government agency or an *exempt foreign government agency, and:</p> <ul style="list-style-type: none"> (a) the lease or quasi-ownership right enables you to use the land for the primary and principal purpose of *carbon sequestration by the trees; and (b) any holder of a lesser interest or licence relating to the land does not use the land for the primary and principal purpose of carbon sequestration by the trees.
3	<p>You:</p> <ul style="list-style-type: none"> (a) hold a licence relating to the land occupied by the trees; and (b) use the land for the primary and principal purpose of *carbon sequestration by the trees, as a result of holding the licence.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

40-1010 Expenditure for establishing trees in carbon sink forests

- (1) Expenditure is covered under this section in relation to particular trees if:
- (a) the trees are established in an income year; and
 - (b) you incur or another entity incurs the expenditure in the income year or an earlier income year for establishing the trees; and
 - (c) the entity incurring the expenditure (the *establishing entity*) is carrying on a *business in the income year; and
 - (d) the establishing entity's primary and principal purpose for establishing the trees is *carbon sequestration by the trees (see section 40-1015); and
 - (e) the establishing entity's purposes for establishing the trees do not include any of the following:
 - (i) felling the trees;
 - (ii) using the trees for *commercial horticulture; and
 - (f) the establishing entity does not incur the expenditure under:
 - (i) a *managed investment scheme; or
 - (ii) a *forestry managed investment scheme; and
 - (g) all of the conditions in subsection (2) are satisfied for the trees; and
 - (h) the establishing entity gives the Commissioner, in accordance with subsection (4), a statement that:
 - (i) sets out all information necessary to determine whether all of the conditions in subsection (2) are satisfied for the trees; and
 - (ii) is in the *approved form.
- (2) The conditions are as follows:
- (a) at the end of the income year, the trees occupy a continuous land area in Australia of 0.2 hectares or more;
 - (b) at the time the trees are established, it is more likely than not that they will:
 - (i) attain a crown cover of 20% or more; and
 - (ii) reach a height of at least 2 metres;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) on 1 January 1990, the area occupied by the trees was clear of other trees that:
 - (i) attained, or were more likely than not to attain, a crown cover of 20% or more; and
 - (ii) reached, or were more likely than not to reach, a height of at least 2 metres;
 - (d) the establishment of the trees meets the requirements of the guidelines mentioned in subsection (3).
- (3) The *Climate Change Minister must, by legislative instrument, make guidelines about environmental and natural resource management in relation to the establishment of trees for the purposes of *carbon sequestration.
- (4) The statement mentioned in paragraph (1)(h) is to be given to the Commissioner no later than:
 - (a) if the establishing entity lodges its *income tax return for the income year within 5 months after the end of the income year—the day the establishing entity lodges that income tax return; or
 - (b) otherwise—5 months after the end of the income year.
- (5) However, expenditure is *not* covered under this section if the *Climate Change Secretary gives the Commissioner a notice under subsection (6) in relation to the trees.
- (6) The *Climate Change Secretary must give the Commissioner a notice in writing under this subsection if the Climate Change Secretary is satisfied that one or more of the conditions in subsection (2) have not been satisfied for the trees.
- (7) A person may apply to the *AAT for review of a decision (as defined in the *Administrative Appeals Tribunal Act 1975*) of the *Climate Change Secretary to give a notice under subsection (6).
- (8) The Commissioner may give the *Climate Change Secretary a copy of the statement mentioned in paragraph (1)(h), for the purposes of subsections (5), (6) and (7).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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40-1015 *Carbon sequestration by trees*

Carbon sequestration by trees means the process by which trees absorb carbon dioxide from the atmosphere.

40-1020 **Certain expenditure disregarded**

In working out a deduction under this Subdivision in relation to the establishment of trees, disregard expenditure incurred:

- (a) in draining swamp or low-lying land; or
- (b) in clearing land.

40-1025 **Non-arm's length transactions**

If an entity incurred capital expenditure under an *arrangement and:

- (a) there is at least one other party to the arrangement with whom the entity did not deal at *arm's length; and
- (b) apart from this section, the amount of the expenditure would be more than the *market value of what it was for;

the amount of expenditure taken into account under this Subdivision is that market value.

40-1030 **Extra deduction for destruction of trees in carbon sink forest**

- (1) You can deduct the amount worked out under subsection (2) for an income year if:
 - (a) you or another entity incurred capital expenditure that is covered under section 40-1010 in relation to particular trees; and
 - (b) you use the land occupied by the trees for the primary and principal purpose of *carbon sequestration by the trees; and
 - (c) the trees are destroyed during the income year; and
 - (d) you satisfy a condition in subsection 40-1005(5) for the trees just before they are destroyed.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) Work out the amount of the deduction as follows:

Method statement

Step 1. Work out the total of the amounts you could have deducted under this Subdivision in relation to the trees for the period:

- (a) starting on the first day of the income year in which the trees are established; and
- (b) ending when the trees were destroyed;

assuming that, during that period, you satisfied a condition in the table in subsection 40-1005(5).

Step 2. Subtract from the expenditure that is covered under section 40-1010 in relation to the trees:

- (a) the result from step 1; and
- (b) any amount you received (under an insurance policy or otherwise) for the destruction.

The remaining amount (if positive) is your deduction under subsection (1).

- (3) This deduction is in addition to any deduction for the income year under section 40-1005.

40-1035 Getting information if you acquire a carbon sink forest

- (1) This section applies if:
- (a) you or another entity incurred capital expenditure; and
 - (b) the expenditure is covered under section 40-1010 in relation to particular trees; and
 - (c) you begin to satisfy a condition in the table in subsection 40-1005(5) for the trees.
- (2) You may give the last entity (if any) that satisfied a condition mentioned in subsection 40-1005(5) for the trees a written notice requiring the entity to give you any or all of the following information:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the amount of the expenditure covered under section 40-1010 in relation to the trees;
 - (b) the income year in which the trees were established.
- (3) The notice must:
 - (a) be given within 60 days of your beginning to satisfy the condition mentioned in paragraph (1)(c); and
 - (b) specify a period of at least 60 days within which the information must be given; and
 - (c) set out the effect of subsection (4).

Note: Subsections (5), (6) and (7) explain how this subsection operates if the entity to which the notice is to be given is a partnership.

Requirement to comply with notice

- (4) The entity to whom the notice is given must not intentionally refuse or fail to comply with the notice.

Penalty: 10 penalty units.

Giving the notice to a partnership

- (5) If the entity to whom the notice is given is a partnership:
 - (a) you may give it to the partnership by giving it to any of the partners (this does not limit how else you can give it); and
 - (b) the obligation to comply with the notice is imposed on each of the partners (not on the partnership), but may be discharged by any of them.

- (6) A partner must not intentionally refuse or fail to comply with that obligation.

Penalty: 10 penalty units.

- (7) Subsection (6) does not apply if another partner has already complied with that obligation.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7), see subsection 13.3(3) of the *Criminal Code*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Limits on giving a notice

- (8) Only one notice can be given in relation to the same trees.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 41—Additional deduction for certain new business investment

Guide to Division 41

41-1 What this Division is about

You may be able to deduct an amount in relation to a depreciating asset for the 2008-09, 2009-10, 2010-11 or 2011-12 income year if:

- (a) you can deduct an amount for the decline in value for the asset for the relevant year under Subdivision 40-B; and
- (b) you make certain new investments in respect of the asset in the period starting on 13 December 2008 and ending on 31 December 2009; and
- (c) the total of those new investments is at least \$1000 (for small businesses) or \$10,000 (for other businesses).

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Operative provisions

41-5 Object of Division

The object of this Division is to provide a temporary business tax break for Australian businesses using assets in Australia, with a view to encouraging business investment and economic activity.

41-10 Entitlement to deduction for investment

- (1) You can deduct an amount for an income year in relation to an asset if:
 - (a) the asset is a *depreciating asset, other than an intangible asset; and
 - (b) you can deduct an amount under section 40-25 in relation to the asset for the income year; and
 - (c) the income year is the 2008-09, 2009-10, 2010-11 or 2011-12 income year; and
 - (d) the total of the *recognised new investment amounts for the income year in relation to the asset equals or exceeds the *new investment threshold for the income year in relation to the asset.
- (2) Subsection 355-715(2) (tax offset for assets used for R&D activities) does not apply to a deduction under subsection (1).
- (3) For the purposes of paragraph (1)(b), in determining whether you can deduct the amount in relation to the asset under section 40-25 for the income year:
 - (a) disregard section 40-55 if the asset is a *car for which you use the “12% of original value” method for that income year; and
 - (aa) disregard section 40-90 (reduction in cost where debt is forgiven); and
 - (ab) disregard subsection 40-365(5) (reduction in cost for replacement asset where involuntary disposal); and
 - (b) disregard Subdivision 328-D (capital allowances for small business entities); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) disregard subsection 355-715(2) (tax offset for assets used for R&D activities).

Counting additional recognised new investment amounts for the purposes of meeting the threshold

- (4) For the purposes of paragraph (1)(d), treat each of the following as a *recognised new investment amount for the income year in relation to the asset (the **relevant asset**):
 - (a) a recognised new investment amount for a previous income year in relation to the relevant asset;
 - (b) a recognised new investment amount for the income year or a previous income year in relation to another asset, if:
 - (i) the other asset is part of a set of assets including the relevant asset; or
 - (ii) the other asset is identical, or substantially identical, to the relevant asset;
 - (c) a recognised new investment amount for the income year or a previous income year in relation to an asset *held by another entity, if:
 - (i) subsection 40-35(1) (jointly held depreciating assets) applies in relation to the relevant asset because it is your interest in an asset (the **underlying asset**); and
 - (ii) the asset held by the other entity is the other entity's interest in the underlying asset.

41-15 Amount of deduction

- (1) The amount that you can deduct is:
 - (a) if the *new investment threshold for the income year in relation to the asset is \$1000 (small business entities)—50% of the total of the *recognised new investment amounts for the income year in relation to the asset; or
 - (b) if paragraph (a) does not apply but subsection (3), (4) or (5) applies—10% of that total; or
 - (c) otherwise—the sum of:
 - (i) 30% of the total of the recognised new investment amounts for the income year in relation to the asset that meet the condition in subsection (2); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) 10% of the total of the other recognised new investment amounts for the income year in relation to the asset.
- (2) A *recognised new investment amount meets the condition in this subsection if:
 - (a) the *investment commitment time for the amount occurred before 1 July 2009; and
 - (b) the *first use time for the amount occurred before 1 July 2010.
- (3) This subsection applies if the income year is the 2011-12 income year.
- (4) This subsection applies if:
 - (a) you can deduct the amount because of paragraph 41-10(4)(a); and
 - (b) the *new investment threshold for the income year in relation to the asset exceeds the total of the *recognised new investment amounts for the income year in relation to the asset that meet the condition in subsection (2).
- (5) This subsection applies if:
 - (a) you can deduct the amount because of paragraph 41-10(4)(b) or (c); and
 - (b) the *new investment threshold for the income year in relation to the asset exceeds the sum of:
 - (i) the total of the *recognised new investment amounts for the income year in relation to the asset that meet the condition in subsection (2); and
 - (ii) the total of the amounts treated under paragraph 41-10(4)(b) or (c) (as the case requires) as recognised new investment amounts for the income year in relation to the asset that meet the condition in subsection (2).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

41-20 Recognised new investment amount

- (1) An amount is a recognised new investment amount for the income year in relation to the asset if:
 - (a) either:
 - (i) the amount is included in the first element of the asset's *cost (worked out in accordance with Subdivision 40-C); or
 - (ii) the amount is included in the second element of the asset's cost under paragraph 40-190(2)(a); and
 - (b) the *investment commitment time for the amount occurs in the period:
 - (i) starting at 12.01 am, by legal time in the Australian Capital Territory, on 13 December 2008; and
 - (ii) ending on 31 December 2009; and
 - (c) the *first use time for the amount occurs:
 - (i) no later than the end of the income year; and
 - (ii) no later than 31 December 2010; and
 - (d) at the first use time for the amount, it is reasonable to conclude that you will use the asset principally in Australia for the principal purpose of *carrying on a *business; and
 - (e) if the amount is included in the first element of the asset's cost—the first use time for the amount is the first time you or any other entity have used the asset, or have it installed ready for use, for any purpose; and
 - (f) you have not been entitled to a deduction under this Division for any previous income year in relation to the amount.
- (2) Treat the requirements in paragraph (1)(d) as *not* being met if, at the first use time for the amount, it is reasonable to conclude that the asset will never be located in Australia.
- (3) For the purposes of paragraph (1)(e), disregard any previous use of the asset that was merely for the purposes of reasonable testing or trialling.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) Treat the requirements in paragraph (1)(e) as *not* being met if the amount becomes included in the first element of the asset's *cost at a time because of paragraph 40-205(a) (splitting depreciating assets) or 40-210(a) (merging depreciating assets).
- (5) In determining the amount of a *recognised new investment amount, disregard:
 - (a) subsection 40-90(2) (reduction in cost where debt is forgiven); and
 - (b) paragraph 40-365(5)(a) (reduction in cost for replacement asset where involuntary disposal).

41-25 Investment commitment time

- (1) The *investment commitment time* for the amount is:
 - (a) if the amount is included in the first element of the asset's *cost—the time at which you:
 - (i) enter into a contract under which you *hold the asset at that time, or will hold the asset at a later time; or
 - (ii) start to construct the asset; or
 - (iii) start to hold the asset in some other way; or
 - (b) if the amount is included in the second element of the asset's cost—the time at which you enter into a contract, or start construction, for the economic benefit in relation to which the amount becomes, or will become, included in that element under paragraph 40-190(2)(a).

Integrity rule

- (2) Subsection (3) applies in relation to an amount if:
 - (a) at a time, you:
 - (i) enter into a contract under which you *hold an asset at that time, or will hold the asset at a later time; or
 - (ii) start to construct an asset; or
 - (iii) start to hold an asset in some other way; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) at a later time, you engage in conduct that results in you:
 - (i) entering into a contract under which you hold the asset mentioned in paragraph (a) (or an identical or substantially similar asset) at that later time, or will hold that asset (or an identical or substantially similar asset) at an even later time; or
 - (ii) starting to construct an asset that is identical or substantially similar to the asset mentioned in paragraph (a); or
 - (iii) starting to hold the asset mentioned in paragraph (a) (or an identical or substantially similar asset) in some other way; and
 - (c) you engage in that conduct for the purpose, or for purposes that include the purpose, of becoming entitled to a deduction under this Division.
- (3) Despite paragraph (1)(a), the ***investment commitment time*** for an amount to which that paragraph would otherwise apply is the time mentioned in paragraph (2)(a).
- (3A) For the purposes of paragraph (1)(a) and subsection (2), treat yourself as having started to construct an asset at a time if you first incur expenditure in respect of the construction of the asset at that time.
- (3B) For the purposes of paragraph (1)(b), treat yourself as having started construction for an economic benefit at a time if you first incur expenditure in respect of the construction for the benefit at that time.

Options

- (4) To avoid doubt, for the purposes of this section, you do not enter into a contract under which you ^{*}hold an asset merely because you acquire an option to enter into such a contract.

^{*}To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

41-30 First use time

The **first use time** for the amount is:

- (a) if the amount is included in the first element of the asset's *cost—the time at which you start to use the asset, or have it *installed ready for use; or
- (b) if the amount is included in the second element of the asset's cost—the later of:
 - (i) the time at which it becomes included in that element under paragraph 40-190(2)(a); or
 - (ii) the time mentioned in paragraph (a).

41-35 New investment threshold

The **new investment threshold** for an income year (the **relevant income year**) in relation to an asset means:

- (a) \$1000 if you are a *small business entity during any of the following income years:
 - (i) the income year in which occurs the *investment commitment time for any *recognised new investment amount for the asset in relation to the relevant income year;
 - (ii) the income year in which occurs the *first use time for any such amount;
 - (iii) the relevant income year; or
- (b) otherwise—\$10,000.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 43—Deductions for capital works

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43-C	Your area and your construction expenditure
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Guide to Division 43

43-1 What this Division is about

You can deduct certain capital expenditure on assessable income producing buildings and other capital works. This Division sets out the rules for working out those deductions.

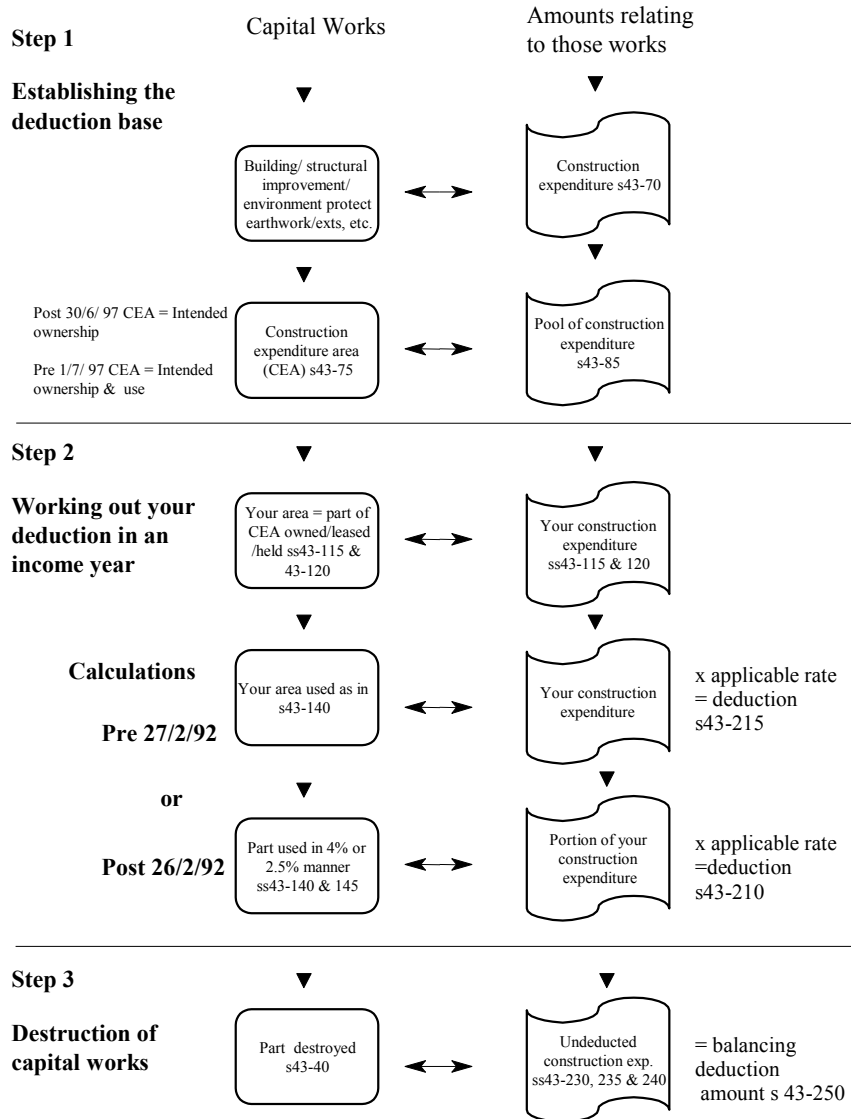
Table of sections

43-2	Key concepts used in this Division
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43-2 Key concepts used in this Division

The following graphic introduces the key concepts used in this Division and shows the relationships between them.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 43-A—Key operative provisions

Guide to Subdivision 43-A

43-5 What this Subdivision is about

This Subdivision contains the key operative provisions for this Division, including all of the deduction entitlement provisions. You should read all of this Subdivision to understand how this Division works.

Table of sections

Operative provisions

43-10	Deductions for capital works
43-15	Amount you can deduct
43-20	Capital works to which this Division applies
43-25	Rate of deduction
43-30	No deduction until construction is complete
43-35	Requirement for registration under the Industry Research and Development Act
43-40	Deduction for destruction of capital works
43-45	Certain anti-avoidance provisions
43-50	Links and signposts to other parts of the Act
43-55	Anti-avoidance—arrangement etc. with tax-exempt entity

Operative provisions

43-10 Deductions for capital works

- (1) You can deduct an amount for capital works for an income year.
- (2) You can only deduct the amount if:
 - (a) the capital works have a *construction expenditure area; and
 - (b) there is a *pool of construction expenditure for that area; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(c) you use *your area in the income year in the way set out in Table 43-140 (Current year use).

Note 1: The deduction is limited to capital works to which this Division applies, see section 43-20.

Note 2: Amongst other things, the definition of *your area* ensures that only owners and certain lessees of capital works, and certain holders of quasi-ownership rights over land on which capital works are constructed, can deduct an amount under this Division.

43-15 Amount you can deduct

(1) The amount you can deduct is a portion of *your construction expenditure. However, it cannot exceed the amount of *undeducted construction expenditure for *your area.

Note: The limit in this subsection has 2 effects:

- It ensures that not more than 100% of your construction expenditure can be deducted.
- It imposes a time limit on the period over which your construction expenditure can be deducted. For capital works begun before 27 February 1992, that period will be 25 years if the rate of deduction is 4% or 40 years if the rate is 2.5%. For other capital works, the period will be 25 years or 40 years or some period between 25 and 40 years depending on their use.

(2) Your deduction is calculated under section 43-210 or 43-215.

43-20 Capital works to which this Division applies

Buildings

(1) This Division applies to capital works being a building, or an extension, alteration or improvement to a building:

- (a) begun in Australia after 21 August 1979; or
- (b) begun outside Australia after 21 August 1990.

Note: Section 43-80 explains when capital works begin.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-20

Structural improvements

- (2) This Division also applies to capital works (other than capital works referred to in subsection (1)) begun after 26 February 1992 that are structural improvements, or extensions, alterations or improvements to structural improvements, whether they are in or outside Australia.
- (3) Some examples of structural improvements are:
 - (a) sealed roads, sealed driveways, sealed car parks, sealed airport runways, bridges, pipelines, lined road tunnels, retaining walls, fences, concrete or rock dams and artificial sports fields; and
 - (b) earthworks that are integral to the construction of a structural improvement (other than a structural improvement described in subsection (4)), for example, embankments, culverts and tunnels associated with a runway, road or railway.
- (4) This Division does not apply to structural improvements being:
 - (a) earthworks that:
 - (i) are not integral to the installation or construction of a structure; and
 - (ii) are permanent (assuming they are maintained in reasonably good order and condition); and
 - (iii) can be economically maintained in reasonably good order and condition for an indefinite period;
for example, unlined channels, unlined basins, earth tanks and dirt tracks; or
 - (b) earthworks that merely create artificial landscapes, for example, grass golf course fairways and greens, gardens, and grass sports fields.

Environment protection earthworks

- (5) This Division also applies to capital works being earthworks, or extensions, alterations or improvements to earthworks, if:
 - (a) they are constructed as a result of carrying out of
*environmental protection activities; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) they can be economically maintained in reasonably good order and condition for an indefinite period; and
- (c) they are not integral to the construction of capital works; and
- (d) the expenditure on the capital works was incurred after 18 August 1992.

Note: This subsection allows you to deduct an amount for some earthworks that are excluded by paragraph (4)(a) if the earthworks are constructed in carrying out an environmental protection activity.

43-25 Rate of deduction

- (1) For capital works begun after 26 February 1992, there is a basic entitlement to a rate of 2.5% for parts used as described in Table 43-140 (Current year use). The rate increases to 4% for parts used as described in Table 43-145 (Use in the 4% manner).
- (2) For capital works begun before 27 February 1992 and used as described in Table 43-140, the rate is:
 - (a) 4% if the capital works were begun after 21 August 1984 and before 16 September 1987; or
 - (b) 2.5% in any other case.

Note: Section 43-80 explains when capital works begin.

43-30 No deduction until construction is complete

You cannot deduct an amount for any period before the completion of construction of the capital works even though you used them, or part of them, before completion.

43-35 Requirement for registration under the Industry Research and Development Act

You may deduct an amount under this Division on the basis of using capital works for the purpose of conducting *R&D activities only if:

- (a) you are registered under section 27A (registering R&D activities) of the *Industry Research and Development Act 1986* for the R&D activities for an income year; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-40

- (b) if you are an *R&D partnership—an *R&D entity, who was a partner of the R&D partnership at some time while the R&D activities were conducted, is registered under that section for the R&D activities for an income year.

Note 1: R&D activities must be conducted in connection with a business carried on for the purpose of producing assessable income, see section 43-195.

Note 2: You may still deduct an amount under this Division if you were registered for the R&D activities under former section 39J (Registration of eligible companies) of the *Industry Research and Development Act 1986* (see section 355-200 of the *Income Tax (Transitional Provisions) Act 1997*).

43-40 Deduction for destruction of capital works

- (1) You can deduct an amount if all or a part of *your area is destroyed in an income year and:
- (a) you have been allowed, or can claim, a deduction under this Division, or former Division 10C or 10D of Part III of the *Income Tax Assessment Act 1936*, for your area; and
 - (b) there is an amount of *undeducted construction expenditure for your area; and
 - (c) you were using your area in the way that applies to it under Table 43-140 (Current year use) immediately before the destruction or, if not, neither you nor any other entity used your area for any purpose since it was last used by you in that way.
- (2) The deduction is allowable in the income year in which the destruction occurs, and is calculated under section 43-250.

Note: The effect of this provision is to allow you to deduct an amount in the income year in which the capital works are destroyed for all of your construction expenditure that has not yet been deducted. However, you must reduce the deduction by any insurance and salvage receipts.

43-45 Certain anti-avoidance provisions

These anti-avoidance provisions:

- (a) section 51AD (Deductions not allowable in respect of property under certain leveraged arrangements) of the *Income Tax Assessment Act 1936*;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) Division 16D (Certain arrangements relating to the use of property) of Part III of that Act;
apply to your deductions under this Division for an asset as if you were the owner of the asset instead of any other person.

43-50 Links and signposts to other parts of the Act

Links

- (1) No part of a *pool of construction expenditure can be a deduction, or taken into account in working out the amount of a deduction, under a provision of this Act other than this Division.
- (2) No part of an amount incurred by an entity in acquiring capital works for which there is a *pool of construction expenditure can be a deduction, or taken into account in working out the amount of a deduction, under a provision of this Act other than this Division.
- (3) You will be taken not to be the owner of any part of capital works that are the subject of a lease to which you have chosen to apply section 104-115 (CGT event F2). The lessee or sublessee will be taken to be the owner of that part.

Note 1: Choosing to apply section 104-115 results in the lease being treated for CGT purposes more like an outright disposal.

Note 2: See subsection 43-180(3) for the effect of the rule in subsection (3) of this section on the need to own 10 apartments, units or flats in an apartment building.

Signposts

- (6) There are special record-keeping rules that apply to this Division in subsection 262A(4AJA) of the *Income Tax Assessment Act 1936*.
- (7) Your deductions under this Division may be reduced if any of your commercial debts have been forgiven in the income year: see Subdivision 245-E.
- (8) Where you have had a deduction under this Division an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

43-55 Anti-avoidance—arrangement etc. with tax-exempt entity

- (1) You will not be allowed a deduction under this Division for an income year if the Commissioner is satisfied that:
 - (a) you entered into an *arrangement with:
 - (i) an entity to which section 50-5, 50-10, 50-15, 50-20, 50-25, 50-30, 50-40 or 50-45 (dealing with *exempt income) applies; or
 - (ii) an STB (within the meaning of Division 1AB of Part III of the *Income Tax Assessment Act 1936*) whose *ordinary income and *statutory income is exempt from income tax;
under which you were to pay an amount, or transfer property, directly or indirectly, to the entity; and
 - (b) the amount of the payment or the value of the property is calculated by reference to the amount of a deduction allowable to you under this Division; and
 - (c) a purpose of the arrangement that is not a merely incidental purpose is to ensure that the benefit of the deduction would pass wholly or substantially to the entity, whether directly or indirectly.
- (2) Subsection (1) applies to *arrangements entered into with an entity referred to in subparagraph (1)(a)(i) after 1 May 1980 that relate to deductions for *hotel buildings or *apartment buildings begun before 1 July 1997.
- (3) Subsection (1) also applies to *arrangements entered into with an entity referred to in subparagraph (1)(a)(ii) after 30 June 1994 that relate to deductions for *hotel buildings or *apartment buildings begun before 1 July 1997.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 43-B—Establishing the deduction base

Guide to Subdivision 43-B

43-60 What this Subdivision is about

This Subdivision explains the meaning of the terms *construction expenditure*, *construction expenditure area* and *pool of construction expenditure*.

Table of sections

43-65 Explanatory material

Operative provisions

43-70 What is construction expenditure?
43-72 Meaning of *forestry road*, *timber operation* and *timber mill building*
43-75 Construction expenditure area
43-80 When capital works begin
43-85 Pools of construction expenditure
43-90 Table of intended use at time of completion of construction
43-95 Meaning of *hotel building* and *apartment building*
43-100 Certificates by Innovation Australia

43-65 Explanatory material

Expenditure in respect of the construction of capital works is only eligible for a deduction under this Division if there is a construction expenditure area for the capital works. The area defined as the construction expenditure area may comprise the whole of the capital works or only part of them.

Whether there is a construction expenditure area for capital works and how it is identified depends on the following factors:

- the type of expenditure incurred;
- the time when the capital works began;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-70

- the area of the capital works that is to be owned, leased or held by the entity that incurred the expenditure;
- for capital works begun before 1 July 1997, the area of the capital works that was to be used in a particular manner.

A pool of construction expenditure is that part of an amount of construction expenditure that is attributable to a particular construction expenditure area.

Operative provisions

43-70 What is construction expenditure?

- (1) **Construction expenditure** is capital expenditure incurred in respect of the construction of capital works.
- (2) **Construction expenditure** does not include:
 - (a) expenditure on acquiring land; or
 - (b) expenditure on demolishing existing structures; or
 - (c) expenditure on clearing, levelling, filling, draining or otherwise preparing the construction site prior to carrying out excavation works; or
 - (d) expenditure on landscaping; or
 - (e) expenditure on *plant; or
 - (f) expenditure on property for which a deduction is allowable, or would be allowable if the property were for use for the *purpose of producing assessable income, under:
 - (i) Subdivision 40-F (about primary production depreciating assets), Subdivision 40-G (about capital expenditure of primary producers and other landholders), Subdivision 40-H (about capital expenditure that is immediately deductible) or Subdivision 40-I (about capital expenditure that is deductible over time); or
 - (ii) the former Division 330 of this Act or the former Division 10, 10AAA or 10AA of Part III of the *Income Tax Assessment Act 1936* (all of which dealt with mining and/or quarrying); or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (iii) section 73A of the *Income Tax Assessment Act 1936* (about expenditure on scientific research); or
- (iv) the former Subdivision 387-A of this Act or the former section 75D of the *Income Tax Assessment Act 1936* (both of which allowed deductions for capital expenditure to prevent land degradation); or
- (v) the former Subdivision 387-B of this Act or the former section 75B of the *Income Tax Assessment Act 1936* (both of which allowed deductions for capital expenditure on facilities to conserve or convey water); or
- (vi) the former Subdivision 387-G of this Act or the former section 124F or 124JA of the *Income Tax Assessment Act 1936* (all of which allowed deductions for capital expenditure on forestry roads and/or timber mill buildings); or
- (fa) any of these kinds of expenditure if a deduction is allowable for the expenditure, or would be allowable if property had been used for the purpose of producing assessable income:
 - (i) *mining capital expenditure or *transport capital expenditure;
 - (ii) expenditure on a *forestry road in connection with carrying on a *timber operation for a *taxable purpose;
 - (iii) expenditure for the construction or acquisition of a *timber mill building;
 - (iv) expenditure on a *depreciating asset you can deduct under subsection 40-80(1) (about exploration and prospecting); or
- (g) expenditure on property for which a deduction under section 355-305 or 355-520 is allowable for the property, or would be allowable if the property were for use for conducting *R&D activities; or
- (h) eligible heritage conservation expenditure within the meaning of the former Subdivision AAD of Division 17 of Part III of the *Income Tax Assessment Act 1936*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-72

43-72 Meaning of *forestry road*, *timber operation* and *timber mill building*

- (1) A ***forestry road*** is a road constructed primarily and principally for the purpose of providing access to an area to enable:
- (a) trees to be planted or tended in the area; or
 - (b) timber felled in the area to be removed.
- For this purpose, a road includes any bridge, culvert or similar work forming part of the road.
- (2) A ***timber operation*** is:
- (a) planting or tending trees for felling; or
 - (b) felling standing timber; or
 - (c) removing felled timber; or
 - (d) milling felled timber or processing it in another way.
- (3) A ***timber mill building*** is a building:
- (a) for use primarily and principally:
 - (i) in carrying on your *business of milling timber for a *taxable purpose; or
 - (ii) as residential accommodation for your employees engaged in connection with the business, or for their dependants; and
 - (b) located in a forest, and in or adjacent to the area where timber milled in the business is, or is to be, felled.

43-75 Construction expenditure area

- (1) The ***construction expenditure area*** of capital works begun after 30 June 1997 is the part of the capital works on which the *construction expenditure was incurred that, at the time when it was incurred by an entity, was to be owned or leased by the entity or held by the entity under a *quasi-ownership right over land granted by an *exempt Australian government agency or an *exempt foreign government agency.

Note: Section 43-80 explains when capital works begin.

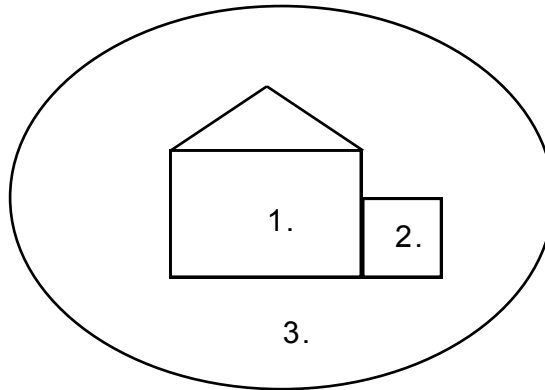
*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The **construction expenditure area** of capital works begun before 1 July 1997 is the part of the capital works on which the *construction expenditure was incurred that:
- (a) at the time when it was incurred by an entity, was to be owned or leased by the entity or held by the entity under a *quasi-ownership right over land granted by an *exempt Australian government agency or an *exempt foreign government agency; and
 - (b) at the time of completion of construction, was to be used in the way described in Column 3 of Table 43-90 (intended use at completion) for the time period when the capital works began as set out in Column 1.
- (3) There is taken to be a **construction expenditure area** for capital works purchased by an entity from another entity if:
- (a) the capital works would have had a construction expenditure area but for the fact that the other entity did not incur capital expenditure in constructing the capital works; and
 - (b) the other entity is not an *associate of the entity; and
 - (c) the other entity constructed the capital works on land that it owned or leased in the course of a business that included the construction and sale of capital works of that kind.
- Note: Subsection (3) makes capital works purchased from a speculative builder eligible for deduction in the hands of the first and subsequent purchasers.
- (4) The construction of the capital works must be complete before the *construction expenditure area is determined.
- (5) Only one *construction expenditure area is created each time an entity constructs capital works.
- Example: An entity undertakes the construction of a building. During the course of construction, the entity makes 3 progress payments to the builder. There is still only one construction expenditure area.
- (6) A separate *construction expenditure area will be created each time an entity undertakes the construction of capital works.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-80

Example: In the diagram below, area 1 relates to the original construction of a building which gives rise to one *construction expenditure area*. Area 2 is a subsequent extension of the same building which gives rise to another, while area 3 is a later renovation of the entire building which gives rise to another.



43-80 When capital works begin

Capital works are taken to begin when the first step in the construction phase starts. For example, the pouring of foundations or sinking of pilings for a building.

Note 1: Capital works begun after 15 September 1987 are taken to have begun before 16 September 1987 in certain circumstances. See section 43-220.

Note 2: The time when capital works begin is relevant for determining whether the capital works qualify for deduction, the use to which those works must be put, the rate of deduction and the calculation mechanism used. However, the time when capital works begin does not limit what qualifies as construction expenditure.

43-85 Pools of construction expenditure

- (1) A *pool of construction expenditure* is so much of the *construction expenditure incurred by an entity on capital works as is attributable to the *construction expenditure area.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) In applying subsection (1) in a case to which subsection 43-75(3) (dealing with purchases from speculative builders) applies, assume that the expenditure incurred by the other entity was capital expenditure, but that the limitations in subsection 43-70(2) (which sets out types of expenditure that are not *construction expenditure) still apply to the other entity's expenditure.

Note: The builder's profit margin does not form part of the construction expenditure of the purchaser.

43-90 Table of intended use at time of completion of construction

Column 1 Date capital works begin	Column 2 Type of capital works	Column 3 Intended use on completion
Time period 1: 22/8/79 to 19/7/82 (inclusive)	Hotel building	For use by any entity wholly or mainly to operate a hotel, motel or guest house that has at least 10 bedrooms that are for use wholly or mainly to provide short-term accommodation for travellers.
	Apartment building	The building consisted of: (a) at least 10 apartments, units or flats each of which was for use wholly or mainly to provide short-term accommodation for travellers; or (b) at least 10 apartments, units or flats each of which was for use for that purpose and facilities that are wholly or mainly for use in association with providing short-term accommodation for travellers in those apartments, units or flats.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2 Liability rules of general application**Part 2-10** Capital allowances: rules about deductibility of capital expenditure**Division 43** Deductions for capital worksSection 43-90

Column 1 Date capital works begin	Column 2 Type of capital works	Column 3 Intended use on completion
Time period 2: 20/7/82 to 17/7/85 (inclusive)	Hotel building	As for time period 1.
	Apartment building	As for time period 1.
	Non-residential building	For: (a) use by the entity that incurred the expenditure for the *purpose of producing assessable income or exempt income; or (b) disposal by that entity to another entity for use by the other entity for the purpose of producing assessable income or exempt income.
Time period 3: 18/7/85 to 20/11/87 (inclusive)	Any building	For: (a) use by the entity that incurred the expenditure for the *purpose of producing assessable income or exempt income; or (b) disposal by that entity to another entity for use by the other entity for the purpose of producing assessable income or exempt income; or (c) use by an entity wholly or mainly for, or in association with, residential accommodation.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Column 1 Date capital works begin	Column 2 Type of capital works	Column 3 Intended use on completion
Time period 4: 21/11/87 to 26/2/92 (inclusive)	Any building	For: (a) use by the entity that incurred the expenditure for the * purpose of producing assessable income or exempt income; or (b) disposal by that entity to another entity for use by the other entity for the purpose of producing assessable income or exempt income; or (c) use by an entity wholly or mainly for, or in association with, residential accommodation; or (d) use by the entity that incurred the expenditure to carry on research and development activities (within the meaning of former section 73B of the <i>Income Tax Assessment Act 1936</i>) by or for that entity, or for disposal by that entity to another entity for use by the other entity for carrying on research and development activities (within the meaning of that former section) by or for the other entity.
Time period 5: 27/2/92 to 18/8/92 (inclusive)	Hotel building	As for time period 1.
	Apartment building	As for time period 1.
	Other buildings	As for any building in time period 4.
	Structural improvements	As for any building in time period 4.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2 Liability rules of general application

Part 2-10 Capital allowances: rules about deductibility of capital expenditure

Division 43 Deductions for capital works

Section 43-95

Column 1 Date capital works begin	Column 2 Type of capital works	Column 3 Intended use on completion
Time period 6: 19/8/92 to 30/6/97 (inclusive)	Hotel building	As for time period 1.
	Apartment building	As for time period 1.
	Other buildings	As for any building in time period 4.
	Structural improvements	As for any building in time period 4.
	Environment protection earthworks	As for any building in time period 4.

Note: There are special rules that explain or qualify the uses described in Column 3 of this Table. These rules are set out in Subdivision 43-E (sections 43-155 to 43-195). For example, certain facilities that are not commonly provided in a hotel, motel or guest house in Australia are taken not to be used or for use to operate a hotel, motel or guest house, see subsection 43-180(6).

43-95 Meaning of *hotel building* and *apartment building*

(1) A ***hotel building*** is:

- (a) a building begun after 21 August 1979 and before 18 July 1985, or after 26 February 1992 and before 1 July 1997, that, at the time of completion of its construction, was intended to be used in the way referred to in Column 3 of Table 43-90 (intended use at completion) for a hotel building; or
- (b) a building begun after 30 June 1997 and that, in the income year, is used in the way referred to in Column 3 (time period 2) of Table 43-145 (use in the 4% manner) for a hotel building.

(2) An ***apartment building*** is:

- (a) a building begun after 21 August 1979 and before 18 July 1985, or after 26 February 1992 and before 1 July 1997, that, at the time of completion of its construction, was intended to

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- be used in the way referred to in Column 3 of Table 43-90 for an apartment building; or
- (b) a building begun after 30 June 1997 and that, in the income year, is used in the way referred to in Column 3 (time period 2) of Table 43-145 for an apartment building.

43-100 Certificates by Innovation Australia

A certificate by *Innovation Australia stating that activities carried on by or for an entity were or were not *core R&D activities or *supporting R&D activities is conclusive for the purposes of this Division.

Note: Core R&D activities and supporting R&D activities are kinds of R&D activities.

Subdivision 43-C—Your area and your construction expenditure

Guide to Subdivision 43-C

43-105 What this Subdivision is about

This Subdivision explains *your area* and *your construction expenditure*.

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- 43-115 Your area and your construction expenditure—owners
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- 43-130 Identifying your area on acquisition or disposal

43-110 Explanatory material

You can only get a deduction under this Division for an income year if you own, lease or hold part of a construction expenditure

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-115

area of capital works. The area you own, lease or hold is called ***your area***.

In working out your deductions, you must identify your area for each construction expenditure area of the capital works.

Your area may comprise the whole of the construction expenditure area or part of it.

Note: In certain circumstances the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

Operative provisions

43-115 Your area and your construction expenditure—owners

- (1) ***Your area*** is the part of the *construction expenditure area that you own.
- (2) ***Your construction expenditure*** is the portion of the *pool of construction expenditure that is attributable to your area.

43-120 Your area and your construction expenditure—lessees and quasi-ownership right holders

Own expenditure

- (1) ***Your area*** is the part of the *construction expenditure area that you lease, or hold under a *quasi-ownership right over land granted by an *exempt Australian government agency or an *exempt foreign government agency, and that:
 - (a) is attributable to a *pool of construction expenditure that you incurred; and
 - (b) you have continuously leased or held since the construction was completed.

Earlier lessees' or holders' expenditure

- (2) ***Your area*** is the part of the *construction expenditure area that you lease, or hold under a *quasi-ownership right over land granted by an *exempt Australian government agency or an *exempt foreign government agency, and that:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) is attributable to a *pool of construction expenditure incurred by another lessee or holder of a quasi-ownership right over land; and
 - (b) has been continuously leased or held since the construction was completed by the lessee or holder who incurred the expenditure or an assignee of that lessee's lease or that holder's quasi-ownership right over land.
- (3) ***Your construction expenditure*** is the portion of the *pool of construction expenditure that is attributable to your area.

43-125 Lessees' or right holders' pools can revert to owner

- (1) An amount that relates to a *pool of construction expenditure that arises as a result of expenditure incurred by a lessee or a holder of a *quasi-ownership right over land:
 - (a) can only be deducted by a lessee or a holder of a quasi-ownership right over land who satisfies subsection 43-120(1) or (2); and
 - (b) cannot be deducted by the owner of the capital works while there is a lessee or a holder of a quasi-ownership right over land who satisfies that subsection.
- (2) The owner of the capital works may deduct an amount that relates to that pool if there is no longer a lessee or a holder of a *quasi-ownership right over land who satisfies subsection 43-120(1) or (2).

43-130 Identifying your area on acquisition or disposal

There will be a separate *your area at each time in an income year when you:

- (a) acquire an additional part of a *construction expenditure area; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) dispose of some but not all of a construction expenditure area.

Example: You own half of a building (part A) throughout the income year, and you acquire the other half (part B) on 1 January. This section ensures that part A is your area for the entire year and that part B is your area for the second 6 months of the year.

Note: This ensures that the same area is not counted twice in calculating your deduction. You will have to make separate deduction calculations if you have identified more than one area as your area of the capital works.

Subdivision 43-D—Deductible uses of capital works

Guide to Subdivision 43-D

43-135 What this Subdivision is about

You can only get a deduction under this Division if you use your area in a way described in Table 43-140 or 43-145 of this Subdivision.

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Operative provisions

43-140	Using your area in a deductible way
43-145	Using your area in the 4% manner
43-150	Meaning of <i>industrial activities</i>

Operative provisions

43-140 Using your area in a deductible way

- (1) The following table sets out the way you must use *your area in an income year for a deduction to be allowed under section 43-10 (the main deduction provision). The relevant use depends on the time when the capital works began (Column 1) and the type of capital works (Column 2). Column 3 sets out the use.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Table 43-140—Current year use		
Column 1 Date capital works begin	Column 2 Type of capital works	Column 3 Use of your area at some time in the income year
Time period 1: After 30/6/97	Any capital works	You use *your area for the purpose of: (a) producing assessable income; or (b) conducting *R&D activities.
Time period 2: 27/2/92 to 30/6/97 (inclusive)	*Hotel building	You use *your area for the *purpose of producing assessable income.
	*Apartment building	You use *your area for the *purpose of producing assessable income.
	Other capital works	You use *your area for the purpose of: (a) producing assessable income; or (b) conducting *R&D activities.
Time period 3: Before 27/2/92	*Hotel building	You use *your area for the *purpose of producing assessable income and: (a) all or part of that area is used by any entity wholly or mainly to operate a hotel, motel or guest house; and (b) that hotel, motel or guest house has at least 10 bedrooms that are used or available for use wholly to provide short-term accommodation for travellers.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2 Liability rules of general application

Part 2-10 Capital allowances: rules about deductibility of capital expenditure

Division 43 Deductions for capital works

Section 43-140

Table 43-140—Current year use		
Column 1 Date capital works begin	Column 2 Type of capital works	Column 3 Use of your area at some time in the income year
	*Apartment building	You use *your area for the *purpose of producing assessable income and: (a) that area is, is part of or contains an apartment, unit or flat that is used or available for use by any entity wholly to provide short-term accommodation for travellers, and you own or lease at least 9 other apartments, units or flats in the building that are used or available for use by any entity wholly to provide short-term accommodation for travellers; or (b) that area is, is part of or contains a facility that is used or available for use by any entity wholly or mainly in association with providing short-term accommodation for travellers in apartments, units or flats in the building that are used in the way described in paragraph (a).
	Other capital works	You use *your area for the purpose of: (a) producing assessable income; or (b) conducting *R&D activities.

Note 1: There are special rules that explain or qualify the uses described in Column 3 of this Table. These rules are set out in Subdivision 43-E (sections 43-155 to 43-195). For example:

- Your area is taken to be used, for use or available for use for a purpose or in a way if it is maintained ready for use for that purpose or in that way. See section 43-160.
- R&D activities must be conducted in connection with a business carried on for the purpose of producing assessable income, see section 43-195.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- Note 2: If Division 250 applies to you and an asset that is a capital work:
- (a) if section 250-150 applies—you are taken to be using the capital work for the purpose of producing assessable income, or for the purpose of conducting R&D activities, to the extent specified in a determination made under subsection 250-150(3); or
 - (b) otherwise—you are taken not to be using the capital work for such a purpose.

- (2) This Division applies to an entity as if the entity used property for the *purpose of producing assessable income if the entity uses the property for:
- (a) *environmental protection activities; or
 - (b) the environmental impact assessment of a project;
- unless a provision of this Act expressly provides that that use is not for the purpose of producing assessable income.

43-145 Using your area in the 4% manner

You use a part of *your area in the **4% manner** if you use it as described in the following Table. The relevant use depends on the time when the capital works began (Column 1) and the type of capital works (Column 2). Column 3 sets out the use.

Table 43-145—Use in the 4% manner		
Column 1 Date capital works begin	Column 2 Type of capital works	Column 3 Use of a part of *your area at some time in the income year
Time period 1: After 30/6/97	Capital works that are buildings	<p>You use the part of *your area for the *purpose of producing assessable income and:</p> <ul style="list-style-type: none"> (a) that part is used by any entity wholly or mainly to operate a hotel, motel or guest house; and (b) that hotel, motel or guest house has at least 10 bedrooms that are used or available for use wholly to provide short-term accommodation for travellers.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2 Liability rules of general application

Part 2-10 Capital allowances: rules about deductibility of capital expenditure

Division 43 Deductions for capital works

Section 43-145

Table 43-145—Use in the 4% manner		
Column 1 Date capital works begin	Column 2 Type of capital works	Column 3 Use of a part of *your area at some time in the income year
		<p>You use the part of *your area for the *purpose of producing assessable income and:</p> <p>(a) that part is, is part of or contains an apartment, unit or flat that is used or available for use by any entity wholly to provide short-term accommodation for travellers, and you own or lease at least 9 other apartments, units or flats in the building that are used or available for use by any entity wholly to provide short-term accommodation for travellers; or</p> <p>(b) that part is, is part of or contains a facility that is used or available for use by any entity wholly or mainly in association with providing short-term accommodation for travellers in apartments, units or flats in the building that are used in the way described in paragraph (a).</p>

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Table 43-145—Use in the 4% manner		
Column 1 Date capital works begin	Column 2 Type of capital works	Column 3 Use of a part of *your area at some time in the income year
		<p>You use the part of *your area for the *purpose of producing assessable income, and that part is used by any entity:</p> <p>(a) wholly or mainly for *industrial activities; or</p> <p>(b) to provide meal rooms, rest rooms, first aid rooms, change rooms or similar facilities that are wholly or mainly for use by:</p> <p style="padding-left: 40px;">(i) workers employed wholly or mainly to undertake the work directly involved in carrying out industrial activities; or</p> <p style="padding-left: 40px;">(ii) the immediate supervisors of those workers; or</p> <p>(c) wholly or mainly as office accommodation for the immediate supervisors of those workers.</p>
Time period 2: 27/2/92 to 30/6/97 (inclusive)	*Hotel building	<p>You use the part of *your area for the *purpose of producing assessable income and:</p> <p>(a) that part is used by any entity wholly or mainly to operate a hotel, motel or guest house; and</p> <p>(b) that hotel, motel or guest house has at least 10 bedrooms that are used or available for use wholly to provide short-term accommodation for travellers.</p>

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2 Liability rules of general application

Part 2-10 Capital allowances: rules about deductibility of capital expenditure

Division 43 Deductions for capital works

Section 43-145

Table 43-145—Use in the 4% manner		
Column 1 Date capital works begin	Column 2 Type of capital works	Column 3 Use of a part of *your area at some time in the income year
	*Apartment building	<p>You use the part of *your area for the *purpose of producing assessable income and:</p> <p>(a) that part is, is part of or contains an apartment, unit or flat that is used or available for use by any entity wholly to provide short-term accommodation for travellers, and you own or lease at least 9 other apartments, units or flats in the building that are used or available for use by any entity wholly to provide short-term accommodation for travellers; or</p> <p>(b) that part is, is part of or contains a facility that is used or available for use by any entity wholly or mainly in association with providing short-term accommodation for travellers in apartments, units or flats in the building that are used in the way described in paragraph (a).</p>

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Table 43-145—Use in the 4% manner		
Column 1 Date capital works begin	Column 2 Type of capital works	Column 3 Use of a part of *your area at some time in the income year
	Other buildings	<p>You use the part of *your area for the *purpose of producing assessable income, and that part is used by any entity:</p> <p>(a) wholly or mainly for *industrial activities; or</p> <p>(b) to provide meal rooms, rest rooms, first aid rooms, change rooms or similar facilities that are wholly or mainly for use by:</p> <p style="padding-left: 40px;">(i) workers employed wholly or mainly to undertake the work directly involved in carrying out industrial activities; or</p> <p style="padding-left: 40px;">(ii) the immediate supervisors of those workers; or</p> <p>(c) wholly or mainly as office accommodation for the immediate supervisors of those workers.</p>

Note: There are special rules that explain or qualify the uses described in Column 3 of this Table. These rules are set out in Subdivision 43-E (sections 43-155 to 43-195). For example:

- Your area is taken to be used, for use or available for use for a purpose or in a way if it is maintained ready for use for that purpose or in that way. See section 43-160.
- A suite of rooms in a hotel building may be treated as one bedroom, see subsection 43-180(2).

43-150 Meaning of *industrial activities*

Industrial activities means:

- (a) any of the following activities (***core activities***):
- (i) operations where manufactured items are derived from other goods even if those manufactured items are themselves used as parts or materials in the manufacture of other items;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) operations (other than packing, placing in containers or labelling) by which manufactured items are brought into or maintained in the form or condition in which they are sold or used, even if they are for sale or use as parts or materials in the manufacture of other items;
- (iii) the separation of a metal or a compound of a metal from its ore (not including crushing, grinding, breaking, screening or sizing to facilitate that separation) or the treatment or processing of a metal or a compound of a metal after its separation;
- (iv) for a metal or a compound of a metal not requiring separation—applying to the metal or compound a treatment or process which, if the metal or compound had required separation, would not have been applied until after the separation;
- (v) refining *petroleum;
- (vi) scouring or carbonising wool;
- (vii) milling timber;
- (viii) freezing primary products;
- (ix) printing, lithographing or engraving, or a similar process, in the course of carrying on a business as a publisher, printer, lithographer or engraver;
- (x) curing meat or fish;
- (xi) producing chilled or frozen meat;
- (xii) pasteurising milk;
- (xiii) canning or bottling foodstuffs;
- (xiv) producing electric current, hydraulic power, steam, compressed air or gases (other than natural gas) for the purpose of sale, or use wholly or mainly in carrying on another activity mentioned in this paragraph; or
- (b) any of the following activities:
 - (i) the packing, placing in containers or labelling of any goods resulting from the carrying on of core activities;
 - (ii) the disposal of waste substances resulting from the carrying on of core activities;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (iii) the cleansing or sterilising of bottles, vats or other containers used by the entity to store goods to be used in carrying on core activities or goods resulting from the carrying on of core activities;
- (iv) the assembly, maintenance, cleansing, sterilising or repair of property used in carrying on core activities;
- (v) the storage, within premises in which core activities are carried on, or premises contiguous to those premises, of goods in carrying on core activities, goods in relation to which core activities have commenced but not finally been completed or goods resulting from core activities;

but does not include the preparation of food or drink (whether for consumption on the premises where it is prepared or elsewhere) in, or in premises occupied in connection with, a hotel, motel, boarding house, catering establishment, restaurant, cafe, milk-bar, coffee shop, retail shop or similar establishment.

Subdivision 43-E—Special rules about uses

Guide to Subdivision 43-E

43-155 What this Subdivision is about

This Subdivision contains special rules about uses of capital works. It is relevant to whether you can get a deduction for capital works and also to the rate of that deduction. The rules in this Subdivision affect the uses of capital works described in Tables 43-90, 43-140 and 43-145.

Table of sections

Operative provisions

43-160	Your area is used for a purpose if it is maintained ready for use for the purpose
43-165	Temporary cessation of use
43-170	Own use—capital works other than hotel and apartment buildings
43-175	Own use—hotel and apartment buildings
43-180	Special rules for hotel and apartment buildings
43-185	Residential or display use

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- 43-190 Use of facilities not commonly provided, and of certain buildings used to operate a hotel, motel or guest house
- 43-195 Use for R&D activities must be in connection with a business

Operative provisions

43-160 Your area is used for a purpose if it is maintained ready for use for the purpose

A part of *your area is taken to be used, for use or available for use for a particular purpose or in a particular manner at a time if, at that time:

- (a) it was maintained ready for use for that purpose or in that manner; and
- (b) it was not used or for use for any other purpose or in any other manner; and
- (c) its use or intended use for that purpose or in that manner had not been abandoned.

Note 1: Construction must be complete before you can deduct an amount, see section 43-30.

Note 2: This section affects Tables 43-140 and 43-145.

43-165 Temporary cessation of use

A part of *your area is taken to be used, for use or available for use for a particular purpose or in a particular manner if its use for that purpose or in that manner temporarily ceases because of:

- (a) the construction of an extension, alteration or improvement, or the making of repairs; or
- (b) seasonal or climatic factors.

Note: This section affects Tables 43-140 and 43-145.

43-170 Own use—capital works other than hotel and apartment buildings

- (1) A part of capital works, other than a *hotel building or an *apartment building, is taken not to be used for the *purpose of producing assessable income if that part is for use mainly for, or in

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

association with, residential accommodation by you or an *associate.

Note: This subsection affects Tables 43-140 and 43-145.

- (2) Subsection (1) does not apply to use by an *associate under an *arrangement:
- (a) to which you and the associate are parties; and
 - (b) that is of a kind that the parties could reasonably be expected to have entered into if they had been dealing with each other at arm's length; and
 - (c) that was not entered into for the purpose of obtaining a deduction under this Division.
- (3) If property that constitutes the whole or part of capital works, other than a *hotel building or an *apartment building, is part of an individual's home, the property is taken to be used, or for use, wholly or mainly for or in association with residential accommodation.

Note: This subsection affects Tables 43-90 and 43-140.

43-175 Own use—hotel and apartment buildings

- (1) An entity is taken not to have used a bedroom in a *hotel building, or an apartment, unit or flat in an *apartment building, for the *purpose of producing assessable income at a time if, at that time, the bedroom, apartment, unit or flat is used, or reserved for use, by:
- (a) the entity; or
 - (b) if the entity is a partnership—any of the partners in the partnership.

Note: This subsection affects Tables 43-140 and 43-145.

- (2) Also, an entity is taken not to use a bedroom in a *hotel building, or an apartment, unit or flat in an *apartment building for any purpose at a time if:
- (a) at that time, a *right to use or a right to occupy the bedroom, apartment, unit or flat was vested in the entity; and
 - (b) that right was vested in the entity because the entity was, at that time, a member of a company, a beneficiary of a trust estate or a partner in a partnership.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: This subsection affects Tables 43-90, 43-140 and 43-145.

43-180 Special rules for hotel and apartment buildings

Rules about counting rooms or apartments etc.

- (1) A bedroom in a *hotel building, or an apartment, unit or flat in an *apartment building, is taken to be used or available for use wholly for short-term accommodation for travellers in a period if it is used or available for use mainly for short-term accommodation for travellers in that period.

Note: This subsection ensures that a limited period of non-short-term traveller accommodation use will be disregarded in counting the number of rooms provided the bedroom, apartment, unit or flat is used mainly for short-term traveller accommodation.

- (2) For the purpose of counting the number of bedrooms in a *hotel building, if 2 or more rooms that are bedrooms or include a bedroom are for use together as a suite of rooms, the suite is taken to constitute one bedroom.
- (3) Despite subsection 43-50(3) (which treats you as not being the owner of certain capital works), you can still count an apartment, unit or flat in relation to which CGT event F2 has happened in working out whether you own or lease at least 10 apartments, units or flats in an *apartment building if you own or lease at least one other apartment, unit or flat in the building.

Note 1: CGT event F2 results in a lease with a term of 50 years or more being treated for CGT purposes more like an outright disposal.

Note 2: Subsection 43-50(3) treats you as not being the owner of capital works that are the subject of such a lease.

Rules about hotel or apartment complexes

- (4) A group of buildings that constitutes a complex of buildings is taken to be one *hotel building or *apartment building, and none of the buildings in the group is taken to be a separate building.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (5) The construction of a *hotel building or *apartment building is taken to be an extension of another building if, after completion of the construction, those buildings are taken to be one building under subsection (4).

Note: Subsections (4) and (5) ensure that a hotel or apartment building that provides short-term traveller accommodation in detached buildings will be treated as a single building so that the 10 hotel room/apartment test is applied to the complex as a whole. It also has the effect that the complex as a whole must be completed before there can be a construction expenditure area.

Rules about facilities not commonly provided in Australia

- (6) If a *hotel building contains a facility of a kind that is not commonly provided in a hotel, motel or guest house in Australia, the facility is taken not to be used or for use to operate a hotel, motel or guest house.
- (7) If an *apartment building contains a facility of a kind that is not commonly provided in a hotel, motel or guest house in Australia, the facility is taken not to be a facility for use in association with providing short-term accommodation for travellers in apartments, units or flats.

Note: Subsections (6) and (7) exclude areas such as casinos from the construction expenditure area of a hotel building or apartment building.

43-185 Residential or display use

- (1) A building, other than a *hotel building or an *apartment building, or an extension, alteration or improvement to such a building, begun after 19 July 1982 and before 18 July 1985 is taken not to be used for the *purpose of producing assessable income or exempt income if it is used or for use wholly or mainly for exhibition or display in connection with:
- (a) the sale of all or part of any building; or
 - (b) the lease of all or part of any building for use wholly or mainly for or in association with residential accommodation.

Note: Subsection (1) affects time period 2 in Table 43-90 and time period 3 in Table 43-140.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-190

- (2) A building, other than a *hotel building or an *apartment building, begun after 19 July 1982 and before 18 July 1985 is taken not to be used for the *purpose of producing assessable income if it is used or available for use wholly or mainly for or in association with residential accommodation.

Note: Subsection (2) affects time period 2 in Table 43-90 and time period 3 in Table 43-140.

- (3) A building, other than a *hotel building or an *apartment building, begun after 17 July 1985 and before 1 July 1997 is taken not to be used for the *purpose of producing assessable income if it is used or for use wholly or mainly for exhibition or display in connection with the sale of all or part of any building.

Note: Subsection (3) affects time periods 2 and 3 in Table 43-140.

43-190 Use of facilities not commonly provided, and of certain buildings used to operate a hotel, motel or guest house

- (1) A facility in a *hotel building or an *apartment building that is not commonly provided in a hotel, motel or guest house in Australia is taken not to be used, or for use, for or in association with residential accommodation if the facility is part of a building begun after 19 July 1982 and before 18 July 1985.

Note: This subsection means that, for time period 2 in Table 43-90, a facility referred to in subsection 43-180(6) or (7) (dealing with facilities not commonly provided in Australia) is taken to be a non-residential building if it satisfies the use test in Column 3 of that table for a building of that kind, and is therefore eligible for deduction even though it would ordinarily be taken to be used for residential accommodation.

- (2) A building, other than a *hotel building or an *apartment building, begun after 19 July 1982 and before 18 July 1985 that is used, or for use, wholly or mainly for the purpose of operating a hotel, motel or guest house is taken to be used or for use wholly or mainly for, or in association with, residential accommodation.

Note: This subsection ensures that hotels, motels and guest houses begun in the specified time period that do not satisfy the tests for hotel and apartment buildings (for example, because they had fewer than 10 bedrooms or apartments) do not qualify for a deduction under this Division.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

43-195 Use for R&D activities must be in connection with a business

You are taken not to use capital works for *R&D activities unless you do so in connection with a business that you carry on for the *purpose of producing assessable income.

Note: This section affects Tables 43-90 and 43-140.

Subdivision 43-F—Calculation of deduction

Guide to Subdivision 43-F

43-200 What this Subdivision is about

This Subdivision shows you how to calculate the amount of a deduction under section 43-10. The calculations must be made separately for each area that is identified as your area.

There are 2 separate calculation provisions: One for capital works begun before 27 February 1992; and the other for capital works begun after 26 February 1992.

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43-210 Deduction for capital works begun after 26 February 1992

43-215 Deduction for capital works begun before 27 February 1992

43-220 Capital works taken to have begun earlier for certain purposes

43-205 Explanatory material

Capital works begun before 27 February 1992

The calculation for these works is based on *your construction expenditure and the applicable rate of deduction. There can be only one rate of deduction that applies to *your area. However, reductions of deductions may apply.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-205

You must reduce your deduction for any period in the income year that you did not own *your area and use it in the way described in Table 43-140 (Current year use). Because there are 2 use tests in Table 43-140 for *hotel buildings and *apartment buildings (a general income producing test and a more specific hotel and short-term traveller accommodation use test), there are 2 reduction steps.

The first step reduces your deduction if part of *your area was not used as a *hotel building or *apartment building. The second step reduces the deduction to the extent that your area is used only partly for the *purpose of producing assessable income. This occurs, for example, if you *derive both assessable and exempt income, or if part of your area is not used to produce assessable income for all or part of the period it was used as a hotel building or apartment building.

Capital works begun after 26 February 1992

The calculation for these works is based on a portion of *your construction expenditure and the applicable rate of deduction. There can be 2 rates of deduction for your area depending on the way you use it.

If 2 rates apply, there will be a separate calculation for the part of *your area used in the way described in Table 43-140 and for the part of *your area used in the way described in Table 43-145 (Use in the 4% manner). A gross deduction and subsequent reduction is calculated for each.

The reduction is the same as the second reduction for capital works begun before 27 February 1992.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Operative provisions

43-210 Deduction for capital works begun after 26 February 1992

Step 1 Calculate the amount worked out using the formula:

$$\frac{\text{Portion of your CE} \times \text{Days used} \times 0.04}{365}$$

where:

portion of your CE is the portion of *your construction expenditure that is attributable to the part of *your area that you used in the *4% manner.

days used is the number of days in the income year that:

- (a) you owned or were the lessee of that part of *your area and used it in the *4% manner; or
- (b) you were the holder of that part of *your area under a *quasi-ownership right over land granted by an *exempt Australian government agency or an *exempt foreign government agency, and used that part of your area in the 4% manner.

Step 2 Reduce the Step 1 amount by the extent to which the part referred to in Step 1 was used only partly for the *purpose of producing assessable income.

Note: This Step applies if:

- part of your income from the part referred to in Step 1 is exempt income; or
- part of the part referred to in Step 1 was not used for the purpose of producing assessable income or was not available for that use; or
- the part of the part referred to in Step 1 was not used for such a purpose during a part of the days used period.

Step 3 Calculate the amount worked out using the formula:

$$\frac{\text{Portion of your CE} \times \text{Days used} \times 0.025}{365}$$

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

where:

portion of your CE is the portion of *your construction expenditure that is attributable to the part of *your area that you did not use in the *4% manner but was used as described in Table 43-140 (Current year use).

days used is the number of days in the income year that:

- (a) you owned or were the lessee of that part of *your area and used it in that manner; or
- (b) you were the holder of that part of *your area under a *quasi-ownership right over land granted by an *exempt Australian government agency or an *exempt foreign government agency, and used that part of your area in that manner.

Step 4 Reduce the Step 3 amount by the extent to which the part referred to in Step 3:

- (a) for a *hotel building or *apartment building—was used only partly for the *purpose of producing assessable income; or
- (b) for any other capital works—was used only partly for the purpose of *producing assessable income or conducting *R&D activities.

Note: This Step applies if:

- part of your income from the part referred to in Step 3 is exempt income; or
- part of the part referred to in Step 3 was not used for the purpose of producing assessable income (or R&D activities) or was not available for that use; or
- the part of the part referred to in Step 3 was not used for such a purpose during a part of the days used period.

Step 5 Add the Step 2 and Step 4 amounts.

Step 6 The amount of your deduction is the lesser of your Step 5 amount or the *undeducted construction expenditure for *your area.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

43-215 Deduction for capital works begun before 27 February 1992

Step 1 Calculate the amount worked out using the formula:

$$\frac{\text{Your CE} \times \text{Days used} \times \text{Applicable rate}}{365}$$

where:

your CE is *your construction expenditure.

days used is the number of days in the income year that you owned or were the lessee of *your area and used it in the way that applies to the capital works under Table 43-140 (Current year use).

applicable rate is:

- (a) 0.04 if the capital works began after 21 August 1984 and before 16 September 1987; or
- (b) 0.025 in any other case.

Note: For the purpose of working out the applicable rate, capital works begun after 15 September 1987 are taken to have begun before 16 September 1987 in certain circumstances. See section 43-220.

Step 2 This step applies only to *hotel buildings and *apartment buildings. Reduce the Step 1 amount by the extent to which:

- (a) for a hotel building—any part of *your area was not used wholly or mainly to operate a hotel, motel or guest house; or
- (b) for an apartment building—any part of *your area was not used wholly for or in association with providing short-term accommodation for travellers.

Step 3 Reduce the Step 1 or 2 amount by the extent to which:

- (a) for a *hotel building or *apartment building—*your area was used only partly for the *purpose of producing assessable income; or
- (b) for any other capital works—*your area was used only partly for the *purpose of producing assessable income or conducting *R&D activities.

Note: This Step applies if:

- part of your income from the capital works is exempt income; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-220

- part of the capital works were not used for the purpose of producing assessable income or were not available for that use; or
- the capital works were not used for such a purpose during a part of the days used period.

Step 4 The amount of your deduction is the lesser of your Step 3 amount or the *undeducted construction expenditure for *your area.

43-220 Capital works taken to have begun earlier for certain purposes

- (1) A building, other than a *hotel building or an *apartment building, or an extension, alteration or improvement to such a building, begun after 15 September 1987 is taken to have begun before 16 September 1987 if:
 - (a) the construction was under a contract that was entered into before 16 September 1987, or was under 2 or more contracts any of which was entered into before that date; or
 - (b) money was borrowed for a purpose that included the purpose of financing the construction under a contract or contracts entered into before 16 September 1987 by an entity that was, or by entities each of which was, a *qualifying investor, and that money was used to finance the construction.
- (2) An entity is a *qualifying investor* for the construction of a building if:
 - (a) at the end of 15 September 1987, the entity was the owner or lessee of the land on which the building was constructed; or
 - (b) the entity became the owner or lessee of the land under a contract entered into before 16 September 1987.
- (3) An entity is a *qualifying investor* for the construction of an extension, alteration or improvement to a building if:
 - (a) at the end of 15 September 1987, the entity was the owner or lessee of the building, or the part of the building to which the extension, alteration or improvement was made; or
 - (b) the entity became the owner or lessee of the building or that part under a contract entered into before 16 September 1987.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 43-G—Undeducted construction expenditure

Guide to Subdivision 43-G

43-225 What this Subdivision is about

The undeducted construction expenditure for your area is the part of your construction expenditure you have left to write off. It is used to work out:

- the number of years in which you can deduct amounts for your construction expenditure; and
- the amount that you can deduct under section 43-40 if your area or a part is destroyed.

Table of sections

Operative provisions

43-230	Calculating undeducted construction expenditure—common step
43-235	Post-26 February 1992 undeducted construction expenditure
43-240	Pre-27 February 1992 undeducted construction expenditure

Operative provisions

43-230 Calculating undeducted construction expenditure—common step

- (1) Identify the date when the capital works began.

Note 1: The date determines whether your calculation is to be made under section 43-235 (for post-26/2/92 expenditure) or 43-240 (for pre-27/2/92 expenditure).

Note 2: Section 43-80 explains when capital works begin.

- (2) If you are calculating a deduction under Subdivision 43-F, identify the period (*use period*) that:

- (a) started when *your area, or a part of it, was first used by any entity for any purpose after completion of the relevant construction; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) ended at the end of the preceding income year or, if you acquired your area during the income year, at the end of the day before the time of the acquisition.
- (3) If you are calculating a deduction under Subdivision 43-H, identify the period (*use period*) that started at the time described in paragraph (2)(a) and ended at the time of the destruction.

43-235 Post-26 February 1992 undeducted construction expenditure

Step 1 Calculate for each day in the use period the amount worked out using the formula:

$$\frac{\text{Portion of your CE} \times 0.04}{365}$$

where:

portion of your CE is the portion of *your construction expenditure that is attributable to the part of *your area that you used in the *4% manner.

Step 2 Calculate for each day in the use period the amount worked out using the formula:

$$\frac{\text{Portion of your CE} \times 0.025}{365}$$

where:

portion of your CE is the portion of *your construction expenditure that is attributable to the part of *your area that you did not use in the *4% manner.

Step 3 Add the aggregate of the amounts calculated under Steps 1 and 2.

Step 4 Deduct the sum of those amounts from *your construction expenditure. The result is the *undeducted construction expenditure* for *your area.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

43-240 Pre-27 February 1992 undeducted construction expenditure

Step 1 Calculate for each day in the use period the amount worked out using the formula:

$$\frac{\text{your CE} \times \text{applicable rate}}{365}$$

where:

your CE is *your construction expenditure.

applicable rate is:

- (a) 0.04 if the capital works began after 21 August 1984 and before 16 September 1987; or
- (b) 0.025 in any other case.

Note: For the purpose of working out the applicable rate, capital works begun after 15 September 1987 are taken to have begun before 16 September 1987 in certain circumstances. See section 43-220.

Step 2 Deduct the sum of the amounts calculated under Step 1 from *your construction expenditure. The result is the **undeducted construction expenditure** for *your area.

Subdivision 43-H—Balancing deduction on destruction of capital works

Guide to Subdivision 43-H

43-245 What this Subdivision is about

You may deduct an amount for the undeducted construction expenditure for your area if your area or part of it is destroyed in the circumstances described in section 43-40.

This Subdivision shows you how to work out that deduction.

The calculations in this Subdivision are made separately for each part of the capital works that is identified as your area.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 43-250

Table of sections

Operative provisions

43-250	The amount of the balancing deduction
43-255	Amounts received or receivable
43-260	Apportioning amounts received for destruction

Operative provisions

43-250 The amount of the balancing deduction

Method statement

- Step 1. Calculate the amount (if any) by which the *undeducted construction expenditure for the part of *your area that was destroyed exceeds the amounts you have received or have a right to receive for the destruction of that part.
- Step 2. Reduce the amount at Step 1 if one or more of these happened to that part of *your area:
- (a) Step 2 or 4 in section 43-210, or Step 2 or 3 in section 43-215, applied to you or another person for it;
 - (b) you were, or another person was, not allowed a deduction for it under this Division;
 - (c) a deduction for it was not allowed or was reduced (for you or another person) under former Division 10C or 10D of Part III of the *Income Tax Assessment Act 1936*.

The reduction under this step must be reasonable.

43-255 Amounts received or receivable

The amounts you have received or have a right to receive for the destruction of that part of *your area include:

- (a) an amount received under an insurance policy or otherwise for the destruction of that part; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) an amount received for disposing of property that was included in that part of your area, less any demolition expenditure incurred on the property.

43-260 Apportioning amounts received for destruction

If an amount received or receivable in respect of the destruction of property relates to both the part of *your area for which you are claiming the balancing deduction and to property:

- (a) the cost of which did not form part of *your construction expenditure; or
 - (b) that is capital works that was not part of your area;
- you must apportion the amount received or receivable to the amount that is attributable to the part of your area that was destroyed. The apportionment must be reasonable.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 45—Disposal of leases and leased plant

Guide to Division 45

45-1 What this Division is about

This Division is designed to prevent tax being avoided through:

- (a) the disposal of leased plant, or an interest in leased plant; or
- (b) the disposal of a partnership interest in a partnership that leased plant; or
- (c) the disposal of shares in a 100% subsidiary that leased plant;

where amounts have been deducted for the decline in value of the plant.

It includes amounts in assessable income. Any benefit received, and any reduction in a liability, is taken into account in calculating the amounts included.

Where the disposal of shares in a 100% subsidiary is involved, the companies in the former wholly-owned group may be made jointly and severally liable for tax that the former subsidiary does not pay.

Table of sections

Operative provisions

45-5	Disposal of leased plant or lease
45-10	Disposal of interest in partnership
45-15	Disposal of shares in 100% subsidiary that leases plant
45-20	Disposal of shares in 100% subsidiary that leases plant in partnership
45-25	Group members liable to pay outstanding tax
45-30	Reduction for certain plant acquired before 21.9.99
45-35	Limit on amount included for plant for which there is a CGT exemption

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

45-40 Meaning of *plant* and *written down value*

Operative provisions

45-5 Disposal of leased plant or lease

- (1) An amount is included in your assessable income if:
- (a) you have deducted or can deduct an amount for the decline in value of *plant; and
 - (b) for most of the time when you *held the plant, you leased it to another entity; and
 - (c) all or part of the lease period occurred on or after 22 February 1999; and
 - (d) on or after that day, you dispose of the plant or an interest in the plant, and that disposal constitutes a *balancing adjustment event; and
 - (e) the sum of the following amounts is *more than* the plant's *written down value or of that part of it that is attributable to that interest:
 - (i) the money you receive or are entitled to receive for the disposal;
 - (ii) the amount of any reduction in a liability of yours as a result of the disposal;
 - (iii) the *market value of any other benefit you receive or are entitled to receive as a result of the disposal.
- (2) The amount included is the excess referred to in paragraph (1)(e). It is included for the income year in which the disposal occurred.

Example: Sean owns a leased asset. The asset has a written down value of \$20,000. He has an outstanding loan for the asset of \$60,000.

Sean sells a 50% interest in the asset to Leprechaun Pty Ltd for \$40,000. Leprechaun agrees to take over 50% of Sean's obligation to make debt service payments.

The excess referred to in paragraph 45-5(1)(e) is:

$$\left[\$40,000 + \$30,000 = \$70,000 \right] - \$10,000 = \$60,000$$

That amount is included in Sean's assessable income.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 45-5

This amount would be reduced if part of it is included in Sean's assessable income under another provision (see subsection 45-5(5)).

Note 1: There is a reduction of the amount included for certain plant acquired before 21 September 1999: see section 45-30.

Note 2: There is a limit on the amount included for plant for which there is a CGT exemption: see section 45-35.

- (3) An amount is also included in your assessable income if:
- (a) you have deducted or can deduct an amount for the *plant's decline in value; and
 - (b) for most of the time when you *held the plant, you leased it to another entity; and
 - (c) all or part of the lease period occurred on or after 22 February 1999; and
 - (d) on or after that day, you dispose of:
 - (i) your interest in the plant, or part of it; or
 - (ii) a right under, or an interest in, the lease;and that disposal does not constitute a *balancing adjustment event.
- (4) The amount included is the sum of the following amounts:
- (a) the money you receive or are entitled to receive for the disposal;
 - (b) the amount of any reduction in a liability of yours as a result of the disposal;
 - (c) the *market value of any other benefit you receive or are entitled to receive as a result of the disposal;
- It is included for the income year in which the disposal occurred.
- (5) However, an amount is not included in your assessable income under this section to the extent that:
- (a) it is included in that assessable income under a provision of this Act outside this Division; or
 - (b) you apply it under section 40-365 (about offsetting balancing adjustments); or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) roll-over relief is available for the disposal under section 40-340.

Note: There are special rules for disposals between 22 February 1999 and 21 September 1999: see Division 45 of the *Income Tax (Transitional Provisions) Act 1997*.

45-10 Disposal of interest in partnership

- (1) An amount is included in your assessable income if:
- (a) a partnership of which you are (or were) a member has deducted or can deduct an amount for the decline in value of *plant; and
 - (b) the deductions have been or would be reflected in your interest in the partnership net income or partnership loss; and
 - (c) for most of the time when the partnership *held the plant, it leased it to another entity; and
 - (d) all or part of the lease period occurred on or after 22 February 1999; and
 - (e) on or after that day, you dispose of your interest in the plant, or part of it, and that disposal constitutes a *balancing adjustment event; and
 - (f) the sum of the following amounts is *more than* that part of the plant's *written down value that is attributable to that interest:
 - (i) the money you receive or are entitled to receive for the disposal;
 - (ii) the amount of any reduction in a liability of yours as a result of the disposal;
 - (iii) the *market value of any other benefit you receive or are entitled to receive as a result of the disposal.
- (2) The amount included is the excess referred to in paragraph (1)(f). It is included for the income year in which the disposal occurred.

Example: Chris has a 50% share in a partnership formed to lease an asset. The asset has a written down value of \$124,000 (of which Chris' share is \$62,000).

Chris assigns his partnership share to another entity for \$34,000 plus the other entity agreeing to take over Chris' obligations to service his

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 45-10

share of the partnership debt (which is \$165,000). The total consideration is:

$$\$34,000 + \$165,000 = \$199,000$$

The amount assessable under section 45-10 is the excess referred to in paragraph 45-10(1)(f), which is:

$$\$199,000 - \$62,000 = \$137,000$$

This amount would be reduced if part of it is included in Chris' assessable income under another provision (see subsection 45-10(5)).

Note 1: There is a reduction of the amount included for certain plant acquired before 21 September 1999: see section 45-30.

Note 2: There is a limit on the amount included for plant for which there is a CGT exemption: see section 45-35.

- (3) An amount is also included in your assessable income if:
- (a) a partnership of which you are (or were) a member has deducted or can deduct an amount for the decline in value of *plant; and
 - (b) the deductions have been or would be reflected in your interest in the partnership net income or partnership loss; and
 - (c) for most of the time when the partnership *held the plant, it leased it to another entity; and
 - (d) all or part of the lease period occurred on or after 22 February 1999; and
 - (e) on or after that day, you dispose of:
 - (i) your interest in the plant, or part of it; or
 - (ii) a right under, or an interest in, the lease;and that disposal does not constitute a *balancing adjustment event.
- (4) The amount included is the sum of the following amounts:
- (a) the money you receive or are entitled to receive for the disposal;
 - (b) the amount of any reduction in a liability of yours as a result of the disposal;
 - (c) the *market value of any other benefit you receive or are entitled to receive as a result of the disposal.

It is included for the income year in which the disposal occurred.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (5) However, an amount is not included in your assessable income under this section to the extent that:
- (a) it is included in that assessable income under a provision of this Act outside this Division; or
 - (b) you apply it under section 40-365 (about offsetting balancing adjustments).

Note: There are special rules for disposals between 22 February 1999 and 21 September 1999: see Division 45 of the *Income Tax (Transitional Provisions) Act 1997*.

45-15 Disposal of shares in 100% subsidiary that leases plant

- (1) A company (the ***former subsidiary***) is treated as if it had disposed of *plant, received its *market value for that disposal and immediately reacquired it for the same amount if:
- (a) the former subsidiary has deducted or can deduct an amount for the decline in value of the plant; and
 - (b) the former subsidiary was a *100% subsidiary of another company in a *wholly-owned group at a time when it *held the plant; and
 - (c) for most of the time when the former subsidiary held the plant, the plant was leased to another entity; and
 - (d) the main *business of the former subsidiary was to lease assets; and
 - (e) all or part of the lease period occurred on or after 22 February 1999; and
 - (f) on or after that day, the direct or indirect beneficial ownership of more than 50% of the *shares in the former subsidiary is acquired by an entity or entities none of which is a member of the wholly-owned group; and
 - (g) the plant's *written down value at the time of that acquisition is less than its market value at that time.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 45-20

- (2) However, the former subsidiary is not treated as if it had disposed of *plant and reacquired it if the main business of each of the entities that acquired the direct or indirect beneficial ownership of *shares in the former subsidiary is the same as the main business of the *wholly-owned group of which the former subsidiary was a member.
- (3) The disposal and reacquisition of the *plant:
 - (a) is taken to have occurred when that direct or indirect beneficial ownership was acquired; and
 - (b) is taken not to have affected any lease of the plant.

45-20 Disposal of shares in 100% subsidiary that leases plant in partnership

- (1) A company (also the *former subsidiary*) is treated as if it had disposed of its interest in *plant, received its *market value for that disposal and immediately reacquired it for the same amount if:
 - (a) a partnership of which the former subsidiary is (or was) a member has deducted or can deduct an amount for the decline in value of the plant; and
 - (b) the former subsidiary was a *100% subsidiary of another company in a *wholly-owned group at a time when:
 - (i) it was a member of that partnership; and
 - (ii) the partnership *held the plant; and
 - (c) for most of the time when the partnership held the plant, the plant was leased to another entity; and
 - (d) the main *business of the partnership was to lease assets; and
 - (e) all or part of the lease period occurred on or after 22 February 1999; and
 - (f) on or after that day, the direct or indirect beneficial ownership of more than 50% of the *shares in the former subsidiary is acquired by an entity or entities none of which is a member of the wholly-owned group; and
 - (g) the plant's *written down value at the time of that acquisition is less than its market value at that time.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) However, the former subsidiary is not treated as if it had disposed of the interest and reacquired it if the main business of each of the entities that acquired the direct or indirect beneficial ownership of *shares in the former subsidiary is the same as the main business of the *wholly-owned group of which the former subsidiary was a member.
- (3) The disposal and reacquisition of the interest:
 - (a) is taken to have occurred when that direct or indirect beneficial ownership was acquired; and
 - (b) is taken not to have affected any lease of the plant.

45-25 Group members liable to pay outstanding tax

- (1) The consequences specified in subsection (2) apply if:
 - (a) an amount is included in the former subsidiary's assessable income for an income year because of section 45-15 or 45-20; and
 - (b) the former subsidiary is liable to pay an amount of income tax for that income year; and
 - (c) the former subsidiary does not pay all of that income tax within 6 months after it became payable.
- (2) The consequences are that:
 - (a) the former subsidiary remains liable to pay the outstanding amount of income tax (reduced by any payments of tax imposed by the *New Business Tax System (Former Subsidiary Tax Imposition) Act 1999*); and
 - (b) each company that was, just before the time when the direct or indirect beneficial ownership referred to in paragraph 45-15(1)(f) or 45-20(1)(f) was acquired, a member of the former subsidiary's former *wholly-owned group, is jointly and severally liable to pay tax imposed by the *New Business Tax System (Former Subsidiary Tax Imposition) Act 1999*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

45-30 Reduction for certain plant acquired before 21.9.99

- (1) The amount included in your assessable income under subsection 45-5(2) or 45-10(2) is reduced if:
 - (a) you acquired the *plant at or before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999 and you disposed of the plant or an interest in it after that time; and
 - (b) the sum of the amounts (your *proceeds*) referred to in paragraph 45-5(1)(e) or 45-10(1)(f) is more than the plant's *cost, or that part of it that is attributable to the interest you disposed of.
- (2) The amount included is reduced by the lesser of:
 - (a) the amount (if any) by which the *plant's *cost base exceeds its *cost, or that part of the excess that is attributable to the interest you disposed of; and
 - (b) the difference between your proceeds and the plant's cost, or that part of its cost that is attributable to the interest you disposed of.
- (3) However, the amount is not reduced under this section if:
 - (a) the *plant was a *pre-CGT asset at the time of the *balancing adjustment event; or
 - (b) a *capital gain or *capital loss from the plant or interest would be disregarded because of a provision listed in the table in this subsection if:
 - (i) you had made the gain or loss from *CGT event A1; and
 - (ii) that CGT event had happened at the time of the balancing adjustment event.

Plant for which a reduction is not made under this section

Item	Provision	Subject matter
1	section 118-5	cars, motor cycles and valour decorations
2	section 118-10	collectables and personal use assets
3	section 118-12	plant used to produce exempt income

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

45-35 Limit on amount included for plant for which there is a CGT exemption

- (1) For *plant to which subsection 45-30(3) applies there is a limit on the amount that can be included in your assessable income under subsection 45-5(2) or 45-10(2).
- (2) The limit for subsection 45-5(2) is the lesser of:
 - (a) the excess referred to in paragraph 45-5(1)(e); and
 - (b) the amounts you have deducted or can deduct for the decline in value of the *plant or, if you disposed of an interest in the plant, so much of those amounts as is attributable to that interest.
- (3) The limit for subsection 45-10(2) is the lesser of:
 - (a) the excess referred to in paragraph 45-10(1)(f); and
 - (b) that part of the amounts the partnership has deducted or can deduct for the decline in value of the *plant that has been or would be reflected in your interest in the partnership net income or partnership loss (your *partnership amount*) or, if you disposed of part of your interest in the plant, so much of your partnership amount as is attributable to that part of that interest.

45-40 Meaning of *plant* and *written down value*

- (1) **Plant** includes:
 - (a) articles, machinery, tools and rolling stock; and
 - (b) animals used as beasts of burden or working beasts in a *business, other than a *primary production business; and
 - (c) fences, dams and other structural improvements, other than those used for domestic or residential purposes, on land that is used for agricultural or pastoral operations; and
 - (d) structural improvements, other than a *forestry road or structural improvements used for domestic or residential purposes, on land used in a business involving:
 - (i) planting or tending trees in a plantation or forest that are intended to be felled; or
 - (ii) felling trees in a plantation or forest; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 45-40

- (iii) transporting trees, or parts of trees, that you felled in a plantation or forest to the place where they are first to be milled or processed, or from which they are to be transported to the place where they are first to be milled or processed; and
 - (e) structural improvements, other than those used for domestic or residential purposes, that are used wholly for operations (carried out in the course of a business) relating directly to:
 - (i) taking or culturing pearls or pearl shell; or
 - (ii) taking or catching trochus, bêche-de-mer or green snails;and that are situated at or near a port or harbour from which the business is conducted; and
 - (f) structural improvements that are excluded from paragraph (c), (d) or (e) because they are used for domestic or residential purposes if they are provided for the accommodation of employees, tenants or sharefarmers who are engaged in or in connection with the activities referred to in that paragraph.
- (2) **Plant** also includes plumbing fixtures and fittings (including wall and floor tiles) provided by an entity mainly for:
 - (a) either or both:
 - (i) employees in a *business carried on by the entity for the *purpose of producing assessable income; or
 - (ii) employees in a business carried on for that purpose by a company that is a member of the same *wholly-owned group of which the entity is a member; or
 - (b) *children of any of those employees.
- (3) The **written down value** of a *depreciating asset is its *cost less the sum of:
 - (a) the amounts you have deducted or can deduct for its decline in value; and
 - (b) if section 40-340 applied to your acquisition of it—the amounts the transferor, and earlier successive transferors, deducted or can deduct for its decline in value.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Part 2-15—Non-assessable income

Division 50—Exempt entities

Table of Subdivisions

50-A	Various exempt entities
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Subdivision 50-A—Various exempt entities

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 50-1

50-1 Entities whose ordinary income and statutory income is exempt

The total *ordinary income and *statutory income of the entities covered by the following tables is exempt from income tax. In some cases, the exemption is subject to special conditions.

Note 1: Ordinary and statutory income that is exempt from income tax is called exempt income: see section 6-20. The note to subsection 6-15(2) describes some of the other consequences of it being exempt income.

Note 2: Even if you are an exempt entity, the Commissioner can still require you to lodge an income tax return or information under section 161 of the *Income Tax Assessment Act 1936*.

50-5 Charity, education, science and religion

Charity, education, science and religion		
Item	Exempt entity	Special conditions
1.1	charitable institution	see sections 50-50 and 50-52
1.2	religious institution	see section 50-50
1.3	scientific institution	see section 50-55
1.4	public educational institution	see section 50-55
1.5	fund established for public charitable purposes by will before 1 July 1997	see sections 50-52 and 50-57
1.5A	trust covered by paragraph 50-80(1)(c)	see sections 50-52 and 50-60
1.5B	fund established in Australia for public charitable purposes by will or instrument of trust (and not covered by item 1.5 or 1.5A)	see sections 50-52 and 50-60
1.6	fund established to enable scientific research to be conducted by or in conjunction with a public university or public hospital	see section 50-65
1.7	society, association or club established for the encouragement of science	see section 50-70

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 50-10

Charity, education, science and religion

Item	Exempt entity	Special conditions
1.8	Global Carbon Capture and Storage Institute Ltd	only amounts included in assessable income: (a) on or after 1 July 2009; and (b) before 1 July 2013

Note 1: Section 50-52 has the effect that certain charitable institutions, funds and trusts are exempt from income tax only if they are endorsed under Subdivision 50-B.

Note 2: Section 50-80 may affect which item a trust is covered by.

50-10 Community service**Community service**

Item	Exempt entity	Special conditions
2.1	society, association or club established for community service purposes (except political or lobbying purposes)	see section 50-70

50-15 Employees and employers**Employees and employers**

Item	Exempt entity	Special conditions
3.1	(a) employee association; or (b) employer association	the association: (a) is registered or recognised under the <i>Fair Work (Registered Organisations) Act 2009</i> or an *Australian law relating to the settlement of industrial disputes; and (b) is located in Australia, and incurs its expenditure and pursues its objectives principally in Australia

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2 Liability rules of general application**Part 2-15** Non-assessable income**Division 50** Exempt entities

Section 50-20

Employees and employers		
Item	Exempt entity	Special conditions
3.2	trade union	located in Australia and incurring its expenditure and pursuing its objectives principally in Australia

50-20 Funds contributing to other funds

Funds contributing to other funds		
Item	Exempt entity	Special conditions
4.1	fund established by will or instrument of trust solely for a purpose referred to in paragraph (a) or (b) of the column headed "Recipient" in item 2 of the table in section 30-15 (and not covered by item 1.5, 1.5A or 1.5B of the table in section 50-5)	see sections 50-52 and 50-72

50-25 Government

Government		
Item	Exempt entity	Special conditions
5.1	(a) a municipal corporation; or (b) a *local governing body	none
5.2	a public authority constituted under an *Australian law	none
5.3	a *constitutionally protected fund	none

Note: The ordinary and statutory income of a State or Territory body is exempt: see Division 1AB of Part III of the *Income Tax Assessment Act 1936*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

50-30 Health

Health		
Item	Exempt entity	Special conditions
6.1	public hospital	see section 50-55
6.2	hospital carried on by a society or association	not carried on for the profit or gain of its individual members, see also section 50-55
6.3	private health insurer within the meaning of the <i>Private Health Insurance Act 2007</i>	not carried on for the profit or gain of its individual members

50-35 Mining

Mining		
Item	Exempt entity	Special conditions
7.2	the British Phosphate Commissioners Banaba Contingency Fund (established on 1 June 1981)	none

50-40 Primary and secondary resources, and tourism

Primary and secondary resources, and tourism		
Item	Exempt entity	Special conditions
8.1	a society or association established for the purpose of promoting the development of: (a) aviation; or (b) tourism	not carried on for the profit or gain of its individual members

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 50-45

Primary and secondary resources, and tourism		
Item	Exempt entity	Special conditions
8.2	a society or association established for the purpose of promoting the development of any of the following Australian resources: (a) agricultural resources; (b) horticultural resources; (c) industrial resources; (d) manufacturing resources; (e) pastoral resources; (f) viticultural resources; (g) aquacultural resources; (h) fishing resources	not carried on for the profit or gain of its individual members
8.3	a society or association established for the purpose of promoting the development of Australian information and communications technology resources	not carried on for the profit or gain of its individual members

50-45 Sports, culture and recreation

Sports, culture, film and recreation		
Item	Exempt entity	Special conditions
9.1	a society, association or club established for the encouragement of: (a) animal racing; or (b) art; or (c) a game or sport; or (d) literature; or (e) music	see section 50-70
9.2	a society, association or club established for musical purposes	see section 50-70

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

50-50 Special conditions for items 1.1 and 1.2

An entity covered by item 1.1 or 1.2 is not exempt from income tax unless the entity:

- (a) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or
- (b) is an institution that meets the description and requirements in item 1 of the table in section 30-15; or
- (c) is a prescribed institution which is located outside Australia and is exempt from income tax in the country in which it is resident; or
- (d) is a prescribed institution that has a physical presence in Australia but which incurs its expenditure and pursues its objectives principally outside Australia.

Note 1: Certain distributions may be disregarded: see section 50-75.

Note 2: The entity must also meet other conditions to be exempt from income tax: see section 50-52.

50-52 Special condition for items 1.1, 1.5, 1.5A, 1.5B and 4.1

- (1) An entity covered by item 1.1, 1.5, 1.5A, 1.5B or 4.1 is not exempt from income tax unless the entity is endorsed as exempt from income tax under Subdivision 50-B.

Note: The entity will not be exempt from income tax unless it also meets other conditions: see section 50-50 (for an entity covered by item 1.1), 50-57 (for an entity covered by item 1.5), 50-60 (for an entity covered by item 1.5A or 1.5B) or section 50-72 (for an entity covered by item 4.1).

- (3) This section has effect despite all the other sections of this Subdivision.

Note: This means that an entity covered both by an item other than 1.1, 1.5, 1.5A, 1.5B or 4.1 and by one of those items is not exempt from income tax unless the entity is endorsed under Subdivision 50-B as exempt from income tax and the entity meets the requirements of whichever of sections 50-50, 50-57, 50-60 and 50-72 is relevant.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

50-55 Special conditions for items 1.3, 1.4, 6.1 and 6.2

An entity covered by item 1.3, 1.4, 6.1 or 6.2 is not exempt from income tax unless the entity:

- (a) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or
- (b) is an institution that meets the description and requirements in item 1 of the table in section 30-15; or
- (c) is a prescribed institution which is located outside Australia and is exempt from income tax in the country in which it is resident.

Note: Certain distributions may be disregarded: see section 50-75.

50-57 Special condition for item 1.5

A fund covered by item 1.5 is not exempt from income tax unless the fund is applied for the purpose for which it was established.

Note: The fund must also meet another condition to be exempt from income tax: see section 50-52.

50-60 Special conditions for items 1.5A and 1.5B

A fund covered by item 1.5A or 1.5B is not exempt from income tax unless the fund is applied for the purposes for which it was established and:

- (a) incurs, and has at all times since 1 July 1997 incurred, its expenditure principally in Australia and pursues, and has at all times since 1 July 1997 pursued, its charitable purposes solely in Australia; or
- (b) is a fund which is referred to in a table in Subdivision 30-B or in item 2 of the table in section 30-15; or
- (c) distributes solely, and has at all times since 1 July 1997 distributed solely, to either or both of the following:
 - (i) a charitable fund, foundation or institution which, to the best of the trustee's knowledge, is located in Australia and incurs its expenditure principally in Australia and pursues its charitable purposes solely in Australia;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) a charitable fund, foundation or institution that, to the best of the trustee's knowledge, meets the description and requirements in item 1 or 2 of the table in section 30-15.

Note 1: Certain distributions may be disregarded: see section 50-75.

Note 2: The fund must also meet other conditions to be exempt from income tax: see section 50-52.

50-65 Special conditions for item 1.6

A fund covered by item 1.6 is not exempt from tax unless the fund is applied for the purposes for which it was established and is:

- (a) a fund that is located in, and which incurs its expenditure principally in, Australia and that is established for the purpose of enabling scientific research to be conducted principally in Australia by or in conjunction with a public university or public hospital; or
- (b) a scientific research fund that meets the description and requirements in item 1 or 2 of the table in section 30-15.

Note: Certain distributions may be disregarded: see section 50-75.

50-70 Special conditions for items 1.7, 2.1, 9.1 and 9.2

An entity covered by item 1.7, 2.1, 9.1 or 9.2 is not exempt from tax unless the entity is a society, association or club that is not carried on for the purpose of profit or gain of its individual members and that:

- (a) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or
- (b) is a society, association or club that meets the description and requirements in item 1 of the table in section 30-15; or
- (c) is a prescribed society, association or club which is located outside Australia and is exempt from income tax in the country in which it is resident.

Note: Certain distributions may be disregarded: see section 50-75.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

50-72 Special condition for item 4.1

- (1) A fund covered by item 4.1 is not exempt from income tax unless the fund:
 - (a) is applied for the purposes for which it is established; and
 - (b) distributes solely, and has at all times since the time mentioned in subsection (2) distributed solely, to a fund, authority or institution that:
 - (i) meets the description and requirements in item 1 of the table in section 30-15; and
 - (ii) is an *exempt entity.
- (2) The time is the start of the income year after the income year in which the *Tax Laws Amendment (2005 Measures No. 3) Act 2005* receives the Royal Assent.

50-75 Certain distributions may be made overseas

- (1) In determining for the purposes of this Subdivision whether an institution, fund or other body incurs its expenditure or pursues its objectives principally in Australia, distributions of any amount received by the institution, fund or other body as a gift (whether of money or other property) or by way of government grant are to be disregarded.
- (2) In determining for the purposes of this Subdivision whether an institution, fund or other body incurs its expenditure or pursues its objectives principally in Australia, distributions of any amount from a fund that is referred to in a table in Subdivision 30-B and operated by the institution, fund or other body are to be disregarded.
- (3) In determining for the purposes of section 50-60 whether a fund:
 - (a) incurs, and has at all times since 1 July 1997 incurred, its expenditure principally in Australia and pursues, and has at all times since 1 July 1997, pursued its charitable purposes solely in Australia; or
 - (b) distributes solely, and has at all times since 1 July 1997 distributed solely, to a charitable fund, foundation or institution described in subparagraph 50-60(c)(i) or (ii);

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

distributions of any amount received by the fund as a gift (whether of money or property) or by way of government grant are to be disregarded.

50-80 Testamentary trusts may be treated as 2 trusts

- (1) If:
- (a) a trust (the *existing trust*) covered by item 1.5 was in existence immediately before 1 July 1997; and
 - (b) on or after 1 July 1997 one or more assets are given to the existing trust (other than in return for valuable consideration) or become part of the trust property under a will;
- then, for the purposes of this Subdivision and Subdivision 50-B, the existing trust is taken to be 2 separate trusts (the *new trust* and the *old trust*) as follows:
- (c) the new trust is taken to be a trust created after the start of 1 July 1997 that consists of so much of the trust property as consists of those assets together with any income *derived from those assets; and
 - (d) the old trust is taken to be a trust created before 1 July 1997 that consists of the remainder of the trust property.
- (2) Where an asset is received in substitution for another asset, subsection (1) applies as if the substituted asset were the other asset.

Subdivision 50-B—Endorsing charitable entities as exempt from income tax

Guide to Subdivision 50-B

50-100 What this Subdivision is about

This Subdivision sets out rules about endorsement of charitable institutions and trust funds for charitable purposes as exempt from income tax. Such entities are only exempt from income tax if they are endorsed.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Table of sections

Endorsing charitable entities as exempt from income tax

50-105	Endorsement by Commissioner
50-110	Entitlement to endorsement

Endorsing charitable entities as exempt from income tax

50-105 Endorsement by Commissioner

The Commissioner must endorse an entity as exempt from income tax if the entity:

- (a) is entitled to be endorsed as exempt from income tax; and
- (b) has applied for that endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: For procedural rules relating to endorsement, see Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.

50-110 Entitlement to endorsement

General rule

- (1) An entity is entitled to be endorsed as exempt from income tax if the entity meets all the relevant requirements of this section.

Which entities are entitled to be endorsed?

- (2) To be entitled, the entity must be an entity covered by item 1.1, 1.5, 1.5A or 1.5B of the table in section 50-5 or item 4.1 of the table in section 50-20.

Requirement for ABN

- (3) To be entitled, the entity must have an *ABN.
- (4) However, for a trust:
 - (a) covered by item 1.5 of the table in section 50-5 because the trust is covered by paragraph 50-80(1)(d); or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) covered by item 1.5A of the table in section 50-5 (because the trust is covered by paragraph 50-80(1)(c));
to be entitled, the existing trust mentioned in paragraph 50-80(1)(a) must have an *ABN.

Requirement to meet special conditions

- (5) To be entitled:
- (a) the entity must meet the relevant conditions referred to in the column headed “Special conditions” of whichever of items 1.1, 1.5, 1.5A and 1.5B of the table in section 50-5 and item 4.1 of the table in section 50-20 covers the entity; or
 - (b) both of the following conditions must be met:
 - (i) the entity must not have carried on any activities as a charitable institution (if the entity is covered by item 1.1 of the table in section 50-5) or for public charitable purposes (if the entity is covered by item 1.5, 1.5A or 1.5B of that table);
 - (ii) there must be reasonable grounds for believing that the entity will meet the relevant conditions referred to in the column headed “Special conditions” of whichever of items 1.1, 1.5, 1.5A or 1.5B of the table in section 50-5 covers the entity; or
 - (c) if the entity is covered by item 4.1 of the table in section 50-20 and has not made any distributions—there must be reasonable grounds for believing that the entity will satisfy section 50-72.
- (6) To avoid doubt, the condition set out in section 50-52 (requiring the entity to be endorsed under this Subdivision) is not a relevant condition for the purposes of subsection (5).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 51—Exempt amounts

Table of sections

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51-32	Compensation payments for loss of deployment allowance for warlike service
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51-1 Amounts of ordinary income and statutory income that are exempt

The amounts of *ordinary income and *statutory income covered by the following tables are exempt from income tax. In some cases, the exemption is subject to exceptions or special conditions, or both.

Note 1: Ordinary and statutory income that is exempt from income tax is called exempt income: see section 6-20. The note to subsection 6-15(2) describes some of the other consequences of it being exempt income.

Note 2: Even if an exempt payment is made to you, the Commissioner can still require you to lodge an income tax return or information under section 161 of the *Income Tax Assessment Act 1936*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

51-5 Defence

Defence			
Item	If you are:	... the following amounts are exempt from income tax:	... subject to these exceptions and special conditions:
1.1	a member of the Defence Force	(a) payments of allowances or bounty of a kind prescribed in the regulations; and (b) the * market value of rations and quarters supplied to you without charge	none
1.1A	a member of the Defence Force	compensation payments for loss of deployment allowance for warlike service	see section 51-32
1.2	a recipient of a payment in respect of a member of the Defence Force	payments of allowances or bounty of a kind prescribed in the regulations	none
1.4	a member of: (a) the Naval Reserve; or (b) the Army Reserve; or (c) the Air Force Reserve	pay and allowances as a member	except pay and allowances for continuous full time service
1.5	a former member of: (a) the Naval Reserve; or (b) the Army Reserve; or (c) the Air Force Reserve	compensation payments for loss of pay and/or allowances as a member	see section 51-33

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 51-10

Defence			
Item	If you are:	... the following amounts are exempt from income tax:	... subject to these exceptions and special conditions:
1.6	a recipient of an ex-gratia payment from the Commonwealth known as the F-111 Deseal/Reseal Ex-gratia Lump Sum Payment	the ex-gratia payment	none

51-10 Education and training

Education and training			
Item	If you are:	... the following amounts are exempt from income tax:	... subject to these exceptions and special conditions:
2.1A	a full-time student at a school, college or university	a scholarship, bursary, educational allowance or educational assistance	see section 51-35
2.1B	(a) a student; or (b) a recipient of a payment in respect of a student	a payment under a Commonwealth scheme for assistance of: (a) secondary education; or (b) the education of isolated children	see section 51-40
2.1	a recipient of a grant made by the Australian-American Educational Foundation	the grant	the grant is from funds made available to the Foundation under the agreement establishing it

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Education and training			
Item	If you are:	... the following amounts are exempt from income tax:	... subject to these exceptions and special conditions:
2.2	an employer	payments under the CRAFT Scheme (the Commonwealth Rebate for Apprentice Full-Time Training Scheme)	each payment is for an apprentice who most recently started work with you before 1 January 1998
2.3	a recipient of a scholarship known as a Commonwealth Trade Learning Scholarship	the scholarship	none
2.4	a recipient of a payment known as the Apprenticeship Wage Top-Up	the payment	none
2.5	a recipient of: (a) a research fellowship under the Endeavour Awards; or (b) an Endeavour Executive Award	the fellowship or award	none
2.6	a recipient of a bonus for early completion of an apprenticeship	so much of the bonus as does not exceed \$1,000	see section 51-42
2.7	a recipient of a payment under the program known as Skills for Sustainability for Australian Apprentices	the payment	none

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 51-30

Education and training			
Item	If you are:	... the following amounts are exempt from income tax:	... subject to these exceptions and special conditions:
2.8	a recipient of a payment under the program known as Tools for Your Trade (within the program known as the Australian Apprenticeships Incentives Program)	the payment	none
2.9	a recipient of a *HECS-HELP benefit	the benefit	none

51-30 Welfare

Welfare			
Item	If you are:	... the following amounts are exempt from income tax:	... subject to these exceptions and special conditions:
5.1	an individual in receipt of periodic payments in the nature of maintenance	the payments	see section 51-50

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Welfare

Item	If you are:	... the following amounts are exempt from income tax:	... subject to these exceptions and special conditions:
5.1A	an individual in receipt of an ex-gratia payment from the Commonwealth known as Disaster Income Recovery Subsidy for: (a) the floods that occurred in Australia during the period starting on 29 November 2010; or (b) Cyclone Yasi	the payment	the payment must be claimed: (a) after 9 January 2011; and (b) before 1 March 2011
5.1B	an individual in receipt of an ex-gratia payment from the Commonwealth known as assistance for New Zealand non-protected special category visa holders for a disaster that occurred in Australia during the 2010-11 *financial year	the payment	the payment must be claimed: (a) after 30 January 2011; and (b) before 1 August 2011

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2 Liability rules of general application**Part 2-15** Non-assessable income**Division 51** Exempt amounts

Section 51-30

Welfare

Item	If you are:	... the following amounts are exempt from income tax:	... subject to these exceptions and special conditions:
5.1C	an individual in receipt of an ex-gratia payment from the Commonwealth known as assistance for New Zealand non-protected special category visa holders for the floods that occurred in New South Wales and Queensland in January, February and March 2012	the payment	the payment must be claimed: (a) after 5 February 2012; and (b) before 7 August 2012
5.5	an individual in receipt of an ex-gratia thalidomide payment from the Commonwealth	the payment	none
5.6	an individual in receipt of a payment from the Thalidomide Australia Fixed Trust	the payment	the payment must be: (a) made to you, or applied for your benefit, as a beneficiary of the Trust; or (b) made to you in respect of a beneficiary of the Trust

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

51-32 Compensation payments for loss of tax exempt payments

- (1) A compensation payment for the loss of pay or an allowance for your warlike service is exempt from income tax if:
 - (a) the compensation payment is made under the *Safety, Rehabilitation and Compensation Act 1988* in respect of an injury (as defined in that Act) you suffered; and
 - (b) you suffered your injury while covered by a certificate in force under paragraph 23AD(1)(a) of the *Income Tax Assessment Act 1936*; and
 - (c) your injury or disease caused the loss of your pay or allowance; and
 - (d) your pay or allowance was payable under the *Defence Act 1903* or under a determination under that Act.
- (2) A compensation payment for the loss of pay or an allowance for your warlike service is exempt from income tax if:
 - (a) the compensation payment is made under the *Military Rehabilitation and Compensation Act 2004* in respect of a service injury or disease (as defined in that Act); and
 - (b) you sustained your service injury or contracted your service disease, or your service injury or disease was aggravated or materially contributed to, while covered by a certificate in force under paragraph 23AD(1)(a) of the *Income Tax Assessment Act 1936*; and
 - (c) your injury or disease caused the loss of your pay or allowance; and
 - (d) your pay or allowance was payable under the *Defence Act 1903* or under a determination under that Act.
- (3) Subsections (4) and (5) apply to:
 - (a) a deployment allowance; or
 - (b) some other allowance that is exempt from income tax specified in writing by the *Defence Minister for the purposes of this subsection;that is payable under a determination under the *Defence Act 1903* for your non-warlike service.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 51-33

- (4) A compensation payment for the loss of the allowance is exempt from income tax if:
 - (a) the compensation payment is made under the *Safety, Rehabilitation and Compensation Act 1988* in respect of an injury (as defined in that Act) you suffered; and
 - (b) your injury caused the loss of your allowance.
- (5) A compensation payment for the loss of the allowance is exempt from income tax if:
 - (a) the compensation payment is made under the *Military Rehabilitation and Compensation Act 2004* in respect of a service injury or disease (as defined in that Act); and
 - (b) your injury or disease caused the loss of your allowance.

51-33 Compensation payments for loss of pay and/or allowances as a Defence reservist

- (1) A compensation payment for the loss of your pay or an allowance is exempt from income tax if:
 - (a) the compensation payment is made under the *Safety, Rehabilitation and Compensation Act 1988* in respect of an injury (as defined in that Act) you suffered; and
 - (b) you suffered your injury while serving as a member of the Naval Reserve, Army Reserve or Air Force Reserve (but not while on continuous full time service); and
 - (c) your pay or allowance was payable for service of a kind described in paragraph (b).
- (2) A compensation payment for the loss of your pay or an allowance is exempt from income tax if:
 - (a) the compensation payment is made under the *Military Rehabilitation and Compensation Act 2004* in respect of a service injury or disease (as defined in that Act); and
 - (b) you sustained your service injury or contracted your service disease, or your service injury or disease was aggravated or materially contributed to, while serving as a member of the Naval Reserve, Army Reserve or Air Force Reserve; and
 - (c) your pay or allowance was payable for service of a kind described in paragraph (b); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) the compensation payment is worked out by reference to your normal earnings (as defined in that Act) as a part-time Reservist (as defined in that Act).

51-35 Payments to a full-time student at a school, college or university

The following payments made to or on behalf of a full-time student at a school, college or university are *not* exempt from income tax under item 2.1A of the table in section 51-10:

- (a) a payment by the Commonwealth for assistance for secondary education or in connection with education of isolated children;
- (b) a *Commonwealth education or training payment;
- (c) a payment by an entity or authority on the condition that the student will (or will if required) become, or continue to be, an employee of the entity or authority;
- (d) a payment by an entity or authority on the condition that the student will (or will if required) enter into, or continue to be a party to, a contract with the entity or authority that is wholly or principally for the labour of the student;
- (e) a payment under a scholarship where the scholarship is not provided principally for educational purposes;
- (f) an education entry payment under Part 2.13A of the *Social Security Act 1991*.

Note: The whole or part of a Commonwealth education or training payment may be exempt under Subdivision 52-E or 52-F.

51-40 Payments to a secondary student

The following payments made to or on behalf of a student are *not* exempt from income tax under item 2.1B of the table in section 51-10:

- (a) a *Commonwealth education or training payment;
- (b) an education entry payment under Part 2.13A of the *Social Security Act 1991*.

Note: The whole or part of a Commonwealth education or training payment may be exempt under Subdivision 52-E or 52-F.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

51-42 Bonuses for early completion of an apprenticeship

- (1) The bonus must be provided under a scheme provided by a State or Territory, and the scheme must be specified in the regulations for the purposes of this section.
- (2) The apprenticeship:
 - (a) must be for an occupation of a kind specified in the regulations; and
 - (b) must be completed within a time frame specified in the regulations for apprenticeships of that kind.

51-43 Income collected or derived by copyright collecting society

- (1) This section applies to a *copyright collecting society if Division 6 of Part III of the *Income Tax Assessment Act 1936* applies to the income of the society.
- (2) The following are exempt from income tax:
 - (a) *royalties, and interest on royalties, collected or *derived by the society in an income year;
 - (b) any other amounts, relating to copyright, that are:
 - (i) derived by the society in an income year; and
 - (ii) prescribed by the regulations for the purposes of this paragraph;
 - (c) other *ordinary income and *statutory income derived by the society in an income year, to the extent that it does not exceed the lesser of:
 - (i) 5% of the total amount of the *ordinary income and *statutory income collected and derived by the society in the income year; and
 - (ii) \$5 million or such other amount as is prescribed by the regulations for the purposes of this subparagraph.

51-45 Income collected or derived by resale royalty collecting society

- (1) This section applies to the *resale royalty collecting society if Division 6 of Part III of the *Income Tax Assessment Act 1936* applies to the income of the society.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The following are exempt from income tax:
- (a) *resale royalties, and interest on resale royalties, collected or *derived by the society in an income year;
 - (b) any other amounts, relating to *resale royalty rights, that are:
 - (i) derived by the society in an income year; and
 - (ii) prescribed by the regulations for the purposes of this paragraph;
 - (c) other *ordinary income and *statutory income derived by the society in an income year, to the extent that it does not exceed the lesser of:
 - (i) 5% of the total amount of the ordinary income and statutory income collected and derived by the society in the income year; and
 - (ii) \$5 million or such other amount as is prescribed by the regulations for the purposes of this subparagraph.

51-50 Maintenance payments to a spouse or child

- (1) This section sets out the conditions on which a periodic payment, in the nature of maintenance, that:
- (a) is made by an individual (the ***maintenance payer***); or
 - (b) is attributable to a payment made by an individual (also the ***maintenance payer***);
- is exempt from income tax under item 5.1 of the table in section 51-30.
- (2) The maintenance payment is exempt from income tax only if it is made:
- (a) to an individual who is or has been the maintenance payer's *spouse; or
 - (b) to or for the benefit of an individual who is or has been:
 - (i) a *child of the maintenance payer; or
 - (ii) a child who is or has been a child of an individual who is or has been a *spouse of the maintenance payer.
- (3) The maintenance payment is *not* exempt if, in order to make it or a payment to which it is attributable, the maintenance payer:
- (a) divested any income-producing assets; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) diverted *ordinary income or *statutory income upon which the maintenance payer would otherwise have been liable to income tax.

51-52 Income derived from eligible venture capital investments by ESVCLPs

General

- (1) An entity's share of income derived from an *eligible venture capital investment is exempt from income tax if:
 - (a) the entity is a partner in a *limited partnership; and
 - (b) the partnership made the investment; and
 - (c) the investment meets all of the *additional investment requirements for ESVCLPs for the investment; and
 - (d) when the partnership made the investment, the partnership was an *early stage venture capital limited partnership that was *unconditionally registered; and
 - (e) when the income was derived, the partnership:
 - (i) owned the investment; and
 - (ii) was an early stage venture capital limited partnership that was unconditionally registered.

Partners in AFOFs

- (2) An entity's share of income derived from an *eligible venture capital investment is exempt from income tax if:
 - (a) the entity is a partner in an *AFOF; and
 - (b) the AFOF is a partner in a partnership that made the investment; and
 - (c) when the partnership made the investment, the partnership was an *early stage venture capital limited partnership that was *unconditionally registered; and
 - (d) the investment meets all of the *additional investment requirements for ESVCLPs for the investment; and
 - (e) when the income was derived, the partnership:
 - (i) owned the investment; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) was an early stage venture capital limited partnership that was unconditionally registered.

Residency requirements for general partners

- (3) However, if the entity is a *general partner in the partnership, this section does not apply to the entity unless the entity is:
 - (a) an Australian resident; or
 - (b) a resident of a foreign country in respect of which a double tax agreement (as defined in Part X of the *Income Tax Assessment Act 1936*) is in force that is an agreement of a kind referred to in subparagraph (b)(i), (ia), (ii), (iii), (iv) or (v) of that definition.
- (4) For the purposes of this section, the place of residence of a *general partner in a *limited partnership:
 - (a) that is a company or limited partnership; and
 - (b) that is not an Australian resident;is the place in which the general partner has its central management and control.

Beneficiaries' shares of capital gains made by unit trusts

- (5) For the purposes of this section, an entity's share of income derived from an *eligible venture capital investment that is an investment in a unit trust includes any present entitlement of the entity, as a beneficiary, to a share of an amount included in the assessable income of the unit trust under section 102-5.

Carried interests

- (6) This section does not apply to an entity's share of income derived from an *eligible venture capital investment to the extent that the income is a payment of a *carried interest of a *general partner in an *ESVCLP or an *AFOF.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

51-54 Gain or profit from disposal of eligible venture capital investments

Partners in VCLPs and ESVCLPs

- (1) An entity's share of any gain or profit made from the disposal or other realisation of an *eligible venture capital investment is exempt from income tax if:
 - (a) it is made by a *VCLP, or an *ESVCLP, that is *unconditionally registered; and
 - (b) were that disposal or other realisation to be a *disposal of a *CGT asset, the entity's share of any *capital gain or *capital loss would be disregarded under section 118-405 or 118-407.

Partners in AFOFs

- (2) An entity's share of any gain or profit made from the disposal or other realisation of an *eligible venture capital investment is exempt from income tax if:
 - (a) it is made by:
 - (i) an *AFOF that is *unconditionally registered; or
 - (ii) a *VCLP, or an *ESVCLP, that is unconditionally registered and in which an AFOF that is *unconditionally registered is a partner; and
 - (b) were that disposal or other realisation to be a *disposal of a *CGT asset, the entity's share of any *capital gain or *capital loss would be disregarded under section 118-410.

Eligible venture capital investors

- (3) Any gain or profit made from the disposal or other realisation of an *eligible venture capital investment is exempt from income tax if:
 - (a) you are an *eligible venture capital investor; and
 - (b) were that disposal or other realisation to be a *disposal of a *CGT asset, any *capital gain or *capital loss would be disregarded under section 118-415.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

51-55 Gain or profit from disposal of venture capital equity

Any gain or profit made from the disposal or other realisation of *venture capital equity in a *resident investment vehicle is exempt from income tax if:

- (a) it is made by a *venture capital entity or a *limited partnership referred to in subsection 118-515(2); and
- (b) if that disposal or other realisation were a *disposal of a *CGT asset, any *capital gain or *capital loss would be disregarded under Subdivision 118-G.

51-57 Interest on judgment debt relating to personal injury

- (1) An amount paid by way of interest on a judgment debt, whether payable under an *Australian law, or otherwise, is exempt from income tax if:
 - (a) the judgment debt arose from a judgment (the ***original judgment***) given by, or entered in, a court for an award of damages for personal injury; and
 - (b) the amount is in respect of the whole or any part of the period:
 - (i) beginning at the time of the original judgment, or, if the judgment debt is taken to have arisen at an earlier time, at that earlier time; and
 - (ii) ending when the original judgment is finalised.
- (2) For the purposes of subsection (1), an original judgment is ***finalised*** at whichever of the following times is applicable:
 - (a) if the period for lodging an appeal against either the original judgment or a subsequent related judgment ends without an appeal being lodged—the end of the period;
 - (b) if an appeal from either the original judgment or a subsequent related judgment is lodged and final judgment on the appeal is given by, or entered in, a court—when the final judgment takes effect;
 - (c) if an appeal from either the original judgment or a subsequent related judgment is lodged but is settled or discontinued—when the settlement or discontinuance takes effect.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) For the purposes of paragraph (2)(b), a judgment is a ***final judgment*** if:
- (a) no appeal lies against the judgment; or
 - (b) leave to appeal against the judgment has been refused.

51-60 Prime Minister's Prizes

- (1) To the extent that the Prime Minister's Prize for Australian History would otherwise be assessable income, it is exempt from income tax.
- (2) To the extent that the Prime Minister's Prize for Science would otherwise be assessable income, it is exempt from income tax.
- (3) To the extent that a Prime Minister's Literary Award would otherwise be assessable income, it is exempt from income tax.

51-100 Shipping

- (1) An entity's **ordinary income* **derived* during an income year (the ***present year***), or **statutory income* for the present year, is exempt from income tax to the extent that it is from **shipping activities* that:
- (a) relate to a vessel for which the entity has a **shipping exempt income certificate* for the present year; and
 - (b) take place on a day (a ***certified day***) to which the certificate applies.

Note: For the days to which the certificate applies, see subsection 8(5) of the *Shipping Reform (Tax Incentives) Act 2012*.

- (2) Subsection (1) does not apply to **ordinary income* **derived* from, or **statutory income* from, **incidental shipping activities* relating to the vessel if:

Total incidental shipping income > 0.25% of total core shipping income
where:

total core shipping income means the sum of the entity's:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) *ordinary income *derived from *core shipping activities relating to the vessel on the certified days (see paragraph (1)(b)); and
- (b) *statutory income from those activities on those days.

total incidental shipping income means the sum of the entity's:

- (a) *ordinary income *derived from *incidental shipping activities relating to the vessel on the certified days (see paragraph (1)(b)); and
- (b) *statutory income from those activities on those days.

51-105 Shipping activities

Shipping activities are *core shipping activities or *incidental shipping activities.

51-110 Core shipping activities

- (1) **Core shipping activities** are activities directly involved in operating a vessel to carry *shipping cargo or *shipping passengers for consideration.
- (2) Without limiting subsection (1), **core shipping activities** include the following:
 - (a) carrying the *shipping cargo or *shipping passengers on the vessel;
 - (b) crewing the vessel;
 - (c) carrying goods on board for the operation of the vessel (including for the enjoyment of shipping passengers);
 - (d) providing the containers that carry shipping cargo on the vessel;
 - (e) loading shipping cargo onto, and unloading it from, the vessel;
 - (f) repacking shipping cargo to be carried on the vessel;
 - (g) providing temporary storage for shipping cargo just before or after its carriage on the vessel;
 - (h) providing space on board the vessel for carrying shipping cargo or shipping passengers;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) activities generating onboard income from shipping passengers of the vessel;
 - (j) providing shore excursions to shipping passengers of the vessel;
 - (k) transporting shipping cargo, or shipping passengers, between the vessel and the shore;
 - (l) providing administration and insurance services that are directly related to carrying shipping cargo or shipping passengers on the vessel;
 - (m) onboard selling of tickets on behalf of other entities to shipping passengers of the vessel;
 - (n) onboard advertising to shipping passengers of the vessel;
 - (o) providing quay-side services to shipping passengers that:
 - (i) are similar to those provided on the vessel; and
 - (ii) are provided from a floor area that does not exceed that from which similar services are provided on the vessel;
 - (p) providing car parking to individuals while they are shipping passengers on the vessel;
 - (q) making contracts solely to reduce the risk of financial loss from currency exchange rate fluctuations that directly relate to the operation of the vessel;
 - (r) an activity specified in regulations made for the purposes of this paragraph.
- (3) Despite subsections (1) and (2), **core shipping activities** do not include an activity specified in regulations made for the purposes of this subsection.

51-115 Incidental shipping activities

Incidental shipping activities are activities incidental to *core shipping activities.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 52—Certain pensions, benefits and allowances are exempt from income tax

Guide to Division 52

52-1 What this Division is about

Certain payments made under various Acts are wholly or partly exempt from income tax. This Division tells you if a payment is exempt and how much is exempt.

Table of Subdivisions

52-A	Exempt payments under the Social Security Act 1991
52-B	Exempt payments under the Veterans' Entitlements Act 1986
52-C	Exempt payments made because of the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986
52-CA	Exempt payments under the Military Rehabilitation and Compensation Act 2004
52-CB	Exempt payments under the Australian Participants in British Nuclear Tests (Treatment) Act 2006
52-D	Exempt payments made by the Commonwealth to reimburse certain expenditure
52-E	Exempt payments under the ABSTUDY scheme
52-F	Exemption of Commonwealth education or training payments
52-G	Exempt payments under the A New Tax System (Family Assistance) (Administration) Act 1999
52-H	Other exempt payments

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 52-A—Exempt payments under the Social Security Act 1991

Guide to Subdivision 52-A

52-5 What this Subdivision is about

This Subdivision tells you:

- (a) the payments under the *Social Security Act 1991* that are wholly or partly exempt from income tax; and
- (b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and
- (c) how to work out how much of a payment is exempt.

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52-10	How much of a social security payment is exempt?
52-15	Supplementary amounts of payments
52-20	Tax-free amount of an ordinary payment after the death of your partner
52-25	Tax-free amount of certain bereavement lump sum payments
52-30	Tax-free amount of certain other bereavement lump sum payments
52-35	Tax-free amount of a lump sum payment made because of the death of a person you are caring for
52-40	Provisions of the <i>Social Security Act 1991</i> under which payments are made

Operative provisions

52-10 How much of a social security payment is exempt?

- (1) The table in this section tells you about the income tax treatment of social security payments, other than payments of:
 - (a) pension bonus and pension bonus bereavement payment; or
 - (aa) child disability assistance; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ab) carer supplement; or
- (ba) 2006 one-off payment to older Australians; or
- (baa) 2007 one-off payment to older Australians; or
- (bab) 2008 one-off payment to older Australians; or
- (bb) payments under a scheme referred to in subsection (1CB); or
- (c) one-off payment to carers (carer payment related); or
- (d) one-off payment to carers (carer allowance related); or
- (e) 2005 one-off payment to carers (carer payment related); or
- (f) 2005 one-off payment to carers (carer service pension related); or
- (g) 2005 one-off payment to carers (carer allowance related); or
- (h) 2006 one-off payment to carers (carer payment related); or
- (i) 2006 one-off payment to carers (wife pension related); or
- (j) 2006 one-off payment to carers (partner service pension related); or
- (k) 2006 one-off payment to carers (carer service pension related); or
- (l) 2006 one-off payment to carers (carer allowance related); or
- (m) 2007 one-off payment to carers (carer payment related); or
- (n) 2007 one-off payment to carers (wife pension related); or
- (o) 2007 one-off payment to carers (partner service pension related); or
- (p) 2007 one-off payment to carers (carer service pension related); or
- (q) 2007 one-off payment to carers (carer allowance related); or
- (r) 2008 one-off payment to carers (carer payment related); or
- (s) 2008 one-off payment to carers (wife pension related); or
- (t) 2008 one-off payment to carers (partner service pension related); or
- (u) 2008 one-off payment to carers (carer service pension related); or
- (v) 2008 one-off payment to carers (carer allowance related); or
- (w) payments under a scheme referred to in subsection (1E); or
- (wa) payments under the *Social Security Act 1991* referred to in subsection (1EA); or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (x) economic security strategy payment under the *Social Security Act 1991*; or
- (y) training and learning bonus under the *Social Security Act 1991*; or
- (z) farmers hardship bonus under the *Social Security Act 1991*; or
- (za) education entry payment supplement under the *Social Security Act 1991*; or
- (zb) clean energy payments under the *Social Security Act 1991*.

Note: Section 52-40 sets out the provisions of the *Social Security Act 1991* under which the payments are made.

- (1A) Payments of pension bonus and pension bonus bereavement payment under Part 2.2A of the *Social Security Act 1991* are exempt from income tax.
- (1AA) Child disability assistance under Part 2.19AA of the *Social Security Act 1991* is exempt from income tax.
- (1AB) Carer supplement under Part 2.19B of the *Social Security Act 1991* is exempt from income tax.
- (1CA) The following payments under the *Social Security Act 1991* are exempt from income tax:
 - (a) 2006 one-off payment to older Australians (see Division 2 of Part 2.2B of that Act);
 - (b) 2007 one-off payment to older Australians (see Division 3 of Part 2.2B of that Act);
 - (c) 2008 one-off payment to older Australians (see Division 4 of Part 2.2B of that Act).
- (1CB) Payments to older Australians under the following schemes are exempt from income tax:
 - (a) a scheme determined under item 1 of Schedule 2 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Act 2006*;
 - (b) a scheme determined under item 1 of Schedule 2 to the *Social Security and Veterans' Affairs Legislation Amendment*

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(One-off Payments and Other 2007 Budget Measures) Act 2007;

- (c) a scheme determined under item 1 of Schedule 2 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008*.

(1D) The following payments under the *Social Security Act 1991* are exempt from income tax:

- (a) one-off payment to carers (carer payment related) (see Division 1 of Part 2.5A of that Act);
- (b) one-off payment to carers (carer allowance related) (see Division 1 of Part 2.19A of that Act);
- (c) 2005 one-off payment to carers (carer payment related) (see Division 2 of Part 2.5A of that Act);
- (d) 2005 one-off payment to carers (carer service pension related) (see Division 3 of Part 2.5A of that Act);
- (e) 2005 one-off payment to carers (carer allowance related) (see Division 2 of Part 2.19A of that Act);
- (f) 2006 one-off payment to carers (carer payment related) (see Division 4 of Part 2.5A of that Act);
- (g) 2006 one-off payment to carers (wife pension related) (see Division 5 of Part 2.5A of that Act);
- (h) 2006 one-off payment to carers (partner service pension related) (see Division 6 of Part 2.5A of that Act);
- (i) 2006 one-off payment to carers (carer service pension related) (see Division 7 of Part 2.5A of that Act); or
- (j) 2006 one-off payment to carers (carer allowance related) (see Division 3 of Part 2.19A of that Act);
- (k) 2007 one-off payment to carers (carer payment related) (see Division 8 of Part 2.5A of that Act);
- (l) 2007 one-off payment to carers (wife pension related) (see Division 9 of Part 2.5A of that Act);
- (m) 2007 one-off payment to carers (partner service pension related) (see Division 10 of Part 2.5A of that Act);
- (n) 2007 one-off payment to carers (carer service pension related) (see Division 11 of Part 2.5A of that Act);

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

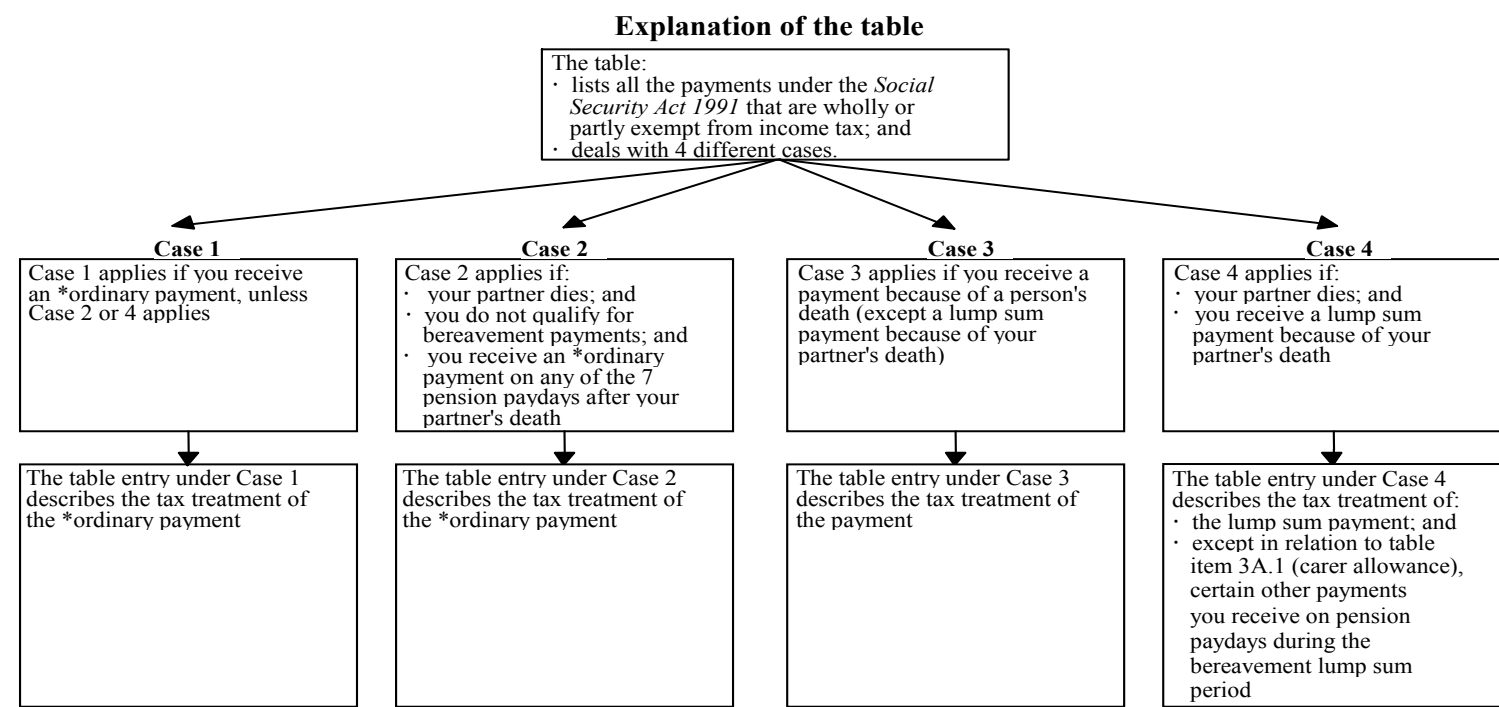
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- (o) 2007 one-off payment to carers (carer allowance related) (see Division 4 of Part 2.19A of that Act);
 - (p) 2008 one-off payment to carers (carer payment related) (see Division 12 of Part 2.5A of that Act);
 - (q) 2008 one-off payment to carers (wife pension related) (see Division 13 of Part 2.5A of that Act);
 - (r) 2008 one-off payment to carers (partner service pension related) (see Division 14 of Part 2.5A of that Act);
 - (s) 2008 one-off payment to carers (carer service pension related) (see Division 15 of Part 2.5A of that Act);
 - (t) 2008 one-off payment to carers (carer allowance related) (see Division 5 of Part 2.19A of that Act).
- (1E) Payments to carers under the following schemes are exempt from income tax:
- (a) a scheme determined under Schedule 3 to the *Family Assistance Legislation Amendment (More Help for Families—One-off Payments) Act 2004*;
 - (b) a scheme determined under Schedule 2 to the *Social Security Legislation Amendment (One-off Payments for Carers) Act 2005*;
 - (c) a scheme determined under Schedule 4 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Act 2006*;
 - (d) a scheme determined under Schedule 4 to the *Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Act 2007*;
 - (e) a scheme determined under Schedule 4 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008*.
- (1EA) The following payments under the *Social Security Act 1991* are exempt from income tax:
- (a) voluntary income management incentive payment (see Part 2.25D of that Act);
 - (b) matched savings scheme (income management) payment (see Part 2.25E of that Act).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (1F) Economic security strategy payment under the *Social Security Act 1991* is exempt from income tax.
- (1G) Training and learning bonus under the *Social Security Act 1991* is exempt from income tax.
- (1H) Farmers hardship bonus under the *Social Security Act 1991* is exempt from income tax.
- (1J) Education entry payment supplement under the *Social Security Act 1991* is exempt from income tax.
- (1L) Clean energy payments under the *Social Security Act 1991* are exempt from income tax.
- (2) Expressions used in this Subdivision that are also used in the *Social Security Act 1991* have the same meaning as in that Act.
- (3) ***Ordinary payment*** means a payment other than a payment made because of a person's death.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Income tax treatment of social security payments					
Item	Payment	Case 1	Case 2	Case 3	Case 4
1.1	Advance pharmaceutical supplement	Exempt	Exempt	Not applicable	Not applicable
2.1	Age pension	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-25)
2AA.1	Australian Government Disaster Recovery Payment	Exempt	Exempt	Not applicable	Not applicable
2A.1	Austudy payment	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-30)
3.1	Bereavement allowance	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt	Not applicable
3A.1	Carer allowance	Exempt	Exempt	Exempt	Exempt

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2 Liability rules of general application

Part 2-15 Non-assessable income

Division 52 Certain pensions, benefits and allowances are exempt from income tax

Section 52-10

Income tax treatment of social security payments					
Item	Payment	Case 1	Case 2	Case 3	Case 4
4.1	Carer payment: you are pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt, but if it is made under section 236A of the <i>Social Security Act 1991</i> , exempt only up to the tax-free amount (see section 52-35)	Exempt up to the tax-free amount if it is made under section 239 of the <i>Social Security Act 1991</i> (see section 52-25)
4.2	Carer payment: the care receiver or any of the care receivers is pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt, but if it is made under section 236A of the <i>Social Security Act 1991</i> , exempt only up to the tax-free amount (see section 52-35)	Exempt up to the tax-free amount if it is made under section 239 of the <i>Social Security Act 1991</i> (see section 52-25)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Income tax treatment of social security payments					
Item	Payment	Case 1	Case 2	Case 3	Case 4
4.3	Carer payment: both you and the care receiver or all of the care receivers are under pension age	Exempt	Exempt	Exempt, but if it is made under section 236A of the <i>Social Security Act 1991</i> , exempt only up to the tax-free amount (see section 52-35)	Exempt up to the tax-free amount if it is made under section 239 of the <i>Social Security Act 1991</i> (see section 52-25)
4.4	Carer payment: you are under pension age and any of the care receivers has died	Exempt	Exempt	Exempt, but if it is made under section 236A of the <i>Social Security Act 1991</i> , exempt only up to the tax-free amount (see section 52-35)	Exempt up to the tax-free amount if it is made under section 239 of the <i>Social Security Act 1991</i> (see section 52-25)
5.1	Crisis payment	Exempt	Exempt	Not applicable	Not applicable
6.1	Disability support pension: you are pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-25)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Income tax treatment of social security payments					
Item	Payment	Case 1	Case 2	Case 3	Case 4
6.2	Disability support pension: you are under pension age	Exempt	Exempt	Exempt	Exempt up to the tax-free amount (see section 52-25)
9.1	Double orphan pension	Exempt	Exempt	Exempt	Not applicable
13A.1	Fares allowance	Exempt	Exempt	Not applicable	Not applicable
15.1	Mature age allowance (paid under Part 2.12A)	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-25)
16.1	Mature age allowance (paid under Part 2.12B)	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-30)
17.1	Mature age partner allowance	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt	Exempt up to the tax-free amount (see section 52-25)
18.1	Mobility allowance	Exempt	Exempt	Not applicable	Not applicable

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 52-10

Income tax treatment of social security payments					
Item	Payment	Case 1	Case 2	Case 3	Case 4
19.1	Newstart allowance	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-30)
21A.1	Parenting payment (benefit PP (partnered))	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt	Exempt up to the tax-free amount (see section 52-30)
21A.3	Parenting payment (pension PP (single))	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt	Not applicable
22.1	Partner allowance	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt	Exempt up to the tax-free amount (see section 52-30)
22A.1	Pensioner education supplement	Exempt	Exempt	Not applicable	Not applicable

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2 Liability rules of general application

Part 2-15 Non-assessable income

Division 52 Certain pensions, benefits and allowances are exempt from income tax

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Income tax treatment of social security payments					
Item	Payment	Case 1	Case 2	Case 3	Case 4
22B.1	Seniors supplement	Exempt	Exempt	Not applicable	Not applicable
22C.1	Quarterly pension supplement	Exempt	Exempt	Not applicable	Not applicable
23.1	Sickness allowance	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-30)
25.1	Special benefit	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-30)
26.1	Special needs age pension	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-25)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Income tax treatment of social security payments					
Item	Payment	Case 1	Case 2	Case 3	Case 4
27.1	Special needs disability support pension: you are pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-25)
27.2	Special needs disability support pension: you are under pension age	Exempt	Exempt	Exempt	Exempt up to the tax-free amount (see section 52-25)
29.1	Special needs widow B pension	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Not applicable	Not applicable
30.1	Special needs wife pension: you are pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-25)
30.2	Special needs wife pension: your partner is pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-25)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Income tax treatment of social security payments					
Item	Payment	Case 1	Case 2	Case 3	Case 4
30.3	Special needs wife pension: both you and your partner are under pension age	Exempt	Exempt	Exempt	Exempt up to the tax-free amount (see section 52-25)
30.4	Special needs wife pension: you are under pension age and your partner has died	Exempt	Exempt	Exempt	Exempt up to the tax-free amount (see section 52-25)
31.1	Telephone allowance	Exempt	Exempt	Not applicable	Not applicable
31A.1	Utilities allowance	Exempt	Exempt	Not applicable	Not applicable
32.1	Widow allowance	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Not applicable	Not applicable

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Income tax treatment of social security payments					
Item	Payment	Case 1	Case 2	Case 3	Case 4
33.1	Widow B pension	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt	Not applicable
34.1	Wife pension: you are pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt	Exempt up to the tax-free amount (see section 52-25)
34.2	Wife pension: your partner is pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt	Exempt up to the tax-free amount (see section 52-25)
34.3	Wife pension: both you and your partner are under pension age	Exempt	Exempt	Exempt	Exempt up to the tax-free amount (see section 52-25)
34.4	Wife pension: you are under pension age and your partner has died	Exempt	Exempt	Exempt	Exempt up to the tax-free amount (see section 52-25)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2 Liability rules of general application

Part 2-15 Non-assessable income

Division 52 Certain pensions, benefits and allowances are exempt from income tax

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Income tax treatment of social security payments					
Item	Payment	Case 1	Case 2	Case 3	Case 4
35.1	Youth allowance	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt	Exempt up to the tax-free amount (see section 52-30)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

52-15 Supplementary amounts of payments

You work out the *supplementary amount* of a social security payment using the following table:

Supplementary amount of a social security payment		
Item	For this category of social security payment:	the <i>supplementary amount</i> is the total of:
1	Age pension Bereavement allowance Carer payment Sickness allowance Special benefit Special needs age pension Special needs disability support pension Special needs widow B pension Special needs wife pension Widow B pension Wife pension	(a) so much of the payment as is included by way of rent assistance; and (b) so much of the payment as is included by way of remote area allowance; and (c) so much of the payment as is included by way of pharmaceutical allowance; and (d) so much of the payment as is included by way of tax-exempt pension supplement; and (e) so much of the payment as is included by way of clean energy supplement

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Supplementary amount of a social security payment

Item	For this category of social security payment:	the <i>supplementary amount</i> is the total of:
2	Disability support pension	(a) so much of the payment as is included by way of rent assistance; and (b) so much of the payment as is included by way of remote area allowance; and (c) so much of the payment as is included by way of pharmaceutical allowance; and (d) so much of the payment as is included by way of incentive allowance; and (e) so much of the payment as is included by way of language, literacy and numeracy supplement; and (f) so much of the payment as is included by way of tax-exempt pension supplement; and (g) so much of the payment as is included by way of clean energy supplement

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Supplementary amount of a social security payment

Item	For this category of social security payment:	the <i>supplementary amount</i> is the total of:
3	Newstart allowance Parenting payment (benefit (PP partnered)) Parenting payment (pension (PP single)) Partner allowance Widow allowance Youth allowance	(a) so much of the payment as is included by way of rent assistance; and (b) so much of the payment as is included by way of remote area allowance; and (c) so much of the payment as is included by way of pharmaceutical allowance; and (d) so much of the payment as is included by way of language, literacy and numeracy supplement; and (e) so much of the payment as is included by way of tax-exempt pension supplement; and (f) so much of the payment as is included by way of clean energy supplement
4	Austudy payment	(a) so much of the payment as is included by way of rent assistance; and (b) so much of the payment as is included by way of remote area allowance; and (c) so much of the payment as is included by way of pharmaceutical allowance; and (d) so much of the payment as is included by way of tax-exempt pension supplement; and (e) so much of the payment as is included by way of clean energy supplement

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

52-20 Tax-free amount of an ordinary payment after the death of your partner

- (1) You work out under this section the *tax-free amount of an *ordinary payment made under the *Social Security Act 1991* after the death of your partner if:
- (a) you do not qualify for payments under a *bereavement Subdivision; and
 - (b) the ordinary payment became due to you during the bereavement period.

Note: For the provisions of the *Social Security Act 1991* that tell you if you qualify for payments under a bereavement Subdivision: see subsection (3).

- (2) This is how to work out the **tax-free amount**:

Method statement

Step 1. Work out the *supplementary amount of the payment.

Note: The supplementary amount is also exempt and is worked out under section 52-15.

Step 2. Subtract the *supplementary amount from the amount of the payment.

Step 3. Work out what would have been the amount of the payment if your partner had not died.

Step 4. Work out what would have been the *supplementary amount of the payment if your partner had not died.

Step 5. Subtract the amount at Step 4 from the amount at Step 3.

Step 6. Subtract the amount at Step 5 from the amount at Step 2: the result is the **tax-free amount**.

- (3) This table sets out:
- (a) the Subdivisions of the *Social Security Act 1991* that are ***bereavement Subdivisions***; and
 - (b) the provision of that Act that tells you if you qualify for payments under the relevant bereavement Subdivision.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Bereavement Subdivisions		
Item	For this bereavement Subdivision:	This provision tells you if you qualify for payments under it:
1	Subdivision A of Division 9 of Part 2.2	paragraph 82(1)(e)
2	Subdivision A of Division 10 of Part 2.3	paragraph 146F(1)(e)
3	Subdivision B of Division 9 of Part 2.5	paragraph 237(1)(e)
5	Subdivision A of Division 10 of Part 2.9	paragraph 469(1)(e)
5A	Division 10 of Part 2.11	paragraph 567(1)(f)
5B	Division 10 of Part 2.11A	paragraph 592(1)(f)
6	Subdivision AA of Division 9 of Part 2.12	paragraph 660LA(1)(f)
7	Subdivision A of Division 11 of Part 2.12A	paragraph 660XKA(1)(e)
8	Subdivision C of Division 11 of Part 2.12B	paragraph 660YKC(1)(e)
9	Subdivision AA of Division 9 of Part 2.14	paragraph 728PA(1)(f)
10	Subdivision AA of Division 9 of Part 2.15	paragraph 768A(1)(f)
11	Subdivision A of Division 10 of Part 2.16	paragraph 822(1)(e)

52-25 Tax-free amount of certain bereavement lump sum payments

- (1) This section applies if a lump sum of any of these categories of social security payments becomes due to you because of your partner's death.

Category of social security payment
Age pension
Carer payment
Disability support pension
Mature age allowance (paid under Part 2.12A)
Mature age partner allowance
Special needs age pension
Special needs disability support pension
Special needs wife pension
Wife pension

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The total of the following are exempt up to the **tax-free amount*:
- (a) the lump sum payment;
 - (b) all other payments that become due to you under the *Social Security Act 1991* during the bereavement lump sum period.
- (3) This is how to work out the *tax-free amount*:

Method statement

- Step 1. Work out the payments under the *Social Security Act 1991* that would have become due to you during the bereavement lump sum period if:
- (a) your partner had not died; and
 - (b) your partner had been under pension age; and
 - (c) immediately before your partner died, you and your partner had been neither an illness separated couple nor a respite care couple.
- Step 2. Work out how much of those payments would have been exempt in those circumstances.
- Step 3. Work out the payments under the *Social Security Act 1991* or Part III of the *Veterans' Entitlements Act 1986* that would have become due to your partner during the bereavement lump sum period if:
- (a) your partner had not died; and
 - (b) immediately before your partner died, you and your partner were neither an illness separated couple nor a respite care couple;
- even if the payments would not have been exempt.
- Step 4. Total the payments worked out at Steps 2 and 3: the result is the *tax-free amount*.

Example: You are receiving a disability support pension of \$300 a fortnight and a pharmaceutical allowance of \$5 a fortnight. You are over pension age. Your partner is receiving a partner allowance of \$250 a fortnight and rent assistance of \$75 a fortnight.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Your partner dies. Seven instalments are due to you during the bereavement lump sum period. You work out the tax-free amount as follows:

- Step 1: The instalments that would have become due to you during the bereavement lump sum period are:
 $\$300 + \$5 = \$305$
The total for the period is \$2,135.
- Step 2: The exempt component of each instalment is \$5. The total for the 7 instalments is \$35.
- Step 3: The instalments that would have become due to your partner during the same period are:
 $\$250 + \$75 = \$325$
The total for the period is \$2,275.
- Step 4: The tax-free amount is:
 $\$35 + \$2,275 = \$2,310$

52-30 Tax-free amount of certain other bereavement lump sum payments

- (1) This section applies if a lump sum of any of these categories of social security payments becomes due to you because of your partner's death.

Category of social security payment
Austudy payment
Mature age allowance (paid under Part 2.12B)
Newstart allowance
Parenting payment (benefit PP (partnered))
Partner allowance
Sickness allowance
Special benefit
Youth allowance

- (2) The total of the following are exempt up to the *tax-free amount:
- (a) the lump sum payment;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 52-35

- (b) all other payments that become due to you under the *Social Security Act 1991* during the bereavement lump sum period.
- (3) This is how to work out the ***tax-free amount***:

Method statement

- Step 1. Work out the payments under the *Social Security Act 1991* that would have become due to you during the bereavement lump sum period if:
- (a) your partner had not died; and
 - (b) your partner had been under pension age; and
 - (c) immediately before your partner died, you and your partner had been neither an illness separated couple nor a respite care couple.
- Step 2. Work out how much of those payments would have been exempt in those circumstances.
- Step 3. Work out the payments under the *Social Security Act 1991* that would have become due to your partner during the bereavement lump sum period if your partner had not died, even if the payments would not have been exempt.
- Step 4. Total the payments worked out at Steps 2 and 3: the result is the ***tax-free amount***.

52-35 Tax-free amount of a lump sum payment made because of the death of a person you are caring for

- (1) This section applies if a lump sum payment becomes due to you under section 236A of the *Social Security Act 1991* because of the death of the care receiver or any of the care receivers.
- (2) The total of the following are exempt up to the ^{*}tax-free amount:
- (a) the lump sum payment;
 - (b) all other payments that become due to you under the *Social Security Act 1991* during the bereavement lump sum period.

^{*}To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(3) This is how to work out the *tax-free amount*:

Method statement

- Step 1. Work out the payments under the *Social Security Act 1991* that would have become due to you during the bereavement lump sum period if:
- (a) the care receiver had not died; and
 - (b) the care receiver had been under pension age.
- Step 2. Work out how much of those payments would have been exempt in those circumstances.
- Step 3. Work out the payments under the *Social Security Act 1991* that would have become due to the care receiver during the bereavement lump sum period if the care receiver had not died, even if the payments would not have been exempt.
- Step 4. Total the payments worked out at Steps 2 and 3: the result is the *tax-free amount*.

52-40 Provisions of the *Social Security Act 1991* under which payments are made

This table lists the provisions of the *Social Security Act 1991* under which social security payments are made that are wholly or partly exempt from income tax under this Subdivision.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Provisions under which social security payments are made				
Item	Category of social security payment	Ordinary payment	Payment made because of a person's death (unless covered by next column)	Lump sum payment made because of your partner's death
1	Advance pharmaceutical supplement	Part 2.23	Not applicable	Not applicable
2	Age pension	Part 2.2	Sections 83, 86 and 91	Section 84
2AA	Australian Government Disaster Recovery Payment	Part 2.24	Not applicable	Not applicable
2A	Austudy payment	Part 2.11A	Section 592A	Section 592B
3	Bereavement allowance	Part 2.7	Section 359	Not applicable
3A	Carer allowance	Part 2.19	Sections 992K and 992M	Not applicable
4	Carer payment	Part 2.5	Sections 236A, 238, 241 and 246	Section 239
4A	Clean energy payment	Part 2.18A	Not applicable	Not applicable
5	Crisis payment	Part 2.23A	Not applicable	Not applicable
6	Disability support pension	Part 2.3	Sections 146G, 146K and 146Q	Section 146H
9	Double orphan pension	Part 2.20	Sections 1034 and 1034A	Not applicable
13A	Fares allowance	Part 2.26	Not applicable	Not applicable
15	Mature age allowance (paid under Part 2.12A)	Part 2.12A	Sections 660XKB, 660XKE and 660XKG	Section 660XKC

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Provisions under which social security payments are made				
Item	Category of social security payment	Ordinary payment	Payment made because of a person's death (unless covered by next column)	Lump sum payment made because of your partner's death
16	Mature age allowance (paid under Part 2.12B)	Part 2.12B	Section 660YKD	Section 660YKE
17	Mature age partner allowance	Part 2.12A	Sections 660XKK and 660XKM	Section 660XKL
18	Mobility allowance	Part 2.21	Not applicable	Not applicable
19	Newstart allowance	Part 2.12	Section 660LB	Section 660LC
21A	Parenting payment (benefit PP (partnered))	Part 2.10	Sections 513A and 514B	Section 514C
21C	Parenting payment (pension PP (single))	Part 2.10	Section 513	Not applicable
22	Partner allowance	Part 2.15A	Section 771NW	Section 771NX
22A	Pensioner education supplement	Part 2.24A	Not applicable	Not applicable
22B	Seniors supplement	Part 2.25B	Not applicable	Not applicable
22C	Quarterly pension supplement	Part 2.25C	Not applicable	Not applicable
23	Sickness allowance	Part 2.14	Section 728PB	Section 728PC
25	Special benefit	Part 2.15	Section 768B	Section 768C

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Provisions under which social security payments are made				
Item	Category of social security payment	Ordinary payment	Payment made because of a person's death (unless covered by next column)	Lump sum payment made because of your partner's death
26	Special needs age pension	Section 77 2	Sections 823, 826 and 830	Section 824
27	Special needs disability support pension	Section 77 3	Sections 823, 826 and 830	Section 824
29	Special needs widow B pension	Section 77 8	Not applicable	Not applicable
30	Special needs wife pension	Section 77 4	Sections 823, 826 and 830	Section 824
31	Telephone allowance	Part 2.25	Not applicable	Not applicable
31A	Utilities allowance	Part 2.25A	Not applicable	Not applicable
32	Widow allowance	Part 2.8A	Not applicable	Not applicable
33	Widow B pension	Part 2.8	Section 407	Not applicable
34	Wife pension	Part 2.4	Sections 189 and 191	Section 190
35	Youth allowance	Part 2.11	Section 567A	Section 567B

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 52-B—Exempt payments under the Veterans’ Entitlements Act 1986

Guide to Subdivision 52-B

52-60 What this Subdivision is about

This Subdivision tells you:

- (a) the payments under the *Veterans’ Entitlements Act 1986* that are wholly or partly exempt from income tax; and
- (b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and
- (c) how to work out how much of a payment is exempt.

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Operative provisions

52-65 How much of a veterans’ affairs payment is exempt?

- (1) The table in this section tells you about the income tax treatment of veterans’ affairs payments, other than:
 - (a) payments of pension bonus, pension bonus bereavement payment, DFISA bonus or DFISA bonus bereavement payment; or
 - (b) clean energy payments; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ba) clean energy payments under the scheme prepared under Part VII (about educating veterans' children) of the *Veterans' Entitlements Act 1986*; or
- (d) economic security strategy payment under the *Veterans' Entitlements Act 1986*; or
- (da) ETR payments under the *Veterans' Entitlements Act 1986*; or
- (e) a prisoner of war recognition supplement under Part VIB of the *Veterans' Entitlements Act 1986*.

Note: Section 52-75 sets out the provisions of the *Veterans' Entitlements Act 1986* under which the payments are made.

- (1A) The following payments under the *Veterans' Entitlements Act 1986* are exempt from income tax:
 - (a) pension bonus and pension bonus bereavement payment under Part IIIAB;
 - (b) DFISA bonus and DFISA bonus bereavement payment under Part VIIAB.
 - (1D) Economic security strategy payment under the *Veterans' Entitlements Act 1986* is exempt from income tax.
 - (1E) A lump sum payment under section 198N of the *Veterans' Entitlements Act 1986* is exempt from income tax.
 - (1F) A prisoner of war recognition supplement under Part VIB of the *Veterans' Entitlements Act 1986* is exempt from income tax.
 - (1G) The following are exempt from income tax:
 - (a) clean energy payments under the *Veterans' Entitlements Act 1986*;
 - (b) clean energy payments under the scheme prepared under Part VII (about educating veterans' children) of that Act.
- Note: The supplementary amount of each other payment under the scheme mentioned in paragraph (b) is also exempt from income tax (see section 52-140).
- (1H) ETR payments under Part VIIH of the *Veterans' Entitlements Act 1986* are exempt from income tax.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) Expressions (except “pension age”) used in this Subdivision that are also used in the *Veterans’ Entitlements Act 1986* have the same meaning as in that Act.
- (3) **Pension age** has the meaning given by subsection 23(1) of the *Social Security Act 1991*.
- (4) **Ordinary payment** means a payment other than a payment made because of a person’s death.

Income tax treatment of veterans’ affairs payments			
Item	Category of veterans’ affairs payment	Ordinary payment	Payment made because of a person’s death
1.1	Age service pension	Supplementary amount is exempt (see section 52-70)	Exempt
2.1	Attendant allowance	Exempt	Not applicable
3.1	Carer service pension: unless covered by item 3.2 or 3.3	Supplementary amount is exempt (see section 52-70)	Exempt
3.2	Carer service pension: both you and your partner are under pension age and your partner is receiving an invalidity service pension	Exempt	Exempt
3.3	Carer service pension: you are under pension age, your partner has died and was receiving an invalidity service pension at death	Exempt	Exempt
4.1	Clothing allowance	Exempt	Not applicable

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Income tax treatment of veterans' affairs payments			
Item	Category of veterans' affairs payment	Ordinary payment	Payment made because of a person's death
5.1	Decoration allowance	Exempt	Not applicable
5A.1	Defence Force Income Support Allowance: the whole of the social security pension, or the whole of the social security benefit, that is also payable to you on the day this allowance is payable to you is exempt from income tax under section 52-10	Exempt	Not applicable
6.1	Income support supplement: unless covered by item 6.2, 6.3, 6.4 or 6.5	Supplementary amount is exempt (see section 52-70)	Exempt
6.2	Income support supplement: you are under pension age and receiving the supplement on the grounds of permanent incapacity	Exempt	Exempt
6.3	Income support supplement: both you and the severely handicapped person you are caring for are under pension age and you are receiving the supplement for providing constant care for that person	Exempt	Exempt
6.4	Income support supplement: both you and your partner are under pension age and your partner is an invalidity service pensioner or a disability support pensioner	Exempt	Exempt

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Income tax treatment of veterans' affairs payments			
Item	Category of veterans' affairs payment	Ordinary payment	Payment made because of a person's death
6.5	Income support supplement: both you and your partner are under pension age and your partner is receiving the supplement on the grounds of permanent incapacity	Exempt	Exempt
7.1	Invalidity service pension: you are pension age or over	Supplementary amount is exempt (see section 52-70)	Exempt
7.2	Invalidity service pension: you are under pension age	Exempt	Exempt
8.1	Loss of earnings allowance	Exempt	Not applicable
9.1	Partner service pension: unless covered by item 9.2 or 9.3	Supplementary amount is exempt (see section 52-70)	Exempt
9.2	Partner service pension: both you and your partner are under pension age and your partner is receiving an invalidity service pension	Exempt	Exempt
9.3	Partner service pension: you are under pension age, your partner has died and was receiving an invalidity service pension at death	Exempt	Exempt
10.1	Pension for defence-caused death or incapacity	Exempt	Not applicable
11.1	Pension for war-caused death or incapacity	Exempt	Not applicable
12.1	Quarterly pension supplement	Exempt	Not applicable

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Part 2-15 Non-assessable income

Division 52 Certain pensions, benefits and allowances are exempt from income tax

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Income tax treatment of veterans' affairs payments			
Item	Category of veterans' affairs payment	Ordinary payment	Payment made because of a person's death
13.1	Recreation transport allowance	Exempt	Not applicable
14.1	Section 98A Bereavement payment	Not applicable	Exempt
14.2	Section 98AA Bereavement payment	Not applicable	Exempt
15.1	Section 99 funeral benefit	Not applicable	Exempt
16.1	Section 100 funeral benefit	Not applicable	Exempt
16A.1	Seniors supplement	Exempt	Not applicable
17.1	Special assistance	Exempt	Not applicable
20.1	Travelling expenses	Exempt	Not applicable
21.1	Vehicle Assistance Scheme	Exempt	Not applicable
21A.1	Veterans supplement	Exempt	Not applicable
22.1	Victoria Cross allowance	Exempt	Not applicable

52-70 Supplementary amounts of payments

The *supplementary amount* of a veterans' affairs payment is the total of:

- (a) so much of the payment as is included by way of rent assistance; and
- (b) so much of the payment as is included by way of an additional amount for each of your dependent *children; and
- (c) so much of the payment as is included by way of remote area allowance; and
- (d) so much of the payment as is equal to the tax-exempt pension supplement for the payment; and
- (e) so much of the payment as is included by way of clean energy supplement.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

52-75 Provisions of the Veterans' Entitlements Act 1986 under which payments are made

This table lists the provisions of the *Veterans' Entitlements Act 1986* under which veterans' affairs payments are made that are wholly or partly exempt from income tax under this Subdivision.

Provisions under which veterans' affairs payments are made			
Item	Category of veterans' affairs payment	Ordinary payment	Payment made because of a person's death
1	Age service pension	Division 3 of Part III	Division 12A of Part IIIB
2	Attendant allowance	Section 98	Not applicable
3	Carer service pension	Division 6 of Part III	Division 12A of Part IIIB
3A	Clean energy payment	Part IIIE	Not applicable
3B	Clean energy payment under Veterans' Children Education Scheme	Part VII	Not applicable
4	Clothing allowance	Section 97	Not applicable
5	Decoration allowance	Section 102	Not applicable
5A	Defence Force Income Support Allowance	Part VIIAB	Not applicable
5B	Economic security strategy payment	Part VIIG	Not applicable
5C	ETR payment	Part VIIH	Not applicable
6	Income support supplement	Part IIIA	Division 12A of Part IIIB
7	Invalidity service pension	Division 4 of Part III	Division 12A of Part IIIB
8	Loss of earnings allowance	Section 108	Not applicable
9	Partner service pension	Division 5 of Part III	Division 12A of Part IIIB
10	Pension for defence-caused death or incapacity	Part IV	Not applicable
11	Pension for war-caused death or incapacity	Part II	Not applicable

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2 Liability rules of general application**Part 2-15** Non-assessable income**Division 52** Certain pensions, benefits and allowances are exempt from income tax

Section 52-100

Provisions under which veterans' affairs payments are made			
Item	Category of veterans' affairs payment	Ordinary payment	Payment made because of a person's death
12	Quarterly pension supplement	Part IIID	Not applicable
12A	Prisoner of war recognition supplement	Part VIB	Not applicable
13	Recreation transport allowance	Section 104	Not applicable
14	Section 98A Bereavement payment	Not applicable	Section 98A
14A	Section 98AA Bereavement payment	Not applicable	Section 98AA
15	Section 99 funeral benefit	Not applicable	Section 99
16	Section 100 funeral benefit	Not applicable	Section 100
16A	Seniors supplement	Part VIIAD	Not applicable
17	Special assistance	Section 106	Not applicable
20	Travelling expenses	Section 110	Not applicable
21	Vehicle Assistance Scheme	Section 105	Not applicable
21A	Veterans supplement	Part VIIA	Not applicable
22	Victoria Cross allowance	Section 103	Not applicable

**Subdivision 52-C—Exempt payments made because of the
Veterans' Entitlements (Transitional Provisions and
Consequential Amendments) Act 1986**

Guide to Subdivision 52-C**52-100 What this Subdivision is about**

This Subdivision tells you:

- (a) the payments made because of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* that are wholly or partly exempt from income tax; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- | |
|--|
| <ul style="list-style-type: none">(b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and(c) how to work out how much of a payment is exempt. |
|--|

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| 52-105 | Supplementary amount of a payment made under the <i>Repatriation Act 1920</i> is exempt |
| 52-110 | Other exempt payments |

Operative provisions

52-105 Supplementary amount of a payment made under the *Repatriation Act 1920* is exempt

- (1) The *supplementary amount of a payment made to you is exempt from income tax if:
 - (a) you are a *parent of a *member of the Forces who has died (but you are neither a widow nor a woman divorced or deserted by her husband) and you are of *pension age or over; or
 - (b) you are the mother of a *member of the Forces who has died and you are also a widow, or divorced or deserted by your husband;and the payment is covered by subsection (2).
- (2) The payment must be made in circumstances that are a prescribed case under:
 - (a) Table A in Schedule 3 to the *Repatriation Act 1920*; or
 - (b) that Table as applying because of the *Repatriation (Far East Strategic Reserve) Act 1956*; or
 - (c) that Table as applying because of the *Repatriation (Special Overseas Service) Act 1962*; or
 - (d) that Table as applying because of the *Interim Forces Benefits Act 1947*;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 52-110

as in force because of subsection 4(6) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*.

- (3) The **supplementary amount** is the total of:
 - (a) so much of the payment as is included by way of rental assistance; and
 - (b) so much of the payment as is included by way of an additional amount for each of your dependent *children; and
 - (c) so much of the payment as is included by way of remote area allowance.
- (4) **Member of the Forces** has the same meaning as in the Act referred to in the relevant paragraph of subsection (2).
- (5) Expressions (except **pension age**) used in this Subdivision that are also used in the *Veterans' Entitlements Act 1986* have the same meaning as in that Act.
- (6) **Pension age** has the meaning given by subsection 23(1) of the *Social Security Act 1991*.

52-110 Other exempt payments

Payments (except those covered by section 52-105) made because of subsection 4(6) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* are exempt from income tax.

Subdivision 52-CA—Exempt payments under the Military Rehabilitation and Compensation Act 2004

Guide to Subdivision 52-CA

52-112 What this Subdivision is about

This Subdivision tells you:

- (a) the payments under the *Military Rehabilitation and Compensation Act 2004* that are wholly or partly exempt from income tax; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- | |
|--|
| <p>(b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and</p> <p>(c) how to work out how much of a payment is exempt.</p> |
|--|

Table of sections

Operative provisions

- 52-114 How much of a payment under the Military Rehabilitation and Compensation Act is exempt?

Operative provisions

52-114 How much of a payment under the Military Rehabilitation and Compensation Act is exempt?

- (1) The table in this section tells you about the income tax treatment of payments under the *Military Rehabilitation and Compensation Act 2004*. References in the table to provisions are to provisions of that Act.
- (2) Expressions used in this Subdivision that are also used in the *Military Rehabilitation and Compensation Act 2004* have the same meanings as in that Act.
- (3) **Ordinary payment** means a payment other than a payment made because of a person's death.

Income tax treatment of Military Rehabilitation and Compensation Act payments

Item	Category of payment and provision under which it is paid	Ordinary payment	Payment because of a person's death
1	Alterations to aids and appliances relating to rehabilitation (section 57)	Exempt	Not applicable

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2 Liability rules of general application**Part 2-15** Non-assessable income**Division 52** Certain pensions, benefits and allowances are exempt from income tax

Section 52-114

Income tax treatment of Military Rehabilitation and Compensation Act payments			
Item	Category of payment and provision under which it is paid	Ordinary payment	Payment because of a person's death
2	Compensation for journey and accommodation costs (sections 47, 290, 291 and 297 and subsection 328(4))	Exempt	Not applicable
3	Compensation for permanent impairment (sections 68, 71, 75 and 80)	Exempt	Exempt
4	Compensation for financial advice (sections 81, 205 and 239)	Exempt	Not applicable
5	Compensation for incapacity for Permanent Forces member or continuous full-time Reservist (section 85)	See section 51-32	Exempt
6	Compensation for incapacity for part-time Reservists (section 86)	See section 51-33	Exempt
7	Compensation by way of Special Rate Disability Pension (section 200)	Exempt	Not applicable
8	Compensation under the Motor Vehicle Compensation Scheme (section 212)	Exempt	Not applicable

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Income tax treatment of Military Rehabilitation and Compensation Act payments			
Item	Category of payment and provision under which it is paid	Ordinary payment	Payment because of a person's death
9	Compensation for household services and attendant care services (sections 214 and 217)	Exempt	Not applicable
10	MRCA supplement (sections 221, 245 and 300)	Exempt	Not applicable
11	Compensation for loss or damage to medical aids (section 226)	Exempt	Not applicable
12	Compensation for a wholly dependent partner for a member's death (section 233)	Not applicable	Exempt
13	Continuing permanent impairment and incapacity etc. compensation for a wholly dependent partner (subparagraphs 242(1)(a)(i) and (iii))	Not applicable	Exempt
14	Compensation for eligible young persons who were dependent on deceased member (section 253)	Not applicable	Exempt
15	Continuing permanent impairment and incapacity etc. compensation for eligible young persons (subparagraphs 255(1)(c)(i) and (iii))	Not applicable	Exempt
16	Education and training, or	Exempt if:	Exempt

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 2 Liability rules of general application**Part 2-15** Non-assessable income**Division 52** Certain pensions, benefits and allowances are exempt from income tax

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Income tax treatment of Military Rehabilitation and Compensation Act payments

Item	Category of payment and provision under which it is paid	Ordinary payment	Payment because of a person's death
	a payment, under the education scheme for certain eligible young persons (section 258)	(a) provided for or made to a person under 16; or (b) a clean energy payment	
17	Compensation for other persons who were dependent on deceased member (section 262)	Not applicable	Exempt
18	Compensation for cost of a funeral (section 266)	Not applicable	Exempt
19	Compensation for treatment costs (sections 271, 272 and 273)	Exempt	Not applicable
21	Special assistance (section 424)	Exempt	Exempt
22	Clean energy payment (sections 83A, 209A and 238A and Part 5A of Chapter 11)	Exempt	Not applicable

Note: The supplementary amount of a payment covered by item 16 of the table made to a person aged 16 or over is also exempt from income tax (see section 52-140).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Subdivision 52-CB—Exempt payments under the Australian
Participants in British Nuclear Tests (Treatment) Act
2006**

52-117 Payments of travelling expenses are exempt

A payment made to you under Part 3 of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* is exempt from income tax.

**Subdivision 52-D—Exempt payments made by the
Commonwealth to reimburse certain expenditure**

52-125 Private health insurance incentive payments are exempt

A payment made to you under Division 26 of the *Private Health Insurance Act 2007* is exempt from income tax.

**Subdivision 52-E—Exempt payments under the ABSTUDY
scheme**

Guide to Subdivision 52-E

52-130 What this Subdivision is about

This Subdivision tells you:

- (a) the payments under the ABSTUDY scheme that are wholly or partly exempt from income tax; and
- (b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and
- (c) how to work out how much of a payment is exempt.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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52-131	Payments under ABSTUDY scheme
52-132	Supplementary amounts of payments
52-133	Tax-free amount of ordinary payment on death of partner if no bereavement payment payable
52-134	Tax-free amount if you receive a bereavement lump sum payment

Operative provisions

52-131 Payments under ABSTUDY scheme

- (1) This section tells you about the income tax treatment of a payment under the ABSTUDY scheme made in respect of a period commencing at a time when you were at least 16 years old.

Note: The whole of a payment made under the ABSTUDY scheme in respect of a period commencing at a time when you are under 16 years old may be exempt under section 51-10.

- (2) A crisis payment, or clean energy payment, made to you under the ABSTUDY scheme is exempt from income tax.

- (3) If:

- (a) an *ordinary payment becomes due to you; and
 - (b) the payment is not covered by subsection (4) or (6);
- the *supplementary amount of the ordinary payment is exempt from income tax.

Note: To work out the supplementary amount of the ordinary payment, see section 52-132.

- (4) If:

- (a) your partner dies; and
- (b) you do not qualify for a payment under the ABSTUDY scheme in respect of that death; and
- (c) an *ordinary payment becomes due to you during the bereavement period;

the *supplementary amount and the *tax-free amount of the ordinary payment are exempt from income tax.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note 1: To work out the supplementary amount of the ordinary payment, see section 52-132.

Note 2: To work out the tax-free amount of the ordinary payment, see section 52-133.

(5) If a payment becomes due to you under the ABSTUDY scheme because of a person's death (except a lump sum payment because of your partner's death), the payment is exempt from income tax.

(6) If:

- (a) your partner dies; and
- (b) a lump sum payment under the ABSTUDY scheme becomes due to you because of your partner's death;

the total of the following are exempt from income tax up to the *tax free amount:

- (c) the lump sum payment; and
- (d) all other payments that become due to you under the ABSTUDY scheme during the bereavement lump sum period.

Note: To work out the tax-free amount, see section 52-134.

(7) **ABSTUDY scheme** means the scheme known as ABSTUDY.

(8) **Ordinary payment** means a payment under the ABSTUDY scheme, other than:

- (a) a crisis payment; or
- (aa) a clean energy payment; or
- (b) a payment made because of a person's death.

(9) The following expressions used in this Subdivision have the same meaning as in the ABSTUDY Policy Manual:

- (a) bereavement lump sum period;
- (b) bereavement period;
- (c) illness separated couple;
- (d) lump sum payment;
- (e) partner;
- (f) pension age;
- (g) respite care couple.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 52-132

Note: In 2009, the ABSTUDY Policy Manual was accessible through the website of the Education Department.

52-132 Supplementary amount of payment

The *supplementary amount of a payment is the total of:

- (a) so much of the payment as is included to assist you with, or to reimburse you for, the costs of any one or more of the following:
 - (i) rent;
 - (ii) living in a remote area;
 - (iii) commencing employment;
 - (iv) travel to, or participation in, courses, interviews, education or training;
 - (v) a child or children wholly or substantially dependent on you;
 - (vi) telephone bills;
 - (vii) living away from your usual residence;
 - (viii) maintaining your usual residence while living away from that residence;
 - (ix) accommodation, books or equipment;
 - (xi) discharging a compulsory repayment amount (within the meaning of the *Higher Education Support Act 2003*);
 - (xii) transport in travelling to undertake education or training, or to visit your usual residence when undertaking education or training away from that residence;
 - (xiii) if you are disabled—acquiring any special equipment, services or transport as a result of the disability;
 - (xiv) anything that would otherwise prevent you from beginning, continuing or completing any education or training; and
- (b) so much of the payment as is included by way of pharmaceutical allowance; and
- (c) so much of the payment as is included by way of clean energy supplement.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

52-133 Tax-free amount of ordinary payment on death of partner if no bereavement payment payable

This is how to work out the *tax-free amount* of an *ordinary payment for the purposes of subsection 52-131(4):

Method statement

- Step 1. Work out the *supplementary amount of the payment.
- Note: The supplementary amount is also exempt and is worked out under section 52-132.
- Step 2. Subtract the *supplementary amount from the amount of the payment.
- Step 3. Work out what would have been the amount of the payment if your partner had not died.
- Step 4. Work out what would have been the *supplementary amount of the payment if your partner had not died.
- Step 5. Subtract the amount at Step 4 from the amount at Step 3.
- Step 6. Subtract the amount at Step 5 from the amount at Step 2: the result is the *tax-free amount*.

52-134 Tax-free amount if you receive a bereavement lump sum payment

This is how to work out the *tax-free amount* for the purposes of subsection 52-131(6):

Method statement

- Step 1. Work out the payments under the ABSTUDY scheme that would have become due to you during the bereavement lump sum period if:
- (a) your partner had not died; and
 - (b) your partner had been under pension age; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) immediately before your partner died, you and your partner had been neither an illness separated couple nor a respite care couple.
- Step 2. Work out how much of those payments would have been exempt in those circumstances.
- Step 3. Work out the payments under the ABSTUDY scheme or the *Social Security Act 1991* that would have become due to your partner during the bereavement lump sum period if your partner had not died, even if the payments would not have been exempt.
- Step 4. Total the payments worked out at Steps 2 and 3: the result is the ***tax-free amount***.

Subdivision 52-F—Exemption of Commonwealth education or training payments

Table of sections

52-140	Supplementary amount of a Commonwealth education or training payment is exempt
52-145	Meaning of Commonwealth education or training payment

52-140 Supplementary amount of a Commonwealth education or training payment is exempt

- (1) This section tells you about the income tax treatment of a
*Commonwealth education or training payment (other than a payment to or on behalf of a student under the scheme known as ABSTUDY).

Note: The income tax treatment of payments under the scheme known as ABSTUDY is dealt with in Subdivision 52-E.

- (2) The *supplementary amount of the payment is exempt from income tax.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) The **supplementary amount** is the total of:
- (a) so much of the payment as is included to assist you with, or to reimburse you for, the costs of any one or more of the following:
 - (i) rent;
 - (ii) living in a remote area;
 - (iii) commencing employment;
 - (iv) travel to, or participation in, courses, interviews, education or training;
 - (v) a child or children wholly or substantially dependent on you;
 - (vi) telephone bills;
 - (vii) living away from your usual residence;
 - (viii) maintaining your usual residence while living away from that residence;
 - (ix) accommodation, books or equipment;
 - (xa) discharging a compulsory repayment amount (within the meaning of the *Higher Education Support Act 2003*);
 - (xi) transport in travelling to undertake education or training, or to visit your usual residence when undertaking education or training away from that residence;
 - (xii) if you are disabled—acquiring any special equipment, services or transport as a result of the disability;
 - (xiii) anything that would otherwise prevent you from beginning, continuing or completing any education or training; and
 - (b) so much of the payment as is included by way of pharmaceutical allowance; and
 - (c) so much of the payment as is included by way of clean energy supplement.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

52-145 Meaning of Commonwealth education or training payment

- (1) A ***Commonwealth education or training payment*** is a payment by the Commonwealth, or in connection with a payment by the Commonwealth, of an allowance or reimbursement:
- (a) to or on behalf of a participant in a *Commonwealth labour market program; or
 - (b) to or on behalf of a student under:
 - (i) the scheme known as ABSTUDY; or
 - (ii) the scheme known as the Assistance for Isolated Children Scheme; or
 - (iii) the scheme known as the Veterans' Children Education Scheme; or
 - (iiia) the scheme under section 258 of the *Military Rehabilitation and Compensation Act 2004* to provide education and training; or
 - (iv) the scheme known as youth allowance; or
 - (v) the scheme known as austudy payment;in respect of a period commencing at a time when the student was at least 16 years old.
- (2) A ***Commonwealth labour market program*** is a program administered by the Commonwealth under which:
- (a) unemployed persons are given training in skills to improve their employment prospects; or
 - (b) unemployed persons are assisted in obtaining employment or to become self-employed; or
 - (c) employed persons are given training in skills and other assistance to aid them in continuing to be employed by their current employer or in obtaining other employment.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 52-G—Exempt payments under the A New Tax System (Family Assistance) (Administration) Act 1999

52-150 Family assistance payments are exempt

A payment of child care benefit, child care rebate, family tax benefit, baby bonus, economic security strategy payment to families, back to school bonus, single income family bonus, clean energy advance, single income family supplement, ETR payment or schoolkids bonus made to you under the *A New Tax System (Family Assistance) (Administration) Act 1999* is exempt from income tax.

Subdivision 52-H—Other exempt payments

52-160 Economic security strategy payments are exempt

Payments under the scheme determined under Schedule 4 to the *Social Security and Other Legislation Amendment (Economic Security Strategy) Act 2008* are exempt from income tax.

52-162 ETR payments are exempt

Payments under the scheme determined under Part 2 of Schedule 1 to the *Family Assistance and Other Legislation Amendment (Schoolkids Bonus Budget Measures) Act 2012* are exempt from income tax.

52-165 Household stimulus payments are exempt

Payments under the scheme determined under Schedule 4 to the *Household Stimulus Package Act (No. 2) 2009* are exempt from income tax.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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52-170 Outer Regional and Remote payments under the Helping Children with Autism package are exempt

Payments known as Outer Regional and Remote payments under the Helping Children with Autism package are exempt from income tax.

52-172 Outer Regional and Remote payments under the Better Start for Children with Disability initiative are exempt

Payments known as Outer Regional and Remote payments under the Better Start for Children with Disability initiative are exempt from income tax.

52-175 Continence aids payments are exempt

Payments under the scheme known as the Continence Aids Payment Scheme are exempt from income tax.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 53—Various exempt payments**Guide to Division 53****53-1 What this Division is about**

This Division tells you:

- (a) about various payments that are wholly or partly exempt from income tax; and
- (b) any special conditions that apply to a payment in order for it to be exempt; and
- (c) how to work out how much of a payment is exempt.

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53-10	Exemption of various types of payments
53-15	Supplementary amount of exceptional circumstances relief payment or farm help income support
53-20	Exemption of similar Australian and United Kingdom veterans' payments

Operative provisions**53-10 Exemption of various types of payments**

This table tells you about the income tax treatment of various types of payments.

Exemption of various payments			
Item	This type of payment:	... made under:	... is exempt subject to these exceptions and special conditions:
1	Carer adjustment payment	The power of the Commonwealth to make ex-gratia payments	None

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Exemption of various payments			
Item	This type of payment:	... made under:	... is exempt subject to these exceptions and special conditions:
1A	Clean energy advance	The <i>Farm Household Support Act 1992</i>	None
2	Disability services payment	Part III of the <i>Disability Services Act 1986</i>	None
3	Exceptional circumstances relief payment or farm help income support: payment made other than because of a person's death	The <i>Farm Household Support Act 1992</i>	Only the supplementary amount is exempt (see section 53-15)
4	Exceptional circumstances relief payment or farm help income support: payment made because of a person's death	Paragraph 49(b) of the <i>Farm Household Support Act 1992</i>	None
4B	Sugar industry exit grant	The program known as the Sugar Industry Reform Program	As a condition of receiving the grant, you entered into an undertaking not to become the owner or operator of any agricultural *enterprise within 5 years after receiving the grant
4C	Tobacco industry exit grant	The program known as the Tobacco Growers Adjustment Assistance Programme 2006	As a condition of receiving the grant, you entered into an undertaking not to become the owner or operator of any agricultural *enterprise within 5 years after receiving the grant
4D	Transitional Farm Family Payment	The program known as the	Only so much of the payment as is included:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Exemption of various payments

Item	This type of payment:	... made under:	... is exempt subject to these exceptions and special conditions:
		Transitional Farm Family Payment program	(a) in lieu of clean energy advance; or (b) by way of clean energy supplement; is exempt
5	Wounds and disability pension	Not applicable	The payment must be: (a) of a kind specified in section 641 of the Income Tax (Earnings and Pensions) Act 2003 of the United Kingdom; and (b) similar in nature to payments that are exempt under Division 52 or this Division

Note 1: References in this section to exceptional circumstances relief payment also cover amounts paid as drought relief payment—see item 4 of Schedule 3 to the *Farm Household Support Amendment (Restart and Exceptional Circumstances) Act 1997*.

Note 2: A sugar industry exit grant referred to in table item 4B is included in assessable income if the recipient becomes the owner or operator of an agricultural enterprise (except a sugar industry enterprise) within 5 years after receiving the grant: see subsection 15-65(2).

53-15 Supplementary amount of exceptional circumstances relief payment or farm help income support

The **supplementary amount** of an exceptional circumstances relief payment or a payment of farm help income support is the total of:

- (a) so much of the payment as is included by way of rent assistance; and
- (b) so much of the payment as would have been included by way of remote area allowance if it had been a payment of newstart allowance under the *Social Security Act 1991* instead of an

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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exceptional circumstances relief payment or a payment of farm help income support; and

- (c) for an exceptional circumstances relief payment—so much of the payment as is included by way of clean energy supplement, worked out as if the payment were the applicable payment of youth allowance, or newstart allowance, referred to in paragraph 24A(1)(a) of the *Farm Household Support Act 1992*.

53-20 Exemption of similar Australian and United Kingdom veterans' payments

The following payments made by the Government of Australia, or the Government of the United Kingdom, are exempt from income tax:

- (a) payments similar to payments under the *Veterans' Entitlements Act 1986* that are exempt under Subdivision 52-B;
- (b) payments similar to payments that are made because of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* and are exempt under Subdivision 52-C.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 54—Exemption for certain payments made under structured settlements and structured orders

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	Guide to Division 54
54-A	Definitions
54-B	Tax exemption for personal injury annuities
54-C	Tax exemption for personal injury lump sums
54-D	Miscellaneous

Guide to Division 54

54-1 What this Division is about

Certain annuities and lump sums provided under structured settlements and structured orders are exempt from income tax. This Division tells you what a structured settlement is and what a structured order is, and when such an annuity or lump sum is exempt.

Subdivision 54-A—Definitions

Table of sections

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54-5	Definitions
54-10	Meaning of <i>structured settlement</i> and <i>structured order</i>

Operative provisions

54-5 Definitions

In this Division:

date of the settlement or order:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) for a *structured settlement, means:
 - (i) the date on which the agreement that is the structured settlement was entered into; or
 - (ii) if that agreement depends, for its effectiveness, on being approved (however described) by an order of a court, or on being embodied in a consent order made by a court, the date on which that order was made; and
- (b) for a *structured order, means the date on which the order was made.

personal injury annuity means an *annuity:

- (a) that is purchased under the terms of a *structured settlement as mentioned in paragraph 54-10(1)(e); or
- (b) that is purchased under the terms of a *structured order as mentioned in paragraph 54-10(1A)(e).

personal injury lump sum means a lump sum:

- (a) that is purchased under the terms of a *structured settlement as mentioned in paragraph 54-10(1)(e); or
- (b) that is purchased under the terms of a *structured order as mentioned in paragraph 54-10(1A)(e).

54-10 Meaning of *structured settlement* and *structured order*

- (1) A ***structured settlement*** is a settlement of a claim that satisfies the following conditions:
 - (a) the claim:
 - (i) is for compensation or damages for, or in respect of, personal injury suffered by a person (the ***injured person***); and
 - (ii) is made by the injured person or by his or her *legal personal representative;
 - (b) the claim is based on the commission of a wrong, or on a right created by statute;
 - (c) the claim is made against a person (the ***defendant***) and satisfies the following conditions:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (i) the claim is not made against the defendant in his or her capacity as an employer, or *associate of an employer, of the injured person;
 - (ii) the claim is not made under a *workers' compensation law, and is not made as an alternative to a claim under such a law;
 - (d) the settlement takes the form of a written agreement between the parties to the claim (whether or not that agreement is approved by an order of a court, or is embodied in a consent order made by a court);
 - (e) under the terms of the settlement, some or all of the compensation or damages is to be used by the defendant (or by a person with whom the defendant has insurance against the liability to which the claim relates) to purchase from one or more *life insurance companies or *State insurers:
 - (i) an *annuity or annuities to be paid to the injured person, or to a trustee for the benefit of the injured person; or
 - (ii) such an annuity or annuities, together with one or more lump sums that are also to be paid to the injured person, or to a trustee for the benefit of the injured person.
- (1A) A **structured order** is an order of a court that satisfies the following conditions:
- (a) the order is made in respect of a claim that:
 - (i) is for compensation or damages for, or in respect of, personal injury suffered by a person (the **injured person**); and
 - (ii) is made by the injured person or by his or her *legal personal representative;
 - (b) the order is not an order approving or endorsing an agreement as mentioned in paragraph (1)(d);
 - (c) the claim is based on the commission of a wrong, or on a right created by statute;
 - (d) the claim is made against a person (the **defendant**) and satisfies the following conditions:
 - (i) the claim is not made against the defendant in his or her capacity as an *employer, or *associate of an employer, of the injured person;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) the claim is not made under a *workers' compensation law, and is not made as an alternative to a claim under such a law;
- (e) under the terms of the order, some or all of the compensation or damages is to be used by the defendant (or by a person with whom the defendant has insurance against the liability to which the claim relates) to purchase from one or more *life insurance companies or *State insurers:
 - (i) an *annuity or annuities to be paid to the injured person, or to a trustee for the benefit of the injured person; or
 - (ii) such an annuity or annuities, together with one or more lump sums that are also to be paid to the injured person, or to a trustee for the benefit of the injured person.
- (3) If a claim is both:
 - (a) for compensation or damages for personal injury suffered by a person; and
 - (b) for some other remedy (for example, compensation or damages for loss of, or damage to, property);this section applies to the claim, but only to the extent that it relates to the compensation or damages referred to in paragraph (a), and only to annuities or lump sums that, in the settlement agreement, or in the order, are identified as being solely in payment of that compensation or those damages.

Subdivision 54-B—Tax exemption for personal injury annuities

Table of sections

Operative provisions

54-15	Personal injury annuity exemption for injured person
54-20	Lump sum compensation etc. would not have been assessable
54-25	Requirements of the annuity instrument
54-30	Requirements for payments of the annuity
54-35	Payments during the guarantee period on the death of the injured person
54-40	Requirement for minimum monthly level of support

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Operative provisions

54-15 Personal injury annuity exemption for injured person

A payment of a *personal injury annuity that is made to the *injured person is exempt from income tax if the conditions in this Subdivision are satisfied.

Note: Section 54-70 provides a tax exemption if the payment is instead made to the trustee of a trust.

54-20 Lump sum compensation etc. would not have been assessable

If the compensation or damages that were used to purchase the *annuity had instead been paid to the *injured person in a single lump sum on the *date of the settlement or order, the compensation or damages would not have been assessable income.

Note: Paragraph 118-37(1)(b) disregards a capital gain or capital loss that arises from compensation or damages the injured person receives for any wrong he or she suffers personally.

54-25 Requirements of the annuity instrument

The *annuity instrument must:

- (a) identify the *structured settlement or *structured order under which the *annuity is provided; and
- (b) only allow for payments of the annuity to be made to:
 - (i) the injured person; or
 - (ii) a trustee of a trust of which the injured person is the beneficiary; or
 - (iii) a reversionary beneficiary, or the injured person's estate, in accordance with section 54-35; and
- (c) contain a statement to the effect that the annuity cannot be assigned, and cannot be commuted except as mentioned in section 54-35.

Note: Division 2A of Part 10 of the *Life Insurance Act 1995* makes a purported assignment or commutation that is contrary to paragraph (c) ineffective.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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54-30 Requirements for payments of the annuity

- (1) The *annuity instrument must provide that payments of the *annuity are to be made at least annually:
 - (a) over a period of at least 10 years during the life of the *injured person; or
 - (b) for the life of the injured person.
- (2) The *annuity instrument must specify:
 - (a) the date of the first payment of the *annuity; and
 - (b) if the annuity instrument specifies a period of years—the date of the last payment in that period; and
 - (c) the amount of each periodic payment of the annuity.
- (3) The *annuity instrument may only allow the amount of a payment to be varied by increasing the amount:
 - (a) in order to maintain its real value:
 - (i) by indexation by reference to increases in the *All Groups Consumer Price Index number; or
 - (ii) by indexation by reference to increases in the full-time adult average weekly ordinary time earnings, published by the Australian Statistician; or
 - (b) by a percentage specified in the annuity instrument.
- (4) The *annuity instrument may only allow the amount of a particular payment to be varied:
 - (a) by only one of the methods referred to in subsection (3); or
 - (b) by whichever of 2 or more of those methods would result in the biggest or smallest increase.
- (5) A reference in this section to specifying a date or percentage requires an actual date or figure to be specified, not merely a method of determining a date or figure.

Example: Under subsection (2), “13 September 2002” would be allowed, but “The date on which the annuitant finishes university” would not be allowed.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

54-35 Payments during the guarantee period on the death of the injured person

- (1) This section applies if the *annuity instrument provides for payments to be made to the *injured person during any part of the period ending 10 years after the *date of the settlement or order (whether the *annuity is expressed to be for the life of the person or for a period of years).
- (2) The *annuity instrument may specify a period (the ***guarantee period***) of up to 10 years after the *date of the settlement or order, during which, if the *injured person dies, the payments (the ***remaining payments***) for the remainder of the guarantee period that would have been paid to the injured person are to be paid instead to:
 - (a) the injured person's estate; or
 - (b) a reversionary beneficiary.

Note: For tax exemptions in this situation, see sections 54-65 and 54-70.

- (3) If the *annuity instrument provides for the remaining payments to be made to a reversionary beneficiary, the instrument must:
 - (a) name the beneficiary; and
 - (b) allow the beneficiary to choose either:
 - (i) to be paid the amounts of the remaining payments when the injured person would have received them; or
 - (ii) to commute those payments into a lump sum worked out under subsection (5).
- (4) The *injured person's estate may only be paid the lump sum worked out under subsection (5) (and not the periodic payments).
- (5) The amount of the lump sum under subparagraph (3)(b)(ii) or subsection (4) is the *policy termination value of the *life insurance policy that is the *annuity instrument, as calculated by an *actuary as at the date of the injured person's death. In making this calculation, the following are to be disregarded:
 - (a) any payments of the annuity due to be made after the end of the guarantee period;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(b) any *structured settlement lump sums that are also provided for by that policy.

(6) In this section:

pay to a person includes pay to the trustee of a trust of which the person is the beneficiary.

pay to the injured person's estate includes pay to the trustee of a trust established by the *injured person's will.

54-40 Requirement for minimum monthly level of support

(1) Either:

- (a) the *annuity instrument must provide; or
- (b) if there is more than one *annuity provided under the *structured settlement or *structured order—the annuity instruments for all of those annuities that satisfy the other conditions in this Subdivision, taken as a whole, must provide;

that at least once a month for the life of the *injured person, he or she is to be paid an amount that equals or exceeds the minimum monthly level of support.

(2) The *minimum monthly level of support* means:

- (a) for the year starting on the *date of the settlement or order—one twelfth of the amount that is, on that date, the sum of:
 - (i) the maximum basic rate of age pension payable to a person in accordance with item 1 of Table B in point 1064-B1 of Pension Rate Calculator A in section 1064 of the *Social Security Act 1991*; and
 - (ii) the amount of a person's pension supplement, worked out (using that maximum basic rate) in accordance with Module BA of that Pension Rate Calculator; and
- (b) for any subsequent year starting on an anniversary of the date of the settlement or order:
 - (i) if the indexation factor for the year (see subsection (3)) is greater than 1—the amount worked out under subsection (4); or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) otherwise—the minimum monthly level of support for the previous year.

Note: In working out the rate and amount that count for the purposes of paragraph (a), the effect of the indexation provisions in sections 1191 to 1195 of the *Social Security Act 1991* must be taken into account. The indexed figures are available from the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*.

- (3) The **indexation factor** for a year is to be worked out on the anniversary of the *date of the settlement or order in accordance with the formula:

$$\frac{\text{Most recently published *All Groups Consumer Price Index number for a *quarter}}{\text{*All Groups Consumer Price Index number for the same *quarter in the base year}}$$

where:

base year means:

- (a) if there have been one or more previous years for which the indexation factor was greater than 1—the year ending immediately before the most recent year for which the indexation factor was greater than 1; or
- (b) otherwise—the year ending immediately before the *date of the settlement or order.

Note: This has effect subject to subsection (6).

- (4) If the indexation factor for a year is greater than 1, then the minimum monthly level of support for the year is the amount worked out in accordance with the following formula:

$$\text{Indexation factor for the year} \times \text{Minimum monthly level of support for the previous year}$$

- (5) The results under subsections (3) and (4) must be rounded to 3 decimal places (rounding up if the fourth decimal place is 5 or more).
- (6) The indexation factor for a year must be worked out by reference to figures for the same *quarter (for example, the March quarter) as

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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has been used in previous years, even if, on the anniversary of the *date of the settlement or order, the *All Groups Consumer Price Index number for that quarter has not yet been published. If this happens, the calculation must be made as soon as practicable after the number for that quarter is published.

(7) In this section:

pay to a person includes pay to the trustee of a trust of which the person is the beneficiary.

Subdivision 54-C—Tax exemption for personal injury lump sums

Table of sections

Operative provisions

54-45	Personal injury lump sum exemption for injured person
54-50	Lump sum compensation would not have been assessable
54-55	Requirements of the instrument under which the lump sum is paid
54-60	Requirements for payments of the lump sum

Operative provisions

54-45 Personal injury lump sum exemption for injured person

A payment of a *personal injury lump sum that is made to the *injured person is exempt from income tax if:

- (a) there is at least one *personal injury annuity (provided under the same *structured settlement or *structured order) that satisfies the conditions in Subdivision 54-B; and
- (b) the other conditions in this Subdivision are satisfied.

Note: Section 54-70 provides a tax exemption if the payment is instead made to the trustee of a trust.

54-50 Lump sum compensation would not have been assessable

If the compensation or damages that were used to purchase the *personal injury lump sum had instead been paid to the *injured

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

person on the *date of the settlement or order, the compensation or damages would not have been assessable income.

Note: Paragraph 118-37(1)(b) disregards a capital gain or capital loss that arises from compensation or damages the injured person receives for any wrong he or she suffers personally.

54-55 Requirements of the instrument under which the lump sum is paid

The instrument under which the *personal injury lump sum is paid must:

- (a) identify the *structured settlement or *structured order under which the lump sum is provided; and
- (b) only allow for the payment of the lump sum to be made to:
 - (i) the *injured person; or
 - (ii) a trustee of a trust of which the injured person is the beneficiary; and
- (c) contain a statement to the effect that the right to receive the lump sum cannot be assigned, and cannot be commuted or otherwise cashed-out early.

Note: Division 2A of Part 10 of the *Life Insurance Act 1995* makes a purported assignment or commutation (or cashing-out) that is contrary to paragraph (c) ineffective.

54-60 Requirements for payments of the lump sum

- (1) The instrument under which the *personal injury lump sum is paid must specify the date and amount of the payment of the lump sum.
- (2) The instrument may only allow the amount of the payment to be varied by increasing the amount:
 - (a) in order to maintain its real value:
 - (i) by indexation by reference to increases in the *All Groups Consumer Price Index number; or
 - (ii) by indexation by reference to increases in the full-time adult average weekly ordinary time earnings, published by the Australian Statistician; or
 - (b) by a percentage specified in the instrument.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) The instrument may only allow the amount of the payment to be varied:
- (a) by only one of the methods referred to in subsection (2); or
 - (b) by whichever of 2 or more of those methods would result in the biggest or smallest increase.
- (4) A reference in this section to specifying a date or percentage requires an actual date or figure to be specified, not merely a method of determining a date or figure.

Example: Under subsection (1), “13 September 2002” would be allowed, but “The date on which the annuitant finishes university” would not be allowed.

Subdivision 54-D—Miscellaneous

Table of sections

Operative provisions

54-65	Exemption for certain payments to reversionary beneficiaries
54-70	Special provisions about trusts
54-75	Minister to arrange for review and report

Operative provisions

54-65 Exemption for certain payments to reversionary beneficiaries

A payment that is made to the reversionary beneficiary of a *personal injury annuity for which there is a *guarantee period is exempt from income tax if:

- (a) the payment is a periodic or lump sum payment made in accordance with subsection 54-35(3); and
- (b) either:
 - (i) if subparagraph 54-35(3)(b)(i) applies—the payment; or
 - (ii) if subparagraph 54-35(3)(b)(ii) applies—each of the payments taken into account in working out the amount of the lump sum under subsection 54-35(5);would be exempt from income tax under this Division if the *injured person were still alive and the payment, or each of the payments, were instead made to the injured person.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

54-70 Special provisions about trusts

- (1) A payment of a *personal injury annuity or a *personal injury lump sum to the trustee of a trust is exempt from income tax for the trustee if:
 - (a) the beneficiary of the trust is the *injured person; and
 - (b) because of Subdivision 54-B or 54-C, the payment would have been exempt from income tax if it had been made directly to the beneficiary.
- (2) A payment made in accordance with paragraph 54-35(3)(b) to the trustee of a trust is exempt from income tax for the trustee if:
 - (a) the beneficiary of the trust is the reversionary beneficiary; and
 - (b) because of section 54-65, the payment would have been exempt from income tax if it had been made directly to the beneficiary.
- (3) A payment of a lump sum in accordance with subsection 54-35(4) to the trustee of a trust is exempt from income tax for the trustee.
- (4) If a payment is exempt from income tax for a trustee because of this section, the payment is also exempt from income tax for a beneficiary, or the beneficiary, of the trust, even if the trustee:
 - (a) pays all or part of the payment to the beneficiary; or
 - (b) applies all or part of the payment for the benefit of the beneficiary.

54-75 Minister to arrange for review and report

- (1) The Minister must cause a person to review, and to report to the Minister in writing about, the operation of the following provisions (the ***structured settlements and orders provisions***):
 - (a) the other provisions of this Division;
 - (b) Division 2A of Part 10 of the *Life Insurance Act 1995*.
- (2) The person must be someone who, in the Minister's opinion, is suitably qualified and appropriate to conduct the review.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) The review and report must relate to the period beginning when this Division commences and ending after 4 years and 6 months.
- (4) The person must give the report to the Minister as soon as practicable, and in any event within 6 months, after the end of that period.
- (5) The report may include suggestions for changes to the structured settlements and orders provisions that, in the person's opinion, are needed to overcome, or would help overcome, problems identified during the review and set out in the report.
- (6) The person must provide a reasonable opportunity for members of the public to make submissions to him or her about matters to which the review relates.
- (7) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 55—Payments that are not exempt from income tax

Guide to Division 55

55-1 What this Division is about

A variety of payments are not exempt from income tax even though they are similar in nature to payments that are wholly or partly exempt under this Part.

Table of sections

Operative provisions

55-5	Occupational superannuation payments
55-10	Education entry payments

Operative provisions

55-5 Occupational superannuation payments

- (1) This Part does not exempt from income tax any amount or pension paid under the following provisions or Acts, or under schemes established under any of them:
- (a) *Defence Force Retirement and Death Benefits Act 1973*;
 - (b) *Defence Forces Retirement Benefits Act 1948*;
 - (c) *Military Superannuation and Benefits Act 1991*;
 - (d) *Papua New Guinea (Staffing Assistance) Act 1973*;
 - (e) *Parliamentary Contributory Superannuation Act 1948*;
 - (f) section 10 of the *Superannuation (Pension Increases) Act 1971*;
 - (g) section 9 or 14 of the *Superannuation Act (No. 2) 1956*;
 - (h) subsection 8(1) of the *Superannuation Act 1948*;
 - (i) *Superannuation Act 1922*;
 - (j) *Superannuation Act 1976*;
 - (k) *Superannuation Act 1990*;
 - (l) *Superannuation Act 2005*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) This section operates despite anything contained in any other provision of this Part.

55-10 Education entry payments

This Part does not exempt from income tax an education entry payment under Part 2.13A of the *Social Security Act 1991*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.
