



Income Tax Assessment Act 1997

Act No. 38 of 1997 as amended

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Sections 230-1 to 420-70

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

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

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Chapter 3—Specialist liability rules

Part 3-10—Financial transactions

Division 230—Taxation of financial arrangements

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Guide to Division 230

230-1 What this Division is about

This Division is about the tax treatment of gains and losses from your financial arrangements.

You recognise the gains and losses, as appropriate, over the life of a financial arrangement and ignore distinctions between income and capital unless specific rules apply.

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

Section 230-5

If it is sufficiently certain that you will make a gain or loss, you use a compounding accruals method to recognise the gain or loss. Otherwise you use a realisation method. Instead of either, you may be able to choose to use a fair value or hedging method or to rely on your financial reports. You may also be able to choose to recognise foreign exchange gains and losses using a retranslation method.

230-5 Scope of this Division

- (1) You have a financial arrangement if you have one or more cash settleable legal or equitable rights and/or obligations to receive or provide a financial benefit.
- (2) This Division does not apply to all financial arrangements. The main exceptions are if:
 - (a) you are:
 - (i) an individual; or
 - (ii) a superannuation entity or fund, managed investment scheme or an entity substantially similar to a managed investment scheme under foreign law with assets of less than \$100 million; or
 - (iii) an ADI, securitisation vehicle or other financial sector entity with an aggregated turnover of less than \$20 million; or
 - (iv) another entity with an aggregated turnover of less than \$100 million, financial assets of less than \$100 million and assets of less than \$300 million;and either:
 - (iv) the arrangement is to end not more than 12 months after you start to have it; or
 - (v) the arrangement is not a qualifying security; or
 - (b) the arrangement is a financial arrangement under section 230-50 (equity interests etc.) and neither a fair value election, a hedging financial arrangement election nor an election to rely on financial reports applies to the arrangement.

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

Note: Section 230-455 provides for the exceptions referred to in paragraph (a).

Subdivision 230-A—Core rules

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

Objects

230-10 Objects of this Division

The objects of this Division are:

- (a) to minimise the extent to which the tax treatment of gains and losses from your *financial arrangements distorts, by providing inappropriate impediments and stimulation, your trading, financing and investment decisions and your risk taking and risk management; and
- (b) to do so by aligning more closely the tax and commercial recognition of gains and losses from your financial arrangements in the following ways:
 - (i) by allocating the gains and losses to income years throughout the life of your financial arrangements on a reasonable basis;
 - (ii) by generally recognising gains and losses on revenue rather than capital account; and
- (c) to appropriately take account of, and minimise, your compliance costs.

Tax treatment of gains and losses from financial arrangements

230-15 Gains are assessable and losses deductible

Gains

- (1) Your assessable income includes a gain you make from a *financial arrangement.

Note: This Division does not apply to gains that are subject to exceptions under Subdivision 230-H.

Losses

- (2) You can deduct a loss you make from a *financial arrangement, but only to the extent that:
 - (a) you make it in gaining or producing your assessable income;
 - or

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

- (b) you necessarily make it in carrying on a *business for the purpose of gaining or producing your assessable income.

Note: This Division does not apply to losses that are subject to exceptions under Subdivision 230-H.

- (3) You can also deduct a loss you make from a *financial arrangement if:

- (a) you are an *Australian entity; and
- (b) you make the loss in deriving income from a foreign source; and
- (c) the income is *non-assessable non-exempt income under section 23AI, 23AJ or 23AK of the *Income Tax Assessment Act 1936*; and
- (d) the loss is, in whole or in part, a cost in relation to a *debt interest you issue that is covered by paragraph 820-40(1)(a).

You can deduct the loss only to the extent to which it is a cost in relation to a *debt interest you issue that is covered by paragraph 820-40(1)(a).

Note: This Division does not apply to losses that are subject to exceptions under Subdivision 230-H.

- (4) If the *financial arrangement is a *debt interest, the loss is not prevented from being deductible for an income year under subsection (2) merely because of either or both of the following:
- (a) one or more of the *financial benefits that are taken into account in working out the amount of the loss are *contingent on the economic performance (whether past, current or future) of:
 - (i) you or a part of your activities; or
 - (ii) a *connected entity of yours or a part of the activities of a connected entity of yours;
 - (b) one or more of the financial benefits that are taken into account in working out the amount of the loss secure a permanent or enduring benefit for you or a connected entity of yours.

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

Section 230-15

- (4A) A *dividend on a *debt interest is a loss you can deduct to the extent to which it would have been a deductible loss under subsection (2) if:
- (a) the payment of the amount of the dividend were the incurring of a liability to pay the same amount as interest; and
 - (b) that interest were incurred in respect of the finance raised by you and in respect of which the dividend was paid or provided; and
 - (c) the debt interest retained its character as a debt interest for the purposes of subsection (4).
- (5) Subject to subsection (6), subsection (4) does not apply to the loss to the extent to which the annually compounded internal rate of return on the *debt interest exceeds the *benchmark rate of return for the debt interest *increased by 150 basis points.
- (6) If:
- (a) regulations made for the purposes of subsection 25-85(6) provide that a specified number of basis points is to apply for the purposes of applying subsection 25-85(5) in particular circumstances; and
 - (b) those circumstances exist in relation to the *debt interest; subsection (5) applies as if the reference in that subsection to 150 basis points were a reference to the number of basis points specified in the regulations.

Division does not affect foreign residence rules

- (7) Nothing in this Division affects the operation of the provisions of Division 6 that provide for the significance of foreign residence for the assessability of ordinary and statutory income.

Note 1: Gains that you make under this Division may be ordinary or statutory income for the purposes of Division 6.

Note 2: For the effect of a change of residence during an income year, see sections 230-485 and 230-490.

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

230-20 Gain or loss to be taken into account only once under this Act

Application of section

- (1) This section applies to the following:
 - (a) a gain that is included in your assessable income for an income year under this Division;
 - (b) a loss that is allowable as a deduction to you for an income year under this Division;
 - (c) a gain or a loss that is dealt with in accordance with subsection 230-310(4) in relation to an income year.

Purpose of this section

- (2) The purpose of this section is to ensure that your gains and losses, and *financial benefits, to which this section applies are taken into account only once under this Act in working out your taxable income.

Gain or loss to be taken into account only once

- (3) A gain or loss to which this section applies is not to be (to any extent):
 - (a) included in your assessable income; or
 - (b) allowable as a deduction to you; or
 - (c) dealt with in accordance with subsection 230-310(4);again under this Division for the same or any other income year.
- (4) A gain or loss to which this section applies is not to be (to any extent):
 - (a) included in your assessable income; or
 - (b) allowable as a deduction to you;under any provisions of this Act outside this Division for the same or any other income year.

Section does not give rise to exempt income

- (5) A gain is not to be treated as *exempt income merely because it is not included in your assessable income under this section.

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

230-25 Associated financial benefits to be taken into account only once under this Act

Application of section

- (1) This section applies to a *financial benefit whose amount or value is taken into account in working out whether you make, or the amount of, a gain or loss to which paragraph 230-20(1)(a), (b) or (c) applies.

Associated financial benefit to be taken into account only once

- (2) A *financial benefit to which this section applies is not to be (to any extent):
- (a) included in your assessable income; or
 - (b) allowable as a deduction to you;
- under any provision of this Act outside this Division for the same or any other income year.

Exception for certain bad debts

- (3) If:
- (a) a *financial benefit has been included in your assessable income under a provision of this Act outside this Division; and
 - (b) a bad debt deduction would have been allowed under section 25-35 in relation to the financial benefit;
- subsection (2) does not prevent that bad debt deduction from being allowed under section 25-35 in relation to the financial benefit as if the debt were still outstanding.

Section does not give rise to exempt income

- (4) A *financial benefit is not to be treated as *exempt income merely because it is not included in your assessable income under this section.

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

230-30 Treatment of gains and losses related to exempt income and non-assessable non-exempt income

- (1) Despite section 230-15, a gain that you make from a *financial arrangement:
 - (a) to the extent that it reflects an amount that would be treated, or would reasonably be expected to be treated, as *exempt income under a provision of this Act if this Division were disregarded—is exempt income; and
 - (b) to the extent that it reflects an amount that would be treated or would reasonably be expected to be treated, as *non-assessable non-exempt income under a provision of this Act if this Division were disregarded—is not assessable income and is not exempt income.
- (2) Despite section 230-15, a gain that you make from a *financial arrangement:
 - (a) to the extent that, if it had been a loss, you would have made it in gaining or producing *exempt income—is exempt income; and
 - (b) to the extent to which, if it had been a loss, you would have made it in gaining or producing *non-assessable non-exempt income—is not assessable income and is not exempt income.
- (3) A loss you make from a *financial arrangement is *not* allowable as a deduction to you under any provision of this Act (other than subsection 230-15(3)) to the extent that you make it in gaining or producing your:
 - (a) *exempt income; or
 - (b) *non-assessable non-exempt income.

230-35 Treatment of gains and losses of private or domestic nature

Borrowings etc. used for private or domestic purpose

- (1) Subsections (2) and (3) apply if:
 - (a) a *borrowing is made by you, or credit is provided to you, under a *financial arrangement; and

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

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- (b) you use some or all of the funds borrowed or the credit provided for a private or domestic purpose.
- (2) This Division does not apply to a gain you make from the arrangement to the extent that you use the funds raised or the credit provided for a private or domestic purpose.
- (3) A loss you make from the arrangement is *not* allowable as a deduction to you under any provision of this Act to the extent that you use the funds raised or the credit provided for a private or domestic purpose.

Derivative financial arrangement held for private or domestic purpose

- (4) Subsections (5) and (6) apply if:
 - (a) you are an individual; and
 - (b) you make a gain or loss from a *derivative financial arrangement; and
 - (c) the arrangement is held, wholly or in part, for a private or domestic purpose.
- (5) This Division does not apply to a gain you make from the arrangement to the extent that the arrangement is held or used for a private or domestic purpose.
- (6) A loss you make from the arrangement is *not* allowable as a deduction to you under any provision of this Act to the extent that the arrangement is held or used for a private or domestic purpose.

Method to be applied to take account of gain or loss

230-40 Methods for taking gain or loss into account

Methods available

- (1) The methods that can be applied to take account of a gain or loss you make from a *financial arrangement are:
 - (a) the accruals and realisation methods provided for in Subdivision 230-B; or
 - (b) the fair value method provided for in Subdivision 230-C; or

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

- (c) the foreign exchange retranslation method provided for in Subdivision 230-D; or
- (d) the hedging financial arrangement method provided for in Subdivision 230-E; or
- (e) the method of relying on your financial reports provided for in Subdivision 230-F; or
- (f) a balancing adjustment provided for in Subdivision 230-G.

Note: The methods referred to in paragraphs (b) to (e) only apply if you make an election under the relevant Subdivision and you must meet certain requirements before you can make such an election.

- (2) A gain or loss is not taken into account under any of the methods referred to in paragraphs (1)(a), (b), (c) and (e) to the extent to which it is taken into account under the method referred to in paragraph (1)(f) (balancing adjustment).
- (3) A gain or loss is not taken into account under the method referred to in paragraph (1)(f) (balancing adjustment) to the extent to which it is taken into account under the method referred to in paragraph (1)(d) (hedging financial arrangement method).

Note: The hedging financial arrangement method may take some account of the gain or loss by reference to the balancing adjustment method (see subsection 230-300(5)).

Elections override accruals and realisation methods

- (4) Subdivision 230-B (accruals and realisation method) does not apply to a gain or loss you make from a *financial arrangement:
 - (a) if Subdivision 230-C (fair value method) applies to the arrangement; or
 - (b) to the extent that Subdivision 230-D (foreign exchange retranslation method) applies to the gain or loss; or
 - (c) to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement; or
 - (d) if Subdivision 230-F (method of relying on financial reports) applies to the arrangement; or
 - (e) if the arrangement is a financial arrangement under section 230-50 (equity interests etc.).

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

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Priorities among election methods

- (5) Subdivision 230-C (fair value method) does not apply to a gain or loss you make from a *financial arrangement:
 - (a) to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement; or
 - (b) if Subdivision 230-F (method of relying on financial reports) applies to the arrangement.
- (6) Subdivision 230-D (foreign exchange retranslation method) does not apply to a gain or loss you make from a *financial arrangement:
 - (a) if Subdivision 230-C (fair value method) applies to the arrangement; or
 - (b) to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement; or
 - (c) if Subdivision 230-F (method of relying on financial reports) applies to the arrangement.
- (7) Subdivision 230-F (method of relying on financial reports) does not apply to a gain or loss you make from a *financial arrangement to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement.

Financial arrangement concept

230-45 Financial arrangement

- (1) You have a ***financial arrangement*** if you have, under an *arrangement:
 - (a) a *cash settlable legal or equitable right to receive a *financial benefit; or
 - (b) a cash settlable legal or equitable obligation to provide a financial benefit; or
 - (c) a combination of one or more such rights and/or one or more such obligations;unless:
 - (d) you also have under the arrangement one or more legal or equitable rights to receive something and/or one or more legal or equitable obligations to provide something; and

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

- (e) for one or more of the rights and/or obligations covered by paragraph (d):
 - (i) the thing that you have the right to receive, or the obligation to provide, is not a financial benefit; or
 - (ii) the right or obligation is not cash settleable; and
- (f) the one or more rights and/or obligations covered by paragraph (e) are not insignificant in comparison with the right, obligation or combination covered by paragraph (a), (b) or (c).

The right, obligation or combination covered by paragraph (a), (b) or (c) constitutes the financial arrangement.

- Note 1: Whether your rights and/or obligations under an arrangement constitute a financial arrangement can change over time depending on changes either to the terms of the arrangement or external circumstances (such as particular rights or obligations under the arrangement being satisfied by the parties). For example, a contract may provide for the transfer of a boat in 6 months time and payment of the contract price at the end of 2 years. Until the boat is delivered, there is no financial arrangement because of the operation of paragraphs (d), (e) and (f) above. Once the boat is delivered, there is a financial arrangement because those paragraphs are no longer applicable.
- Note 2: The operative provisions of this Division do not apply to all financial arrangements, and only apply partially to some: see the exceptions in Subdivision 230-H.
- Note 3: There are some rules in this Division that tell you what happens if an arrangement ceases to be a financial arrangement (see Subdivision 230-G and section 230-505).

- (2) A right you have to receive, or an obligation you have to provide, a *financial benefit is **cash settleable** if, and only if:
 - (a) the benefit is money or a *money equivalent; or
 - (b) in the case of a right—you intend to satisfy or settle it by receiving money or a money equivalent or by starting to have, or ceasing to have, another *financial arrangement; or
 - (c) in the case of an obligation—you intend to satisfy or settle it by providing money or a money equivalent or by starting to have, or ceasing to have, another financial arrangement; or
 - (d) you have a practice of satisfying or settling similar rights or obligations as mentioned in paragraph (b) or (c) (whether or

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

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not you intend to satisfy or settle the right or obligation in that way); or

- (e) you deal with the right or obligation, or with similar rights or obligations, in order to generate a profit from short-term fluctuations in price, from a dealer's margin, or from both; or
- (f) none of paragraphs (a) to (e) applies but you satisfy subsection (3); or
- (g) you are able to settle the right or obligation as mentioned in paragraph (b) or (c) (whether or not you intend to satisfy or settle the right or obligation in that way) and you do not have, as your sole or dominant purpose for entering into the arrangement under which you are to receive or provide the financial benefit, the purpose of receiving or delivering the financial benefit as part of your expected purchase, sale or usage requirements.

A reference in paragraph (b) or (c) to a financial arrangement does not include a reference to something that is a financial arrangement under section 230-50.

Note: Examples of dealing of the kind covered by paragraph (e) are:

- (a) dealing with the right or obligation, or similar rights or obligations, on a frequent basis, a short-term basis or on a frequent and short-term basis; and
- (b) acquiring the right or obligation, or similar rights or obligations, and managing the resulting risk by entering into offsetting arrangements that provide a profit margin.

- (3) You satisfy this subsection if:
 - (a) the *financial benefit is readily convertible into money or a *money equivalent; and
 - (b) there is a market for the financial benefit that has a high degree of liquidity; and
 - (c) subsection (4) or (5) is satisfied.
- (4) This subsection is satisfied if, for the recipient of the *financial benefit, the amount of the money or *money equivalent referred to in paragraph (3)(a) is not subject to a substantial risk of substantial decrease in value.

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

- (5) This subsection is satisfied if your purpose, or one of your purposes, for entering into the arrangement under which you are to receive or provide the *financial benefit, is to receive or deliver the financial benefit:
- (a) to raise or provide finance; or
 - (b) if paragraph (a) does not apply—so that it may be converted or liquidated into money or a money equivalent (other than as part of your expected purchase, sale or usage requirements).

230-50 Financial arrangement (equity interest or right or obligation in relation to equity interest)

- (1) You also have a **financial arrangement** if you have an *equity interest. The equity interest constitutes the financial arrangement.
- (2) You also have a **financial arrangement** if:
- (a) you have, under an *arrangement:
 - (i) a legal or equitable right to receive something that is a financial arrangement under this section; or
 - (ii) a legal or equitable obligation to provide something that is a financial arrangement under this section; or
 - (iii) a combination of one or more such rights and/or obligations; and
 - (b) the right, obligation or combination does not constitute, or form part of, a financial arrangement under subsection 230-45(1).

The right, obligation or combination referred to in paragraph (a) constitutes the financial arrangement.

Note 1: Paragraph 230-40(4)(e) prevents the accruals method or the realisation method being applied to something that is a financial arrangement under this section.

Note 2: Subsection 230-270(1) prevents the retranslation method being applied to something that is a financial arrangement under this section.

Note 3: Subsection 230-330(1) prevents the hedging method being applied to something that is a financial arrangement under this section.

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

230-55 Rights, obligations and arrangements (grouping and disaggregation rules)

Single right or obligation or multiple rights or obligations?

- (1) If you have a right to receive 2 or more *financial benefits, you are taken, for the purposes of this Division, to have a separate right to receive each of those financial benefits.
- (2) If you have an obligation to provide 2 or more *financial benefits, you are taken, for the purposes of this Division, to have a separate obligation to provide each of those financial benefits.
- (3) Subsections (1) and (2) apply for the avoidance of doubt.

Matters relevant to determining what rights and/or obligations constitute particular arrangements

- (4) For the purposes of this Division, whether a number of rights and/or obligations are themselves an *arrangement or are 2 or more separate arrangements is a question of fact and degree that you determine having regard to the following:
 - (a) the nature of the rights and/or obligations;
 - (b) their terms and conditions (including those relating to any payment or other consideration for them);
 - (c) the circumstances surrounding their creation and their proposed exercise or performance (including what can reasonably be seen as the purposes of one or more of the entities involved);
 - (d) whether they can be dealt with separately or must be dealt with together;
 - (e) normal commercial understandings and practices in relation to them (including whether they are regarded commercially as separate things or as a group or series that forms a whole);
 - (f) the objects of this Division.

In applying this subsection, have regard to the matters referred to in paragraphs (a) to (f) both in relation to the rights and/or obligations separately and in relation to the rights and/or obligations in combination with each other.

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

Example 1: Your rights and obligations under a typical convertible note, including the right to convert the note into a share or shares, would constitute one arrangement.

Example 2: Your rights and obligations under a typical price-linked or index-linked bond would constitute one arrangement.

Note 1: If you raised funds by means of a contract that you would not have entered into without entering into another contract, and neither contract could be assigned to a third party without the other also being assigned, this would tend to indicate that your rights and obligations under the 2 contracts together constitute one arrangement.

Note 2: If the commercial effect of your individual rights and/or obligations in a group or series cannot be understood without reference to the group or series as a whole, this would tend to indicate that all of your rights and/or obligations in the group or series together constitute one arrangement.

General rules

230-60 When financial benefit provided or received under financial arrangement

Financial benefit provided under financial arrangement

- (1) You are taken, for the purposes of this Division, to have (or to have had) an obligation to provide a *financial benefit under a *financial arrangement if:
- (a) you have (or had) an obligation to provide the financial benefit in relation to the arrangement; and
 - (b) the financial benefit would not otherwise be treated as one that you have (or had) an obligation to provide under the arrangement; and
 - (c) the financial benefit plays an integral role in determining:
 - (i) whether you make a gain or loss from the arrangement; or
 - (ii) the amount of such a gain or loss.

Paragraph (a) applies even if the entity to which you provide the financial benefit is not a party to the arrangement.

Note: This means that the financial benefits you provide to acquire the financial arrangement (whether to the issuer, a previous holder or a third party) are taken to be financial benefits you provide under the arrangement. The financial benefits you provide may include, for

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

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example, fees paid or the forgoing of rights to receive a financial benefit.

Financial benefit received under financial arrangement

- (2) You are taken, for the purposes of this Division, to have (or to have had) a right to receive a *financial benefit under a *financial arrangement if:
- (a) you have (or had) a right to receive the financial benefit in relation to the arrangement; and
 - (b) the financial benefit would not otherwise be treated as one that you have (or had) a right to receive under the arrangement; and
 - (c) the financial benefit plays an integral role in determining:
 - (i) whether you make a gain or loss from the arrangement; or
 - (ii) the amount of such a gain or loss.

Paragraph (a) applies even if the entity that provides the financial benefit is not a party to the arrangement.

Note: The financial benefits you receive may include, for example, the waiving of an obligation you have to provide a financial benefit.

230-65 Amount of financial benefit relating to more than one financial arrangement etc.

- (1) This section applies if:
- (a) a *financial benefit plays the integral role mentioned in paragraph 230-60(1)(c) or (2)(c) in relation to a *financial arrangement; and
 - (b) either or both of the following apply:
 - (i) the financial benefit plays that role in relation to one or more other financial arrangements;
 - (ii) the financial benefit is provided or received for one or more other things that are not financial arrangements.

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

- (2) For the purposes of this Division, determine the amount of the *financial benefit that plays that role in relation to a particular *financial arrangement by apportioning the actual amount of the financial benefit, on a reasonable basis, between:
- (a) that financial arrangement; and
 - (b) each other financial arrangement (if any) in relation to which the benefit plays that role; and
 - (c) each other thing (if any) mentioned in subparagraph (1)(b)(ii).

230-70 Apportionment when financial benefit received or right ceases

- (1) Apply subsection (2) in working out whether you make, or will make, a gain or loss (and the amount of the gain or loss) at a time when:
- (a) you receive a particular *financial benefit under a *financial arrangement; or
 - (b) one of your rights under a financial arrangement ceases.
- The gain or loss is to be calculated in nominal (and not *present value) terms.
- (2) You must have regard to the extent to which the *financial benefits that you have provided, or are to provide, under the *financial arrangement are reasonably attributable, at the time mentioned in subsection (1), to the benefit or right referred to in paragraph (1)(a) or (b).
- (3) Any attribution made under subsection (2) must reflect appropriate and commercially accepted valuation principles that properly take into account:
- (a) the nature of the rights and obligations under the *financial arrangement; and
 - (b) the risks associated with each *financial benefit, right and obligation under the arrangement; and
 - (c) the time value of money.

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

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- (4) Despite subsection (2), no *financial benefit that you have provided, or are to provide, under the *financial arrangement is to be attributed to the benefit or right referred to in paragraph (1)(a) or (b) if:
- (a) you are working out the amount of a gain or loss for the purposes of Subdivision 230-B; and
 - (b) the gain or loss is not an overall gain or loss from the arrangement (within the meaning of that Subdivision) at the time when you start to have the arrangement; and
 - (c) the benefit or right referred to in paragraph (1)(a) or (b) is an amount that represents, or is a right to an amount that represents:
 - (i) interest; or
 - (ii) a *return paid or provided on a *debt interest; or
 - (iii) something that is in the nature of interest; or
 - (iv) something that could reasonably be regarded as being a substitute for interest; or
 - (v) something prescribed by the regulations for the purposes of this paragraph.

Note 1: An example of something in the nature of interest is a discount on a security.

Note 2: An example of something that could reasonably be regarded as being a substitute for interest is a lump sum payment received instead of payments of interest.

230-75 Apportionment when financial benefit provided or obligation ceases

- (1) Apply subsection (2) in working out whether you make, or will make, a gain or loss (and the amount of the gain or loss) at a time when:
- (a) you provide a particular *financial benefit under the *financial arrangement; or
 - (b) one of your obligations under a financial arrangement ceases.
- The gain or loss is to be calculated in nominal (and not *present value) terms.

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

- (2) You must have regard to the extent to which the *financial benefits that you have received, or are to receive, under the *financial arrangement are reasonably attributable, at the time mentioned in subsection (1), to the benefit or obligation referred to in paragraph (1)(a) or (b).
- (3) Any attribution made under subsection (2) must reflect appropriate and commercially accepted valuation principles that properly take into account:
- (a) the nature of the rights and obligations under the *financial arrangement; and
 - (b) the risks associated with each *financial benefit, right and obligation under the arrangement; and
 - (c) the time value of money.
- (4) Despite subsection (2), no *financial benefit that you have received, or are to receive, under the *financial arrangement is to be attributed to the benefit or obligation referred to in paragraph (1)(a) or (b) if:
- (a) you are working out the amount of a gain or loss for the purposes of Subdivision 230-B; and
 - (b) the gain or loss is not an overall gain or loss from the arrangement (within the meaning of that Subdivision) at the time when you start to have the arrangement; and
 - (c) the benefit or obligation referred to in paragraph (1)(a) or (b) is an amount that represents, or is an obligation to provide an amount that represents:
 - (i) interest; or
 - (ii) a *return paid or provided on a *debt interest; or
 - (iii) something that is in the nature of interest; or
 - (iv) something that could reasonably be regarded as being a substitute for interest; or
 - (v) something prescribed by the regulations for the purposes of this paragraph.

Note 1: An example of something in the nature of interest is a discount on a security.

Note 2: An example of something that could reasonably be regarded as being a substitute for interest is a lump sum payment made instead of payments of interest.

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

230-80 Consistency in working out gains or losses (integrity measure)

Object of section

- (1) The object of this section is to stop you obtaining an inappropriate tax benefit from not working out your gains and losses in a consistent manner.

Consistent treatment for particular financial arrangement

- (2) If:
- (a) this Division provides that a particular method applies to gains or losses you make from a *financial arrangement; and
 - (b) that method allows you to choose the particular manner in which you apply that method;
- you must use that manner consistently for the arrangement for all income years.

Consistent treatment for financial arrangements of essentially the same nature

- (3) If:
- (a) this Division provides that a particular method applies to gains or losses you make from 2 or more *financial arrangements; and
 - (b) that method allows you to choose the particular manner in which you apply that method;
- you must use that same manner consistently for all of those financial arrangements that are essentially of the same nature.

230-85 Rights and obligations include contingent rights and obligations

To avoid doubt:

- (a) a right is treated as a right for the purposes of this Division even it is subject to a contingency; and
- (b) an obligation is treated as an obligation for the purposes of this Division even if it is subject to a contingency.

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

Subdivision 230-B—The accruals/realisation methods

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

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Guide to Subdivision 230-B

230-90 What this Subdivision is about

This Subdivision applies the accruals method to determine the amount and timing of gains and losses from a financial arrangement if they are sufficiently certain for such accrual to be done.

This Subdivision applies the realisation method to determine the amount and timing of gains and losses if they are not sufficiently certain to be dealt with under the accruals method.

If the accruals method is applied to a gain or loss on the basis of an estimate of a financial benefit and the benefit when received or provided is more or less than the estimate, a balancing adjustment is made to correct for the underestimate or overestimate.

If the accruals method is being applied to gains and losses from the arrangement and there is a material change to the arrangement, or the circumstances in which it operates, a reassessment is made of whether the accruals method or the realisation method should apply to gains and losses from the arrangement.

A change in circumstances may also cause a re-estimation of gains and losses that the accruals method is being applied to.

Objects of Subdivision

230-95 Objects of this Subdivision

The objects of this Subdivision are:

- (a) to properly recognise gains and losses from *financial arrangements by allocating them to appropriate periods of time; and
- (b) to reduce compliance costs by reflecting commercial accounting concepts where appropriate; and

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

(c) to minimise tax deferral.

When accruals method or realisation method applies

230-100 When accruals method or realisation method applies

When accruals method applies and when realisation method applies

- (1) This section tells you when to apply the accruals method and when to apply the realisation method if this Subdivision applies to gains and losses from a *financial arrangement.

Accruals method—sufficiently certain overall gain or loss at start time

- (2) The accruals method provided for in this Subdivision applies to a gain or loss you make from a *financial arrangement if:
- (a) the gain or loss is an overall gain or loss from the arrangement; and
 - (b) the gain or loss is sufficiently certain at the time when you start to have the arrangement.

Note: Subsection 230-105(1) tells you when you have a sufficiently certain overall gain or loss.

Accruals method—sufficiently certain particular gain or loss

- (3) The accruals method provided for in this Subdivision also applies to a gain or loss you make from a *financial arrangement if:
- (a) the gain or loss arises from a *financial benefit that you are to receive or are to provide under the arrangement; and
 - (b) the gain or loss:
 - (i) is sufficiently certain at the time when you start to have the arrangement and before you are to receive or provide the benefit; or
 - (ii) becomes sufficiently certain after the time when you start to have the arrangement and before you are to receive or provide the benefit; and

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

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- (c) the benefit has not already been taken into account in applying:
 - (i) the accruals method provided for in this Subdivision; or
 - (ii) the realisation method provided for in this Subdivision; to another gain or loss from the arrangement.

This subsection has effect subject to subsection (4).

Note: Subsection 230-110(1) tells you when you have a sufficiently certain gain or loss at a particular time.

- (4) Subsection (3) does not apply to a gain or loss that you make from a *financial arrangement if:
 - (a) you are:
 - (i) an individual; or
 - (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
 - (b) the arrangement is a *qualifying security; and
 - (c) you have not made an election under subsection 230-455(7).

Realisation method—gain or loss not sufficiently certain

- (5) The realisation method provided for in this Subdivision applies to a gain or loss that you make from a *financial arrangement if the accruals method provided for in this Subdivision does not apply to that gain or loss.

Note: Section 230-180 tells you how to apply the realisation method to the gain or loss.

230-105 Sufficiently certain overall gain or loss

- (1) You have a sufficiently certain overall gain or loss from a *financial arrangement at the time when you start to have the arrangement only if it is sufficiently certain at that time that you will make an overall gain or loss from the arrangement of:
 - (a) a particular amount; or
 - (b) at least a particular amount.

The amount of the gain or loss is the amount referred to in paragraph (a) or (b).

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

Note: Sections 230-70 and 230-75 (about apportionment of financial benefits) only apply in working out whether you make, or will make, a gain or loss (and the amount of the gain or loss) when particular events happen. They do not apply in working out, at the time when you start to have a financial arrangement, whether it is sufficiently certain that you will make an overall gain or loss from the arrangement.

- (2) In applying subsection (1), you must:
- (a) assume that you will continue to have the *financial arrangement for the rest of its life; and
 - (b) have regard to the extent of the risk that a *financial benefit that you are not sufficiently certain to provide or receive under the arrangement may reduce the amount of the gain or loss.

230-110 Sufficiently certain gain or loss from particular event

- (1) You have a sufficiently certain gain or loss from a *financial arrangement at a particular time if it is sufficiently certain at that time that you will make a gain or loss from the arrangement of:
- (a) a particular amount; or
 - (b) at least a particular amount;
- when one of the following occurs:
- (c) you receive a particular *financial benefit under the arrangement or one of your rights under the arrangement ceases;
 - (d) you provide a particular financial benefit under the arrangement or one of your obligations under the arrangement ceases.

The amount of the gain or loss is the amount referred to in paragraph (a) or (b).

- (2) In applying subsection (1) to work out whether you have a sufficiently certain gain or loss at a particular time:
- (a) have regard to the extent of the risk that a *financial benefit that you are not sufficiently certain to provide or receive under the arrangement may reduce the amount of the gain or loss; and

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

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- (b) disregard any financial benefit that has already been taken into account in working out the amount of a sufficiently certain overall gain or loss from the *financial arrangement under subsection 230-105(1) at the time when you started to have the arrangement; and
- (c) disregard any financial benefit (or that part of any financial benefit) that has already been taken into account in working out the amount of a sufficiently certain gain or loss from the *financial arrangement under subsection (1).

Note: Sections 230-70 and 230-75 allow you to apportion financial benefits provided and financial benefits received in working out the amount of a gain or loss.

230-115 Sufficiently certain financial benefits

- (1) In deciding for the purposes of this Subdivision whether it is sufficiently certain at a particular time that you will make a gain or loss from a *financial arrangement:
 - (a) have regard only to:
 - (i) *financial benefits that you are sufficiently certain to receive; and
 - (ii) financial benefits that you are sufficiently certain to provide; and
 - (b) have regard to those financial benefits only to the extent that the amount or value of the benefits is, at that time, fixed or determinable with reasonable accuracy.
- Note: The particular time may be the time at which you start to have the arrangement.
- (2) A *financial benefit that you are to receive or provide is to be treated as one that you are sufficiently certain to receive or to provide only if:
 - (a) it is reasonably expected that you will receive or provide the financial benefit (assuming that you will continue to have the *financial arrangement for the rest of its life); and
 - (b) at least some of the amount or value of the benefit is, at that time, fixed or determinable with reasonable accuracy.
 - (3) In applying subsection (2) to the *financial benefit:

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

- (a) you must have regard to:
 - (i) the terms and conditions of the *financial arrangement;
and
 - (ii) accepted pricing and valuation techniques; and
 - (iii) the economic or commercial substance and effect of the arrangement; and
 - (iv) the contingencies that attach to the other financial benefits that are to be provided or received under the arrangement; and
 - (b) you must treat the financial benefit as if it were not contingent if it is appropriate to do so having regard to the contingencies that attach to the other financial benefits that are to be received or provided under the arrangement.
- (4) In applying paragraph (2)(b) at a particular time (the **reference time**) to a *financial benefit that depends on a variable that is based on:
- (a) an interest rate; or
 - (b) a rate that solely or primarily reflects the time value of money; or
 - (c) a rate that solely or primarily reflects a consumer price index;
or
 - (d) a rate that solely or primarily reflects an index prescribed by the regulations for the purposes of this paragraph;
- you must assume that that variable will continue to have the value it has at the reference time.
- (5) Despite subsection (4), in applying paragraph (2)(b) at a particular time to a *financial benefit that depends on a rate of change to a variable that is based on:
- (a) a rate that solely or primarily reflects a consumer price index;
or
 - (b) a rate that solely or primarily reflects an index prescribed by the regulations for the purposes of this paragraph;
- you must assume that the rate of change to that variable will continue to be the rate of change that is current at that time.
- (6) If subsection (4) or (5) applies to a gain or loss and you are determining the amount of the gain or loss at a particular time, you

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

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must also assume that that variable will continue to have the value that it has at that time.

- (7) Subsections (4) and (5) do not limit paragraph (2)(b).
- (8) If all of the *financial benefits provided and received under the *financial arrangement are denominated in a particular *foreign currency, those financial benefits are not to be translated into:
 - (a) your *applicable functional currency; or
 - (b) if you do not have an applicable functional currency—
Australian currency;for the purposes of applying subsection (2) to the arrangement.
- (9) To avoid doubt:
 - (a) a *financial benefit that you have already provided at a particular time is taken to be one that it is, at that time, a financial benefit that you are sufficiently certain to provide; and
 - (b) a financial benefit that you have already received at a particular time is taken to be one that it is, at that time, a financial benefit that you are sufficiently certain to receive.

230-120 Financial arrangements with notional principal

- (1) This section applies to a *financial arrangement that you have if, in substance or effect, and having regard to the pricing, terms and conditions of the arrangement:
 - (a) the arrangement consists of these things:
 - (i) a leg, the *financial benefits to be provided or received in respect of which are calculated by reference to, or are reasonably related to, a notional principal;
 - (ii) another leg, the financial benefits to be provided or received in respect of which also are calculated by reference to, or are reasonably related to, a notional principal;
 - (iii) if the arrangement includes one or more other things—those things; and

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

- (b) when you start to have the arrangement, the value of the notional principal in relation to one leg is equal to the value of the notional principal in relation to the other leg; and
- (c) all or part of the notional principal in relation to each leg is provided or received at a time, regardless of whether that time is different in relation to each leg.

Example: A swap contract.

- (2) To avoid doubt, the *financial benefits mentioned in subparagraphs (1)(a)(i) and (ii), and the notional principal in relation to each leg, need not actually be provided or received.
- (3) In applying this Subdivision to the *financial arrangement:
 - (a) work out the *financial benefits from the arrangement as follows:
 - (i) work out the financial benefits from each thing of which the arrangement consists separately from the financial benefits from each other thing of which the arrangement consists;
 - (ii) ensure that results under subparagraph (i) are consistent with the timing and amount of financial benefits to be actually provided or received under the arrangement; and
 - (b) work out your gains and losses from the arrangement as follows:
 - (i) work out the gains and losses from each thing of which the arrangement consists separately from the gains and losses from each other thing of which the arrangement consists;
 - (ii) treat the gains and losses mentioned in subparagraph (i) for all of those things as your gains and losses from the arrangement; and
 - (c) in working out a gain or loss from a thing for the purposes of subparagraph (b)(i), and, if the accruals method applies to the gain or loss, how it is to be spread and allocated:
 - (i) if the thing is a leg—take into account the amount of the notional principal at a time and in a manner that properly reflects the way in which the financial benefits in respect of that leg are calculated; and

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

- (ii) if the thing is *not* a leg—take into account an amount relevant to the thing at a time and in a manner that properly reflects the way in which the financial benefits in respect of that thing are calculated.

The accruals method

230-125 Overview of the accruals method

If the accruals method applies to a gain or loss you make from a *financial arrangement:

- (a) you use section 230-130 to work out the period over which the gain or loss is to be spread; and
- (b) you use section 230-135 to work out how to allocate the gain or loss to particular intervals within the period over which the gain or loss is to be spread; and
- (c) if an interval to which part of the gain or loss is allocated straddles 2 income years, you use section 230-170 to work out how to allocate that part of the gain or loss allocated between those 2 income years.

230-130 Applying accruals method to work out period over which gain or loss is to be spread

Period over which overall gain or loss is to be spread

- (1) If you have a sufficiently certain overall gain or loss from a *financial arrangement under subsection 230-105(1), the period over which the gain or loss is to be spread is the period that:
 - (a) starts when you start to have the arrangement; and
 - (b) ends when you will cease to have the arrangement.

In applying paragraph (b), you must assume that you will continue to have the arrangement for the rest of its life.

- (2) However, if you have sufficiently certain gains or losses from the arrangement that:
 - (a) can be spread under subsection (3); and
 - (b) when considered together, represent adequately the overall gain or loss mentioned in subsection (1);

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

you may spread those gains or losses in accordance with subsection (3) instead of spreading the overall gain or loss in accordance with subsection (1).

Period over which particular gain or loss is to be spread

- (3) If you have a sufficiently certain gain or loss from a *financial arrangement under subsection 230-110(1), the period over which the gain or loss is to be spread is the period to which the gain or loss relates. Have regard to the pricing, terms and conditions of the arrangement in working out the period to which the gain or loss relates. This subsection has effect subject to subsections (4) and (5).
- (4) The start of the period over which a gain or loss to which subsection (3) applies is to be spread must:
 - (a) not start earlier than the time when you start to have the *financial arrangement; and
 - (b) not start earlier than the start of the income year during which it becomes sufficiently certain that you will make the gain or loss.
- (5) The end of the period over which a gain or loss to which subsection (3) applies is to be spread must:
 - (a) not end later than the time when you will cease to have the *financial arrangement; and
 - (b) not end later than the end of the income year during which:
 - (i) the *financial benefit that gives rise to the gain or loss is to be received or provided; or
 - (ii) the right or obligation whose ceasing gives rise to the gain or loss is to cease.

230-135 How gain or loss is spread

How to spread gain or loss

- (1) This section tells you how to spread a gain or loss to which the accruals method applies.

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

Compounding accruals or approximation

- (2) The gain or loss is to be spread using:
 - (a) compounding accruals; or
 - (b) a method whose results approximate those obtained using the method referred to in paragraph (a) (having regard to the length of the period over which the gain or loss is to be spread).
- (3) The following subsections of this section clarify the way in which the gain or loss is to be spread in accordance with paragraph (2)(a).

Intervals to which parts of gain or loss allocated

- (4) The intervals to which parts of the gain or loss are allocated must:
 - (a) not exceed 12 months; and
 - (b) all be of the same length.Paragraph (b) does not apply to the first and last intervals. These may be shorter than the other intervals.

Fixing of amount and rate for interval

- (5) For each interval:
 - (a) determine a rate of return; and
 - (b) determine an amount to which you apply the rate of return.
- (6) For the purposes of paragraph (5)(b), in determining the amount to which you apply the rate of return for an interval, have regard to:
 - (a) the amount or value; and
 - (b) the timing;of *financial benefits that are to be taken into account in working out the amount of the gain or loss, and were provided or received by you during the interval.

Assumption of continuing to hold arrangement for rest of its life

- (7) The gain or loss is to be spread assuming that you will continue to have the *financial arrangement for the rest of its life.

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

Regard to be had to financial benefits provided or received in interval

- (8) In allocating the gain or loss to intervals, have regard to the *financial benefits to be provided or received in each of those intervals.

230-140 Method of spreading gain or loss—effective interest method

- (1) This section clarifies that the method mentioned in subsection (2) of spreading gains and losses is a method covered by paragraph 230-135(2)(b) (methods approximating compounding accruals).
- (2) The method is the effective interest method mentioned in *accounting standard AASB 139 (or another accounting standard prescribed by the regulations for the purposes of this subsection).
- (3) However, this section applies to a particular *financial arrangement you have only if:
- (a) in a case where there is a discount or premium under the arrangement—when you start to have the arrangement, the annually compounded rate of return applicable to the discount or premium does not exceed 1%; and
 - (b) when you start to have the arrangement, neither the maximum life of the arrangement (as determined under the terms and conditions of the arrangement) nor the expected life of the arrangement exceeds:
 - (i) unless subparagraph (ii) applies—30 years; or
 - (ii) if the regulations prescribe a different period for the purposes of this subparagraph—that period; and
 - (c) each *financial benefit that you have an obligation to provide or a right to receive under the arrangement, and that gives rise to a gain or loss from the arrangement (other than a gain or loss that is attributable to any discount or premium):
 - (i) relates to a period not exceeding 12 months; and
 - (ii) will be provided or received in the period to which it relates; and

Note: Different financial benefits may relate to different periods.

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

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- (d) you prepare a financial report for the year in which you start to have the arrangement; and
 - (e) that financial report is:
 - (i) prepared in accordance with paragraph 230-210(2)(a); and
 - (ii) audited in accordance with paragraph 230-210(2)(b); and
 - (f) all gains and losses from the arrangement to which the accrual method applies are spread in a way that is consistent with that financial report.
- (4) For the purposes of paragraph (3)(a), assume that you will continue to have the arrangement for the rest of its expected life.

230-145 Application of effective interest method where differing income and accounting years

- (1) This section applies if:
- (a) you prepare a financial report for a year (the *first year*); and
 - (b) you prepare a financial report for the subsequent year (the *second year*); and
 - (c) your income year starts in the first year and ends in the second year; and
 - (d) both the financial report for the first year and the financial report for the second year are:
 - (i) prepared in accordance with paragraph 230-210(2)(a); and
 - (ii) audited in accordance with paragraph 230-210(2)(b); and
 - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) For the purposes of paragraph 230-140(3)(d), treat yourself as having prepared a financial report for the income year in which you start to have the arrangement.

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

- (3) Work out the gain or loss you make from the arrangement for the income year as follows:
- (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with paragraph 230-140(3)(f) (treating the first year as an income year);
 - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
 - (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with paragraph 230-140(3)(f) (treating the second year as an income year);
 - (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);
 - (e) next:
 - (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or
 - (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or
 - (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.
- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
- (a) using a methodology that is reasonable; and
 - (b) using the same methodology for the first and second years.

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

230-150 Election for portfolio treatment of fees

- (1) You may make an election for an income year under this section if:
 - (a) you prepare a financial report for the income year in accordance with:
 - (i) the *accounting principles; or
 - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting made under a *foreign law that apply to the preparation of the financial report under a foreign law; and
 - (b) the financial report is audited in accordance with:
 - (i) the *auditing principles; or
 - (ii) if the auditing principles do not apply to the auditing of the financial report—comparable standards for auditing made under a foreign law.
- (2) An election under this section is irrevocable.

230-155 Election for portfolio treatment of fees where differing income and accounting years

- (1) This section applies if:
 - (a) you prepare a financial report for a year (the *first year*); and
 - (b) you prepare a financial report for the subsequent year (the *second year*); and
 - (c) your income year starts in the first year and ends in the second year; and
 - (d) both the financial report for the first year and the financial report for the second year are:
 - (i) prepared in accordance with paragraph 230-150(1)(a); and
 - (ii) audited in accordance with paragraph 230-150(1)(b); and
 - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.

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

- (2) Treat yourself as eligible to make an election for the income year under subsection 230-150(1).
- (3) Work out the gain or loss you make from the arrangement for the income year as follows:
 - (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with subsections 230-160(3) and (4) or 230-165(3) and (4) (treating the first year as an income year);
 - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
 - (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with subsections 230-160(3) and (4) or 230-165(3) and (4) (treating the second year as an income year);
 - (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);
 - (e) next:
 - (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or
 - (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or
 - (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.
- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
 - (a) using a methodology that is reasonable; and
 - (b) using the same methodology for the first and second years.

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

230-160 Portfolio treatment of fees

- (1) This section applies in relation to a *financial arrangement if:
 - (a) you have made an election under section 230-150 in an income year; and
 - (b) you start to have the financial arrangement in that income year or a later income year; and
 - (c) the financial arrangement is part of a portfolio of similar financial arrangements; and
 - (d) a gain or loss to which subsection 230-130(3) applies arises in part from fees in respect of the *financial arrangement; and
 - (e) the fees play an integral role in determining the amount of the gain or loss; and
 - (f) the net amount of the fees is *not* expected to be significant relative to an overall gain or loss from the arrangement.
- (2) For the purposes of this Division, split the gain or loss mentioned in paragraph (1)(d) as follows:
 - (a) to the extent that it arises from the fees, treat it as a gain or loss from the *financial arrangement (the *fees gain or loss*) to which subsection 230-130(3) applies;
 - (b) to the extent that it does not arise from the fees, treat it as a separate gain or loss from the financial arrangement to which subsection 230-130(3) applies.

Note: The separate gain or loss mentioned in paragraph (b) may itself be split under subsection 230-165(2) (premium/discount gain or loss).

Determination of period for fees gain or loss

- (3) The period over which the fees gain or loss is to be spread is the period that you determine to be the expected life of the portfolio, if:
 - (a) the basis on which you determine the period accords with the spreading of the fees gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and
 - (b) the basis on which you determine the period is set and recorded before any fees in respect of the *financial arrangement fall due; and

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

- (c) the period can be justified objectively; and
- (d) the period is reasonable in the circumstances.

Spreading the fees gain or loss

- (4) The method by which the fees gain or loss is to be spread is the method that you determine, if:
 - (a) the basis on which you determine the method accords with the spreading of the fees gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and
 - (b) the method is determined before any fees in respect of the *financial arrangement fall due; and
 - (c) the method can be justified objectively; and
 - (d) the method is reasonable in the circumstances.
- (5) To avoid doubt, subsections (3) and (4) apply despite sections 230-130 and 230-135.

230-165 Portfolio treatment of premiums and discounts for acquiring portfolio

- (1) This section applies in relation to a *financial arrangement if:
 - (a) you have made an election under section 230-150 in an income year; and
 - (b) you start to have the financial arrangement in that income year or a later income year; and
 - (c) the financial arrangement is part of a portfolio of similar financial arrangements; and
 - (d) a gain or loss to which subsection 230-130(3) applies arises in part from a premium or discount in starting to have the portfolio; and
 - (e) the gain or loss is *not* expected to be significant relative to the amount of the gain or loss on the portfolio.
- (2) For the purposes of this Division, split the gain or loss mentioned in paragraph (1)(d) as follows:
 - (a) to the extent that it arises from the premium or discount, treat it as a gain or loss from the *financial arrangement (the

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

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premium/discount gain or loss) to which subsection 230-130(3) applies;

- (b) to the extent that it does not arise from the premium or discount, treat it as a separate gain or loss from the financial arrangement to which subsection 230-130(3) applies.

Note: The separate gain or loss mentioned in paragraph (b) may itself be split under subsection 230-160(2) (portfolio fees gain or loss).

Determination of period for premium/discount gain or loss

- (3) The period over which the premium/discount gain or loss is to be spread is the period that you determine to be the expected life of the portfolio, if:
- (a) the basis on which you determine the period accords with the spreading of the premium/discount gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and
 - (b) the basis on which you determine the period is set and recorded before you start to have the *financial arrangement; and
 - (c) the period can be justified objectively; and
 - (d) the period is reasonable in the circumstances.

Spreading the premium/discount gain or loss

- (4) The method by which the premium/discount gain or loss is to be spread is the method that you determine, if:
- (a) the basis on which you determine the method accords with the spreading of the premium/discount gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and
 - (b) the method is determined before you start to have the *financial arrangement; and
 - (c) the method can be justified objectively; and
 - (d) the method is reasonable in the circumstances.
- (5) To avoid doubt, subsections (3) and (4) apply despite sections 230-130 and 230-135.

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

230-170 Allocating gain or loss to income years

- (1) You are taken, for the purposes of section 230-15, to make, for an income year, a gain or loss equal to a part of a gain or loss if:
 - (a) that part of the gain or loss is allocated to an interval under section 230-135; and
 - (b) that interval falls wholly within that income year.
- (2) If:
 - (a) a part of a gain or loss is allocated to an interval under section 230-135; and
 - (b) that interval straddles 2 income years;you are taken, for purposes of section 230-15, to make a gain or loss equal to so much of that part of the gain or loss as is allocated between those income years on a reasonable basis.
- (3) If:
 - (a) a *head company of a *consolidated group or *MEC group has a *financial arrangement; and
 - (b) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and
 - (c) immediately after the leaving time, the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group;an income year of the group is taken, for the purposes of applying this section to the group and the arrangement, to end at the leaving time.

230-175 Running balancing adjustments

Overestimate of financial benefit to be received

- (1) You are taken for the purposes of this Division to make a loss from a *financial arrangement if:
 - (a) a provision of this Subdivision has applied on the basis that you were sufficiently certain, at a particular time, to receive a *financial benefit of, or of at least, a particular amount under the arrangement; and

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

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- (b) when you receive the benefit (or the time comes for you to receive the benefit), the amount you receive (or are to receive) is nil or is less than the amount estimated.

The amount of the loss is equal to the difference between the amount estimated and the amount you receive (or are to receive). You are taken to have made the loss for the income year in which you receive the benefit (or in which the time comes for you to receive the benefit).

Underestimate of financial benefit to be received

- (2) You are taken for the purposes of this Division to make a gain from a *financial arrangement if:
 - (a) a provision of this Subdivision has applied on the basis that you were sufficiently certain at a particular time to receive a *financial benefit of, or of at least, a particular amount under the arrangement; and
 - (b) when you receive the benefit, or the time comes for you to receive the benefit, the amount you receive, or are to receive, is more than the amount estimated.

The amount of the gain is equal to the difference between the amount estimated and the amount you receive or are to receive. You are taken to have made that gain in the income year in which you receive the benefit or in which the time comes for you to receive the benefit.

Overestimate of financial benefit to be provided

- (3) You are taken for the purposes of this Division to make a gain from a *financial arrangement if:
 - (a) a provision of this Subdivision has applied on the basis that you were sufficiently certain at a particular time to provide a *financial benefit of, or of at least, a particular amount under the arrangement; and
 - (b) when you provide the benefit, or the time comes for you to provide the benefit, the amount you provide, or are to provide, is nil or is less than the amount estimated.

The amount of the gain is equal to the difference between the amount estimated and the amount you provide or are to provide.

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

You are taken to have made that gain in the income year in which you provide the benefit or in which the time comes for you to provide the benefit.

Underestimate of financial benefit to be provided

- (4) You are taken for the purposes of this Division to make a loss from a *financial arrangement if:
- (a) a provision of this Subdivision has applied on the basis that you were sufficiently certain at a particular time to provide a *financial benefit of, or of at least, a particular amount under the arrangement; and
 - (b) when you provide the benefit, or the time comes for you to provide the benefit, the amount you are to provide is more than the estimated amount referred to in paragraph (a).

The amount of the loss is equal to the difference between the amount estimated and the amount you are to provide. You are taken to have made that loss in the income year in which you provide the benefit or in which the time comes for you to provide the benefit.

Realisation method

230-180 Realisation method

- (1) If a gain or loss is to be taken into account using the realisation method, you are taken, for the purposes of section 230-15, to make the gain or loss for the income year in which the gain or loss occurs.

Note: Sections 230-70 and 230-75 allow you to apportion financial benefits provided and financial benefits received in working out the amount of the gain or loss.

- (2) For the purposes of subsection (1), a gain or loss from a *financial arrangement is taken to occur at the time at which the last of the *financial benefits taken into account in determining the amount of the gain or loss:
- (a) is provided; or
 - (b) if the financial benefit is not provided at the time when it is due to be provided under the arrangement and it is reasonable

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

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to expect that the financial benefit will be provided—is due to be provided.

This subsection has effect subject to subsection (3).

- (3) For the purposes of subsection (1), you make a loss from a *financial arrangement from writing off, as a bad debt, a right to a *financial benefit (or a part of a financial benefit) if:
- (a) the financial benefit was taken into account in working out the amount of a gain from the arrangement and the gain has been included in your assessable income under this Division; or
 - (b) the right is one in respect of money that you lent in the ordinary course of your *business of lending money; or
 - (c) the right is one that you bought in the ordinary course of your business of lending money.
- (4) The loss referred to in subsection (3) occurs when you write off the right to the *financial benefit (or the part of the financial benefit) as a bad debt.
- (5) The amount of the loss referred to in subsection (3) is:
- (a) if paragraph (3)(a) applies—so much of the gain referred to in that paragraph as is reasonably attributable to the *financial benefit (or the part of the financial benefit); or
 - (b) if paragraph (3)(b) applies—the amount of the financial benefit (or the part of the financial benefit); or
 - (c) if paragraph (3)(c) applies—the amount of the financial benefit (or the part of the financial benefit) but only up to the value of the financial benefit you provided to acquire the right to the financial benefit (or the part of the financial benefit).
- (6) For the purposes of this Act, a deduction for the loss referred to in subsection (3) is to be treated as a deduction of a bad debt.

Note: Various provisions in this Act and the *Income Tax Assessment Act 1936* restrict the availability of deductions for bad debts and make provision in relation to the recoupment of amounts in relation to bad debts that have been written off. These provisions are set out in subsection 25-35(5).

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

Reassessment and re-estimation

230-185 Reassessment

- (1) You must make a fresh assessment of which gains and losses from a *financial arrangement the accruals method should apply to, and which gains and losses from that arrangement the realisation method should apply to, if:
 - (a) the accruals method, or the realisation method, provided for in this Subdivision applies to gains and losses from the arrangement; and
 - (b) there is a material change to:
 - (i) the terms and conditions of the arrangement; or
 - (ii) circumstances that affect the arrangement.
- (2) Without limiting subsection (1), the following changes are material changes to the terms and conditions of, or circumstances that affect, the *financial arrangement:
 - (a) a change to the terms or conditions of the arrangement in a way that alters the essential nature of the arrangement (for example, by altering it from a *debt interest to an *equity interest or from an equity interest to a debt interest);
 - (b) a change to the terms or conditions of the arrangement in a way that materially affects the contingencies on which significant obligations and rights under the arrangement are dependent (for example, by introducing such a contingency or removing such a contingency);
 - (c) a change in circumstances that makes something that:
 - (i) materially affects significant obligations and rights under the arrangement; and
 - (ii) was previously dependent on a contingency; no longer dependent on a contingency (because, for example, only one of a number of previously possible contingencies is realised);
 - (d) a change to:
 - (i) the terms on which credit is to be provided to an entity that is not a party to the arrangement; or

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

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- (ii) the credit rating of an entity that is not a party to the arrangement;
if a significant obligation or right under the arrangement is dependent on that credit being provided or that rating being maintained;
- (e) if the arrangement is, or includes, a financial asset or financial liability and you prepare your financial reports in accordance with:
 - (i) the *accounting principles; or
 - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting made under a *foreign law that apply to the preparation of the financial report under a foreign law;
a change to the terms or conditions of, or circumstances that affect, the arrangement that are sufficient for the financial asset or financial liability to be treated as impaired for the purposes of those principles or standards.
- (3) You do not need to make a reassessment under this section merely because of a change in the fair value of the *financial arrangement.

230-190 Re-estimation

When re-estimation necessary

- (1) You re-estimate a gain or loss from a *financial arrangement under subsection (5) if:
 - (a) the accruals method applies to the gain or loss; and
 - (b) circumstances arise that materially affect:
 - (i) the amount or value; or
 - (ii) the timing;
of *financial benefits that were taken into account in working out the amount of the gain or loss; and
 - (c) the circumstances do not give rise to a re-estimation under section 230-200; and
 - (d) in a case where the gain or loss is spread using the method referred to in paragraph 230-135(2)(b) in accordance with

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

section 230-140 (effective interest method)—the maximum life of the arrangement (as determined under the terms and conditions of the arrangement) is more than 12 months.

- (2) If subsection (1) applies, you must re-estimate the gain or loss:
 - (a) unless paragraph (b) applies—as soon as reasonably practicable after you become aware of the circumstances referred to in paragraph (1)(b); or
 - (b) if paragraph (1)(d) is satisfied and the terms and conditions of the *financial arrangement provide for reset dates to occur no more than 12 months apart—at the relevant reset date.
- (3) Without limiting subsection (1), the following are circumstances of the kind referred to in paragraph (1)(b):
 - (a) a material change in market conditions that are relevant to the amount or value of the *financial benefits to be received or provided under the *financial arrangement;
 - (b) cash flows that were previously estimated becoming known and the difference between the cash flows that become known and the cash flows that were previously estimates is not insignificant;
 - (c) a right to, or a part of a right to, a financial benefit under the arrangement is written off as a bad debt;
 - (d) you have made a reassessment under section 230-185 in relation to gains or losses under the arrangement and you have determined on the reassessment under that section that the accruals method should continue to apply to those gains or losses.
- (4) You do not re-estimate the gain or loss from a *financial arrangement under subsection (5) merely because of a change in the credit rating, or the creditworthiness, of a party or parties to the arrangement.

Nature of re-estimation

- (5) Making a re-estimation in relation to a gain or loss under this subsection involves:
 - (a) a fresh determination of the amount of the gain or loss; and

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

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- (b) a reapplication of the accruals method to the redetermined gain or loss to make a fresh allocation of the part of the redetermined gain or loss that has not already been allocated to intervals ending before the re-estimation is made to intervals ending after the re-estimation is made.

Basis for re-estimation

- (6) You may make the fresh allocation of the gain or loss under subsection (5) on these bases:
 - (a) if you satisfy subsection (7) in relation to the *financial arrangement—by maintaining the rate of return being used and adjusting the amount to which you apply the rate of return to the present value of the estimated future cash flows discounted at the maintained rate of return;
 - (b) in any case—by adjusting the rate of return and maintaining the amount to which the adjusted rate of return is to be applied.

The object to be achieved by both bases is to allow you to bring the remainder of the gain or loss based on the new estimates properly to account over the remainder of the period over which you spread the gain or loss.

Note: The amount referred to in paragraph (b) is the amount to which the previous rate of return was being applied immediately before the re-estimation.

- (7) You satisfy this subsection in relation to a *financial arrangement if every re-estimation you make under subsection (5) in relation to a gain or loss from the arrangement is made in accordance with:
 - (a) financial reports of the kind referred to in paragraph 230-395(2)(a) that are audited as referred to in paragraph 230-395(2)(b) (regardless of whether Subdivision 230-F (reliance on financial reports method) are to apply to a particular financial arrangement); and
 - (b) *accounting standard AASB 139 (or another accounting standard prescribed by the regulations for the purposes of this paragraph).

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

- (8) The following subsections apply if the re-estimation arises because of an impairment (within the meaning of the *accounting principles) of:
 - (a) the *financial arrangement; or
 - (b) a financial asset or financial liability that forms part of the arrangement.
- (9) Despite paragraph (6)(a), you must make the fresh allocation in accordance with paragraph (6)(b).
- (10) To the extent that the impairment results in you making a loss for an income year under section 230-15, you cannot deduct that loss for the income year.

230-195 Balancing adjustment if rate of return maintained on re-estimation

- (1) If you make a fresh allocation of the gain or loss on the basis referred to in paragraph 230-190(6)(a), you must make the following balancing adjustment:
 - (a) if you re-estimate a gain and the amount to which you apply the rate of return increases—you make a gain from the *financial arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;
 - (b) if you re-estimate a gain and the amount to which you apply the rate of return decreases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the decrease;
 - (c) if you re-estimate a loss and the amount to which you apply the rate of return increases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;
 - (d) if you re-estimate a loss and the amount to which you apply the rate of return decreases—you make a gain from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the decrease.

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

- (2) Subsection (3) applies if:
- (a) the re-estimation is made wholly or partly on the basis that you have written off, as a bad debt, a right to receive a *financial benefit (or a part of a financial benefit); and
 - (b) the right:
 - (i) is not one in respect of money that you lent in the ordinary course of your *business of lending money; and
 - (ii) is not one that you bought in the ordinary course of your business of lending money.
- (3) The balancing adjustment to be made under paragraph (1)(b), to the extent that it relates to the writing off of the bad debt, must not exceed so much of the gain in relation to the *financial arrangement as:
- (a) has been assessed under this Division; and
 - (b) is reasonably attributable to the *financial benefit (or the part of the financial benefit).
- (4) Subsection (5) applies if:
- (a) the re-estimation is made wholly or partly on the basis that you have written off, as a bad debt, a right to receive a *financial benefit; and
 - (b) the right is one that you bought in the ordinary course of your *business of lending money.
- (5) The balancing adjustment to be made under paragraph (1)(b), to the extent that it relates to the writing off of the bad debt, must not exceed the value of the *financial benefit you provided to acquire the right to the financial benefit (or the part of the financial benefit).
- (6) For the purposes of this Act, a deduction for the balancing adjustment referred to in subsection (3) is to be treated as a deduction of a bad debt.

Note: Various provisions in this Act and the *Income Tax Assessment Act 1936* restrict the availability of deductions for bad debts and make provision in relation to the recoupment of amounts in relation to bad debts that have been written off. These provisions are set out in subsection 25-35(5).

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

230-200 Re-estimation if balancing adjustment on partial disposal

Re-estimation if balancing adjustment on partial disposal

- (1) You also re-estimate a gain or loss from a *financial arrangement under subsection (2) if:
- (a) the accruals method applies to the gain or loss; and
 - (b) a balancing adjustment is made in relation to the arrangement under Subdivision 230-G because you transfer to another entity:
 - (i) a proportionate share of all of your rights and/or obligations under the arrangement; or
 - (ii) a right or obligation that you have under the arrangement to a specifically identified *financial benefit; or
 - (iii) a proportionate share of a right or obligation that you have under the arrangement to a specifically identified financial benefit.

You must re-estimate the gain or loss as soon as reasonably practicable after the transfer occurs.

Nature of re-estimation

- (2) Making a re-estimation in relation to a gain or loss under this subsection involves:
- (a) a fresh determination of the amount of the gain or loss disregarding:
 - (i) *financial benefits; and
 - (ii) amounts of the gain or loss that have already been allocated to intervals ending before the re-estimation is made;to the extent to which they are reasonably attributable to the proportionate share, or the right or obligation, referred to in paragraph (1)(b); and
 - (b) a reapplication of the accruals method to the redetermined gain or loss to make a fresh allocation of the part of that gain or loss that has not already been allocated to intervals ending before the re-estimation is made to intervals ending after the re-estimation is made.

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

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In applying paragraph (a), disregard subsections 230-70(4) and 230-75(4).

Basis for re-estimation

- (3) You make the fresh allocation of the gain or loss under subsection (2) by maintaining the rate of return being used and adjusting the amount to which you apply the rate of return to the present value of the estimated future cash flows discounted at the maintained rate of return. The object to be achieved by the fresh allocation is to allow you to bring the redetermined gain or loss properly to account over the remainder of the period over which you spread the gain or loss.

Subdivision 230-C—Fair value method

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230-205 Objects of this Subdivision

The objects of this Subdivision are:

- (a) to allow you to align the tax treatment of gains and losses from *financial arrangements with the accounting treatment that applies where assets and liabilities are classified or designated as at fair value through profit or loss; and
- (b) to facilitate efficient price-making; and
- (c) to achieve the above objects without allowing you to obtain an inappropriate tax benefit.

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

230-210 Fair value election

Election

- (1) You may make a **fair value election** under this section if you are eligible under subsection (2) to make the election for the income year in which you make the election.

Eligibility to make fair value election for an income year

- (2) You are eligible to make a **fair value election** for an income year if:
- (a) you prepare a financial report for that income year in accordance with:
 - (i) the *accounting principles; or
 - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting made under a *foreign law that apply to the preparation of the financial report under a foreign law; and
 - (b) the financial report is audited in accordance with:
 - (i) the *auditing principles; or
 - (ii) if the auditing principles do not apply to the auditing of the financial report—comparable standards for auditing made under a foreign law.

Note: Section 230-500 allows regulations to be made specifying particular foreign accounting and auditing standards as ones that are to be treated as comparable with Australian accounting and auditing principles for the purposes of this Division.

Election irrevocable

- (3) A *fair value election is irrevocable.

Note: The election may cease to have effect, or cease to apply to a particular financial arrangement, under section 230-240.

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

230-215 Fair value election where differing income and accounting years

- (1) This section applies if:
 - (a) you prepare a financial report for a year (the *first year*); and
 - (b) you prepare a financial report for the subsequent year (the *second year*); and
 - (c) your income year starts in the first year and ends in the second year; and
 - (d) both the financial report for the first year and the financial report for the second year are:
 - (i) prepared in accordance with paragraph 230-210(2)(a); and
 - (ii) audited in accordance with paragraph 230-210(2)(b); and
 - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-210(2).
- (3) Work out the gain or loss you make from the *financial arrangement for the income year as follows:
 - (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with section 230-230 (treating the first year as an income year);
 - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
 - (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with section 230-230 (treating the second year as an income year);
 - (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);

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

- (e) next:
 - (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or
 - (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or
 - (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.
- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
 - (a) using a methodology that is reasonable; and
 - (b) using the same methodology for the first and second years.
- (5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

230-220 Financial arrangements to which fair value election applies

- (1) A *fair value election applies in relation to *financial arrangements that:
 - (a) are *Division 230 financial arrangements; and
 - (b) are recognised in financial reports of the kind referred to in paragraph 230-210(2)(a) that are audited, or required to be audited, as referred to in paragraph 230-210(2)(b); and
 - (c) are assets or liabilities that you are required (whether or not as a result of a choice you make) by:
 - (i) the *accounting principles; or
 - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting that apply to the preparation of the financial report under a *foreign law;

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

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to classify or designate, in the financial reports, as at fair value through profit or loss; and

- (d) you start to have in the income year in which you make the election or in a later income year.

This subsection has effect subject to section 230-225.

- (2) If, but for this subsection, paragraphs (1)(b) and (c) would not be satisfied in relation to a *financial arrangement because the arrangement is an intra-group transaction for the purposes of:
- (a) *accounting standard AASB 127 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
 - (b) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a *foreign law;

paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.

Note: Financial arrangements between members of a consolidated group or MEC group are not covered by this subsection because the single entity rule in subsection 701-1(1) operates to treat them as not being financial arrangements for the purposes of this Division.

- (3) If:
- (a) the *financial arrangement would not be a financial arrangement if the following provisions were disregarded:
 - (i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);
 - (ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and
 - (b) paragraphs (1)(b) and (c) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities; and
 - (c) the *fair value election is made by:
 - (i) if section 121EB of the *Income Tax Assessment Act 1936* applies—the OBU mentioned in that section (disregarding the operation of that section); or

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

- (ii) if section 160ZZW of that Act applies—the bank mentioned in that section (disregarding the operation of that section);
- paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.

230-225 Financial arrangements to which election does not apply

- (1) A *fair value election does not apply to a *financial arrangement if:
 - (a) the arrangement is an *equity interest; and
 - (b) you are the issuer of the equity interest.
- (2) A *fair value election does not apply to a *financial arrangement if:
 - (a) you are:
 - (i) an individual; or
 - (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
 - (b) the arrangement is a *qualifying security; and
 - (c) you have not made an election under subsection 230-455(7).
- (3) A *fair value election does not apply to a *financial arrangement if:
 - (a) the election is made by the *head company of a *consolidated group or *MEC group; and
 - (b) the election specifies that the election is not to apply to financial arrangements in relation to *life insurance business carried on by a member of the consolidated group or MEC group; and
 - (c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.
- (4) A *fair value election does not apply to a *financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

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

230-230 Applying fair value method to gains and losses

- (1) If a *fair value election applies to your *financial arrangement, the gain or loss you make from the arrangement for an income year is:
- (a) the gain or loss that the principles or standards referred to in paragraph 230-210(2)(a) require you to recognise in profit or loss for the income year from the asset or liability mentioned in paragraph 230-220(1)(c); or
 - (b) if subsection 230-220(2) applies to the arrangement—the gain or loss that the principles or standards referred to in paragraph 230-220(1)(c) would have required you to recognise in profit or loss for the year from the asset or liability mentioned in paragraph 230-220(1)(c) if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-220(2)(b); or
 - (c) if subsection 230-220(3) applies to the arrangement—the gain or loss that the principles or standards referred to in paragraph 230-220(1)(c) would have required you to recognise in profit or loss for the year from the asset or liability mentioned in paragraph 230-220(1)(c) if the arrangement had been between 2 separate entities.
- Note: Subsection 230-40(7) provides that an election under Subdivision 230-E (hedging financial arrangements method) or Subdivision 230-F (method of relying on financial reports) may override a fair value election.
- (2) Subsection (3) applies if:
- (a) a *head company of a *consolidated group or *MEC group has a *financial arrangement; and
 - (b) a *fair value election applies to the arrangement; and
 - (c) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and
 - (d) immediately after the leaving time, the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group.
- (3) The gain or loss the group makes from the arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that the principles or standards referred to in paragraph

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

230-210(2)(a) would require the group to recognise as at fair value through profit or loss for the income year from the asset or liability mentioned in paragraph 230-220(1)(c) if:

- (a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and
- (b) any circumstances that arise in relation to the financial arrangement after the leaving time were disregarded.

230-235 Splitting financial arrangements into 2 financial arrangements

- (1) If:
 - (a) a *financial arrangement is constituted only in part by an asset or liability mentioned in paragraph 230-220(1)(c); and
 - (b) a *fair value election would apply to the arrangement if it were constituted solely by that asset or liability;the provisions of this Division (other than this section) apply to the arrangement as if it were instead 2 separate financial arrangements.
- (2) The 2 separate *financial arrangements are:
 - (a) one consisting of the part referred to in paragraph (1)(a); and
 - (b) one consisting of the remaining part.

230-240 When election ceases to apply

- (1) A *fair value election ceases to have effect from the start of an income year if you cease to be eligible under subsection 230-210(2) to make the fair value election for that income year.
- (2) Subsection (1) does not prevent you from making a new *fair value election at a later time if you become, at that later time, eligible under subsection 230-210(2) to make a fair value election for an income year.

Note: The new election will only apply to financial arrangements you start to have after the start of the income year in which the new election is made.

- (3) A *fair value election ceases to apply to a particular *financial arrangement from the start of an income year if the arrangement

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

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ceases to satisfy a requirement of paragraph 230-220(1)(b) or (c) during that income year.

- (4) If the election ceases to apply to a particular *financial arrangement under subsection (3), the election cannot subsequently reapply to that arrangement (even if the requirements of paragraphs 230-220(1)(b) and (c) are satisfied once more in relation to the arrangement).

230-245 Balancing adjustment if election ceases to apply

- (1) You must make balancing adjustments under subsection (2) if a *fair value election ceases to have effect under subsection 230-240(1).
- (2) The balancing adjustments under this subsection are the balancing adjustments you would make under Subdivision 230-G for each of the *financial arrangements to which the election applied if you disposed of the arrangement for its fair value when the election ceases to have effect.
- (3) You must make a balancing adjustment under subsection (4) if a *fair value election ceases to apply to a particular *financial arrangement under subsection 230-240(3).
- (4) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you disposed of the *financial arrangement for its fair value when the election ceases to apply to the arrangement.
- (5) If a balancing adjustment is made under subsection (2) or (4) in relation to a *financial arrangement, you are taken, for the purposes of this Division, to have reacquired the arrangement at its fair value immediately after the election ceased to have effect or ceased to apply to the arrangement.

Subdivision 230-D—Foreign exchange retranslation method

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

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- 230-265 Financial arrangements to which general election applies
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- 230-280 Applying foreign exchange retranslation method to gains and losses
- 230-285 When election ceases to apply
- 230-290 Balancing adjustment if election ceases to apply

230-250 Objects of this Subdivision

The objects of this Subdivision are:

- (a) to allow you to align the tax treatment of gains and losses from foreign exchange rate changes with the accounting treatment of profits and losses from such changes; and
- (b) to achieve this without allowing you to obtain an inappropriate tax benefit.

230-255 Foreign exchange retranslation election

General election

- (1) You may make a **foreign exchange retranslation election** under this subsection if you are eligible under subsection (2) to make the election for the income year in which you make the election.

Eligibility to make election

- (2) You are eligible to make a *foreign exchange retranslation election for an income year if:
 - (a) you prepare a financial report for that income year in accordance with:
 - (i) the *accounting principles; or
 - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting made under a *foreign law that apply to the preparation of the financial report under a foreign law; and
 - (b) the financial report is audited in accordance with:
 - (i) the *auditing principles; or

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

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- (ii) if the auditing principles do not apply to the auditing of the financial report—comparable standards for auditing made under a foreign law.

Note: Section 230-500 allows regulations to be made specifying particular foreign accounting and auditing standards as ones that are to be treated as comparable with Australian accounting and auditing principles for the purposes of this Division.

Election in relation to qualifying forex accounts

- (3) You may make a **foreign exchange retranslation election** under this subsection in relation to a *financial arrangement if:
 - (a) the arrangement is a *qualifying forex account; and
 - (b) you have not made a *foreign exchange retranslation election under subsection (1) that applies to the account.

You may make the election even if you start to have the arrangement before you make the election.

Financial arrangements to which election in relation to qualifying forex accounts applies

- (4) The election under subsection (3) applies to the *financial arrangement:
 - (a) from the time when you start to have the arrangement if the election is made before you start to have the arrangement; or
 - (b) from the start of the income year in which the election is made if you make the election after you start to have the arrangement.

Election irrevocable

- (5) A *foreign exchange retranslation election is irrevocable.

Note: The election may cease to apply under section 230-285.

230-260 Foreign exchange retranslation election where differing income and accounting years

- (1) This section applies if:
 - (a) you prepare a financial report for a year (the **first year**); and

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

- (b) you prepare a financial report for the subsequent year (the *second year*); and
 - (c) your income year starts in the first year and ends in the second year; and
 - (d) both the financial report for the first year and the financial report for the second year are:
 - (i) prepared in accordance with paragraph 230-255(2)(a); and
 - (ii) audited in accordance with paragraph 230-255(2)(b); and
 - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-255(2).
- (3) Work out the gain or loss you make from the arrangement for the income year as follows:
- (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with section 230-280 (treating the first year as an income year);
 - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
 - (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with section 230-280 (treating the second year as an income year);
 - (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);
 - (e) next:
 - (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or
 - (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or

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

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- (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.
- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
 - (a) using a methodology that is reasonable; and
 - (b) using the same methodology for the first and second years.
- (5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

230-265 Financial arrangements to which general election applies

- (1) A *foreign exchange retranslation election under subsection 230-255(1) applies to each of your *financial arrangements:
 - (a) that are *Division 230 financial arrangements; and
 - (b) that are recognised in financial reports of a kind referred to in paragraph 230-255(2)(a) that are audited, or required to be audited, as referred to in paragraph 230-255(2)(b); and
 - (c) in relation to which you are required by:
 - (i) *accounting standard AASB 121 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
 - (ii) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a *foreign law;
to recognise, in the financial reports, amounts in profit or loss (if any) that are attributable to changes in currency exchange rates; and
 - (d) that you start to have in the income year in which you make the election or in a later income year.

This subsection has effect subject to section 230-270.

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

Note: The election also has consequences under Subdivision 775-F for arrangements that are not Division 230 financial arrangements.

- (2) If, but for this subsection, paragraphs (1)(b) and (c) would not be satisfied in relation to a *financial arrangement because the arrangement is an intra-group transaction for the purposes of:
- (a) *accounting standard AASB 127 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
 - (b) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a *foreign law;

paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.

Note: Financial arrangements between members of a consolidated group or MEC group are not covered by this subsection because the single entity rule in subsection 701-1(1) operates to treat them as not being financial arrangements for the purposes of this Division.

- (3) If:
- (a) the *financial arrangement would not be a financial arrangement if the following provisions were disregarded:
 - (i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);
 - (ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and
 - (b) paragraphs (1)(b) and (c) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities; and
 - (c) the *foreign exchange retranslation election under subsection 230-255(1) is made by:
 - (i) if section 121EB of the *Income Tax Assessment Act 1936* applies—the OBU mentioned in that section (disregarding the operation of that section); or
 - (ii) if section 160ZZW of that Act applies—the bank mentioned in that section (disregarding the operation of that section);

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

paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.

230-270 Financial arrangements to which general election does not apply

- (1) For the purposes of this Division, a *foreign exchange retranslation election under subsection 230-255(1) does not apply to a *financial arrangement if the arrangement is a financial arrangement under section 230-50 (equity interests etc.).
- (2) For the purposes of this Division, a *foreign exchange retranslation election under subsection 230-255(1) does not apply to a *financial arrangement if:
 - (a) you are:
 - (i) an individual; or
 - (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
 - (b) the arrangement is a *qualifying security; and
 - (c) you have not made an election under subsection 230-455(7).
- (3) A *foreign exchange retranslation election under subsection 230-255(1) does not apply to a *financial arrangement if:
 - (a) the election is made by the *head company of a *consolidated group or *MEC group; and
 - (b) the election specifies that the election is not to apply to financial arrangements in relation to *life insurance business carried on by a member of the consolidated group or MEC group; and
 - (c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.
- (4) A *foreign exchange retranslation election does not apply to a *financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

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

230-275 Balancing adjustment for election in relation to qualifying forex accounts

- (1) If you make a *foreign exchange retranslation election under subsection 230-255(3) in relation to a *financial arrangement after you start to have the arrangement, you must make a balancing adjustment under subsection (2).
- (2) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you ceased to have the arrangement for its fair value at the time when the election started to apply to the arrangement (but only to the extent to which the balancing adjustment is reasonably attributable to a *currency exchange rate effect).

230-280 Applying foreign exchange retranslation method to gains and losses

General election

- (1) You make a gain or loss from a *financial arrangement for an income year if:
 - (a) a *foreign exchange retranslation election under subsection 230-255(1) applies to the arrangement; and
 - (b) any of the following subparagraphs apply:
 - (i) the standard referred to in paragraph 230-265(1)(c) requires you to recognise a particular amount in profit or loss in relation to that arrangement for that income year;
 - (ii) if subsection 230-265(2) applies to the arrangement—the standard referred to in paragraph 230-265(1)(c) would have required you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-265(2)(b);
 - (iii) if subsection 230-265(3) applies to the arrangement—the standard referred to in paragraph 230-265(1)(c) would have required you to recognise a particular

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

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amount in profit or loss for the year that is attributable to currency exchange rates mentioned in paragraph 230-265(1)(c) if the arrangement had been between 2 separate entities.

The amount of the gain or loss is the amount the standard requires, or would have required, you to recognise.

Note: See subsection 230-40(6).

Election in relation to qualifying forex accounts

- (2) You make a gain or loss from a *financial arrangement for an income year if:
- (a) a *foreign exchange retranslation election under subsection 230-255(3) applies to the arrangement; and
 - (b) the standard referred to in paragraph 230-265(1)(c):
 - (i) requires you to recognise a particular amount in profit or loss in relation to that arrangement for that income year; or
 - (ii) would require you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if that standard applied to the arrangement; or
 - (iii) would require you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-265(2)(b); or
 - (iv) would require you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-265(2)(b) and if that standard applied to the arrangement.

The amount of the gain or loss is the amount the standard requires, or would require, you to recognise.

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

Subsidiary leaving group

- (3) Subsection (4) applies if:
- (a) a *head company of a *consolidated group or *MEC group has a *financial arrangement; and
 - (b) a *foreign exchange retranslation election under subsection 230-255(1) or (3) applies to the arrangement; and
 - (c) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and
 - (d) immediately after the leaving time, the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group.
- (4) The gain or loss the group makes from the *financial arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that the standard referred to in paragraph 230-265(1)(c) would require the group to recognise in profit or loss in relation to the arrangement for that income year if:
- (a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and
 - (b) any circumstances that arise in relation to the arrangement after the leaving time were disregarded.

230-285 When election ceases to apply

General election

- (1) A *foreign exchange retranslation election under subsection 230-255(1) ceases to have effect from the start of an income year if you cease to be eligible under subsection 230-255(2) to make a foreign exchange retranslation election under subsection 230-255(1) for that income year.
- (2) Subsection (1) does not prevent you from making a new *foreign exchange retranslation election at a later time if you become, at that later time, eligible under subsection 230-255(2), to make a foreign exchange retranslation election under subsection 230-255(1) for that income year.

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

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Note: The new election will only apply to financial arrangements you start to have after the start of the income year in which the new election is made.

- (3) A *foreign exchange retranslation election under subsection 230-255(1) ceases to apply to a *financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of paragraph 230-265(1)(b) or (c) during that income year.
- (4) If the election ceases to apply to a particular *financial arrangement under subsection (3), the election cannot subsequently reapply to that arrangement (even if the requirements of paragraphs 230-265(1)(b) and (c) are satisfied once more in relation to the arrangement).

Election in relation to qualifying forex accounts

- (5) A *foreign exchange retranslation election under subsection 230-255(3) ceases to apply to a *financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of subsection 230-255(3) during that income year.
- (6) If the election ceases to apply to a particular *financial arrangement under subsection (5), the election cannot subsequently reapply to that arrangement (even if the requirements of subsection 230-255(3) are satisfied once more in relation to the arrangement).

230-290 Balancing adjustment if election ceases to apply

- (1) You must make balancing adjustments under subsection (2) if a *foreign currency retranslation election ceases to have effect under subsection 230-285(1).
- (2) The balancing adjustments under this subsection are the balancing adjustments you would make under Subdivision 230-G for each of the *financial arrangements to which the election applied if you disposed of the arrangement for its fair value when the election ceases to have effect (but only to the extent to which the balancing adjustment is reasonably attributable to a *currency exchange rate effect).

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

- (3) You must make a balancing adjustment under this section if a *foreign currency retranslation election ceases to apply to a particular *financial arrangement under subsection 230-285(3) or (5).
- (4) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you disposed of the *financial arrangement for its fair value when the election ceases to apply to the arrangement (but only to the extent to which the balancing adjustment is reasonably attributable to a *currency exchange rate effect).
- (5) If a balancing adjustment is made under subsection (2) or (4) in relation to a *financial arrangement, you are taken, for the purposes of this Division, to have reacquired the arrangement at its fair value immediately after the election ceased to have effect or ceased to apply to the arrangement.

Subdivision 230-E—Hedging financial arrangements method

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

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230-385 You may be excluded from this Subdivision for deliberate failures to comply with requirements

230-295 Objects of this Subdivision

The objects of this Subdivision are:

- (a) to facilitate the efficient management of financial risk by reducing after-tax mismatches and better aligning tax treatment where hedging takes place; and
- (b) to minimise tax deferral and tax motivated practices (including tax deferral arising from such practices as tax advantaged selection from among possible hedges and inappropriate selection of tax treatment).

230-300 Applying hedging financial arrangement method to gains and losses

- (1) If you have a *hedging financial arrangement to which a *hedging financial arrangement election applies, the gain or loss you make for an income year from the arrangement is worked out under this section and section 230-310 instead of under Subdivision 230-B, 230-C, 230-D, 230-F or 230-G.
- (2) Except where subsection (5) applies, the gain or loss you make from the *hedging financial arrangement is equal to the overall gain or loss you make from the arrangement.
- (3) The gain or loss you make from the *hedging financial arrangement is allocated over income years according to the determination referred to in subsection 230-360(1).

Note 1: The allocation is capable of extending to income years after you cease to have the hedging financial arrangement (see subsection 230-360(3)).

Note 2: The determination must be included in the record made under section 230-355.

- (4) If the *hedging financial arrangement is a *foreign currency hedge and is a *debt interest, split a gain or loss you make from the arrangement as follows:
 - (a) to the extent to which the gain or loss represents a *currency exchange rate effect attributable to the outstanding balance in

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

- relation to the debt interest, treat it as a separate gain or loss to which subsections (1) and (2) apply;
- (b) to the extent that it does not represent that effect, treat it as a separate gain or loss from the financial arrangement that is allocated under Subdivision 230-B, 230-F or 230-G.
- (5) If an event listed in the table in subsection 230-305(1) occurs:
- (a) the gain or loss you make from the *hedging financial arrangement is equal to any gain or loss that you would have made:
- (i) while the arrangement was hedging the *hedged item or items; and
- (ii) on ceasing to have the arrangement;
if you ceased to have the arrangement for its fair value at the time of the event; and
- (b) this Division further applies as if, just after the event, you had acquired the arrangement for its fair value at the time of the event.
- Despite subsection (3), the gain or loss referred to in paragraph (a) is allocated over income years according to the table.
- (7) Subsection (8) applies if the *hedging financial arrangement:
- (a) is a *financial arrangement under section 230-50 (equity interests etc.); and
- (b) is a *foreign currency hedge; and
- (c) is one that you issue.
- (8) Split a gain or loss you make from the arrangement as follows:
- (a) to the extent to which the gain or loss represents a *currency exchange rate effect, treat it as a separate gain or loss to which subsections (1) and (2) apply;
- (b) to the extent that it does not represent that effect, treat it as a separate gain or loss from the financial arrangement to which this Division does not apply.
- (9) Subsections (10) and (11) apply if:
- (a) a *head company of a *consolidated group or *MEC group has a *hedging financial arrangement; and

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

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- (b) a *hedging financial arrangement election applies to the arrangement; and
 - (c) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and
 - (d) immediately after the leaving time:
 - (i) the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group; and
 - (ii) the head company no longer has the *hedged item (or all of the hedged items) because the subsidiary member ceased to be a member of the group.
- (10) The gain or loss the group makes from the arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that would be allocated to the group in accordance with this section (disregarding subsection (5)) if:
- (a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and
 - (b) any circumstances that arise in relation to the *financial arrangement after the leaving time were disregarded.
- (11) For the purposes of applying paragraph (5)(a) to the *head company of the group at the leaving time, disregard item 2 of the table in subsection 230-305(1).

230-305 Table of events and allocation rules

- (1) For the purposes of paragraph 230-300(5)(a), the following table lists events and their consequences:

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

Table of events and allocation rules		
Item	If this event occurs ...	Your gain or loss is allocated ...
1	(a) you revoke the hedging designation; or (b) you redesignate your *hedging financial arrangement; or (c) you cease to meet the requirement of section 230-365 in relation to your hedging financial arrangement	over income years according to the basis determined under subsection 230-360(1).
2	(a) you cease to have the *hedged item or all of the hedged items; or (b) you cease to expect that the hedged item or items will come into existence; or (c) you cease to expect that you will have the hedged item or items	to the income year in which the event occurs.
2A	(a) you cease to have one or more (but not all) of the *hedged items; or (b) you cease to expect that one or more (but not all) of the hedged items will come into existence; or (c) you cease to expect that you will have one or more (but not all) of the hedged items	(a) to the extent to which the gain or loss is reasonably attributable to those one or more hedged items—to the income year in which the event occurs; and (b) to the extent to which the gain or loss is reasonably attributable to the remaining hedged item or items—over income years according to the basis determined under subsection 230-360(1).
3	a risk being hedged by your *hedging financial arrangement ceases to exist	to the income year in which the risk ceases to exist.

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

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- (2) For the purposes of item 2A of the table in subsection (1), determine the extent to which the gain or loss is reasonably attributable to a particular *hedged item having regard to the following:
- (a) the fair value of the hedged item;
 - (b) the length of the period over which you have held the hedged item;
 - (c) commercially accepted valuation principles;
 - (d) any other relevant factors.

230-310 Aligning tax classification of gain or loss from hedging financial arrangement with tax classification of hedged item

- (1) The object of this section is to better align, in particular circumstances, the tax classification of a gain or loss you make from a *hedging financial arrangement with the tax classification of the *hedged item.
- (2) This section applies if:
- (a) you make a gain or loss from a *hedging financial arrangement for an income year; and
 - (b) a *hedging financial arrangement election applies to the arrangement.
- (3) Subject to subsection (4):
- (a) if you make a gain from the arrangement—your assessable income includes the gain in accordance with subsection 230-15(1); and
 - (b) if you make a loss from the arrangement—you may deduct the loss in accordance with subsections 230-15(2) and (3).
- Note: Section 230-300 tells you how to allocate the gain or loss to an income year or years.
- (4) A gain or loss you make from a *hedging financial arrangement, to the extent to which it is reasonably attributable to a *hedged item referred to in the following table, is dealt with in the way indicated in that item:

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

Special tax classification for gains and losses			
Item	For a hedged item that is or produces ...	the gain ...	the loss ...
1	a *CGT asset any *net capital gain in relation to which would be assessable under Parts 3-1 and 3-3 in relation to which a *CGT event (the <i>hedged item CGT event</i>) occurs	is treated as a *capital gain from a CGT event (but only to the extent to which the gain is reasonably attributable to the hedged item CGT event)	is treated as a *capital loss from a CGT event (but only to the extent to which the loss is reasonably attributable to the hedged item CGT event)
2	a *CGT asset that is *taxable Australian property	is treated as a *capital gain from a *CGT event for a CGT asset that is taxable Australian property	is treated as a *capital loss from a CGT event for a CGT asset that is taxable Australian property
3	a *CGT asset your capital gains and losses in relation to which are disregarded, or reduced by a particular percentage, under Division 855	is disregarded or reduced by the same percentage	is disregarded or reduced by the same percentage
4	*exempt income	is treated as exempt income	is not deductible
5	*non-assessable non-exempt income of an Australian resident	is treated as non-assessable non-exempt income	is not deductible
6	a share in a company that is a foreign resident if the capital gain or loss you make from a *CGT event that happens to the share is reduced by a particular percentage under Subdivision 768-G	is treated as a *capital gain from a CGT event that is reduced by the same percentage	is treated as a *capital loss from a CGT event that is reduced by the same percentage

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

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Special tax classification for gains and losses			
Item	For a hedged item that is or produces ...	the gain ...	the loss ...
7	*ordinary income or *statutory income from an *Australian source	is treated as ordinary income or statutory income from an Australian source	is treated as a loss incurred in gaining or producing ordinary income or statutory income from an Australian source
8	*ordinary income or *statutory income from a source out of Australia	is treated as ordinary income or statutory income from a source out of Australia	is treated as a loss incurred in gaining or producing ordinary income or statutory income from a source out of Australia
9	a loss or outgoing incurred in gaining or producing *ordinary income or *statutory income from a source out of Australia	is treated as ordinary income or statutory income from a source out of Australia	is treated as a loss incurred in gaining or producing ordinary income or statutory income from a source out of Australia
10	a loss or outgoing incurred in gaining or producing *ordinary income or *statutory income from an *Australian source	is treated as ordinary income or statutory income from an Australian source	is treated as a loss incurred in gaining or producing ordinary income or statutory income from an Australian source
11	a loss or outgoing that is not allowed as a deduction	is treated as *non-assessable non-exempt income	is treated as a loss that is not allowed as a deduction

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

Special tax classification for gains and losses

Item	For a hedged item that is or produces ...	the gain ...	the loss ...
12	a net investment in a foreign operation (within the meaning of the *accounting principles) that is not carried on through: (a) a company in which you hold shares; or (b) a company that is a subsidiary of yours (within the meaning of the <i>Corporations Act 2001</i>).	(a) to the extent that the net investment would give rise to income that is *non-assessable non-exempt income under section 23AH of the <i>Income Tax Assessment Act 1936</i> —is treated as non-assessable non-exempt income; and (b) otherwise—is treated in accordance with the item or items in this table that are applicable to the gain.	(a) to the extent that the net investment would give rise to income that is non-assessable non-exempt income under section 23AH of the <i>Income Tax Assessment Act 1936</i> —is not deductible; and (b) otherwise—is treated in accordance with the item or items in this table that are applicable to the loss.

(5) If:

- (a) a *hedged item is your net investment in a foreign operation (within the meaning of the *accounting principles); and
- (b) the foreign operation is carried on through:
 - (i) a company in which you hold shares; or
 - (ii) a company that is a subsidiary of yours (within the meaning of the *Corporations Act 2001*);

the hedged item is taken, for the purposes of applying the table in subsection (4), to be the interest you have in the shares of the company.

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

230-315 Hedging financial arrangement election

Election

- (1) You can make a **hedging financial arrangement election** if you are eligible under subsection (2) to make the election for the income year in which you make the election.

Eligibility to make hedging financial arrangement election for an income year

- (2) You are eligible to make a **hedging financial arrangement election** for an income year if:
- (a) you prepare a financial report for that income year in accordance with:
 - (i) the *accounting principles; or
 - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting made under a *foreign law that apply to the preparation of the financial report under a foreign law; and
 - (b) the financial report is audited in accordance with:
 - (i) the *auditing principles; or
 - (ii) if the auditing principles do not apply to the auditing of the financial report—comparable standards for auditing made under a foreign law.

Note: Section 230-500 allows regulations to be made specifying particular foreign accounting and auditing standards as ones that are to be treated as comparable with Australian accounting and auditing principles for the purposes of this Division.

Election irrevocable

- (3) The *hedging financial arrangement election is irrevocable.

Note: The election may cease to apply under section 230-385.

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

230-320 Hedging financial arrangement election where differing income and accounting years

- (1) This section applies if:
 - (a) you prepare a financial report for a year (the *first year*); and
 - (b) you prepare a financial report for the subsequent year (the *second year*); and
 - (c) your income year starts in the first year and ends in the second year; and
 - (d) both the financial report for the first year and the financial report for the second year are:
 - (i) prepared in accordance with paragraph 230-315(2)(a); and
 - (ii) audited in accordance with paragraph 230-315(2)(b); and
 - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-315(2).

230-325 Hedging financial arrangements to which election applies

- (1) A *hedging financial arrangement election applies to a *hedging financial arrangement if:
 - (a) you start to have the arrangement in the income year in which you make the election or in a later income year; and
 - (b) the requirements in sections 230-355 to 230-365 are met in relation to the arrangement.

Note: Paragraph (b)—see section 230-380 for the Commissioner's discretion in relation to failures to meet the requirements of sections 230-355 to 230-365.

- (2) For the purposes of paragraph (1)(b), treat the requirement in paragraph 230-365(c) as being met even if you do not assess the hedging of the risk mentioned in that paragraph, but you can demonstrate that you intend to do so.
- (3) This section has effect subject to section 230-330.

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

230-330 Hedging financial arrangements to which election does not apply

- (1) A *hedging financial arrangement election does not apply to a *financial arrangement if the arrangement is a financial arrangement under section 230-50 (equity interests etc.).
- (2) Subsection (1) does not apply to a *hedging financial arrangement if:
 - (a) the hedging financial arrangement is a *foreign currency hedge; and
 - (b) you issue the hedging financial arrangement.
- (3) A *hedging financial arrangement election does not apply to a *financial arrangement if:
 - (a) you are:
 - (i) an individual; or
 - (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
 - (b) the arrangement is a *qualifying security; and
 - (c) you have not made an election under subsection 230-455(7).
- (4) A *hedging financial arrangement election does not apply to a *financial arrangement if:
 - (a) the election is made by the *head company of a *consolidated group or *MEC group; and
 - (b) the election specifies that the election is not to apply to financial arrangements in relation to *life insurance business carried on by a member of the consolidated group or MEC group; and
 - (c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.
- (5) A *hedging financial arrangement election does not apply to a *financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

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

230-335 Hedging financial arrangement and hedged item

Hedging financial arrangement

- (1) A *financial arrangement that you have that is a *derivative financial arrangement, or is not a derivative financial arrangement but is a *foreign currency hedge, is a **hedging financial arrangement** if:
- (a) you create, acquire or apply the arrangement for the purpose of hedging a risk or risks in relation to a *hedged item or items; and
 - (b) at the time you create, acquire or apply the arrangement, the arrangement satisfies the requirements of the principles or standards referred to in paragraph 230-315(2)(a) to be a hedging instrument; and
 - (c) the arrangement is recorded as a hedging instrument in:
 - (i) your financial report (including documents and records on which the report is based); or
 - (ii) if the arrangement hedges a risk in relation to *foreign currency—your financial report or the financial report of a consolidated entity in which you are included (including documents and records on which the report is based);
- for the income year in which the rights and/or obligations are created, acquired or applied.

Note: For **document** and **record**, see section 2B of the *Acts Interpretation Act 1901*.

- (2) If:
- (a) the *financial arrangement would not be a financial arrangement if the following provisions were disregarded:
 - (i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);
 - (ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and
 - (b) paragraphs (1)(b) and (c) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities;

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

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paragraphs (1)(b) and (c) are taken to be satisfied in relation to the arrangement.

- (3) A *financial arrangement that is a *derivative financial arrangement, or is not a derivative financial arrangement but is a *foreign currency hedge, is a **hedging financial arrangement** if:
- (a) you create, acquire or apply the arrangement for the purpose of hedging a risk or risks in relation to something; and
 - (b) one or more of subsections (4), (5), (6) or (7) is satisfied; and
 - (c) the requirements of paragraphs (1)(b) or (c) are not able to be satisfied:
 - (i) because of the requirements of the principles or standards referred to in paragraph 230-315(2)(a); and
 - (ii) not because of any act or omission on your part to deliberately fail to satisfy those requirements; and
 - (d) you satisfy the additional recording requirements of subsection 230-355(5); and
 - (e) you satisfy the requirements (if any) prescribed by the regulations for the purposes of this paragraph.
- (4) This subsection is satisfied if:
- (a) the *financial arrangement hedges a foreign currency risk in relation to an anticipated dividend from a *connected entity; and
 - (b) the dividend is *non-assessable non-exempt income under section 23AJ of the *Income Tax Assessment Act 1936*.
- (5) This subsection is satisfied if:
- (a) you enter into a *financial arrangement with a *connected entity; and
 - (b) the principles or standards referred to in paragraph 230-315(2)(a) require that a consolidated financial report be prepared that deals with both your affairs and the affairs of the connected entity; and
 - (c) the report properly reflects your affairs; and
 - (d) the arrangement satisfies the requirements of paragraph (1)(a); and

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

- (e) the arrangement would satisfy the requirements of paragraph (1)(b) or (c) but for the fact that the consolidated report disregards the arrangement.
- (6) This subsection is satisfied if:
 - (a) the period for which the risk or risks are hedged does not straddle 2 or more income years; and
 - (b) the *financial arrangement satisfies the requirements of paragraph (1)(a); and
 - (c) the arrangement would satisfy the requirements of paragraph (1)(c) if the period for which the risk or risks that are hedged did straddle 2 or more income years.
- (7) This subsection is satisfied if the requirements prescribed by the regulations for the purposes of this subsection are satisfied.

Financial arrangement hedging more than one type of risk

- (8) A *financial arrangement that hedges more than one type of risk may only be a **hedging financial arrangement** if the principles or standards referred to in paragraph (1)(b) allow the arrangement to be designated as a hedge of those risks.

More than one financial arrangement hedging the same risk or risks

- (9) If 2 or more *financial arrangements hedge the same risk or risks, each of the arrangements may only be a **hedging financial arrangement** if the principles or standards referred to in paragraph (1)(b) allow those arrangements to be viewed in combination and jointly designated as hedging that risk or those risks.

Hedged item

- (10) If a *financial arrangement that you have hedges a risk in relation to:
 - (a) an asset or a part of an asset; or
 - (b) a liability or a part of a liability; or

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

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- (c) a firm commitment (within the meaning of the *accounting principles) or a part of such a commitment; or
 - (d) a highly probable forecast transaction (within the meaning of the accounting principles) or a part of such a transaction; or
 - (e) a net investment in a foreign operation (within the meaning of the accounting principles) or a part of such an investment; or
 - (f) something prescribed by the regulations for the purposes of this paragraph;
- the asset (or that part of the asset), the liability (or that part of the liability), the commitment (or that part of the commitment), the transaction (or that part of the transaction) or the investment (or that part of the investment) is a **hedged item** for the arrangement.
- (11) If a *financial arrangement is a *hedging financial arrangement because of paragraph (4)(a), the anticipated dividend referred to in that subparagraph is a **hedged item** for the arrangement even if subsection (10) is not satisfied in relation to the anticipated dividend.

230-340 Generally whole arrangement must be hedging financial arrangement

- (1) Subject to subsections (2), (3) and (4), the whole of a *financial arrangement must satisfy the requirements of subsection 230-335(1) or (3) for the arrangement to be a **hedging financial arrangement**.

Partial hedges

- (2) If a *financial arrangement:
- (a) is an options contract; and
 - (b) hedges risk only in part by reference to changes in the intrinsic value of the options contract;
- the arrangement may be treated as a **hedging financial arrangement** to the extent to which the part of the arrangement referred to in paragraph (b) satisfies the requirements of subsection 230-335(1) or (3).

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

- (3) If a *financial arrangement:
- (a) is a forward contract; and
 - (b) has a spot price element and an interest element;
- the arrangement may be treated as a **hedging financial arrangement** to the extent to which the spot price element satisfies the requirements of subsection 230-335(1) or (3).

Proportionate hedges

- (4) A specified proportion of a *financial arrangement may be treated as a **hedging financial arrangement** to the extent to which that proportion of the arrangement satisfies the requirements of subsection 230-335(1) or (3).

Separate financial arrangements if partial or proportionate hedge

- (5) If a part (or parts), or a proportion (or proportions), of a *financial arrangement is (or are) treated as a *hedging financial arrangement under subsection (2), (3) or (4):
- (a) the part (or each of the parts), or the proportion (or each of the proportions), of the arrangement that is (or are) treated as a hedging financial arrangement is taken to be a separate financial arrangement for the purposes of this Division; and
 - (b) the remaining part or proportion (if any) of the arrangement is taken to be a separate financial arrangement for the purposes of this Division.
- (6) Subsection (5) has effect even if there would not be separate *arrangements under subsection 230-55(4).

230-345 Requirements not satisfied because of honest mistake or inadvertence

If a *derivative financial arrangement, or a *foreign currency hedge, that you have would not be a *hedging financial arrangement only because the requirements of paragraph 230-335(1)(b) or (c), or both, are not satisfied because of an honest mistake or inadvertence, it is nevertheless a **hedging financial arrangement** if the Commissioner considers this appropriate having regard to:

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

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- (a) your documented risk management practices and policies; and
- (b) your record keeping practices; and
- (c) your accounting systems and controls; and
- (d) your internal governance processes; and
- (e) the circumstances surrounding the mistake or inadvertence (including the steps (if any) taken to correct or address the mistake or inadvertence and the steps (if any) taken to prevent a recurrence); and
- (f) the extent to which the requirements of paragraphs 230-335(1)(b) and (c) have been met; and
- (g) the objects of this Subdivision.

230-350 *Derivative financial arrangement and foreign currency hedge*

Derivative financial arrangement

- (1) A ***derivative financial arrangement*** is a *financial arrangement that you have where:
- (a) its value changes in response to changes in a specified variable or variables; and
 - (b) there is no requirement for a net investment, or there is such a requirement but the net investment is smaller than would be required for other types of financial arrangement that would be expected to have a similar response to changes in market factors.

Note: Paragraph (a)—a specified variable includes an interest rate, foreign exchange rate, credit rating, index or commodity or financial instrument price.

Foreign currency hedge

- (2) A ***foreign currency hedge*** is a *financial arrangement that you have if:
- (a) paragraph (1)(a) is satisfied but paragraph (1)(b) is not; and
 - (b) the arrangement hedges a risk in relation to movements in currency exchange rates.

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

230-355 Recording requirements

- (1) The requirement of this section is that you must make, or have in place, a record that:
 - (a) contains a description of the following:
 - (i) the *hedging financial arrangement in relation to which the election is made;
 - (ii) the nature of the risk or risks being hedged;
 - (iii) the *hedged item or items;
 - (iv) how you will assess the effectiveness of hedging the risk in reducing your exposure to changes in the fair value of the hedged item or items or cash flows or foreign currency exposure attributable to them;
 - (v) the risk management objective for, and the risk management strategy to be followed in, acquiring, creating or applying the arrangement; and
 - (b) contains any further details that the *accounting principles require, by way of documentation, for an arrangement to be recorded in a financial report as a hedging instrument; and
 - (c) sets out the terms of the determinations you make under section 230-360.

To avoid doubt, paragraph (b) applies even if the arrangement is not recorded in your financial report as a hedging instrument.
- (2) To avoid doubt, the record may consist of a single document or 2 or more documents.
- (3) The record must be made or in place:
 - (a) at, or soon after, the time when you create, acquire or apply the *hedging financial arrangement; or
 - (b) at such other time as is provided for in the regulations for the purposes of this paragraph.
- (4) The description must be sufficiently precise and detailed that the following are clear:
 - (a) that the risk in respect of the particular *hedged item or items was the one hedged by the *hedging financial arrangement;
 - (b) the extent to which the risk was hedged;

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

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- (c) that the rights and/or obligations comprising the hedging financial arrangement were in fact those created, acquired or applied for the purpose of hedging the risk.
- (5) If a *financial arrangement is a *hedging financial arrangement under subsection 230-335(2) or (3), the following requirements must be met in addition to the requirements of subsections (1), (3) and (4):
 - (a) you must make or have in place, at, or soon before or soon after, the time when you create, acquire or apply the arrangement, a record that sets out:
 - (i) a statement of why, and the way in which, the arrangement operates commercially or economically as a hedge of the *hedged item or items; and
 - (ii) the reasons why the arrangement does not satisfy the requirements of the principles or standards referred to in paragraph 230-315(2)(a) to be a hedging instrument;
 - (b) you must, at the end of each income year during which you have the arrangement, make a record of the accumulated gains and/or losses (whether realised or unrealised) as at the end of that income year from the arrangement or arrangements relating to the hedged item or items that are yet to be included in your assessable income or allowed to you as deductions;
 - (c) you must have, at the time when you create, acquire or apply the arrangement, a record that sets out your risk management policies and practices;
 - (d) you must have in place, at the time when you create, acquire or apply the arrangement, internal risk management systems and controls that record the arrangement and the hedged item or items.
- (6) For the purposes of paragraph (5)(b), you must assume that:
 - (a) all the gains from the *financial arrangement would be assessable income; and
 - (b) all the losses from the financial arrangement would be allowed to you as deductions.

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

230-360 Determining basis for allocating gain or loss

- (1) A requirement of this section is that you must determine the basis on which your gain or loss from the *hedging financial arrangement is to be allocated to an income year, or over 2 or more income years, for the purposes of this Division.
 - (2) It is also a requirement of this section that the basis that you determine must:
 - (a) fairly and reasonably correspond with the basis on which gains, losses or other amounts in relation to the *hedged item or items are recognised or allocated under this Act; and
 - (b) be objective; and
 - (c) be sufficiently precise and detailed that, when your gain, loss or other amount from the *hedged item or items is taken into account for the purposes of this Act, the following will be clear from the record made under section 230-355:
 - (i) the time at which the gain or loss from the *hedging financial arrangement is to be taken into account for the purposes of this Division;
 - (ii) the way in which that gain or loss will be dealt with under section 230-310.
- Note: Paragraph (a) refers to an amount in relation to the hedged item or items being recognised or allocated under this Act. This would include an amount being allowed as a deduction or an amount being included in assessable income. If the hedged item were an asset, an amount referable to a part of the cost of the asset might, for example, be allowed as a deduction for a particular income year.
- (3) To avoid doubt, the income years over which your gain or loss is to be allocated may include an income year that starts after you cease to have the *hedging financial arrangement.

230-365 Effectiveness of the hedge

The requirement of this section is that:

- (a) hedging the risk must be expected to be highly effective (within the meaning of the principles or standards referred to in paragraph 230-315(2)(a)), for the period for which you expect to have the *hedging financial arrangement, in reducing your exposure to changes in the fair value of the

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

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- *hedged item or items or cash flows attributable to your hedged risk; and
- (b) the fair value of the hedged item or items or cash flows relating to them and the fair value of the arrangement must be able to be reliably measured; and
- (c) you must assess the hedging of the risk by the arrangement:
 - (i) on a regular basis in accordance with the *accounting principles; and
 - (ii) at least once in each 12 month period;and your assessment must be that it will be highly effective (within the meaning of the principles or standards referred to in paragraph 230-315(2)(a)) in reducing your exposure to changes in the fair value of the hedged item or items or cash flows attributable to the hedged risk throughout the remainder of the period for which you expect to have the arrangement.

230-370 When election ceases to apply

- (1) A *hedging financial arrangement election ceases to have effect from the start of an income year if you cease to be eligible under subsection 230-315(2) to make the election for that income year.
- (2) Subsection (1) does not prevent you from making a new *hedging financial arrangement election at a later time if you become, at that later time, eligible under subsection 230-315(2) to make an election for an income year.

Note: The new election will only apply to financial arrangements you start to have after the start of the income year in which the new election is made.

230-375 Balancing adjustment if election ceases to apply

- (1) This section applies if a *hedging financial arrangement election ceases to have effect under subsection 230-370(1).
- (2) You are taken, for the purposes of this Division, to have:
 - (a) disposed of each *hedging financial arrangement to which the election applies for its fair value immediately before the election ceases to have effect; and

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

- (b) reacquired the arrangement at its fair value immediately after the election ceases to have effect.
- (3) To avoid doubt, this Subdivision applies, for the purposes of working out the consequences of the disposal referred to in paragraph (2)(a), as if the *hedging financial arrangement were one to which the *hedging financial arrangement election applied at the time of the disposal.

230-380 Where requirements not met

Commissioner may determine that requirement met

- (1) If (apart from this section) the requirements of sections 230-355 to 230-365 are not met in relation to a *hedging financial arrangement that you have, treat those requirements as having been so met if the Commissioner makes a determination under subsection (1A) in relation to the arrangement.
- (1A) The Commissioner may make the determination if the Commissioner considers that this is appropriate, having regard to:
 - (a) the respects in which the arrangement does not meet those requirements; and
 - (b) the extent to which it does not meet those requirements; and
 - (c) the reasons why it does not meet those requirements; and
 - (d) if the Commissioner is considering whether to impose conditions under subsection (2)—the likelihood that you will comply with those conditions; and
 - (e) the objects of this Subdivision.

Commissioner may impose additional record keeping requirements

- (2) The Commissioner may make a determination under subsection (1A) conditional on your keeping records in addition to those required by section 230-355.
- (3) A determination under subsection (1A) ceases to have effect if you breach a condition imposed under subsection (2).

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

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- (4) Subsection (3) ceases to apply to you if the Commissioner determines that that subsection ceases to apply to you. The determination takes effect from the date specified in the determination.
- (5) In deciding whether to make the determination under subsection (4), the Commissioner must have regard to:
 - (a) your record keeping practices; and
 - (b) your compliance history; and
 - (c) any changes that have been made to:
 - (i) your accounting systems and controls; and
 - (ii) your internal governance processes;to ensure that breaches of the kind referred to in subsection (3) do not happen again; and
 - (d) any other relevant matter.

Commissioner may determine matter under section 230-360

- (6) If:
 - (a) the Commissioner makes a determination under subsection (1A) in relation to a *hedging financial arrangement; and
 - (b) either or both of the following applies:
 - (i) you fail to determine a matter in relation to the arrangement under section 230-360;
 - (ii) you determine a matter in relation to the arrangement under section 230-360 but the determination does not satisfy the requirements of subsection 230-360(2);the Commissioner may determine that matter and the Commissioner's determination has effect as if you had made the determination and recorded it under that section.

230-385 You may be excluded from this Subdivision for deliberate failures to comply with requirements

When section applies

- (1) This section applies if:

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

- (a) you start to have a *hedging financial arrangement to which your *hedging financial arrangement election applies; and
- (b) you do not meet a requirement of section 230-355 or 230-360 in relation to the arrangement; and
- (c) you deliberately fail to meet that requirement in order to have this Subdivision not apply to the arrangement.

Hedging financial arrangement election ceases to apply

- (2) The *hedging financial arrangement election does not apply to a *hedging financial arrangement you start to have after you fail to meet the requirement referred to in paragraph (1)(b).

Commissioner may determine that hedging financial arrangement is to reapply

- (3) Subsection (2) ceases to apply to you if the Commissioner determines that that subsection ceases to apply to you. The determination takes effect from the date specified in the determination.
- (4) The Commissioner may make the determination under subsection (3) only if satisfied that you are unlikely to deliberately fail again to meet a requirement of section 230-355 or 230-360 in order to have this Subdivision not apply to a *hedging financial arrangement.
- (5) In deciding whether to make the determination under subsection (3), the Commissioner must have regard to:
 - (a) your record keeping practices; and
 - (b) your compliance history; and
 - (c) any changes that have been made to:
 - (i) your accounting systems and controls; and
 - (ii) your internal governance processes;to ensure that failures of the kind referred to in paragraph (1)(c) do not happen again; and
 - (d) any other relevant matter.

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

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- (6) If the Commissioner makes a determination under subsection (3), the *hedging financial arrangement election applies to a *hedging financial arrangement only if you start to have the arrangement after the determination takes effect.

Commissioner may still exercise powers under section 230-380

- (7) This section does not prevent the Commissioner from exercising the Commissioner's powers under section 230-380 in relation to the *hedging financial arrangement referred to in paragraph (1)(a).

Subdivision 230-F—Reliance on financial reports

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230-390 Objects of this Subdivision

The objects of this Subdivision are:

- (a) to reduce administration and compliance costs by allowing you to align the tax treatment of your gains and losses from a *financial arrangement with the accounting treatment that applies to the arrangement; and
- (b) to achieve those objects without your obtaining inappropriate tax benefits.

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

230-395 Election to rely on financial reports

Election

- (1) You may make an ***election to rely on financial reports*** if you are eligible under subsection (2) to make the election for the income year in which you make the election.

Eligibility to make election

- (2) You are eligible to make an election to rely on financial reports for an income year if:
- (a) you prepare a financial report for that income year in accordance with:
 - (i) the *accounting principles; or
 - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting made under a *foreign law that apply to the preparation of the financial report under a foreign law; and
 - (b) the financial report is audited in accordance with:
 - (i) the *auditing principles; or
 - (ii) if the auditing principles do not apply to the auditing of the financial report—comparable standards for auditing made under a foreign law; and
 - (c) your auditor has not qualified the auditor's report on your financial report for that income year or any of the last 4 financial years in a respect that is relevant to the taxation treatment of *financial arrangements; and
 - (d) your accounting systems and controls and your internal governance processes are reliable; and
 - (e) no report of an audit or review conducted in the income year, or any of the preceding 4 income years, has included an adverse assessment of your accounting systems in a respect that is relevant to the taxation treatment of financial arrangements.

Note 1: Paragraph (b)—section 230-500 allows regulations to be made specifying particular foreign accounting and auditing standards as

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

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ones that are to be treated as comparable with Australian accounting and auditing principles for the purposes of this Division.

Note 2: For the purposes of paragraphs (c) and (e), a qualification or assessment may be relevant to the taxation treatment of financial arrangements even though it does not deal with the amount or timing of recognition of gains or losses (but relates, for example, to the reliability of the accounting systems through which information about financial arrangements is recorded).

- (3) Paragraph (2)(e) does not apply to a report of:
- (a) an internal audit or review that you conduct; or
 - (b) an audit or review of a kind prescribed by the regulations for the purposes of this paragraph.

Election irrevocable

- (4) An election under subsection (1) is irrevocable.

Note: The election may cease to apply under section 230-425.

230-400 Financial reports election where differing income and accounting years

- (1) This section applies if:
- (a) you prepare a financial report for a year (the ***first year***); and
 - (b) you prepare a financial report for the subsequent year (the ***second year***); and
 - (c) your income year starts in the first year and ends in the second year; and
 - (d) both the financial report for the first year and the financial report for the second year are:
 - (i) prepared in accordance with paragraph 230-395(2)(a); and
 - (ii) audited in accordance with paragraph 230-395(2)(b); and
 - (e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.
- (2) Treat yourself as eligible to make an election for the income year under subsection 230-395(2).

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

- (3) Work out the gain or loss you make from the arrangement for the income year as follows:
- (a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with section 230-420 (treating the first year as an income year);
 - (b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);
 - (c) next, work out the gain or loss you make from the arrangement for the second year in accordance with section 230-420 (treating the second year as an income year);
 - (d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);
 - (e) next:
 - (i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or
 - (ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or
 - (iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.
- (4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
- (a) using a methodology that is reasonable; and
 - (b) using the same methodology for the first and second years.
- (5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

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

230-405 Commissioner discretion to waive requirements in paragraphs 230-395(2)(c) and (e)

- (1) Paragraph 230-395(2)(c) or (e) does not apply in relation to your *election to rely on financial reports for a particular income year or income years if the Commissioner determines that the paragraph does not apply to the election for that income year or those income years.
- (2) In deciding whether to make the determination under subsection (1), the Commissioner must have regard to:
 - (a) the reasons for the non-compliance with the principles or standards concerned; and
 - (b) the remedial action (if any) that you have undertaken to ensure that non-compliance with those principles or standards does not occur in future (such as changes to your accounting systems and controls or to your internal governance structures); and
 - (c) if you, or your activities, are subject to regulatory oversight or review—any opinions expressed by the regulator about the adequacy of remedial action of the kind referred to in paragraph (b); and
 - (d) any other relevant matter.

230-410 Financial arrangements to which the election applies

- (1) An *election to rely on financial reports applies in relation to a *financial arrangement that you have if:
 - (a) the arrangement is a *Division 230 financial arrangement; and
 - (b) you start to have the arrangement in the income year in which you make the election or in a later income year; and
 - (c) the arrangement is recognised in financial reports of the kind referred to in paragraph 230-395(2)(a) that are audited as referred to in paragraph 230-395(2)(b); and
 - (d) if the arrangement is a financial arrangement under section 230-50—the arrangement is an asset or liability that you are required (whether or not as a result of a choice you make) by:

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

- (i) the *accounting principles; or
- (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting that apply to the preparation of the financial report under a *foreign law;
to classify or designate, in the financial reports, as at fair value through profit or loss; and
- (e) it is reasonably expected that the following is, or will be, the same:
 - (i) the amount of the overall gain or loss you make from the arrangement (as determined in accordance with the financial reports);
 - (ii) the amount of the overall gain or loss you make from the arrangement (as determined in accordance with the provisions of this Division if the election under this subsection did not apply to the arrangement); and
- (f) the differences between the results of the following methods would reasonably be expected not to be substantial:
 - (i) the method used in your financial reports to work out the amounts of the gain or loss you make from the arrangement for each income year;
 - (ii) the method that would be applied by this Division to work out the amounts of those gains or losses if the election did not apply to the arrangement.

This subsection has effect subject to section 230-415.

- (2) In applying paragraph (1)(f) at the time when you start to have the *financial arrangement, disregard any differences between the results of the methods referred to in subparagraphs (1)(f)(i) and (ii) that are attributable solely to the provision for the possible impairment of debts required by the principles or standards referred to in paragraph 230-395(2)(a).

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

Section 230-410

- (3) Subsections (4), (5) and (6) apply if, but for this subsection, paragraphs (1)(c) and (d) would not be satisfied in relation to a *financial arrangement because the arrangement is an intra-group transaction for the purposes of:
- (a) *accounting standard AASB 127 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or
 - (b) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a *foreign law.
- Note: Financial arrangements between members of a consolidated group or MEC group are not covered by this subsection because the single entity rule in subsection 701-1(1) operates to treat them as not being financial arrangements for the purposes of this Division.
- (4) Paragraphs (1)(c) and (d) are taken to be satisfied in relation to the *financial arrangement.
- (5) Paragraph (1)(e) applies as if the reference in subparagraph (1)(e)(i) to the amount of the overall gain or loss you make from the *financial arrangement (as determined in accordance with the financial reports) were a reference to the amount of that overall gain or loss (as would be determined in accordance with the financial reports if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in subsection (3)).
- (6) Paragraph (1)(f) applies as if the reference in subparagraph (1)(f)(i) to the method used in your financial reports to work out the amounts of the gain or loss you make from the arrangement for each income year were a reference to the method that would be used in your financial reports to work out those amounts if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in subsection (3).
- (7) For the purposes of applying subparagraphs (1)(e)(ii) and (f)(ii) to a *financial arrangement, assume that you had made any election that:
- (a) you could make under Subdivision 230-C or 230-D; and
 - (b) could apply to the arrangement.

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

- (8) If:
- (a) the *financial arrangement would not be a financial arrangement if the following provisions were disregarded:
 - (i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);
 - (ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and
 - (b) paragraphs (1)(c) and (d) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities; and
 - (c) the *election to rely on financial reports is made by:
 - (i) if section 121EB of the *Income Tax Assessment Act 1936* applies—the OBU mentioned in that section (disregarding the operation of that section); or
 - (ii) if section 160ZZW of that Act applies—the bank mentioned in that section (disregarding the operation of that section);
- paragraphs (1)(c) and (d) are taken to be satisfied in relation to the arrangement.

230-415 Financial arrangements not covered by election

- (1) An *election to rely on financial reports does not apply to a *financial arrangement if:
 - (a) the arrangement is an *equity interest; and
 - (b) you are the issuer of the equity interest.
- (2) An *election to rely on financial reports does not apply to a *financial arrangement if:
 - (a) you are:
 - (i) an individual; or
 - (ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and
 - (b) the arrangement is a *qualifying security; and
 - (c) you have not made an election under subsection 230-455(7).

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

Section 230-420

- (3) An *election to rely on financial reports does not apply to a *financial arrangement if:
- (a) the election is made by the *head company of a *consolidated group or *MEC group; and
 - (b) the election specifies that the election is not to apply to financial arrangements in relation to *life insurance business carried on by a member of the consolidated group or MEC group; and
 - (c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.
- (4) An *election to rely on financial reports does not apply to a *financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

230-420 Effect of election to rely on financial reports

- (1) If an *election to rely on financial reports applies to a *financial arrangement, the gain or loss you make from the arrangement for an income year is:
- (a) the gain or loss that the principles or standards referred to in paragraph 230-395(2)(a) require you to recognise in profit or loss from that arrangement for that income year; or
 - (b) if subsection 230-410(3) applies to the arrangement—the gain or loss that the principles or standards referred to in paragraph 230-395(2)(a) would have required you to recognise in profit or loss from that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-410(3)(b); or
 - (c) if subsection 230-410(8) applies to the arrangement—the gain or loss that the principles or standards referred to in paragraph 230-410(1)(d) would have required you to recognise in profit or loss for the year from the asset or liability mentioned in paragraph 230-410(1)(d) if the arrangement had been between 2 separate entities.

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

Note: Subsection 230-40(7) provides that this Subdivision does not apply to a gain or loss from a financial arrangement to the extent to which Subdivision 230-E (hedging financial arrangements method) applies to the arrangement.

- (2) Subsection (3) applies if:
- (a) a *head company of a *consolidated group or *MEC group has a *financial arrangement; and
 - (b) an *election to rely on financial reports applies to the arrangement; and
 - (c) a subsidiary member of the group ceases to be a member of the group at a particular time (the *leaving time*); and
 - (d) immediately after the leaving time, the subsidiary member has the arrangement.
- (3) The gain or loss the group makes from the *financial arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that the principles or standards referred to in paragraph 230-395(2)(a) would require the group to recognise in profit or loss from the arrangement for that income year if:
- (a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and
 - (b) any circumstances that arise in relation to the arrangement after the leaving time were disregarded.

230-425 When election ceases to apply

- (1) An election under subsection 230-395(1) ceases to have effect from the start of an income year if you cease to be eligible to make an *election to rely on financial reports for that income year.
- (2) Subsection (1) does not prevent you from making a new election under subsection 230-395(1) at a later time if you become, at that later time, eligible to make an *election to rely on financial reports for an income year.

Note: The new election will only apply to financial arrangements you start to have after the start of the income year in which the new election is made.

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

Section 230-430

- (3) An election under subsection 230-395(1) ceases to apply to a *financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of paragraph 230-410(1)(c), (d), (e) or (f) during that income year.
- (4) If the election ceases to apply to a particular *financial arrangement under subsection (3), the election cannot subsequently apply to that arrangement (even if the requirements of paragraphs 230-410(1)(c), (d), (e) and (f) are satisfied once more in relation to the arrangement).

230-430 Balancing adjustment if election ceases to apply

- (1) You must make balancing adjustments under subsection (2) if an election under subsection 230-395(1) ceases to have effect under subsection 230-425(1).
- (2) The balancing adjustments under this subsection are the balancing adjustments you would make under Subdivision 230-G in relation to each of the *financial arrangements to which the election applied if you disposed of the arrangement for its fair value when the election ceases to have effect.
- (3) You must make balancing adjustments under subsection (5) if an election under subsection 230-395(1) ceases to apply to a particular *financial arrangement under subsection 230-425(3).
- (4) Subsection (3) does not apply to a *financial arrangement if:
 - (a) the arrangement is not one that you are required (whether or not as a result of a choice you make) by the principles or standards referred to in paragraph 230-395(2)(a) to classify or designate, in your financial reports, as at fair value through profit or loss; and
 - (b) the election under subsection 230-395(1) ceases to apply to the arrangement because the arrangement fails to satisfy the requirements of paragraph 230-410(1)(e) or (f); and
 - (c) the arrangement ceases to satisfy the requirements of that paragraph because the arrangement becomes impaired for the purposes of those principles or standards.

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

- (5) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you disposed of the *financial arrangement for its fair value when the election ceases to apply to the arrangement.
- (6) If a balancing adjustment is made under subsection (2) or (5) in relation to a *financial arrangement, you are taken, for the purposes of this Division, to have reacquired the arrangement at its fair value immediately after the election ceased to have effect or ceased to apply to the arrangement.

Subdivision 230-G—Balancing adjustment on ceasing to have a financial arrangement

Table of sections

230-435	When balancing adjustment made
230-440	Exceptions
230-445	Balancing adjustment

230-435 When balancing adjustment made

When balancing adjustment made

- (1) A balancing adjustment is made under this Subdivision if:
 - (a) you transfer to another entity all of your rights and/or obligations under a *financial arrangement; or
 - (b) all of your rights and/or obligations under a financial arrangement otherwise cease; or
 - (c) you transfer to another entity:
 - (i) a proportionate share of all of your rights and/or obligations under a financial arrangement; or
 - (ii) a right or obligation that you have under a financial arrangement to a specifically identified *financial benefit; or
 - (iii) a proportionate share of a right or obligation that you have under a financial arrangement to a specifically identified financial benefit; or
 - (d) an *arrangement that is a *Division 230 financial arrangement ceases to be a financial arrangement.

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

Section 230-440

- (2) Paragraphs (1)(a), (b) and (c) do not apply to a right or obligation under a *financial arrangement unless that right or obligation is one of the rights or obligations that constitute the financial arrangement.

Note: See subsections 230-45(1) and 230-50(1) and (2) for the rights and/or obligations that constitute a financial arrangement.

Modifications for arrangements that are assets

- (3) If the *financial arrangement is an asset of yours at the time the event referred to in subsection (1) occurs, paragraphs (1)(a) and (c) do not apply unless the effect of the transfer is to transfer to the other entity substantially all the risks and rewards of ownership of the interest transferred.
- (4) If a *financial arrangement is an asset of yours, for the purposes of applying this Subdivision to the arrangement, you are treated as transferring a right under the arrangement to another entity if:
- (a) you retain the right but assume a new obligation; and
 - (b) your assumption of the new obligation has the same effect, in substance, as transferring the right to another entity; and
 - (c) the new obligation arises only to the extent to which the right to *financial benefits under the arrangement is satisfied; and
 - (d) you cannot sell or pledge the right (other than as security in relation to the new obligation); and
 - (e) you must, under the new obligation, provide financial benefits you receive in relation to the right to the entity to which you owe the new obligation without delay.

Historic rate rollover of derivative financial arrangement

- (5) For the purposes of paragraph (1)(b), all of your rights and/or obligations under a *financial arrangement that is a *derivative financial arrangement are taken to cease if there is an historic rate rollover of the arrangement.

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

230-440 Exceptions

Equity interests etc.

- (1) A balancing adjustment is not made under this Subdivision in relation to a *financial arrangement at a time if:
 - (a) the arrangement is a financial arrangement under section 230-50 (equity interests etc.); and
 - (b) neither Subdivision 230-C nor Subdivision 230-F apply to the arrangement immediately before that time.

Financial arrangements to which hedging financial arrangement elections apply

- (2) Balancing adjustments are not made under this Subdivision in relation to a *financial arrangement in relation to which a *hedging financial arrangement election applies.

Bad debts, margining and conversion into, or exchange for, ordinary shares

- (3) A balancing adjustment is not made under this Subdivision in relation to the following events:
 - (a) a *financial arrangement being written off in whole or part as a bad debt;
 - (b) a financial arrangement that is a *derivative financial arrangement being settled or closed out for margining purposes;
 - (c) the ceasing of obligations or rights under a financial arrangement that is a *traditional security if:
 - (i) the ceasing occurs because the traditional security is converted into ordinary shares in, or transferred to, a company that is the issuer of the traditional security or a *connected entity; and
 - (ii) the traditional security was issued on the basis that it will or may convert into ordinary shares in, or be transferred to, the issuer of the traditional security or the connected entity;

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

Section 230-445

- (d) the ceasing of obligations or rights under a financial arrangement that is a traditional security if:
 - (i) the ceasing occurs because the traditional security is exchanged for ordinary shares in a company that is neither the issuer of the traditional security nor a connected entity; and
 - (ii) if the ceasing of the obligations or rights occurs because of a disposal—the disposal is to the issuer of the traditional security or a connected entity; and
 - (iii) the traditional security was issued on the basis that it will or may be exchanged for ordinary shares in the company.

Note: Paragraph (a)—for the treatment of bad debts, see paragraph 230-190(3)(c).

Subsidiary member leaving consolidated group or MEC group

- (4) A balancing adjustment is not made under this Subdivision in relation to a subsidiary member of a *consolidated group or *MEC group that has a *financial arrangement ceasing to be a member of the group.

230-445 Balancing adjustment

Complete cessation or transfer

- (1) Use the following method statement to make the balancing adjustment if paragraph 230-435(1)(a), (b) or (d) applies:

Method statement for balancing adjustment

Step 1. Add up the following:

- (a) the total of all the *financial benefits you have received under the *financial arrangement;

Note: This would include financial benefits you receive in relation to the transfer or cessation (see paragraph 230-60(2)(c)).

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

- (b) the total of the amounts that have been allowed to you as deductions, because of circumstances that have occurred before the transfer or cessation, for losses from the arrangement;
- (c) the total of the other amounts that would have been allowed to you as deductions, because of circumstances that have occurred before the transfer or cessation, for losses from the arrangement if all your losses from the arrangement were allowable as deductions;

Note: The losses from the arrangement here include losses made in gaining or producing exempt income or non-assessable non-exempt income.

- (d) the total of the amounts that will be allowed to you as deductions after the transfer or cessation because of a balancing adjustment under subitems 104(12) to (18) of the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* to the extent to which those amounts are attributable to the arrangement;
- (e) the total of the amounts that will be allowed to you as deductions after the transfer or cessation because of sections 230-160 and 230-165 to the extent to which those amounts are attributable to the arrangement.

Step 2. Add up the following:

- (a) the total of all the *financial benefits you have provided under the *financial arrangement;

Note: This would include financial benefits you provide in relation to the transfer or cessation (see paragraph 230-60(1)(c)).

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

- (b) the total of the amounts that have been included in your assessable income, because of circumstances that have occurred before the transfer or cessation, as gains from the arrangement;
- (c) the total of the other amounts that would have been included in your assessable income, because of circumstances that have occurred before the transfer or cessation, as gains from the arrangement if all your gains from the arrangement were assessable;

Note: The gains from the arrangement here include amounts of exempt income or non-assessable non-exempt income.

- (d) the total of the amounts that will be included in your assessable income after the transfer or cessation because of a balancing adjustment under subitems 104(12) to (18) of the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* to the extent to which those amounts are attributable to the arrangement.
- (e) the total of the amounts that will be included in your assessable income after the transfer or cessation because of sections 230-160 and 230-165 to the extent to which those amounts are attributable to the arrangement.

Step 3. Compare the amount obtained under step 1 (the ***step 1 amount***) with the amount obtained under step 2 (the ***step 2 amount***). If the step 1 amount exceeds the step 2 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a gain you make from the ^{*}financial arrangement for the purposes of this Division. If the step 2 amount exceeds the step 1 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a loss that you make from the arrangement. If the step 1 amount and the step 2 amount are equal, no balancing adjustment is made.

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

Proportionate transfer of all rights and/or obligations under financial arrangement

- (2) If subparagraph 230-435(1)(c)(i) applies, you make the balancing adjustment by applying the method statement in subsection (1) but reduce:
- (a) the amounts referred to in step 1; and
 - (b) the amounts referred to in step 2;
- by applying the proportion referred to in subparagraph 230-435(1)(c)(i) to them.

Transfer of specifically identified right or obligation under financial arrangement

- (3) If subparagraph 230-435(1)(c)(ii) applies, you make the balancing adjustment by applying the method statement in subsection (1) as if the references to:
- (a) the amounts referred to in step 1; and
 - (b) the amounts referred to in step 2;
- were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 230-435(1)(c)(ii).

Proportionate transfer of specifically identified right or obligation under financial arrangement

- (4) If subparagraph 230-435(1)(c)(iii) applies, you make the balancing adjustment by applying the method statement:
- (a) as if the references to:
 - (i) the amounts referred to in step 1; and
 - (ii) the amounts referred to in step 2;were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 230-435(1)(c)(iii); and
 - (b) by reducing those amounts by applying the proportion referred to in subparagraph 230-435(1)(c)(iii) to them.

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

Section 230-445

Attribution must reflect appropriate and commercially accepted valuation principles

- (5) Any attribution made under subsection (3) or paragraph (4)(a) must reflect appropriate and commercially accepted valuation principles that properly take into account:
- (a) the nature of the rights and obligations under the *financial arrangement; and
 - (b) the risks associated with each *financial benefit, right and obligation under the arrangement; and
 - (c) the time value of money.

Income year for which gain or loss is made

- (6) The gain or loss you are taken to make under subsection (1), (2), (3) or (4) is a gain or loss for the income year in which the event referred to in subsection 230-435(1) occurs.

Treatment of bad debts in relation to financial arrangements

- (7) For the purposes of applying paragraph (b) of step 1 of the method statement in subsection (1) to a *financial arrangement, a bad debt deduction in relation to the arrangement to which subsection 230-25(3) applies is taken to be a deduction for a loss from the arrangement.

Subdivision 230-H—Exceptions

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

230-450 Short-term arrangements where non-money amount involved

This Division does not apply in relation to your gains and losses from a *financial arrangement if:

- (a) the arrangement is a financial arrangement under section 230-45; and
- (b) either:
 - (i) you acquired goods or other property (other than goods that are, or property that is, money or a *money equivalent) or services (other than services that are a money equivalent) from another entity and the *financial benefits you are to provide under the arrangement are consideration for those goods, that property or those services; or
 - (ii) you provided goods or other property (other than goods that are, or other property that is, money or a money equivalent) or services (other than services that are a money equivalent) to another entity and the financial benefits you are to receive under the arrangement are consideration for those goods, that property or those services; and
- (c) the period between the following is not more than 12 months:
 - (i) the time when you are to provide or receive the consideration (or a substantial proportion of it);
 - (ii) the time when you acquired or provided the property, goods or services (or a substantial proportion of them); and
- (d) the arrangement is not a *derivative financial arrangement for any income year; and
- (e) a *fair value election does not apply to the arrangement.

230-455 Certain taxpayers where no significant deferral

- (1) This Division does not apply in relation to your gains or losses from a *financial arrangement for any income year if:
 - (a) you are:
 - (i) an individual; or

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

Section 230-455

- (ii) a superannuation entity (within the meaning of section 10 of the *Superannuation Industry (Supervision) Act 1993*), a *superannuation fund that is not such an entity, a managed investment scheme (within the meaning of the *Corporations Act 2001*) or an entity with a similar status to such a scheme under a *foreign law relating to corporate regulation; or
 - (iii) an *ADI, a *securitisation vehicle, an entity that is required to register under the *Financial Sector (Collection of Data) Act 2001* or an entity that would be required to register under that Act if it were a corporation; or
 - (iv) an entity other than an entity of a kind mentioned in subparagraph (i), (ii) or (iii); and
 - (b) where subparagraph (a)(ii) applies—you satisfy subsection (2) for the income year in which you start to have the arrangement; and
 - (c) where subparagraph (a)(iii) applies—you satisfy subsection (3) for the income year in which you start to have the arrangement; and
 - (d) where subparagraph (iv) applies—you satisfy subsection (4) for the income year in which you start to have the arrangement; and
 - (e) either:
 - (i) the arrangement is to end not more than 12 months after you start to have it; or
 - (ii) the arrangement is not a *qualifying security.
- (2) An entity satisfies this subsection for an income year if:
- (a) the value of the entity's assets (see subsection (5)) for the income year (worked out at the end of the income year) is less than \$100 million if the income year is the one in which the entity comes into existence; or
 - (b) the value of the entity's assets for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$100 million if the income year is an income year after the one in which the entity comes into existence.

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

- (3) An entity satisfies this subsection for an income year if:
- (a) the entity's *aggregated turnover for the income year (worked out at the end of the income year) is less than \$20 million if the income year is the one in which the entity comes into existence; or
 - (b) the entity's aggregated turnover for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$20 million if the income year is an income year after the one in which the entity comes into existence.
- (4) An entity satisfies this subsection for an income year if:
- (a) either:
 - (i) the entity's *aggregated turnover for the income year (worked out at the end of the income year) is less than \$100 million if the income year is the one in which the entity comes into existence; or
 - (ii) the entity's aggregated turnover for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$100 million if the income year is an income year after the one in which the entity comes into existence; and
 - (b) either:
 - (i) the value of the entity's financial assets (see subsection (5)) for the income year (worked out at the end of the income year) is less than \$100 million if the income year is the one in which the entity comes into existence; or
 - (ii) the value of the entity's financial assets for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$100 million if the income year is an income year after the one in which the entity comes into existence; and
 - (c) either:
 - (i) the value of the entity's assets (see subsection (5)) for the income year (worked out at the end of the income year) is less than \$300 million if the income year is the one in which the entity comes into existence; or

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

- (ii) the value of the entity's assets for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than \$300 million if the income year is an income year after the one in which the entity comes into existence.
- (5) For the purposes of subsections (2) and (4), the value of the entity's assets or financial assets is to be determined in accordance with:
- (a) if the entity applies *accounting standard AAS 25 in preparation of its financial reports—that accounting standard or another accounting standard prescribed by the regulations for the purposes of this paragraph; or
 - (b) if paragraph (a) does not apply and the entity prepares its financial reports in accordance with the *accounting principles—the entity's financial reports; or
 - (c) if paragraphs (a) and (b) do not apply and the entity prepares its financial reports in accordance with an accounting standard comparable to accounting standard AAS 25 under a *foreign law—that comparable standard; or
 - (d) if paragraphs (a), (b) and (c) do not apply—commercially accepted valuation principles.
- (6) Subsection (1) does not apply to your gains or losses from a *financial arrangement for an income year if:
- (a) you have made an election under subsection (7) in that income year or an earlier income year; and
 - (b) you start to have the arrangement after the beginning of the income year in which you make the election.
- (7) An election under this subsection is an election to have this Division apply to all of the *financial arrangements that you start to have in the income year in which the election is made or a later income year.
- (8) An election under subsection (7) is irrevocable.
- (9) This section does not apply in relation to your gains or losses from a *financial arrangement that you start to have after a time if you are not an individual and you failed to satisfy subsection (2), (3) or

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

(4) (as the case may be) for an income year ending before that time.

230-460 Various rights and/or obligations

Rights and/or obligations subject to an exception

- (1) This Division does not apply to your gains and losses from a *financial arrangement for any income year to the extent that your rights and/or obligations under the arrangement are the subject of an exception under any of the following subsections.

Note: Further exceptions are also provided for in section 230-475.

Leasing or property arrangement

- (2) A right or obligation arising under:
- (a) an *arrangement to which Division 242 (about luxury car leases) applies; or
 - (b) an arrangement to which Division 240 (about arrangements treated as a sale and loan) applies; or
 - (c) an arrangement that relates to an asset to which Division 250 (about assets put to tax preferred use) applies; or
 - (d) an arrangement that, in substance or effect, depends on the use of a specific asset that is:
 - (i) real property; or
 - (ii) goods or a personal chattel (other than money or a *money equivalent); or
 - (iii) intellectual property;and gives a right to control the use of the asset; or
 - (e) an arrangement that is a licence to use:
 - (i) real property; or
 - (ii) goods or a personal chattel (other than money or a money equivalent); or
 - (iii) intellectual property;is the subject of an exception.

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

Interest in partnership or trust

- (3) A right carried by an interest in a partnership or a trust, or an obligation that corresponds to such a right, is the subject of an exception if:
- (a) there is only one class of interest in the partnership or trust;
or
 - (b) the interest is an *equity interest in the partnership or trust; or
 - (c) for a right or obligation relating to a trust—the trust is managed by a funds manager or custodian, or a responsible entity (as defined in the *Corporations Act 2001*) of a registered scheme (as so defined).
- (4) Subsection (3) does not apply if, assuming that the *financial arrangement were a *Division 230 financial arrangement, a *fair value election, or an *election to rely on financial reports, would apply to it.

Certain insurance policies

- (5) A right or obligation under a *life insurance policy is the subject of an exception unless:
- (a) you are not a *life insurance company that is the insurer under the policy; and
 - (b) the policy is an annuity that is a *qualifying security.
- (6) A right or obligation under a *general insurance policy is the subject of an exception unless:
- (a) you are not a *general insurance company; and
 - (b) the policy is a *derivative financial arrangement.

Certain workers' compensation arrangements

- (7) A right or obligation in relation to a liability for workers' compensation claims to which Subdivision 321-C applies is the subject of an exception.

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

Certain guarantees and indemnities

- (8) A right or obligation under a guarantee or indemnity is the subject of an exception unless:
- (a) assuming that the *financial arrangement were a *Division 230 financial arrangement, it would be the subject of a *fair value election or an *election to rely on financial reports; or
 - (b) the financial arrangement is a *derivative financial arrangement; or
 - (c) the guarantee or indemnity is given in relation to a financial arrangement.

Personal arrangements and personal injury

- (9) The following rights and obligations are the subject of an exception:
- (a) a right to receive, or an obligation to provide, consideration for providing personal services;
 - (b) a right, or obligation, arising from the administration of a deceased person's estate;
 - (c) a right to receive, or an obligation to provide, a gift under a deed;
 - (d) a right to receive, or an obligation to provide, a *financial benefit by way of maintenance:
 - (i) to an individual who is or has been the *spouse of the person liable to provide the benefit; or
 - (ii) to or for the benefit of an individual who is or has been a child of the person liable to provide the benefit; or
 - (iii) to or for the benefit of an individual who is or has been a child of an individual who is or has been a spouse of the person liable to provide the benefit;
 - (e) a right to receive, or an obligation to provide, a financial benefit in relation to personal injury to an individual;
 - (f) a right to receive, or an obligation to provide, a financial benefit in relation to an injury to an individual's reputation.

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

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- (10) Without limiting paragraph (9)(e), that paragraph applies:
- (a) even if the person to whom the *financial benefit is to be provided is not the individual who was injured; and
 - (b) even if the personal injury to the individual takes the form of:
 - (i) a wrong to the individual; or
 - (ii) illness of the individual.

Note: The person referred to in paragraph (a) may, for example, be a relative of the individual who was injured.

Superannuation and pension benefits

- (11) A right to receive, or an obligation to provide, *financial benefits is the subject of an exception if the right or obligation arises from a person's membership of a superannuation or pension scheme, including:
- (a) a right of a dependant of a member to receive financial benefits or an obligation to provide financial benefits to a dependant of a member; and
 - (b) a right or obligation arising from an interest in:
 - (i) a *complying superannuation fund or *non-complying superannuation fund; or
 - (ii) a *pooled superannuation trust; or
 - (iii) an *approved deposit fund; or
 - (iv) an *RSA.

Interest in controlled foreign companies

- (12) A right or obligation that arises under a *direct participation interest of an *attributable taxpayer in a *controlled foreign company is the subject of an exception.

Proceeds from certain business sales

- (13) A right to receive, or an obligation to provide, *financial benefits arising from the sale of:
- (a) a business; or
 - (b) shares in a company that operates a business; or
 - (c) interests in a trust that operates a business;

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

is the subject of an exception if the amounts, or the values, of those benefits are contingent only on the economic performance of the business after the sale.

Infrastructure borrowings

- (14) A right to receive, or an obligation to provide, *financial benefits is the subject of an exception if the right or obligation arises under an *arrangement to which Division 16L of the *Income Tax Assessment Act 1936* applies.

Farm management deposits

- (15) A right to receive, or an obligation to provide, *financial benefits is the subject of an exception if:
- (a) the right or obligation is the right or obligation of an *owner of a *farm management deposit; and
 - (b) the right or obligation relates to the deposit.

Rights and obligations to which section 121EK of the Income Tax Assessment Act 1936 applies

- (16) A right or obligation that arises because of a payment of an amount to which section 121EK of the *Income Tax Assessment Act 1936* applies is the subject of an exception.

Forestry managed investment scheme interests

- (17) A right or obligation under a *forestry interest in a *forestry managed investment scheme in relation to which you can claim deductions under Division 394 is the subject of an exception.

Regulations may provide for exceptions

- (18) A right or obligation of a kind specified in the regulations for the purposes of this subsection is the subject of an exception.

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

230-465 Ceasing to have a financial arrangement in certain circumstances

- (1) This section applies if:
 - (a) you cease to have a *financial arrangement (or part of a financial arrangement); and
 - (b) you make a loss from ceasing to have the arrangement (or that part of the arrangement); and
 - (c) if the arrangement is a marketable security (within the meaning of section 70B of the *Income Tax Assessment Act 1936*):
 - (i) you did not acquire the arrangement in the ordinary course of trading on a securities market (within the meaning of that section); and
 - (ii) at the time you acquired the arrangement, it was not open to you to acquire an identical financial arrangement in the ordinary course of trading on a securities market; and
 - (d) if the arrangement is a marketable security—you did not dispose of the arrangement in the course of trading on a securities market; and
 - (e) it would be concluded that you ceased to have the arrangement wholly or partly because there was an apprehension or belief that the other party or other parties to the arrangement were, or would be likely to be, unable or unwilling to discharge all their liabilities to pay amounts under the arrangement.
- (2) The amount of the loss is reduced by so much of that amount as is a loss of capital or a loss of a capital nature.

Note: However, the amount by which the loss is reduced is a capital loss.
- (3) In applying paragraph (1)(e), you must have regard to:
 - (a) the financial position of the other party or parties to the *financial arrangement; and
 - (b) the perceptions of the financial position of the other party or parties to the arrangement; and
 - (c) other relevant matters.

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

230-470 Forgiveness of commercial debts

If a gain that you make from a *financial arrangement arises from the *forgiveness of a debt to which Subdivisions 245-C to 245-G apply, the gain is reduced by:

- (a) if section 245-90 (about agreements to forgo capital losses or deductions) applies—the debt’s provisional net forgiven amount mentioned in that section; or
- (b) if that section does not apply—the debt’s *net forgiven amount.

Note: Section 51AAA (about a net capital gains limit) of the *Income Tax Assessment Act 1936* also has the effect of preventing you from deducting losses.

230-475 Clarifying exceptions

Exceptions

- (1) To avoid doubt, this Division does not apply to your gains and losses from a *financial arrangement for any income year to the extent that your rights and/or obligations are the subject of an exception under any of the following subsections.
- (2) This section is not intended to limit, expand or otherwise affect the operation of sections 230-45 to 230-55 (which tell you what is covered by the concept of **financial arrangement**) in relation to rights and/or obligations other than those dealt with in this section.

Retirement village and residential or flexible care arrangements

- (3) The following rights and obligations are the subject of an exception:
 - (a) a right or obligation arising under a *retirement village residence contract;
 - (b) a right or obligation arising under a *retirement village services contract;
 - (c) a right or obligation arising under an *arrangement under which *residential care or *flexible care is provided.

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

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- (4) For the purposes of subsection (3):
- (a) a **retirement village residence contract** is a contract that gives rise to a right to occupy *residential premises in a *retirement village; and
 - (b) a **retirement village services contract** is a contract under which a resident of a retirement village is provided with general or personal services in the retirement village.

230-480 Treatment of gains in form of franked distribution etc.

- (1) This section applies if a gain you make from a *financial arrangement is in the form of:
- (a) a *franked distribution (including a franked distribution that *flows indirectly to you); or
 - (b) a right to receive a franked distribution (including a franked distribution that will flow indirectly to you).
- (2) This Division does not apply to the gain to the extent that the *franked distribution has a *franked part.

230-481 Registered emissions units

A *registered emissions unit is exempt from this Division.

Subdivision 230-I—Other provisions

Table of sections

230-485	Effect of change of residence—rules for particular methods
230-490	Effect of change of residence—disposal and reacquisition etc. after ceasing to be Australian resident where no further recognised gains or losses from arrangement
230-495	Effect of change of accounting principles or standards
230-500	Comparable foreign accounting and auditing standards
230-505	Financial arrangement as consideration for provision or acquisition of a thing
230-510	Non-arm's length dealings in relation to financial arrangement
230-515	Arm's length dealings in relation to financial arrangement—adjustment to gain or loss in certain situations
230-520	Disregard gains or losses covered by value shifting regime
230-525	Consolidated financial reports

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

230-485 Effect of change of residence—rules for particular methods

- (1) The object of this section is to deal with your gains and losses for an income year in which you change residence by:
 - (a) allocating the gains and losses to your periods of Australian and foreign residence in that income year; and
 - (b) determining the assessability of the gains and the deductibility of the losses according to:
 - (i) your residency in each period; and
 - (ii) the sources of the gains and the connection of the losses with your assessable income.
- (2) This section applies if:
 - (a) you are a foreign resident for part of an income year (the ***foreign residency period***) and an Australian resident for the other part of the income year (the ***Australian residency period***); and
 - (b) section 230-490 does not apply in respect of the change of residence.

Note: See section 230-490 if you change residence, and after the change the gains and losses you make from the arrangement are not assessable or deductible under this Division.

Realisation method

- (3) Subsection (4) applies if:
 - (a) you have a *financial arrangement at the time (the ***residence change time***):
 - (i) you cease to be an Australian resident; or
 - (ii) you become an Australian resident; and
 - (b) you apply the realisation method to determine the amount of a gain or loss you make from the arrangement.
- (4) You are taken for the purposes of this Division:
 - (a) to have disposed of the arrangement just before the residence change time for its fair value just before that time; and
 - (b) to have acquired the arrangement again at the residence change time for its fair value at that time.

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

Accruals and hedging financial arrangement methods

- (5) Subsection (6) applies if:
- (a) assuming that you disregarded this section and subsection 230-40(2), you would apply the accruals or hedging financial arrangement method to determine the amount of:
 - (i) a gain included in your assessable income under section 230-15 for the income year; or
 - (ii) a loss you can deduct under section 230-15 for the income year; and
 - (b) subsection (4) does not apply in relation to any gain or loss under the arrangement.
- (6) Apply that method by apportioning the gain or loss on a reasonable basis between those periods so as to work out:
- (a) a gain or loss from the arrangement for the foreign residency period; and
 - (b) a gain or loss from the arrangement for the Australian residency period.

Fair value, foreign exchange retranslation and financial reports methods

- (7) Subsection (8) applies if:
- (a) assuming that you disregarded this section and subsection 230-40(2), you would apply the fair value or foreign exchange retranslation method or the method of relying on your financial reports to determine the amount of:
 - (i) a gain included in your assessable income under section 230-15 for the income year; or
 - (ii) a loss you can deduct under section 230-15 for the income year; and
 - (b) subsection (4) does not apply in relation to any gain or loss under the arrangement.
- (8) Apply that method to work out:
- (a) a gain or loss from the arrangement for the foreign residency period; and

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

- (b) a gain or loss from the arrangement for the Australian residency period.

230-490 Effect of change of residence—disposal and reacquisition etc. after ceasing to be Australian resident where no further recognised gains or losses from arrangement

- (1) This section applies if:
 - (a) you cease to be an Australian resident at a particular time (the *residence change time*); and
 - (b) you have a *financial arrangement at the residence change time; and
 - (c) at the residence change time you expect that any gains and losses you make from the arrangement after that time will not be assessable or deductible under this Division.
- (2) You are taken for the purposes of this Division:
 - (a) to have disposed of the arrangement just before that time for its fair value just before that time; and
 - (b) to have acquired the arrangement again at the residence change time for its fair value at that time.

230-495 Effect of change of accounting principles or standards

- (1) This section applies if:
 - (a) one of these methods apply to take account of a gain or loss you make from a *financial arrangement:
 - (i) the fair value method provided for in Subdivision 230-C; or
 - (ii) the foreign exchange retranslation method provided for in Subdivision 230-D; or
 - (iii) the method of relying on your financial reports provided for in Subdivision 230-F; and
 - (b) there is a change in, or in the application of, the relevant principles or standards (as mentioned in section 230-230 (fair value method), 230-280 (foreign exchange retranslation method) or 230-420 (method of relying on financial reports)) that apply in relation to the arrangement; and

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

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- (c) that change applies to a particular income year and later years; and
 - (d) as a result of the change, those principles or standards require you to recognise in your statement of financial position an amount (the **equity amount**), in order to avoid the need to increase or decrease gains or losses recognised in profit or loss from the financial arrangement in respect of previous income years.
- (2) If the equity amount is positive, include in your assessable income for the particular income year mentioned in paragraph (1)(c) so much of it as relates to the *financial arrangement mentioned in paragraph (1)(a).
- (3) If the equity amount is negative, you are entitled to a deduction for the particular income year mentioned in paragraph (1)(c) equal to so much of it as relates to the *financial arrangement mentioned in paragraph (1)(a).

230-500 Comparable foreign accounting and auditing standards

The regulations may:

- (a) specify that particular standards that apply under a *foreign law are to be taken for the purposes of this Division to be comparable to the *accounting principles; and
- (b) specify that particular standards that apply under a foreign law are to be taken for the purposes of this Division to be comparable to the *auditing principles.

230-505 Financial arrangement as consideration for provision or acquisition of a thing

- (1) This section applies if you start or cease to have a *Division 230 financial arrangement as consideration for the provision or acquisition of a thing.
- (2) Work out the *market value of the thing at the time at which you (in fact) provide or acquire it. For the purposes of applying this Act to you, treat the amount:
 - (a) you obtain for providing the thing; or

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

(b) you provide for acquiring the thing;
as being that market value.

Note 1: The amount may be relevant, for example, for the purposes of applying the provisions of this Act dealing with capital gains, capital allowances or trading stock to the thing.

Note 2: This subsection does not affect the financial benefits received or provided under the financial arrangement from you starting or ceasing to have it (except in the circumstances described in Note 3). However:

- (a) the market value of the thing will be, or form part of, those financial benefits for the purposes of section 230-445; and
- (b) in the case of a non arm's length transaction, the amount of those financial benefits may be affected by section 230-510.

Note 3: If the thing is itself a Division 230 financial arrangement and subsection (3) does not apply, this subsection will determine the financial benefits received or provided under the financial arrangement from you starting or ceasing to have it.

(3) Subsection (2) does not apply if:

- (a) you start or cease to have the *financial arrangement as mentioned in subsection (1) under an arrangement (the *starting or ceasing arrangement*); and
- (b) the thing is itself a *Division 230 financial arrangement; and
- (c) the starting or ceasing arrangement is *not* itself a Division 230 financial arrangement.

Example: An arrangement for exchanging a share subject to Subdivision 230-C for another share subject to Subdivision 230-C, where the arrangement itself is not a Division 230 financial arrangement.

(4) For the purposes of this section:

- (a) treat yourself as providing a thing to another entity if:
 - (i) you have provided, or are to provide, the thing to the other entity; or
 - (ii) you cease to have, have ceased to have or are to cease to have, the thing; or
 - (iii) the other entity starts to have, has started having or is to start to have, the thing; and
- (b) treat yourself as acquiring a thing if:
 - (i) another entity has provided, or is to provide, the thing to you; or

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

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- (ii) another entity ceases to have, has ceased to have or is to cease to have, the thing; or
 - (iii) you start to have, have started to have or are to start to have, the thing.
- (5) For the purposes of this section, treat part of a *Division 230 financial arrangement as a Division 230 financial arrangement.
 - (6) Without limiting subsection (1), the thing provided, or the thing acquired, need not be a tangible thing and may take the form of services, conferring a right, incurring an obligation or extinguishing or varying a right or obligation.
 - (7) To avoid doubt, this section applies even if your starting or ceasing to have the *financial arrangement mentioned in subsection (1) is only part of the consideration for the provision or acquisition of the thing.
 - (8) For the purposes of this section, treat your starting or ceasing to have the *financial arrangement mentioned in subsection (1) as consideration for the provision or acquisition of the thing if that starting or ceasing is, in substance or effect, done for the provision or acquisition of the thing.

Example: Starting to have a financial arrangement in satisfaction of an obligation, where the obligation itself was incurred as consideration for the thing.

230-510 Non-arm's length dealings in relation to financial arrangement

- (1) This section applies if:
 - (a) a balancing adjustment is made under Subdivision 230-G in relation to a *Division 230 financial arrangement you have; and
 - (b) if the balancing adjustment was made because of paragraph 230-435(1)(b) or (d) (cessations without transfer)—the arrangement is not a *debt interest or loan.

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

Non-arm's length transaction resulting in you starting to have the arrangement

- (2) Subsection (3) applies if the parties to the dealing that resulted in you starting to have the arrangement were not dealing at *arm's length in relation to the dealing.
- (3) For the purposes of this Division:
 - (a) disregard the amount of the *financial benefit (if any) that you provided or received in relation to you starting to have the arrangement; and
 - (b) instead, treat yourself as having provided or received a financial benefit in relation to you starting to have the arrangement that is equal to the amount of the financial benefit that you would have provided or received if the parties to the dealing mentioned in subsection (2) were dealing at *arm's length in relation to the dealing.

Non-arm's length transaction resulting in change of an amount of a financial benefit that you provided or received under the financial arrangement

- (4) Subsection (5) applies if the parties to a dealing that resulted in a change of an amount of a *financial benefit that you provide or receive under the *financial arrangement were not dealing at *arm's length in relation to the dealing.
- (5) For the purposes of this Division:
 - (a) disregard the amount of the *financial benefit (if any) that you provide or receive under the *financial arrangement as a result of the dealing; and
 - (b) instead, treat yourself as providing or receiving a financial benefit under the financial arrangement as a result of the dealing that is equal to the amount of the financial benefit that you would have provided or received if the parties to the dealing were dealing at *arm's length in relation to the dealing.

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

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Non-arm's length transaction resulting in balancing adjustment

- (6) Subsection (7) applies if the parties to the dealing that resulted in the balancing adjustment mentioned in subsection (1) being made were not dealing at *arm's length in relation to the dealing.
- (7) For the purposes of this Division:
 - (a) disregard the amount of the *financial benefit (if any) that you provide or receive in relation to the balancing adjustment; and
 - (b) instead, treat yourself as providing or receiving a financial benefit in relation to the balancing adjustment that is equal to the amount of the financial benefit that you would have provided or received if the parties to the dealing mentioned in subsection (6) were dealing at *arm's length in relation to the dealing.

230-515 Arm's length dealings in relation to financial arrangement—adjustment to gain or loss in certain situations

- (1) This section applies if:
 - (a) disregarding this Division, a provision mentioned in subsection (2) makes an adjustment to an amount (including a nil amount) (the *relevant amount*); and
 - (b) the relevant amount is relevant in determining the amount of a gain or loss you make from a *Division 230 financial arrangement.
- (2) The provisions are as follows:
 - (a) section 52A of the *Income Tax Assessment Act 1936*;
 - (c) Division 16J of Part III of the *Income Tax Assessment Act 1936*;
 - (d) Division 16K of Part III of the *Income Tax Assessment Act 1936*;
 - (e) item 3 of the table in subsection 245-65(1) of this Act;
 - (f) section 775-40 of this Act.

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

- (3) In determining the amount of the gain or loss, treat the relevant amount as having been adjusted by the provision mentioned in subsection (2).
- (4) However, if the circumstances that give rise to the adjustment result in section 230-510 having the effect of altering the amount of the gain or loss, do not treat the relevant amount as having been adjusted under subsection (3) to the extent of that alteration.

230-520 Disregard gains or losses covered by value shifting regime

- (1) Disregard a gain or loss under this Division from a *financial arrangement to the extent that it is attributable to:
 - (a) a shifting of value that has consequences under Division 723; or
 - (b) a *direct value shift that has consequences under Division 725; or
 - (c) an *indirect value shift that has consequences under Division 727; or
 - (d) a shifting of value that has consequences analogous to those under Division 725 or 727 under a repealed provision of this Act or of the *Income Tax Assessment Act 1936*.
- (2) Determine whether a shifting of value has the consequences mentioned in paragraph (1)(a) on the assumption that a *realisation event in respect of all or part of the *financial arrangement happens in the income year for the gain or loss.

230-525 Consolidated financial reports

For the purposes of this Division, treat a financial report prepared by another entity as being prepared by you if:

- (a) the other entity is a *connected entity of yours; and
- (b) the report is a consolidated financial report that deals with both your affairs and the affairs of the connected entity; and
- (c) the report properly reflects your affairs.

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

Subdivision 230-J—Additional operation of Division

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230-530 Additional operation of Division

Foreign currency

- (1) This Division also applies to *foreign currency as if the currency were a right that constituted a *financial arrangement.

Non-equity shares

- (2) This Division also applies to a *non-equity share in a company as if the share were a right that constituted a *financial arrangement.

Commodities held by traders

- (3) This Division also applies to a commodity that you hold as if the commodity were a right that constituted a *financial arrangement if:
- (a) you are an entity that trades or deals both in:
 - (i) that commodity; and
 - (ii) financial arrangements whose values change in response to changes in the price or value of that commodity; and
 - (b) you hold that commodity for the purposes of dealing in the commodity; and
 - (c) a *fair value election or an *election to rely on financial reports applies to financial arrangements that you start to have when you start to have the commodity; and
 - (d) the commodity is an asset that you are required (whether or not as a result of a choice you make) by:
 - (i) the *accounting principles; or
 - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting that apply to the preparation of the financial report under a *foreign law;

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

to classify or designate, in your financial reports, as at fair value through profit or loss.

Offsetting commodity contracts held by traders

- (4) This Division also applies to a contract to which you are a party as if the contract were a *financial arrangement if:
- (a) you have a right to receive or an obligation to provide a commodity under the contract; and
 - (b) you have a practice of dealing in the commodity through the performance of offsetting contracts to receive and provide the commodity; and
 - (c) you do not have, as your sole or dominant purpose for entering into the contract, the purpose of receiving or delivering the commodity as part of your expected purchase, sale or usage requirements; and
 - (d) a *fair value election or an *election to rely on financial reports applies to financial arrangements that you start to have when you enter into the contract; and
 - (e) the contract is an asset or liability that you are required (whether or not as a result of a choice you make) by:
 - (i) the *accounting principles; or
 - (ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting that apply to the preparation of the financial report under a *foreign law;
- to classify or designate, in your financial reports, as at fair value through profit or loss.

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

Division 240—Arrangements treated as a sale and loan

Table of Subdivisions

	Guide to Division 240
240-A	Application and scope of Division
240-B	The notional sale and notional loan
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240-E	Notional interest and arrangement payments
240-F	The end of the arrangement
240-G	Adjustments if total amount assessed to notional seller differs from amount of interest
240-H	Application of Division 16E to certain arrangements
240-I	Provisions applying to hire purchase agreements

Guide to Division 240

240-1 What this Division is about

For income tax purposes, some arrangements (such as hire purchase agreements) are recharacterised as a sale of property, combined with a loan, by the notional seller to the notional buyer, to finance the purchase price.

240-3 How the recharacterisation affects the notional seller

Effect of notional sale

- (1) The consideration for the notional sale is either the price stated as the cost or value of the property or its arm's length value. If the notional seller is disposing of the property as trading stock, the normal consequences of disposing of trading stock follow. In particular, the notional seller will be assessed on the sale price.
- (2) Where the property is not trading stock the notional seller's assessable income will include any profit made by the notional

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

seller on the notional sale or on the sale of the property after a notional re-acquisition.

Effect of notional loan

- (3) The notional seller's assessable income will include notional interest over the period of the loan.

Other effects

- (4) These effects displace the income tax consequences that would otherwise arise from the arrangement. For example, the actual payments to the notional seller are not included in its assessable income. Also, the notional seller loses the right to deduct amounts under Division 40 (about capital allowances).

240-7 How the recharacterisation affects the notional buyer

Effect of notional purchase

- (1) The cost of the acquisition is either the price stated as the cost or value of the property or its arm's length value. If the notional buyer is acquiring the property as trading stock, the normal consequences of acquiring trading stock follow. In particular, the notional buyer can usually deduct the purchase price.
- (2) If the property is not trading stock, the notional buyer may be able to deduct amounts for the expenditure under Division 40 (about capital allowances).

Effect of notional loan

- (3) The notional buyer may be able to deduct notional interest payments over the period of the loan.

Other effects

- (4) These effects displace the income tax consequences that would otherwise arise from the arrangement. For example, the notional buyer cannot deduct the actual payments to the notional seller.

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

Subdivision 240-A—Application and scope of Division

Table of sections

Operative provisions

240-10	Application of this Division
240-15	Scope of Division

Operative provisions

240-10 Application of this Division

An *arrangement is treated as a notional sale and notional loan if:

- (a) the arrangement is listed in the table below; and
- (b) the arrangement relates to the kind of property listed in the table; and
- (c) any conditions listed in the table are satisfied.

Special provisions that apply to particular arrangements are also listed in the table.

This Division applies to:			
*Arrangements of this kind:	That relate to this kind of property:	If these conditions are satisfied:	Special provisions:
1 *Hire purchase agreement	Any goods	None	See Subdivision 240-I

240-15 Scope of Division

This Division has effect for the purposes of this Act and for the purposes of the *Income Tax Assessment Act 1936* other than:

- (a) Parts 3-1 and 3-3 of this Act (capital gains tax); and
- (b) Division 11A of Part III of the *Income Tax Assessment Act 1936* (certain payments to non-residents etc.).

Subdivision 240-B—The notional sale and notional loan

Table of sections

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

Operative provisions

- 240-17 Who is the notional seller and the notional buyer?
240-20 Notional sale of property by notional seller and notional acquisition of property by notional buyer
240-25 Notional loan by notional seller to notional buyer

Operative provisions

240-17 Who is the notional seller and the notional buyer?

- (1) An entity is the *notional seller* if it is a party to the *arrangement and:
- (a) actually owns the property; or
 - (b) is the owner of the property because of a previous operation of this Division.
- (2) An entity is the *notional buyer* if it is a party to the *arrangement and, under the arrangement, has the *right to use the property.

Example: If the arrangement is a hire purchase agreement, the finance provider will be the notional seller and the hirer will be the notional buyer.

240-20 Notional sale of property by notional seller and notional acquisition of property by notional buyer

- (1) The *notional seller is taken to have disposed of the property by way of sale to the *notional buyer, and the notional buyer is taken to have acquired it, at the start of the *arrangement.
- (2) The *notional buyer is taken to own the property until:
- (a) the *arrangement ends; or
 - (b) the notional buyer becomes the *notional seller under a later arrangement to which this Division applies.

240-25 Notional loan by notional seller to notional buyer

- (1) On entering into the *arrangement, the *notional seller is taken to have made a loan (the *notional loan*) to the *notional buyer.
- (2) The notional loan is for a period:
- (a) starting at the start of the *arrangement; and

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

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- (b) ending on the day on which the arrangement is to cease to have effect or, if the arrangement is of indefinite duration, on the day on which it would be reasonable to conclude, having regard to the terms and conditions of the arrangement, that the arrangement will cease to have effect.
- (3) The notional loan is of an amount (the *notional loan principal*) equal to the consideration for the sale of the property less any amount paid, or credited by the *notional seller as having been paid, by the *notional buyer to the notional seller, at or before the start of the *arrangement, for the cost of the property.

Note: Section 240-80 affects the amount of the notional loan principal where the arrangement is an extension or renewal of another arrangement.
- (4) The notional loan is subject to payment of interest.
- (5) The consideration for the sale of the property by the *notional seller, and the cost of the acquisition of the property by the *notional buyer, are each taken to have been:
 - (a) if an amount is stated to be the cost or value of the property for the purposes of the *arrangement and the notional seller and the notional buyer were dealing with each other at *arm's length in connection with the arrangement—the amount so stated; or
 - (b) otherwise—the amount that could reasonably have been expected to have been paid by the notional buyer for the purchase of the property if:
 - (i) the notional seller had actually sold the property to the notional buyer at the start of the arrangement; and
 - (ii) the notional seller and the notional buyer were dealing with each other at arm's length in connection with the sale.
- (6) The notional loan principal is taken to be repaid, and the interest is taken to be paid, by the making of the payments under the *arrangement.

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

Subdivision 240-C—Amounts to be included in notional seller's assessable income

Guide to Subdivision 240-C

240-30 What this Subdivision is about

This Subdivision provides for the inclusion in the notional seller's assessable income of:

- (a) amounts (notional interest) on account of the interest for the notional loan that the notional seller is taken to have made to the notional buyer; and
- (b) any profit made by the notional seller:
 - (i) on the notional sale of the property to the notional buyer; or
 - (ii) on a sale of the property after any notional re-acquisition of the property by the notional seller.

Table of sections

Operative provisions

240-35	Amounts to be included in notional seller's assessable income
240-40	Arrangement payments not to be included in notional seller's assessable income

Operative provisions

240-35 Amounts to be included in notional seller's assessable income

Notional interest

- (1) The *notional seller's assessable income of an income year includes the *notional interest for *arrangement payment periods, and parts of arrangement payment periods, in the income year.

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

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Profit on notional sale

- (2) If the property is not *trading stock of the *notional seller and the consideration for the notional sale of the property exceeds the cost of the acquisition of the property by the notional seller, the excess is included in the notional seller's assessable income of the income year of the notional sale.

Profit on actual sale after notional re-acquisition

- (3) If:
- (a) the *notional seller is taken under this Division to have re-acquired the property from the *notional buyer; and
 - (b) the notional seller afterwards sells the property; and
 - (c) the consideration for the sale exceeds the cost of the re-acquisition;
- the excess is included in the notional seller's assessable income of the income year in which the sale occurred.

240-40 Arrangement payments not to be included in notional seller's assessable income

- (1) The *arrangement payments that the *notional seller receives, or is entitled to receive, under the *arrangement:
- (a) are not to be included in the *notional seller's assessable income of any income year; but
 - (b) are not taken to be *exempt income of the notional seller.
- (2) However, those *arrangement payments are taken into account in calculating *notional interest that is included in the *notional seller's assessable income under section 240-35.
- (3) A loss or outgoing incurred by the *notional seller in deriving any such *arrangement payments is not taken to be a loss or outgoing incurred by the notional seller in relation to gaining or producing *exempt income.

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

Subdivision 240-D—Deductions allowable to notional buyer

Guide to Subdivision 240-D

240-45 What this Subdivision is about

This Subdivision provides that the notional buyer may, in certain circumstances, be entitled to deductions for the notional interest for the notional loan that the notional seller is taken to have made to the notional buyer.

Table of sections

Operative provisions

- 240-50 Extent to which deductions are allowable to notional buyer
240-55 Arrangement payments not to be deductions

Operative provisions

240-50 Extent to which deductions are allowable to notional buyer

- (1) The *notional buyer is only entitled to deduct *notional interest for an income year to the extent that the notional buyer would, apart from this Division, have been entitled to deduct *arrangement payments for that income year if no part of those payments were capital in nature.
- (2) The *notional buyer is entitled to deduct *notional interest for *arrangement payment periods, and parts of arrangement payment periods, in the income year.

240-55 Arrangement payments not to be deductions

The *notional buyer is not entitled to deduct *arrangement payments that the *notional buyer makes under the *arrangement, but those payments are taken into account in calculating *notional interest that may be deducted under section 240-50.

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

Subdivision 240-E—Notional interest and arrangement payments

Table of sections

Operative provisions

240-60	Notional interest
240-65	Arrangement payments
240-70	Arrangement payment periods

Operative provisions

240-60 Notional interest

- (1) The **notional interest* for an **arrangement payment period* is worked out as follows:

Calculating **notional interest*

- Step 1. Add the **notional interest* from previous **arrangement payment periods* to the notional loan principal.
- Step 2. Subtract any **arrangement payments* that have already been made or that are due but that have not been made. The result is the *outstanding notional loan principal* as at the start of the **arrangement payment period*.
- Step 3. Work out the *implicit interest rate* for the **arrangement payment period*, taking into account the **arrangement payments payable* by the **notional buyer* under the **arrangement* and any **termination amounts*.
- Step 4. Multiply the outstanding notional loan principal by the implicit interest rate. The result is the *notional interest* for the **arrangement payment period*.

- (2) If only part of an **arrangement payment period* occurs during an income year, the **notional interest* for that part of the arrangement payment period is so much of the notional interest for that

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

arrangement payment period as may appropriately be related to that income year in accordance with generally accepted accounting principles.

- (3) In calculating the implicit interest rate, if any of the relevant amounts are not known at the start of the *arrangement, a reasonable estimate of the amount is to be made and is to be used for the purposes of calculating the implicit interest rate for each income year of the *notional seller.
- (4) If a reasonable estimate cannot be made at that time, an estimate of the amount is to be made at the end of each income year of the *notional seller for the purposes of calculating the implicit interest rate for each income year of the notional seller.

240-65 Arrangement payments

An *arrangement payment* is an amount that the *notional buyer is required to pay under the *arrangement but does not include:

- (a) an amount in the nature of a penalty payable for failure to make a payment on time; or
- (b) a *termination amount.

240-70 Arrangement payment periods

- (1) An **arrangement payment period* is a period for which a payment under the *arrangement is allocated or expressed to be payable.
- (2) However, if a period exceeds 6 months, the period is not an *arrangement payment period but each of the following parts of the period is a separate arrangement payment period:
 - (a) the part of the period beginning at the start of that period and ending 6 months later;
 - (b) each part of the period:
 - (i) beginning immediately after a part of the period that is an arrangement payment period under paragraph (a) or under a previous application of this paragraph; and
 - (ii) ending 6 months after the start of that later part or at the end of the period, whichever first occurs.

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

Subdivision 240-F—The end of the arrangement

Table of sections

Operative provisions

240-75	When is the end of the arrangement?
240-80	What happens if the arrangement is extended or renewed
240-85	What happens if an amount is paid by or on behalf of the notional buyer to acquire the property
240-90	What happens if the notional buyer ceases to have the right to use the property

Operative provisions

240-75 When is the end of the arrangement?

- (1) If the *arrangement is stated to cease to have effect at a particular time, it is taken for the purposes of this Division to end (even if it is extended or renewed) at the earlier of:
 - (a) that time; or
 - (b) the time at which the arrangement ceases to have effect (whether because the arrangement is terminated or for any other reason).

Note: Section 240-80 deals with extensions and renewals.

- (2) An *arrangement is taken to have ended if it is extended or renewed.
- (3) If the *arrangement is of indefinite duration, it ends at the time at which the arrangement ceases to have effect even if the *arrangement is renewed.

Note: Section 240-80 deals with extensions and renewals.

- (4) An *arrangement is taken to have ended if it is reasonable to conclude, having regard to the terms and conditions of the *arrangement, that the arrangement has ceased to have effect.
- (5) An *arrangement is also taken to have ended if the property has been lost or destroyed.

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

240-80 What happens if the arrangement is extended or renewed

- (1) This section sets out what happens if, after the end of the *arrangement, the *notional buyer and *notional seller extend or renew the *arrangement.
- (2) This Division applies as if the original *arrangement has ended and the extended arrangement or renewed arrangement is a separate arrangement (the *new arrangement*).
- (3) There is not, however, taken to be any disposal or acquisition as a result of the original arrangement ending or of the new arrangement starting and the *notional buyer does not cease to own the property.
- (4) Also, the notional loan principal for the new loan is:
 - (a) if the *arrangement as extended or renewed states an amount as the cost or value of the property for the purposes of the extension or renewal and the *notional seller and the *notional buyer were dealing with each other at *arm's length in connection with the extension or renewal—the amount so stated; or
 - (b) otherwise—the amount that could reasonably have been expected to have been paid by the notional buyer for the purchase of the property if:
 - (i) the notional seller had actually sold the property to the notional buyer when the arrangement was extended or renewed; and
 - (ii) the notional seller and notional buyer were dealing with each other at arm's length in connection with the sale.
- (5) Subdivision 240-G applies to the notional loan for the original arrangement. For that purpose, the notional loan principal for the new arrangement is taken to be a *termination amount paid to the *notional seller under the original arrangement.

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

240-85 What happens if an amount is paid by or on behalf of the notional buyer to acquire the property

If, at or after the end of the *arrangement, an amount is paid to the *notional seller by, or on behalf of, the *notional buyer to acquire the property, the following provisions have effect:

- (a) the amount paid is not included in the notional seller's assessable income;
- (b) the notional buyer cannot deduct the payment;
- (c) the notional buyer is taken to continue to own the property;
- (d) the transfer to the notional buyer of legal title to the property is not taken to be a disposal of the property by the notional seller.

240-90 What happens if the notional buyer ceases to have the right to use the property

- (1) This section applies if, at the end of the *arrangement:
 - (a) the arrangement is not extended or renewed in the way mentioned in subsection 240-80(1); and
 - (b) no amount is paid to the *notional seller by, or on behalf of, the *notional buyer to acquire the property; and
 - (c) the property is not lost or destroyed.
- (2) The property is taken to have been disposed of by the *notional buyer by way of sale back to the *notional seller, and to have been acquired by the *notional seller, at the end of the *arrangement.
- (3) The consideration for the sale of the property by the *notional buyer, and the cost of the acquisition of the property by the *notional seller, are each taken to be equal to the *market value of the property at the end of the *arrangement.
- (4) Subsection (5) applies where the property is a *car and if it:
 - (a) had been bought from the *notional seller, when this Division first applied to an *arrangement in respect of the car, by the *notional buyer for a price equal to the notional loan principal; and

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

- (b) had been first used by the notional buyer for any purpose in the *financial year in which that time occurred;
the cost of the car, for the purpose of working out its decline in value for that person under Division 40, would have been limited by section 40-230.
- (5) Where an associate of the *notional buyer acquires the *car, the *cost of the car for the purposes of the application of Division 40 to the associate is taken to be whichever is the lesser of:
- (a) the sum of:
- (i) the amount that would have been the *adjustable value of the car at that time for the purposes of the application of that Division to the notional buyer if the notional buyer were not taken under this Division to have disposed of the car; and
- (ii) any amount that is included in the notional buyer's assessable income under section 40-285 because the notional buyer is taken to have disposed of the car; or
- (b) the cost of the acquisition of the car by the associate.

Subdivision 240-G—Adjustments if total amount assessed to notional seller differs from amount of interest

Guide to Subdivision 240-G

240-100 What this Subdivision is about

This Subdivision provides for adjustments if the sum of the amounts included in the notional seller's assessable income are greater or less than the interest, worked out at the end of the arrangement, for the notional loan.

Table of sections

Operative provisions

- 240-105 Adjustments for notional seller
240-110 Adjustments for notional buyer

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

Operative provisions

240-105 Adjustments for notional seller

- (1) This section applies at the end of the *arrangement.
- (2) If the sum of:
 - (a) all amounts (other than *termination amounts) that were paid or payable to the *notional seller under the *arrangement; and
 - (b) any termination amounts paid or payable to the notional seller;

exceeds the amount worked out using the formula in subsection (4), the excess is included in the notional seller's assessable income of the income year in which the arrangement ends.

Note: Subsection 240-80(5) provides that the amount of a notional loan that is taken to be made by an extended or renewed arrangement is a termination amount paid under the previous arrangement.

- (3) If the amount worked out using the formula in subsection (4) exceeds:
 - (a) all amounts (other than *termination amounts) that were paid or payable to the *notional seller under the *arrangement; and
 - (b) any termination amounts paid or payable to the notional seller;

the notional seller is entitled to deduct the excess in the income year in which the arrangement ends.

Note: Subsection 240-80(5) provides that the amount of a notional loan that is taken to be made by an extended or renewed arrangement is a termination amount paid under the previous arrangement.

- (4) The formula for the purposes of subsections (2) and (3) is:

Notional loan principal + Assessed notional interest

where:

assessed notional interest means the *notional interest that has been or is to be included in the *notional seller's assessable income of any income year.

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

240-110 Adjustments for notional buyer

- (1) If:
 - (a) an amount is included in the *notional seller's assessable income of an income year under subsection 240-105(2); or
 - (b) an amount would have been so included if the notional seller had been subject to tax on assessable income;the *notional buyer is entitled to deduct a corresponding amount in the notional buyer's income year.
- (2) If:
 - (a) the *notional seller is entitled to deduct an amount for an income year under subsection 240-105(3); or
 - (b) the notional seller would have been so entitled if the *notional seller had been subject to tax on assessable income;a corresponding amount is included in the notional buyer's assessable income for the notional buyer's income year.
- (3) The *notional buyer is entitled to a deduction, and is required to include an amount in his or her assessable income only to the extent (if any) that the notional buyer would, apart from this Division, have been entitled to deduct *arrangement payments if no part of those payments were capital in nature.

Subdivision 240-H—Application of Division 16E to certain arrangements

240-112 Division 16E applies to certain arrangements

- (1) Division 16E of Part III of the *Income Tax Assessment Act 1936* applies in relation to an arrangement (the **assignment arrangement**) between the notional seller and another person (the **holder**) to transfer the right to payments (the **Division 240 payments**) under an arrangement that is treated as a sale and loan by this Division (the **sale and loan arrangement**).
- (2) In applying Division 16E, the following assumptions are to be made:
 - (a) the assignment arrangement is the qualifying security;

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

Section 240-115

- (b) the notional seller is the issuer;
 - (c) the qualifying security is issued when the assignment arrangement is entered into;
 - (d) the issue price is consideration provided to the notional seller under the assignment arrangement;
 - (e) the Division 240 payments are payments made by the notional seller under the assignment arrangement;
 - (f) no part of the payments represent periodic interest.
- (3) This Subdivision does not apply if the assignment arrangement gives rise to a termination of the sale and loan arrangement for the purposes of this Division.
- (4) To avoid doubt, Division 6A of Part III of the *Income Tax Assessment Act 1936* does not apply to an assignment arrangement to which this Subdivision applies.

Subdivision 240-I—Provisions applying to hire purchase agreements

Table of sections

Operative provisions

240-115 Another person, or no person taken to own property in certain cases

Operative provisions

240-115 Another person, or no person taken to own property in certain cases

- (1) This section sets out special modifications of the effect of this Division that apply in relation to a *hire purchase agreement unless:
- (a) the notional buyer would have been the owner or the *quasi-owner of the property if the *arrangement had been a sale of the property; and
 - (b) it is reasonably likely that the right, obligation or contingent obligation to acquire the property will be exercised by, or in respect of, the notional buyer.

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

Note: An example of a contingent obligation is a put option.

- (2) The modifications also apply if the *notional buyer:
- (a) disposes of his or her interest in the property; or
 - (b) enters into a lease covered by Division 242 (about luxury car leases) under which he or she leases the property to another person.

Modifications

- (3) For the purpose of the *capital allowance provisions, if, apart from the operation of this Division, an entity other than the *notional seller would own the property that is the subject of an agreement covered by this section, that entity is taken to be the owner of the property.
- (4) For the purpose of the *capital allowance provisions, if, apart from the operation of this Division, the *notional seller would own the property that is the subject of an agreement covered by this section, no entity is taken to be the owner of the property.

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

Division 242—Leases of luxury cars

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242-A	Notional sale and loan
242-B	Amount to be included in lessor's assessable income
242-C	Deductions allowable to lessee
242-D	Adjustments if total amount assessed to lessor differs from amount of interest
242-E	Extension, renewal and final ending of the lease

Guide to Division 242

242-1 What this Division is about

A luxury car is one whose market value exceeds the car limit set for a car's capital allowance deductions by section 40-230.

If the lessor of a luxury car is tax exempt, or taxed at a lower rate than the lessee, the lease could be structured to give both parties a better after-tax outcome than if the lessee had bought the car. The lessee could fully deduct the lease payments, thereby avoiding the capital allowance limit for luxury cars, and the lessor would receive higher lease payments.

This Division removes the tax benefit for the lessee by putting both parties in the same position as if the lessor had sold the car to the lessee and lent the lessee the purchase price.

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

Subdivision 242-A—Notional sale and loan

Guide to Subdivision 242-A

242-5 What this Subdivision is about

A leased luxury car is treated for income tax purposes as if it had been sold by the lessor to the lessee for the car's market value. The lessor is treated as having lent the lessee the money to buy the car, and the lease payments are treated as payments of the principal and interest on that notional loan.

Table of sections

Operative provisions

242-10	Application
242-15	Notional sale and acquisition
242-20	Consideration for notional sale, and cost, of car
242-25	Notional loan by lessor to lessee

Operative provisions

242-10 Application

- (1) This Division applies to a *car that:
 - (a) is leased (but not under a *short-term hire agreement or a *hire purchase agreement) for consideration; and
 - (b) was a *luxury car when the lessor first leased it; and
 - (c) is not *trading stock of the lessee; and
 - (d) is not a car covered by subsection 40-230(2) (about cars modified to carry individuals with a disability).
- (2) The provisions of this Division do not have effect for the purposes of Division 11A of Part III of the *Income Tax Assessment Act 1936* (about withholding tax on dividends, interest and royalties).

Note: This subsection prevents interest on the notional loan that this Division creates being subject to withholding tax under Division 11A.

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

Section 242-15

- (3) For the purposes of paragraph (1)(a), the question whether an agreement is a *short-term hire agreement is determined on the basis that an employee or employer of an entity is an *associate of the entity.

Note: Under the definition of *short-term hire agreement* in subsection 995-1(1), successive agreements for the hire of the same asset to an entity or its associates are not short-term hire agreements if they result in substantial continuity of hiring.

242-15 Notional sale and acquisition

- (1) This Act has effect as if:
- (a) the *car had been disposed of (the *notional sale*) by the lessor to the lessee; and
 - (b) the car had been acquired by the lessee;
- at the start of the term of the lease.

Note: This Act will apply as it would have if the lessor had actually disposed of the car to the lessee. For example, if the lessor had been deducting an amount for the car's decline in value, the notional disposal will activate the balancing adjustment rules in Subdivision 40-D because the lessor would be treated as no longer holding the car.

- (2) This Act also has effect as if the lessee owns the *car until:
- (a) the lease (not including any extension or renewal of the lease) ends; or
 - (b) the lessee enters into a sublease of the car and this Division applies to the car in relation to the sublease.

Note 1: This means that the lessee (and not the lessor) may be able to deduct amounts for the decline in value of the car under Division 40.

Note 2: The lessee will be treated as continuing to own the car until the end of any extension or renewal: see section 242-80.

242-20 Consideration for notional sale, and cost, of car

- (1) The consideration for the notional sale by the lessor, and the first element of the *cost of the *car for the lessee, are the car's *market value at the start of the term of the lease.
- (2) If:
- (a) the lease is a sublease; and

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

- (b) the lessee is one or more of the following:
- (i) an *associate of the lessor;
 - (ii) an employer of the lessor;
 - (iii) an employee of the lessor;
- the first element of the *cost of the *car to the lessee is the sum of:
- (c) the amount that would have been the car's *adjustable value at the start of the term of the lease for the purposes of applying this Act to the lessor if the lessor were not taken under this Division to have disposed of the car; and
 - (d) any amount that is included in the lessor's assessable income under section 40-285 as a balancing adjustment because the lessor is treated as having disposed of the car.

Note: Section 242-20 of the *Income Tax (Transitional Provisions) Act 1997* extends paragraph (2)(d) to cover amounts included in assessable income under former provisions corresponding to section 40-285.

242-25 Notional loan by lessor to lessee

- (1) This Act has effect as if, on the grant of the lease, the lessor had made a loan (the *notional loan*) to the lessee:
- (a) for a period equal to the term of the lease (not including the term of any extension or renewal); and
 - (b) of an amount (the *notional loan principal*) equal to the consideration for the notional sale of the *car less any amount paid, or credited by the lessor as having been paid, by the lessee to the lessor, at or before the start of the term of the lease, for the first element of the *cost of the car to the lessee; and
 - (c) subject to payment of interest.
- Note: There is a further notional loan if the lease is extended or renewed: see section 242-80.
- (2) This Act has effect as if the notional loan principal were repaid, and the interest were paid, by the making of the *luxury car lease payments.

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

Subdivision 242-B—Amount to be included in lessor's assessable income

Guide to Subdivision 242-B

242-30 What this Subdivision is about

The lessor's assessable income includes the interest on the notional loan.

The lease payments to the lessor are non-assessable non-exempt income.

Note: If the consideration for a notional sale of a car exceeds the adjustable value of the car to the lessor, the excess will be included in the lessor's assessable income under section 40-285.

There would be a similar result if the lessor is treated as having reacquired the car and then sells the car for more than the cost of reacquisition.

Table of sections

Operative provisions

242-35	Amount to be included in lessor's assessable income
242-40	Treatment of lease payments

Operative provisions

242-35 Amount to be included in lessor's assessable income

Accrual amounts

- (1) The lessor's assessable income for an income year includes:
 - (a) if a *luxury car lease payment period for the lease of a *car occurs wholly during that income year—the amount (an **accrual amount**) worked out under subsection (2) for that luxury car lease payment period; and
 - (b) if part of a luxury car lease payment period for the lease of a car occurs during that income year—so much of the amount

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

(also an *accrual amount*) worked out under subsection (2) for that luxury car lease payment period as may appropriately be related to that income year in accordance with generally accepted accounting principles.

(2) The amount is:

Outstanding notional loan principal at the start of the lease payment period \times Implicit interest rate

where:

implicit interest rate is the implicit interest rate under the lease for the *luxury car lease payment period, taking into account the payments to be made by the lessee under the lease and any *termination amounts.

outstanding notional loan principal at the start of the lease payment period is:

- (a) the sum of the notional loan principal and the accrual amounts for earlier *luxury car lease payment periods; less
- (b) the sum of the *luxury car lease payments that the lessee was required to make before the start of the relevant luxury car lease payment period.

Excessive periods

- (3) If, apart from this subsection, a *luxury car lease payment period for the lease of a *car would exceed 6 months, this Division applies as if each of the following were a separate luxury car lease payment period:
 - (a) the first 6 months of the original luxury car lease payment period;
 - (b) if the original luxury car lease payment period was not longer than 12 months—the remaining part of the original luxury car lease payment period;
 - (c) if the original luxury car lease payment period was longer than 12 months—each successive 6 month period in the original luxury car lease payment period;
 - (d) the period (if any) after the end of the last of the periods to which paragraph (c) applies.

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

242-40 Treatment of lease payments

- (1) The *luxury car lease payments under the lease are not assessable income and are not *exempt income of the lessor.

Note: Those lease payments are instead taken into account in calculating accrual amounts that are included in the lessor's assessable income under section 242-35.

- (2) In working out the amounts the lessor can deduct for any income year, ignore the fact that subsection (1) makes the *luxury car lease payments *non-assessable non-exempt income.

Note: This allows the lessor to continue to deduct amounts related to earning the lease payments (such as interest on an amount the lessor borrowed to acquire the car), just as if the amounts related to earning interest on the notional loan to the lessee.

Subdivision 242-C—Deductions allowable to lessee

Guide to Subdivision 242-C

242-45 What this Subdivision is about

The lessee is entitled to deduct the interest on the notional loan to the same extent that the lessee would have been able to deduct the lease payments apart from this Division.

Table of sections

Operative provisions

242-50	Extent to which deductions are allowable to lessee
242-55	Lease payments not deductible

Operative provisions

242-50 Extent to which deductions are allowable to lessee

- (1) If a *luxury car lease payment period for the lease of a *car occurs wholly during an income year of the lessee, the lessee can deduct the accrual amount for that period for that income year.

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

Note 1: If a luxury car lease payment period would otherwise be longer than 6 months, subsection 242-35(3) divides the original period into periods of no longer than 6 months.

Note 2: For *accrual amount*, see subsection 242-35(1).

- (2) If part of a *luxury car lease payment period for the lease of a *car occurs during an income year of the lessee, the lessee can deduct so much of the accrual amount for that period as may appropriately be related to that income year in accordance with generally accepted accounting principles.
- (3) The lessee can deduct an accrual amount, or part of an accrual amount, for a *luxury car lease payment period under subsection (1) or (2) for an income year only to the extent that the lessee could deduct the luxury car lease payments made for that year apart from this Division.

242-55 Lease payments not deductible

The lessee cannot deduct the *luxury car lease payments that the lessee makes under the lease for any income year.

Note: Those payments are instead taken into account in calculating accrual amounts that are deductible under section 242-50.

Subdivision 242-D—Adjustments if total amount assessed to lessor differs from amount of interest

Guide to Subdivision 242-D

242-60 What this Subdivision is about

When a luxury car lease is extended, renewed or ends, the overall nominal gain to the lessor is compared to the nominal interest so far paid under the lease.

If the overall nominal gain is greater, the difference is assessable income of the lessor, and the lessee may be able to deduct it.

If the overall nominal gain is less, the lessor can deduct the difference, which may also be assessable income of the lessee.

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

This process ensures that the right amount has been taxed over the term of the lease.

Table of sections

Operative provisions

242-65	Adjustments for lessor
242-70	Adjustments for lessee

Operative provisions

242-65 Adjustments for lessor

- (1) This section applies at the following times:
 - (a) if the term of the lease is extended—when the extension takes effect;
 - (b) if the lease is renewed—when the renewal takes effect;
 - (c) when the lease (including any extension or renewal of the lease) ends.
- (2) If the sum of all amounts (whether *luxury car lease payments, a *termination amount or any other payments) that were paid or payable to the lessor under the lease exceeds the amount worked out under subsection (4), the excess is included in the lessor's assessable income for the income year in which the relevant time occurs.

Note: Subsection 242-80(8) treats the amount of a notional loan that is taken to be made by an extended or renewed lease to be a termination amount paid under the previous lease.
- (3) If the sum of all amounts (whether *luxury car lease payments, a *termination amount or any other payments) that were paid or payable to the lessor under the lease is less than the amount worked out under subsection (4), the lessor can deduct the difference for the income year in which the relevant time occurs.
- (4) The amount for the purposes of subsections (2) and (3) is the sum of:
 - (a) the notional loan principal; and

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

- (b) the sum of the accrual amounts that have been or are to be included in the lessor's assessable income of any income year.

Note: For *accrual amount*, see subsection 242-35(1).

242-70 Adjustments for lessee

- (1) If:
 - (a) an amount is included in the lessor's assessable income for an income year under subsection 242-65(2); or
 - (b) an amount would have been so included if the lessor had been subject to tax on assessable income;the lessee can deduct a corresponding amount for the same income year.
- (2) If:
 - (a) the lessor can deduct an amount for an income year under subsection 242-65(3); or
 - (b) the lessor could have deducted an amount under that subsection if the lessor had been subject to tax on assessable income;a corresponding amount is included in the lessee's assessable income for the same income year.
- (3) The lessee cannot deduct an amount for any income year under subsection (1), and an amount is not included in the lessee's assessable income of any income year under subsection (2), except to the extent (if any) that the lessee could deduct the *luxury car lease payments made apart from this Division.

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

Subdivision 242-E—Extension, renewal and final ending of the lease

Guide to Subdivision 242-E

242-75 What this Subdivision is about

When a luxury car lease ends (whether it expires or is terminated before its expiry date), one of 3 things will happen:

- (a) if the lease is extended or renewed—the original notional loan is treated as having been repaid and the lessor is treated as having made a new loan to the lessee; or
- (b) if the lessee acquires the car from the lessor—the lessee continues to own the car for tax purposes, and the actual transfer and the termination payment to acquire the car are ignored for tax purposes; or
- (c) if the lessee’s right to use the car ends—the lessee is treated as having sold the car back to the lessor.

In each case, there may be adjustments under Subdivision 242-D to ensure that the right amount has been taxed over the term of the lease.

Table of sections

Operative provisions

242-80	What happens if the term of the lease is extended or the lease is renewed
242-85	What happens if an amount is paid by the lessee to acquire the car
242-90	What happens if the lessee stops having the right to use the car

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

Operative provisions

242-80 What happens if the term of the lease is extended or the lease is renewed

- (1) The rules in this section have effect if, after the end of the lease (or the end of any extension of the lease term or renewal of the lease), the lessee continues to have the *right to use the *car because the term of the lease is extended (or further extended) or the lease is renewed (or further renewed).
- (2) This Act has effect as if the lessee continued to be the owner of the *car until the end of the lease as extended or renewed.
- (3) However, this Act has effect as if the lessee stopped being the owner of the *car if:
 - (a) the lessee enters into a sublease in respect of the car; and
 - (b) this Division applies to the car in respect of that sublease.
- (4) This Act has effect as if the notional loan that arose because of the grant of the lease, or because of the previous extension or renewal, had been repaid.

Note: Also, Subdivision 242-D (about balancing adjustments) will apply to the ending, extension or renewal.
- (5) This Act has effect as if, on the grant of the extension or renewal, the lessor had made a new loan (the **notional loan**) to the lessee:
 - (a) for the period of the extension of the term of the lease or the period of the renewed lease, as the case may be; and
 - (b) of an amount (the **notional loan principal**) equal to the *car's *market value when the extension or renewal is granted; and
 - (c) subject to the payment of interest.
- (6) This Act has effect as if the notional loan principal were repaid, and the interest were paid, by the making of the *luxury car lease payments under the lease as extended or renewed (or further extended or renewed).
- (7) In determining whether subsection (1) applies to the lessee, disregard any period after the end of the lease (or the end of any extension of the lease term or renewal of the lease) and before the

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

Section 242-85

extension or renewal (or further extension or renewal) is granted and during which the lessee did not have the *right to use the *car if the extension or renewal (or further extension or renewal):

- (a) has effect from the time immediately after the end of that term, extension or renewal; or
 - (b) otherwise results in substantial continuity of the leasing of the car to the lessee.
- (8) The amount of the notional loan is treated, for the purposes of section 242-65 (about the lessor's balancing adjustments), as a *termination amount paid to the lessor under the lease or under the previous extension or renewal.

242-85 What happens if an amount is paid by the lessee to acquire the car

If, at the end of the lease or, if it is extended or renewed, at the end of any extension or renewal (the *end time*), an amount is paid to the lessor by, or on behalf of, the lessee to acquire the *car, the following provisions have effect:

- (a) the amount paid is not included in the lessor's assessable income;
- (b) the lessee cannot deduct the payment;
- (c) this Act has effect as if:
 - (i) the lessee continued to be the owner of the car until the lessee disposes of it; and
 - (ii) the transfer to the lessee of legal title to the car were not a disposal of the car by the lessor.

242-90 What happens if the lessee stops having the right to use the car

- (1) If, at the end time:
- (a) the lessee stops having the *right to use the *car; and
 - (b) no amount is paid to the lessor by, or on behalf of, the lessee to acquire the car;

the following provisions have effect.

Note: For *end time*, see section 242-85.

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

- (2) This Act has effect as if the *car:
- (a) were sold by the lessee to the lessor; and
 - (b) were acquired by the lessor;
- at the end time.
- (3) The consideration for the sale of the *car by the lessee, and the first element of the *cost of the car to the lessor, are the *market value of the car at the end time.
- (4) If the *car is afterwards acquired by an *associate of the lessee or an employer or employee of the lessee, this Act has effect as if the first element of the *cost of the car as a *depreciating asset were the lesser of:
- (a) the sum of:
 - (i) the amount that would have been the *adjustable value of the car at that time for the purposes of applying this Act to the lessee if the lessee were not treated under this Division as having disposed of the car; and
 - (ii) any amount that is included in the lessee's assessable income under section 40-285 as a balancing adjustment because the lessee is treated as having disposed of the car; and
 - (b) the cost of the acquisition of the car by the associate, employer or employee.
- Note: Section 242-20 of the *Income Tax (Transitional Provisions) Act 1997* extends subparagraph (a)(ii) to cover amounts included in assessable income under former provisions corresponding to section 40-285.
- (5) For the purposes of paragraph (1)(a), the lessee is not treated as having stopped to have the *right to use the *car if:
- (a) the term of the lease is extended (or further extended), or the lease is renewed (or further renewed), at a time after, but not immediately after, the end of that term, extension or renewal with effect from the time immediately after that end; or
 - (b) the extension or renewal (or further extension or renewal) otherwise results in substantial continuity of the leasing of the car to the lessee.

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

Division 243—Limited recourse debt

Table of Subdivisions

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243-A	Circumstances in which Division operates
243-B	Working out the excessive deductions
243-C	Amounts included in assessable income and deductions
243-D	Special provisions

Guide to Division 243

243-10 What this Division is about

This Division tells you when you must include an additional amount in your assessable income at the termination of a limited recourse debt arrangement. It also tells you what the additional amount is.

Basically, the Division applies where the capital allowance deductions that have been obtained for expenditure that is funded by the debt and the deductions are excessive having regard to the amount of the debt that was repaid.

The reason for the adjustment is to ensure that, where you have not been fully at risk in relation to an amount of expenditure, you do not get a net deduction if you fail to pay that amount.

Subdivision 243-A—Circumstances in which Division operates

Table of sections

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243-20	What is limited recourse debt?
243-25	When is a debt arrangement terminated?
243-30	What is the financed property and the debt property?

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

Operative provisions

243-15 When does this Division apply?

- (1) This Division applies if:
- (a) *limited recourse debt has been used to wholly or partly finance or refinance expenditure; and
 - (b) at the time that the debt *arrangement is terminated, the debt has not been paid in full by the debtor; and
 - (c) the debtor can deduct an amount as a *capital allowance for the income year in which the termination occurs, or has deducted or can deduct an amount for an earlier income year, in respect of the expenditure or the *financed property.

Note: This Division does not apply to certain limited recourse debts that are used to refinance limited recourse debt to which this Division has applied (see subsection 243-50(4)).

- (2) However, unless the net *capital allowance deductions have been excessive having regard to the amount of the debt that remains unpaid (see section 243-35), no amount is included in the debtor's assessable income under this Division although future deductions may be reduced.
- (3) In working out if the debt has been paid in full, and in working out the unpaid amount of the debt, the following amounts are to be treated as if they were not payments in respect of the debt:
- (a) any reduction in the debt as a result of the *financed property being surrendered or returned to the creditor at the termination of the debt;
 - (b) any payment to reduce the debt that is funded directly or indirectly by *non-arm's length limited recourse debt or by proceeds from the disposal of the debtor's interest in the financed property.

However, any amounts accrued that are interest, *notional interest or in the nature of interest are taken not to be unpaid.

- (4) In working out if the debt has been paid in full, and in working out the unpaid amount of the debt, payments are to be attributed first to the payment of any accrued amounts that are interest, *notional interest or in the nature of interest.

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

Section 243-20

- (5) A notional loan arising because of Division 240 (about arrangements treated as a sale and loan) is taken to be a debt that has been used to wholly or partly finance or refinance expenditure.

243-20 What is limited recourse debt?

- (1) A **limited recourse debt** is an obligation imposed by law on an entity (the **debtor**) to pay an amount to another entity (the **creditor**) where the rights of the creditor as against the debtor in the event of default in payment of the debt or of interest are limited wholly or predominantly to any or all of the following:
- (a) rights (including the right to money payable) in relation to any or all of the following:
 - (i) the *debt property or the use of the debt property;
 - (ii) goods produced, supplied, carried, transmitted or delivered, or services provided, by means of the debt property;
 - (iii) the loss or disposal of the whole or a part of the debt property or of the debtor's interest in the debt property;
 - (b) rights in respect of a mortgage or other security over the debt property or other property;
 - (c) rights that arise out of any *arrangement relating to the financial obligations of an end-user of the *financed property towards the debtor, and are financial obligations in relation to the financed property.
- (2) An obligation imposed by law on an entity (the **debtor**) to pay an amount to another entity (the **creditor**) is also a **limited recourse debt** if it is reasonable to conclude that the rights of the creditor as against the debtor in the event of default in payment of the debt or of interest are capable of being limited in the way mentioned in subsection (1). In reaching this conclusion, have regard to:
- (a) the assets of the debtor (other than assets that are indemnities or guarantees provided in relation to the debt);
 - (b) any *arrangement to which the debtor is a party;
 - (c) whether all of the assets of the debtor would be available for the purpose of the discharge of the debt (other than assets that are security for other debts of the debtor or any other entity);

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

- (d) whether the debtor and creditor are dealing at *arm's length in relation to the debt.
- (3) An obligation imposed by law on an entity (the **debtor**) to pay an amount to another entity (the **creditor**) is also a **limited recourse debt** if there is no *debt property and it is reasonable to conclude that the rights of the creditor as against the debtor in the event of default in payment of the debt or of interest are capable of being limited. In reaching this conclusion, have regard to:
- (a) the assets of the debtor (other than assets that are indemnities or guarantees provided in relation to the debt);
 - (b) any *arrangement to which the debtor is a party;
 - (c) whether all of the assets of the debtor would be available for the purpose of the discharge of the debt (other than assets that are security for other debts of the debtor or any other entity);
 - (d) whether the debtor and creditor are dealing at *arm's length in relation to the debt.
- (4) A notional loan arising because of Division 240 (about arrangements treated as a sale and loan) under a *hire purchase agreement is also a **limited recourse debt**.
- (5) However, an obligation that is covered by subsection (1) is not a limited recourse debt if the creditor's recourse is not in practice limited due to the creditor's rights in respect of a mortgage or other security over property of the debtor (other than the financed property) the value of which exceeds, or is likely to exceed, the amount of the debt.
- (6) Also, an obligation that is covered by subsection (1), (2) or (3) is not a limited recourse debt if, having regard to all relevant circumstances, it would be unreasonable for the obligation to be treated as limited recourse debt.
- (7) A *limited recourse debt is a **non-arm's length limited recourse debt** if the debtor and creditor do not deal with each other at arm's length in relation to the debt.

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

243-25 When is a debt arrangement terminated?

- (1) A debt arrangement is taken to have terminated if:
 - (a) it is actually terminated; or
 - (b) the debtor's obligation to repay the debt is waived, novated or otherwise varied so as to reduce, transfer or extinguish the debt; or
 - (c) an agreement is entered into to waive, novate or otherwise vary the debtor's obligation to repay the debt so as to reduce, transfer or extinguish the debt; or
 - (d) the creditor ceases to have an entitlement to recover the debt from the debtor (other than as a result of an arm's length assignment of some or all of the creditor's rights under the debt arrangement); or
 - (e) the debtor ceases to be the owner or the *quasi-owner of some or all of the *debt property because that property is surrendered to the creditor because of the debtor's failure to pay the whole or a part of the debt; or
 - (f) the debtor ceases to be the owner of a beneficial interest in some or all of the debt property because the interest is surrendered to the creditor because of the debtor's failure to pay the whole or a part of the debt; or
 - (g) the debt becomes a bad debt.
- (2) However, a debt arrangement that is a notional loan arising because of Division 240 (about arrangements treated as a sale and loan) is not taken to have terminated merely because it has been renewed or extended.

Note: Under Division 240, notional loans are taken to have ended if the relevant arrangement is renewed or extended.
- (3) Where a debt is terminated under paragraph (1)(b) or (c) as a result of the debt being reduced, the remaining debt is taken to be a new debt to which section 243-15 applies.

243-30 What is the financed property and the debt property?

- (1) Property is the *financed property* if the expenditure referred to in paragraph 243-15(1)(a) is on the property, is on the acquisition of

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

the property, results in the creation of the property or is otherwise connected with the property.

- (2) If the debt agreement is a notional loan arising under Division 240 (about arrangements treated as a sale and loan), the property that is the subject of the agreement is the *financed property*.
- (3) Property is the *debt property* if:
 - (a) it is the *financed property; or
 - (b) the property is provided as security for the debt.

Subdivision 243-B—Working out the excessive deductions

Table of sections

Operative provisions

243-35 Working out the excessive deductions

Operative provisions

243-35 Working out the excessive deductions

- (1) The *capital allowance deductions have been excessive having regard to the amount of the debt that remains unpaid if the amount worked out under subsection (2) exceeds the amount worked out under subsection (4).
- (2) This is how to work out the total net *capital allowance deductions:

Working out the total net capital allowance deductions

Step 1. Add up all of the debtor's *capital allowance deductions in respect of the expenditure or the *financed property (including deductions because of balancing adjustments) for the income year in which the termination occurs or an earlier income year.

Note: The amount of a capital allowance deduction may be reduced under section 707-415.

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

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- Step 2. Deduct from that any amount that is included in the assessable income of the debtor of any income year by virtue of a provision of this Act (other than this Division) as a result of the disposal of the *financed property the effect of which is to reverse a deduction covered by Step 1.
- Step 3. Deduct from the result an amount equal to the sum of any amounts included in the entity's assessable income as a result of an earlier application of this Division to the debt.
- Step 4. Add to the result an amount equal to the sum of any deductions to which the entity is entitled under section 243-45 (repayments of the original debt after termination) or 243-50 (repayments of the replacement debt) because of payments in respect of the debt.

- (3) The reference in step 2 of the method statement in subsection (2) to an amount that is included in the assessable income of a taxpayer as a result of the disposal of the *financed property includes a reference to an amount that is included under section 26AG of the *Income Tax Assessment Act 1936* as a result of the disposal of the financed property.

Note: Division 20 deals with amounts included to reverse the effect of past deductions.

- (4) This is how to work out the total net capital allowance deductions that would otherwise be allowable taking into account the amount of the debt that is unpaid:

Working out the total net capital allowance deductions that would otherwise be allowable

Work out the amount that would be worked out under subsection (2) if the deductions and the amounts included in assessable income had been calculated using the following assumptions:

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

- (1) The original expenditure in respect of which deductions were calculated was reduced by the amount of the debt that was unpaid by the debtor when the debt was terminated. (In calculating the amount unpaid the following are to be disregarded:
 - (a) any reduction in the amount as a result of the *financed property being surrendered or returned to the creditor at the termination of the debt;
 - (b) any reduction in the amount to the extent that it is funded directly or indirectly by *non-arm's length limited recourse debt or by the consideration for the disposal of the debtor's interest in the financed property.)
- (2) Deductions for income years after the income year in which the termination occurred were also taken into account.
- (3) The original expenditure in respect of which deductions were calculated was increased by any amount that is paid by the debtor as consideration for another person assuming a liability under the debt. (This assumption does not apply to the extent that the consideration is funded directly or indirectly by *non-arm's length limited recourse debt or by the consideration for the disposal of the debtor's interest in the *financed property.)
- (4) Step 2 were omitted from subsection (2).

Subdivision 243-C—Amounts included in assessable income and deductions

Table of sections

Operative provisions

243-40	Amount included in debtor's assessable income
243-45	Deduction for later payments in respect of debt
243-50	Deduction for payments for replacement debt

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

Section 243-40

- 243-55 Effect of Division on later capital allowance deductions
- 243-57 Effect of Division on later capital allowance balancing adjustments
- 243-58 Adjustment where debt only partially used for expenditure

Operative provisions

243-40 Amount included in debtor's assessable income

The debtor's assessable income for the income year in which the termination occurs is to include the excess referred to in subsection 243-35(1).

Note: Section 243-60 applies in relation to certain partnership debts.

243-45 Deduction for later payments in respect of debt

- (1) This section applies if:
 - (a) an amount was included in the debtor's assessable income under section 243-40 or a deduction was reduced under section 243-55; and
 - (b) the debtor makes a payment to the creditor, after the termination of the debt arrangement, in respect of the debt (other than an amount to the extent to which it is a payment of interest, of *notional interest or in the nature of interest).
- (2) This is how to work out the amount of the deduction:

Working out the amount of the deduction

- Step 1. Work out the amount that would be worked out under subsection 243-35(2) if the debt were terminated immediately before the payment.
- Step 2. Work out the amount that would have been worked out under subsection 243-35(4) at that time if the payment had been taken into account.
- Step 3. The ***amount of the deduction*** is the amount (if any) by which the amount worked out under Step 2 exceeds the amount worked out under Step 1.

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

- (3) The amount can be deducted for the income year in which the payment is made.

Limit on deductions

- (4) The total amounts deducted under this section in respect of a debt, and under section 243-50 in respect of a replacement debt, cannot exceed the sum of:
- (a) any amounts included in the debtor's assessable income under this Division in respect of the original debt; and
 - (b) any amount by which deductions in respect of the original debt were reduced under section 243-55.

243-50 Deduction for payments for replacement debt

Payments where debt refinanced

- (1) This section applies if:
- (a) an amount was included in the debtor's assessable income under section 243-40 or a deduction was reduced under section 243-55; and
 - (b) an amount funded by a *non-arm's length limited recourse debt (the **replacement debt**) was disregarded in calculations under subsection 243-35(4); and
 - (c) the debtor makes a payment, after the termination of the original debt arrangement, in respect of the replacement debt (other than to the extent to which it is a payment of interest, of *notional interest or in the nature of interest).
- (2) This is how to work out the amount of the deduction:

Working out the amount of the deduction

- Step 1. Work out the amount that would be worked out under subsection 243-35(2) if the replacement debt were terminated immediately before the payment.
- Step 2. Work out the amount that would have been worked out under subsection 243-35(4) at that time if the payment

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

Section 243-55

had been made in respect of the original debt and it had been taken into account.

Step 3. The ***amount of the deduction*** is the amount (if any) by which the amount worked out under Step 2 exceeds the amount worked out under Step 1.

- (3) The amount can be deducted for the income year in which the payment is made.

Division not to apply to termination of replacement debt

- (4) This Division does not apply to termination of the replacement debt referred to in paragraph (1)(b).

Limit on deductions

- (5) The total amounts deducted under section 243-45 in respect of the original debt, or under this section in respect of the replacement debt, cannot exceed the sum of:
- (a) any amounts included in the debtor's assessable income under this Division in respect of the original debt; and
 - (b) any amount by which deductions in respect of the original debt were reduced under section 243-55.

243-55 Effect of Division on later capital allowance deductions

- (1) This section applies where this Division (other than section 243-65) has applied in relation to a debt and the debtor is entitled to a *capital allowance deduction in respect of the expenditure or the *financed property in relation to a time or period after the termination of the debt.
- (2) The *capital allowance deduction is reduced if the amount that would have been worked out under subsection 243-35(2) would have exceeded the amount worked out under subsection 243-35(4) if the following assumptions were applied in both subsections:

Assumptions to be applied

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

- (1) That the debt was terminated at the time, or at the end of the period, referred to in subsection (1) of this section.
- (2) That the amount unpaid at the time, or at the end of the period, is reduced by any amounts paid under a replacement debt.
- (3) The debtor's *capital allowance deductions in respect of the expenditure or the *financed property were increased by the amount of the capital allowance deduction referred to in subsection (1) of this section.

- (3) The deduction is to be reduced by the amount of the excess.

243-57 Effect of Division on later capital allowance balancing adjustments

- (1) This section applies where this Division (other than section 243-65) has applied in relation to a debt and an amount is later included in the assessable income of an entity by virtue of a provision of this Act (other than this Division) as a result of the disposal of the *financed property the effect of which is to reverse a deduction covered by Step 1 in subsection 243-35(2).
- (2) Any amount that would be included in the debtor's assessable income is reduced if the amount that would have been worked out under subsection 243-35(4) would have exceeded the amount worked out under subsection 243-35(2) if the following assumptions were applied in both subsections:

Assumptions to be applied

- (1) That the debt was terminated at the time of the disposal of the *financed property, referred to in subsection (1) of this section.
- (2) The amount in Step 2 in subsection 243-35(2) were increased by the amount that would otherwise be included in the debtor's assessable income.

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

- (3) The amount worked out under subsection 243-35(4) were reduced by any amount by which:
- (a) the amount arising as a result of the disposal that is taken into account for the purposes of the provision mentioned in subsection (1);
- exceeds:
- (b) the unpaid amount of the debt immediately before the time of the disposal of the *financed property, referred to in subsection (1).

- (3) The amount is to be reduced by the amount of the excess.

243-58 Adjustment where debt only partially used for expenditure

If the debt is only partially used to finance the expenditure, or the property, in respect of which the *capital allowance deductions referred to in Step 1 in subsection 243-35(2) are allowed, the amount of any deduction, any reduction in a deduction or any amount included in assessable income is to be so much as is reasonable taking into account the proportion of the debt that is used for that purpose.

Subdivision 243-D—Special provisions

Table of sections

Operative provisions

243-60	Application of Division to partnerships
243-65	Application where partner reduces liability
243-70	Application of Division to companies ceasing to be 100% subsidiary
243-75	Application of Division where debt forgiveness rules also apply

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

Operative provisions

243-60 Application of Division to partnerships

This Division applies to a partnership in respect of the partnership's debts and in respect of debts of a partner, and references to a debtor include a reference to a partnership.

243-65 Application where partner reduces liability

- (1) This section applies to a debt in relation to a partner in a partnership if:
 - (a) in connection with an *arrangement, the partner's liability to pay the debt is reduced or eliminated and the partner's interest in the partnership ceases or is varied or transferred; and
 - (b) an excess would have been worked out under subsection 243-35(1) if, at the time when the debt is reduced or eliminated, the debt had been terminated and remained unpaid and this section had not applied.
- (2) If this section applies to a debt in relation to a partner in a partnership, an amount is to be included in his or her assessable income.
- (3) This is how to work out the amount to be included:

Working out the amount included

- Step 1. Work out which income years the partner was a member of the partnership and the partnership was entitled to a *capital allowance deduction in respect of the expenditure or the *financed property (including deductions because of balancing adjustments).
- Step 2. For each of those income years, work out the proportion of net income of the partnership or the partnership loss (as the case requires) that was included in the assessable income of the partner or which the partner could deduct.

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

- Step 3. For each of those income years, multiply the *capital allowance deductions in respect of the expenditure or the *financed property (including deductions because of balancing adjustments) of the partnership by the corresponding proportion worked out under Step 2. Sum all of the amounts.
- Step 4. Divide the sum by the total of the *capital allowance deductions in respect of the expenditure or the *financed property (including deductions because of balancing adjustments) of the partnership for all of those income years.
- Step 5. Work out the amount that would have been included in the partnership's assessable income under section 243-40 if the debt had been terminated and remained unpaid and this section had not applied.
- Step 6. Multiply the amount worked out in Step 5 by the factor worked out in Step 4. The result is the amount to be included in the partner's assessable income.

243-70 Application of Division to companies ceasing to be 100% subsidiary

- (1) This section applies to a company if:
- (a) the company ceases to be a *100% subsidiary in relation to at least one other company; and
 - (b) at that time, the company is the debtor for a *limited recourse debt that has not been paid in full by the company; and
 - (c) the creditor's rights under the debt are transferred or assigned to another entity.
- (2) If this section applies, this Division applies as if the debt were terminated, and refinanced with *non-arm's length limited recourse debt, at the time the company ceased to be a *100% subsidiary of that other company.

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

243-75 Application of Division where debt forgiveness rules also apply

- (1) This section is to remove doubt about how this Division and Division 245 apply where both apply to the same debt.
- (2) Where both apply:
 - (a) this Division is to be applied first and is to be applied disregarding any operation of Division 245; and
 - (b) any amounts included in assessable income under this Division are taken into account under paragraph 245-85(1)(a).

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

Division 245—Forgiveness of commercial debts

Table of Subdivisions

Guide to Division 245

- 245-A Debts to which operative rules apply
- 245-B What constitutes forgiveness of a debt
- 245-C Calculation of gross forgiven amount of a debt
- 245-D Calculation of net forgiven amount of a debt
- 245-E Application of net forgiven amounts
- 245-F Special rules relating to partnerships
- 245-G Record keeping

Guide to Division 245

245-1 What this Division is about

When a creditor forgives a commercial debt you owe, you make a gain. This is usually not included in your assessable income. Instead, this Division offsets the forgiven amount against amounts that could otherwise reduce your taxable income in the same or a later income year. Those amounts are:

- (a) your tax losses and net capital losses; and
- (b) capital allowances and some similar deductions; and
- (c) the cost bases of your CGT assets.

245-2 Simplified outline of this Division

- (1) This Division applies to any commercial debt (or part of a commercial debt) you owe that is forgiven.

Note: This Division does not apply if:

- (a) the debt is waived and the waiver constitutes a fringe benefit; or

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

- (b) the amount of the debt has been, or will be, included in your assessable income in any income year; or
 - (c) the debt is forgiven under an Act relating to bankruptcy; or
 - (d) the debt is forgiven by will; or
 - (e) the debt is forgiven for reasons of natural love and affection; or
 - (f) the debt is a tax-related liability.
- (2) The net forgiven amount of a debt is worked out by reducing the value of your forgiven debt by:
- (a) any consideration you provided for the forgiveness; and
 - (b) any amounts that this Act already brings to account because of the forgiveness.
- (3) The net forgiven amounts of all your forgiven debts in an income year are added up. This total net forgiven amount is applied to reduce the following amounts (in the following order):
- (a) your tax losses from previous income years;
 - (b) your net capital losses from previous income years;
 - (c) the deductions you would otherwise get in the income year, or in a later year, because of expenditure from a previous year (e.g. the capital allowance deductions you would get for the cost of a depreciating asset);
 - (d) the cost bases of your CGT assets.
- (4) Any unapplied total net forgiven amount is disregarded.
- (5) Special rules apply to debts of partnerships.

Subdivision 245-A—Debts to which operative rules apply

Guide to Subdivision 245-A

245-5 What this Subdivision is about

This Division applies to a debt if you can deduct interest payable on the debt.

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

Table of sections

Application of Division

245-10	Commercial debts
245-15	Non-equity shares
245-20	Parts of debts

Application of Division

245-10 Commercial debts

Subdivisions 245-C to 245-G apply to a debt of yours if:

- (a) the whole or any part of interest, or of an amount in the nature of interest, paid or payable by you in respect of the debt has been deducted, or can be deducted, by you; or
- (b) interest, or an amount in the nature of interest, is not payable by you in respect of the debt but, had interest or such an amount been payable, the whole or any part of the interest or amount could have been deducted by you; or
- (c) interest or an amount mentioned in paragraph (a) or (b) could have been deducted by you apart from the operation of a provision of this Act (other than paragraphs 8-1(2)(a), (b) and (c)) that has the effect of preventing a deduction.

Note: Paragraphs 8-1(2)(a), (b) and (c) prevent deductions for capital, private or domestic outgoings and for outgoings relating to exempt income or non-assessable non-exempt income.

245-15 Non-equity shares

This Division applies to a *non-equity share issued by a company as if it were a debt to which section 245-10 applies that is owed by the company to the relevant shareholder.

245-20 Parts of debts

This Division applies to part of a debt in the same way as it applies to a whole debt.

Note: This Division treats interest, or an amount in the nature of interest, payable on a debt as being a separate debt if the interest or amount has accrued but has not been paid.

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

Subdivision 245-B—What constitutes forgiveness of a debt

Guide to Subdivision 245-B

245-30 What this Subdivision is about

A debt is *forgiven* if you no longer have to pay it.

However, this Division does not apply to some cases of forgiveness, such as bankruptcy.

Table of sections

Operative provisions

- 245-35 What constitutes *forgiveness* of a debt
- 245-36 What constitutes *forgiveness* of a debt if the debt is assigned
- 245-37 What constitutes *forgiveness* of a debt if a subscription for shares enables payment of the debt
- 245-40 Forgivenesses to which operative rules do not apply
- 245-45 Application of operative rules if forgiveness involves an arrangement

Operative provisions

245-35 What constitutes *forgiveness* of a debt

A debt is *forgiven* if and when:

- (a) the debtor's obligation to pay the debt is released or waived, or is otherwise extinguished other than by repaying the debt in full; or
- (b) the period within which the creditor is entitled to sue for the recovery of the debt ends, because of the operation of a statute of limitations, without the debt having been paid.

245-36 What constitutes *forgiveness* of a debt if the debt is assigned

A debt is *forgiven* if and when the creditor assigns the right to receive payment of the debt to another entity (the *new creditor*) and the following conditions are met:

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

Section 245-37

- (a) either the new creditor is the debtor's *associate or the assignment occurred under an *arrangement to which the new creditor and debtor were parties;
- (b) the right to receive payment of the debt was not acquired by the new creditor in the ordinary course of *trading on a market, exchange or other place on which, or facility by means of which, offers to sell, buy or exchange securities (within the meaning of Division 16E of Part III of the *Income Tax Assessment Act 1936*) are made or accepted.

Note 1: Division 16E of Part III of the *Income Tax Assessment Act 1936* brings to account gains and losses on some securities on an accruals basis.

Note 2: This Division also applies if an assigned debt is subsequently forgiven by the new creditor. Section 245-61 tells you how to work out the value of the debt in that case.

245-37 What constitutes *forgiveness* of a debt if a subscription for shares enables payment of the debt

If an entity subscribes for *shares in a company to enable the company to make a payment in or towards discharge of a debt it owes to the entity, the debt is *forgiven* when, and to the extent that, the company applies any of the money subscribed in or towards payment of the debt.

245-40 Forgivenesses to which operative rules do not apply

Subdivisions 245-C to 245-G do not apply to a *forgiveness of a debt if:

- (a) the debt is waived and the waiver constitutes a *fringe benefit; or

Note: The waiver by an employer of a debt owed by an employee is usually a fringe benefit: see section 14 of the *Fringe Benefits Tax Assessment Act 1986*.

- (b) the amount of the debt has been, or will be, included in the assessable income of the debtor in any income year; or
- (c) the forgiveness is effected under an Act relating to bankruptcy; or
- (d) the forgiveness is effected by will; or

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

- (e) the forgiveness is for reasons of natural love and affection; or
- (f) the debt is a *tax-related liability or a civil penalty under Division 290 in Schedule 1 to the *Taxation Administration Act 1953* (about penalties for promoters and implementers of tax avoidance schemes).

Note: If the forgiveness of your debt involved an arrangement which was entered into before 28 June 1996, see section 245-10 of the *Income Tax (Transitional Provisions) Act 1997*.

245-45 Application of operative rules if forgiveness involves an arrangement

- (1) If:
 - (a) the debtor and the creditor in relation to a debt enter into an *arrangement; and
 - (b) under the arrangement, the debtor's obligation to pay the debt is to cease at a particular future time; and
 - (c) the cessation of the obligation is to occur without the debtor incurring any financial or other obligation (other than an obligation that, having regard to the debtor's circumstances, is of a nominal or insignificant amount or kind);Subdivisions 245-C to 245-G apply as if the debt were *forgiven when the arrangement is entered into.
- (2) If, after the arrangement is entered into, the debt is forgiven, the later forgiveness is disregarded for the purposes of those Subdivisions.

Subdivision 245-C—Calculation of gross forgiven amount of a debt

Guide to Subdivision 245-C

245-48 What this Subdivision is about

The amount of forgiveness (called the gross forgiven amount) for the debtor reflects the loss that the creditor makes for tax purposes. It is worked out in 2 steps:

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

Section 245-50

- (a) the value of the debt when it was forgiven is worked out on the basis that you were solvent both then and when you incurred the debt; and
- (b) the value of the debt is then offset by any consideration given for the forgiveness of the debt.

The difference between the value of the debt and the amount offset is the gross forgiven amount.

If the debt was owed by several debtors, the gross forgiven amount is divided between them equally.

Table of sections

Working out the value of a debt

- 245-50 Extent of forgiveness if consideration is given
- 245-55 General rule for working out the value of a debt
- 245-60 Special rule for working out the value of a non-recourse debt
- 245-61 Special rule for working out the value of a previously assigned debt

Working out if an amount is offset against the value of the debt

- 245-65 Amount offset against amount of debt

Working out the gross forgiven amount

- 245-75 *Gross forgiven amount* of a debt
- 245-77 Gross forgiven amount shared between debtors

Working out the value of a debt

245-50 Extent of forgiveness if consideration is given

If any consideration is paid or given in respect of the *forgiveness of a debt, the debt that is forgiven is:

- (a) the obligation that existed before the forgiveness to pay so much of the debt as is expressed, or is taken, to be forgiven; and

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

- (b) the obligation that existed before the forgiveness to pay any part of the debt to which paragraph (a) does not apply but which ceases to be payable as a result of the payment or giving of the consideration.

Example: Daniel owes Samara \$100. Samara agrees to accept \$60 in full payment of the debt.

If their agreement specifies that Samara forgives the whole debt in return for \$60, paragraph (a) provides that the forgiven debt is \$100.

If their agreement instead requires Daniel to repay \$60 and specifies that Samara forgives the remaining \$40, paragraph (a) would deal with the \$40 and paragraph (b) would add the remaining \$60, again producing a forgiven amount of \$100.

In either case, the \$60 Daniel pays is offset against the forgiven amount of \$100 in working out the gross forgiven amount of the debt: see sections 245-65 and 245-75.

245-55 General rule for working out the value of a debt

- (1) The value of your debt at the time (the *forgiveness time*) when it is *forgiven is the amount that would have been its *market value (considered as an asset of the creditor) at the forgiveness time, assuming that:
- (a) when you incurred the debt, you were able to pay all your debts (including that one) as and when they fell due; and
 - (b) your capacity to pay the debt is the same at the forgiveness time as when you incurred it.
- (2) However, the value of the debt at the forgiveness time is the sum of the following amounts, if that sum is less than the amount applicable under subsection (1):
- (a) what would have been the amount applicable under subsection (1) if there had been no change, from the time the debt was incurred until the forgiveness time, in any rate of interest, or rate of exchange between currencies, that affects the *market value of the debt;
 - (b) each amount:
 - (i) that you have deducted or can deduct as a result of the *forgiveness of the debt; and
 - (ii) that is attributable to such a change.

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

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- (3) Paragraph (1)(a) does not apply to the debt if:
- (a) either:
 - (i) the creditor was an Australian resident at the forgiveness time; or
 - (ii) the *forgiveness of the debt was a *CGT event involving a *CGT asset that was *taxable Australian property; and
 - (b) you and the creditor were not dealing with each other at *arm's length in respect of you incurring the debt; and
 - (c) the debt was not a *moneylending debt.

Note: This subsection reduces your gross forgiven amount to reflect the reduction in the creditor's loss on the forgiven debt under the capital gains tax regime.

- (4) This section has effect subject to sections 245-60 and 245-61 (about non-recourse and assigned debts).

245-60 Special rule for working out the value of a non-recourse debt

- (1) The value of a debt when it is *forgiven is the lesser of:
- (a) the amount of the debt outstanding at that time; and
 - (b) the *market value at that time of the creditor's rights mentioned in paragraph (2)(b).
- (2) Subsection (1) applies to a debt if:
- (a) you incurred the debt directly in respect of financing:
 - (i) the acquisition of property by you; or
 - (ii) the construction or development of property by you; (but not including the manufacture of goods); and
 - (b) the creditor's rights against you in the event of default in the payment of the debt or interest were, just before the debt was forgiven, limited to all or any of the following:
 - (i) rights (including the right to money payable) in relation to all or any of the matters mentioned in subsection (3);
 - (ii) rights in respect of a mortgage or other security over the property;
 - (iii) rights arising out of any *arrangement relating to the financial obligations, in relation to the property, of the *end user of the property to you.

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

- (3) For the purposes of subparagraph (2)(b)(i), the matters are as follows:
- (a) the property or the use of the property;
 - (b) goods produced, supplied, carried, transmitted or delivered by means of the property;
 - (c) services provided by means of the property;
 - (d) the loss or *disposal of the whole or a part of the property or of your interest in the property.

245-61 Special rule for working out the value of a previously assigned debt

If your debt has been assigned as mentioned in section 245-36 and is later *forgiven by the new creditor, the value of that debt when it is later forgiven is:

- (a) if the debt was not a *moneylending debt and the creditor and the new creditor were not dealing with each other at *arm's length in connection with the assignment—the *market value of the debt at the time of the assignment; or
- (b) in any other case—the sum of:
 - (i) the amount or market value of the consideration (if any) you paid or gave, or are required to pay or give, to the creditor in respect of the assignment; and
 - (ii) the amount or market value of the consideration (if any) the new creditor paid or gave in respect of the assignment.

Working out if an amount is offset against the value of the debt

245-65 Amount offset against amount of debt

- (1) The table explains how to work out the amount (if any) that is offset against the value of a debt when it is forgiven (calculated under section 245-55, 245-60 or 245-61) in working out the *gross forgiven amount of the debt.

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

Section 245-65

Amount offset against value of debt		
Item	Column 1 In this case:	Column 2 the amount offset is:
1	the debt is a *moneylending debt, and neither of items 4 and 6 applies	the sum of: (a) each amount that the debtor has paid; and (b) the *market value, at the time of the *forgiveness, of each item of property (other than money) that the debtor has given; and (c) the market value, at that time, of each obligation of the debtor to pay an amount, or to give such an item of property; as a result of, or in respect of, the forgiveness of the debt.
2	the debt is <i>not</i> a *moneylending debt, and none of items 3, 4, 5 and 6 applies	the sum of: (a) each amount that the debtor has paid, or is required to pay; and (b) the *market value, at the time of the *forgiveness, of each item of property (other than money) that the debtor has given, or is required to give; as a result of, or in respect of, the forgiveness of the debt.
3	the debt is <i>not</i> a *moneylending debt, the conditions in subsection (2) are met and none of items 4, 5 and 6 applies	the *market value of the debt at the time of the *forgiveness.
4	the debt is assigned as mentioned in section 245-36, and item 5 does not apply	the sum of: (a) the amount or *market value of the consideration (if any) that the debtor has paid or given, or is required to pay or give, in respect of the assignment; and (b) the amount or market value of the consideration (if any) paid or

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

Amount offset against value of debt		
Item	Column 1 In this case:	Column 2 the amount offset is:
		given by the new creditor in respect of the assignment.
5	the debt is assigned as mentioned in section 245-36, and: (a) the debt is <i>not</i> a *moneylending debt; and (b) the creditor and the new creditor were not dealing with each other at *arm's length in connection with the assignment	the *market value of the debt at the time of the assignment.
6	the debt is *forgiven by subscribing for *shares in a company as mentioned in section 245-37	the amount worked out using the formula in subsection (3).

- (2) The conditions for the purposes of item 3 of the table in subsection (1) are:
- (a) at least one of the following is satisfied:
 - (i) at the time when the debt was *forgiven, the creditor was an Australian resident;
 - (ii) the forgiveness of the debt was a *CGT event involving a *CGT asset that was *taxable Australian property; and
 - (b) at least one of the following is satisfied:
 - (i) there is no amount, and no property, covered by column 2 of item 2 of the table;
 - (ii) the amount worked out under item 2 of the table is greater or less than the *market value of the debt at the time of the forgiveness and the debtor and creditor did not deal with each other at *arm's length in connection with the forgiveness.

- (3) The formula for the purposes of item 6 of the table in subsection (1) is:

$$\frac{\text{Amount applied}}{\text{Amount subscribed}} \times \text{Market value of shares subscribed for}$$

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

Section 245-75

where:

amount applied means the amount applied by the company as mentioned in section 245-37.

amount subscribed means the amount subscribed as mentioned in section 245-37.

market value of shares subscribed for means the *market value of all the shares in the company that were subscribed for as mentioned in section 245-37, immediately after those shares were issued.

Working out the gross forgiven amount

245-75 Gross forgiven amount of a debt

- (1) The **gross forgiven amount** of a debt is:
 - (a) if section 245-65 does not apply to the debt—the value of the debt when it was *forgiven (worked out under section 245-55, 245-60 or 245-61); or
 - (b) if the value of the debt when it was forgiven exceeds the amount offset under section 245-65 in relation to the debt—the excess.
- (2) If the value of the debt when it was *forgiven is equal to or less than the amount offset:
 - (a) there is no **gross forgiven amount** in respect of the debt; and
 - (b) Subdivisions 245-D to 245-F (about how to work out the net forgiven amount of a debt and how to treat it) do not apply in respect of the debt.

245-77 Gross forgiven amount shared between debtors

If 2 or more entities were liable (except as partners in a partnership) to pay a debt, whether their liability was joint or several, or joint and several, this Subdivision applies as if each entity had a *gross forgiven amount worked out using the formula:

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

$$\frac{\text{*Gross forgiven amount in relation to the debt}}{\text{Number of entities liable to pay the debt}}$$

Subdivision 245-D—Calculation of net forgiven amount of a debt

Guide to Subdivision 245-D

245-80 What this Subdivision is about

The net forgiven amount of a debt is worked out by subtracting, from the gross forgiven amount of the debt, any amount that this Act already takes into account for the debtor because the debt was forgiven (for example, if some part of the forgiven amount is treated as the debtor's ordinary income).

If the debtor and creditor were companies under common ownership, they may agree to transfer some of the net forgiven amount from the debtor to the creditor. The creditor must apply that amount to reduce the capital loss or deduction it has because of the forgiveness.

Table of sections

Operative provisions

245-85	Reduction of gross forgiven amount
245-90	Agreement between companies under common ownership for creditor to forgo capital loss or deduction

Operative provisions

245-85 Reduction of gross forgiven amount

- (1) The *gross forgiven amount of your debt is reduced by the sum of the following amounts:
 - (a) any amount that, under a provision of this Act other than this Division, has been, or will be, included in your assessable

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

Section 245-90

income for any income year as a result of the *forgiveness of the debt;

- (b) any amount by which, under a provision of this Act other than this Division, an amount you could otherwise have deducted for any income year has been, or will be, reduced as a result of the forgiveness of the debt (except a reduction under Division 727 (about indirect value shifting));
- (c) any amount by which the *cost base of any of your *CGT assets has been, or will be, reduced under Part 3-1 or 3-3 as a result of the forgiveness of the debt.

Note: Paragraph (1)(c) does not cover a reduction under Division 727 (indirect value shifting) because that Division is not in Part 3-1 or 3-3.

- (2) Subject to section 245-90, the amount remaining after reducing the *gross forgiven amount under subsection (1) is the ***net forgiven amount*** of the debt.

245-90 Agreement between companies under common ownership for creditor to forgo capital loss or deduction

- (1) This section applies if:
 - (a) a debt owed by a company to another company is *forgiven; and
 - (b) from the time when the debt was incurred until the time when the debt is forgiven, the companies were *under common ownership.
- (2) If, apart from this subsection, the creditor would have made a *capital loss as a result of the *forgiveness of the debt:
 - (a) the debtor and creditor may agree that the creditor is to forgo so much of the loss as is stated in the agreement and does not exceed the amount that would be the net forgiven amount of the debt apart from this section (the ***provisional net forgiven amount*** of the debt); and
 - (b) if such an agreement is made:
 - (i) the creditor's capital loss is reduced by the agreed amount; and
 - (ii) the provisional net forgiven amount of the debt is also reduced by the agreed amount; and

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

- (iii) the amount remaining after the reduction of the provisional net forgiven amount of the debt under subparagraph (ii) is the ***net forgiven amount*** of the debt.
- (3) If, apart from this subsection, the creditor could deduct an amount in respect of the debt under section 8-1 (about general deductions) or section 25-35 (about bad debts) for the *forgiveness income year:
 - (a) the debtor and creditor may agree that the creditor is to forgo so much of the deduction as is stated in the agreement and does not exceed the amount that would be the net forgiven amount of the debt apart from this section (the ***provisional net forgiven amount*** of the debt); and
 - (b) if such an agreement is made:
 - (i) the amount the creditor can deduct is reduced by the agreed amount; and
 - (ii) the provisional net forgiven amount of the debt is also reduced by the agreed amount; and
 - (iii) the amount remaining after the reduction of the provisional net forgiven amount of the debt under subparagraph (ii) is the ***net forgiven amount*** of the debt.
- (4) Neither subsection (2) nor (3) applies in relation to an agreement unless the agreement:
 - (a) is in writing and signed by the public officer of each company; and
 - (b) is made before:
 - (i) the first of those companies lodges its *income tax return for the *forgiveness income year; or
 - (ii) any later day that the Commissioner determines in writing.
- (5) A determination made under subparagraph (4)(b)(ii) is not a legislative instrument.

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

Subdivision 245-E—Application of net forgiven amounts

Guide to Subdivision 245-E

245-95 What this Subdivision is about

The total of the net forgiven amounts of all your debts forgiven in an income year is applied to reduce 4 classes of amounts that could otherwise reduce your taxable income in the same or a later income year. It is applied in the following order:

- (a) to your tax losses from previous income years;
- (b) to your net capital losses from previous income years;
- (c) to the deductions you would otherwise get in the income year, or in a later income year, because of expenditure from a previous year (for example, the capital allowance deductions you would get for expenditure on acquiring a depreciating asset);
- (d) to the cost bases of your CGT assets.

You can choose the order in which the net forgiven amounts reduce the amounts within each class.

If all the amounts in the 4 classes are reduced to nil, any remaining net forgiven amounts are disregarded.

Table of sections

General operative provisions

- 245-100 Subdivision not to apply to calculation of attributable income
245-105 How *total net forgiven amount* is applied

Reduction of tax losses

- 245-115 Total net forgiven amount is applied in reduction of tax losses
245-120 Allocation of total net forgiven amount in respect of tax losses

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

Reduction of net capital losses

- 245-130 Remaining total net forgiven amount is applied in reduction of net capital losses
- 245-135 Allocation of remaining total net forgiven amount in respect of net capital losses

Reduction of expenditure

- 245-145 Remaining total net forgiven amount is applied in reduction of expenditure
- 245-150 Allocation of remaining total net forgiven amount in respect of expenditures
- 245-155 How expenditure is reduced—straight line deductions
- 245-157 How expenditure is reduced—diminishing balance deductions
- 245-160 Amount applied in reduction of expenditure included in assessable income in certain circumstances

Reduction of cost bases of assets

- 245-175 Remaining total net forgiven amount is applied in reduction of cost bases of CGT assets
- 245-180 Allocation of remaining total net forgiven amount among relevant cost bases of CGT assets
- 245-185 Relevant cost bases of investments in associated entities are reduced last
- 245-190 Reduction of the relevant cost bases of a CGT asset

Unapplied total net forgiven amount

- 245-195 No further consequences if there is any remaining unapplied total net forgiven amount

General operative provisions

245-100 Subdivision not to apply to calculation of attributable income

This Subdivision does not apply to the calculation of:

- (a) attributable income of a non-resident trust estate within the meaning of section 102AAB of the *Income Tax Assessment Act 1936*; or
- (b) *attributable income of a *CFC.

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

245-105 How *total net forgiven amount* is applied

- (1) Your *total net forgiven amount* for the *forgiveness income year is the total of the *net forgiven amounts of all your debts that are *forgiven in that year.

Note 1: The total net forgiven amount may be reduced under section 707-415.

Note 2: The total net forgiven amount of a partner in a partnership is affected by section 245-215.

- (2) Your *total net forgiven amount is applied, in accordance with sections 245-115 to 245-195, for the *forgiveness income year.

Reduction of tax losses

245-115 Total net forgiven amount is applied in reduction of tax losses

The *total net forgiven amount is applied first, to the maximum extent possible, in reduction, in accordance with section 245-120, of your *tax losses (if any) for any income years, if the tax losses could, if you had enough assessable income, be deducted in:

- (a) the *forgiveness income year; or
- (b) a later income year.

245-120 Allocation of total net forgiven amount in respect of tax losses

- (1) You may choose:
- (a) the order in which your *tax losses are reduced; and
 - (b) the amount applied to reduce each of those losses;
- so long as the *total net forgiven amount is applied, to the maximum extent possible, in reduction of those losses.
- (2) If you do not make a choice for the purposes of subsection (1), the Commissioner may make the choice on your behalf in a reasonable way.

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

Reduction of net capital losses

245-130 Remaining total net forgiven amount is applied in reduction of net capital losses

- (1) The *total net forgiven amount (if any) remaining after being applied under section 245-115 is applied, to the maximum extent possible, in reduction, in accordance with section 245-135, of your *net capital losses (if any) specified in subsection (2).
- (2) Those *net capital losses are your net capital losses for income years before the *forgiveness income year that you could apply in working out your *net capital gain for the forgiveness income year if you had enough capital gains.

245-135 Allocation of remaining total net forgiven amount in respect of net capital losses

- (1) You may choose:
 - (a) the order in which your *net capital losses are reduced; and
 - (b) the amount applied in reduction of each of those losses;so long as the *total net forgiven amount remaining is applied, to the maximum extent possible, in reduction of those losses.
- (2) If you do not make a choice for the purposes of subsection (1), the Commissioner may make the choice on your behalf in a reasonable way.

Reduction of expenditure

245-145 Remaining total net forgiven amount is applied in reduction of expenditure

- (1) The *total net forgiven amount (if any) remaining after being applied under sections 245-115 and 245-130 is applied, to the maximum extent possible, in reduction, in accordance with sections 245-150, 245-155 and 245-157, of your expenditure that:

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

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- (a) is mentioned in the following table (other than expenditure covered by subsection (2)) and was incurred by you before the *forgiveness income year; and
- (b) apart from this Subdivision, could be deducted by you for the forgiveness income year or a later income year if no event or circumstance (other than a *recoupment of the expenditure by you in the forgiveness income year) occurred that would affect its deductibility.

Table of expenditure

Item	Column 1 General description of expenditure	Column 2 Provision under which a deduction is available for the expenditure
1	Expenditure deductible under Division 40 (Capital allowances)	Division 40 of this Act
2	Expenditure incurred in *borrowing money to produce assessable income	Section 25-25 of this Act
3	Expenditure on scientific research	Subsection 73A(2) of the <i>Income Tax Assessment Act 1936</i>
4	Expenditure deductible under Division 355 (R&D)	Division 355 of this Act
5	Advance revenue expenditure	Subdivision H of Division 3 of Part III of the <i>Income Tax Assessment Act 1936</i>
6	Expenditure on acquiring a unit of industrial property to produce assessable income	Subsection 124M(1) of the <i>Income Tax Assessment Act 1936</i>
7	Expenditure on Australian films	Section 124ZAF of the <i>Income Tax Assessment Act 1936</i>
8	Expenditure on assessable income-producing buildings and other capital works	Section 43-10 of this Act

Note: If the asset to which the expenditure relates was disposed of, lost or destroyed before 28 June 1996 or the expenditure was recouped before 28 June 1996, see section 245-10 of the *Income Tax (Transitional Provisions) Act 1997*.

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

- (2) Expenditure is covered by this subsection if:
- (a) it was incurred in respect of an asset you *disposed of to an entity that you dealt with at *arm's length in respect of the disposal; and
 - (b) the disposal occurred during the *forgiveness income year before the *forgiveness of any debt owed by you, and the forgiveness resulted in a *net forgiven amount; and
 - (c) no provision of this Act includes an amount in your assessable income, or allows you a deduction, as a result of the disposal.

245-150 Allocation of remaining total net forgiven amount in respect of expenditures

- (1) You may choose:
- (a) the order in which your expenditures are reduced; and
 - (b) the amount applied in reduction of each of those expenditures;
- so long as that the *total net forgiven amount remaining is applied, to the maximum extent possible, in reduction of your expenditures.
- (2) If you do not make a choice for the purposes of subsection (1), the Commissioner may make the choice on your behalf in a reasonable way.

245-155 How expenditure is reduced—straight line deductions

- (1) This section applies in respect of the reduction under section 245-145 of an expenditure of yours, if:
- (a) the amount that you could deduct, apart from this Subdivision, in respect of the expenditure is a percentage, fraction or proportion of an amount (the **base amount**); and
 - (b) the base amount is worked out without regard to any amount or amounts you previously deducted in respect of that expenditure.
- (2) The amount of the reduction of the expenditure must not exceed:
- (a) the base amount; less

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

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- (b) the amount of that part of the expenditure in respect of which you have deducted (disregarding subsection (4)), or can deduct, an amount for any income year before the *forgiveness income year.
- (3) For the purpose of working out your deductions for the *forgiveness income year and later income years, any amount that is applied in reduction of your expenditure is taken to reduce the base amount.
- (4) You are taken to have deducted the amount of the reduction in respect of the expenditure:
 - (a) before the *forgiveness income year; and
 - (b) for the purposes of any provision of this Act that includes an amount in your assessable income or allows you a deduction:
 - (i) because of the *disposal, loss or destruction of the asset in respect of which the expenditure was incurred; or
 - (ii) because of the *recoupment of any of the expenditure; or
 - (iii) because use of the asset for a particular purpose has been otherwise terminated; or
 - (iv) because a *balancing adjustment event occurs for that asset.
- (5) The amount of that part of the expenditure in respect of which you have deducted (disregarding subsection (4)), or can deduct, an amount for all income years (including income years before the *forgiveness income year) must not exceed the base amount as reduced under subsection (3).

245-157 How expenditure is reduced—diminishing balance deductions

Any amount applied in reduction under section 245-145 of an expenditure of yours is taken to have been deducted by you in respect of the expenditure before the *forgiveness income year, if the amount you could deduct, apart from this Subdivision, in respect of the expenditure is a percentage, fraction or proportion of an amount that is worked out after taking into account any amount previously deducted by you in respect of the expenditure.

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

245-160 Amount applied in reduction of expenditure included in assessable income in certain circumstances

If:

- (a) after the *forgiveness income year you *recoup an amount of expenditure that is subject to reduction under section 245-145; and
- (b) as a result of the recoupment, this Act applies to disallow any amount you have deducted in respect of the expenditure; an amount equal to the amount, or the sum of the amounts, applied under this Subdivision in reduction of the expenditure is included in your assessable income in the income year in which the expenditure is recouped.

Reduction of cost bases of assets

245-175 Remaining total net forgiven amount is applied in reduction of cost bases of CGT assets

- (1) The *total net forgiven amount (if any) remaining after being applied under sections 245-115, 245-130 and 245-145 is applied, to the maximum extent possible, in reduction, in accordance with sections 245-180 to 245-190, of the *cost base and *reduced cost base of your *CGT assets.
- (2) Subsection (1) does not apply to the following *CGT assets:
 - (a) a *pre-CGT asset;
 - (b) a CGT asset you *acquire after the start of the *forgiveness income year;
 - (c) a *personal use asset;
 - (d) a *dwelling that was your main residence at any time before the forgiveness income year;
 - (e) goodwill;
 - (f) a right of yours covered by section 118-305 (which exempts from CGT certain rights relating to a superannuation fund or approved deposit fund);

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

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- (g) a CGT asset that, throughout the period before the forgiveness income year when it was owned by you, was your *trading stock;
- (h) a CGT asset if:
 - (i) expenditure by you (of a kind which is subject to reduction under section 245-145) relates to the asset; and
 - (ii) a *CGT event in relation to the asset would result in an amount being included in your assessable income, or in you being able to deduct an amount;
- (i) if you are a foreign resident at the beginning of the forgiveness income year—an asset of yours that is not *taxable Australian property.

245-180 Allocation of remaining total net forgiven amount among relevant cost bases of CGT assets

- (1) Subject to section 245-185, you may choose:
 - (a) your *CGT assets whose *cost base and *reduced cost base are subject to reduction under section 245-175; and
 - (b) the amount applied in reduction of the cost base and reduced cost base of each of those assets;so long as the *total net forgiven amount remaining is applied, to the maximum extent possible, in reduction of the cost base and reduced cost base of such assets.
- (2) If you do not make a choice for the purposes of subsection (1), the Commissioner may make the choice on your behalf in a reasonable way.

245-185 Relevant cost bases of investments in associated entities are reduced last

If your *CGT assets that are subject to reduction under section 245-175 include investments in, or in relation to, an *associate of yours (including *membership interests, or *debt interests, in your associate), the:

- (a) *cost base; and
- (b) *reduced cost base;

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

of those assets are not subject to reduction under section 245-175 until the *total net forgiven amount (if any) remaining has been applied, to the maximum extent possible, in reduction of the cost bases of your other CGT assets.

245-190 Reduction of the relevant cost bases of a CGT asset

- (1) Subject to subsection (3), if you choose to apply an amount in reduction of the *cost base and *reduced cost base of a particular *CGT asset, the cost base and reduced cost base of the asset, as at any time on or after the beginning of the *forgiveness income year, are reduced by that amount.
- (2) The reduction by a particular amount of the *cost base and *reduced cost base of a particular *CGT asset is, for the purpose of working out the amount by which the *total net forgiven amount remaining is applied, taken to be a reduction by the particular amount (and not by the sum of the amounts by which those cost bases are reduced).
- (3) The maximum amount by which the *cost base and *reduced cost base of a *CGT asset may be reduced is the amount that, apart from sections 245-175 to 245-185, would be the reduced cost base of the asset calculated as if a *CGT event had happened to the asset:
 - (a) subject to paragraph (b), on the first day of the *forgiveness income year; or
 - (b) if, after the beginning of that income year, an event occurred that would cause the reduced cost base of the asset to be reduced—on the day on which the event occurred; and the asset had been *disposed of at its *market value on the day concerned.

Unapplied total net forgiven amount

245-195 No further consequences if there is any remaining unapplied total net forgiven amount

- (1) If any part of the *total net forgiven amount remains after the application of that amount in making reductions under the

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

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preceding provisions of this Subdivision, the remaining part is disregarded.

- (2) This section has effect subject to section 245-215 (about partnerships and transferring the remaining part to the partners).

Subdivision 245-F—Special rules relating to partnerships

Guide to Subdivision 245-F

245-200 What this Subdivision is about

Any part of a partnership's total net forgiven amount left over after applying it under Subdivision 245-E is divided between the partners. Each partner treats the partner's share as a net forgiven amount the partner has for the income year.

Table of sections

Operative provisions

- 245-215 Unapplied total net forgiven amount of a partnership is transferred to partners

Operative provisions

245-215 Unapplied total net forgiven amount of a partnership is transferred to partners

- (1) This section applies if any part (the *residual amount*) of the *total net forgiven amount in relation to a partnership in respect of the *forgiveness income year remains after the total net forgiven amount has been applied in accordance with Subdivision 245-E.
- (2) If there is a *net income in relation to the partnership in respect of the *forgiveness income year:
- (a) each partner is taken to have had a debt *forgiven during the forgiveness income year; and

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

- (b) there is taken to be, in respect of the debt of each partner, a *net forgiven amount worked out in accordance with the following formula:

$$\frac{\text{Partner's share of net income}}{\text{Net income}} \times \text{Residual amount}$$

where:

partner's share of net income means the part of the net income of the partnership for the forgiveness income year that is included in the partner's assessable income.

- (3) If there is a *partnership loss in relation to the partnership in respect of the *forgiveness income year:
- (a) each partner is taken to have had a debt *forgiven during the forgiveness income year; and
- (b) there is taken to be, in respect of the debt of each partner, a *net forgiven amount worked out in accordance with the following formula:

$$\frac{\text{Partner's share of partnership loss}}{\text{Partnership loss}} \times \text{Residual amount}$$

where:

partner's share of partnership loss means the part of the partnership loss that the partner has deducted or can deduct.

- (4) The *total net forgiven amount of a partner for the *forgiveness income year as worked out under subsection 245-105(1) includes the *net forgiven amount worked out in relation to the partner under this section.
- (5) This section has effect in relation to a partnership irrespective of any agreement between the partners as to the operation of this section.

Subdivision 245-G—Record keeping

245-265 Keeping and retaining records

- (1) If you incur a debt, you must keep any records that are necessary to enable the following matters to be readily found out:

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

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- (a) the date on which you incurred the debt;
- (b) the identity of the creditor;
- (c) the amount of the debt;
- (d) the terms of repayment of the debt;
- (e) if the debt is not a *moneylending debt and you and the creditor were not dealing with each other at *arm's length in respect of the incurring of the debt—your capacity at the time when the debt was incurred to pay the debt when it falls due;
- (f) if your debt is *forgiven—the date of the forgiveness and the amount offset under section 245-65 (if any) in respect of the debt.

Note: There is an administrative penalty if you do not keep or retain records as required by this section: see section 288-25 in Schedule 1 to the *Taxation Administration Act 1953*.

- (2) If a company and another company that are *under common ownership cease to be under common ownership, each company must keep any records that are necessary to enable the following matters to be readily found out:
 - (a) the date on which the companies ceased to be under common ownership;
 - (b) the identity of each entity that was a *controller (for CGT purposes) of the company immediately before the companies ceased to be under common ownership;
 - (c) the identity of each entity that was a controller (for CGT purposes) of the company immediately after the companies ceased to be under common ownership.
- (3) You must keep the records required by subsection (1) or (2) in writing in the English language or so as to enable them to be readily accessible and convertible into writing in the English language.
- (4) Subject to subsection (5), you must keep the records required by subsection (1) until:
 - (a) if paragraph (b) does not apply—the end of 5 years after the debt was *forgiven; or
 - (b) if the period within which the Commissioner may, under section 170 of the *Income Tax Assessment Act 1936*, amend

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

your assessment for the income year to which the records relate, or in which a transaction or act to which the records relate was completed, is extended under subsection 170(7) of that Act—the later of:

- (i) the end of the assessment period as so extended; and
 - (ii) the end of the period of 5 years mentioned in paragraph (a).
- (5) Subsection (4) does not require you to keep records after the debt is paid.
- (6) Subject to subsection (7), each company that keeps any records required by subsection (2) must retain the records until the end of the second income year after the income year in which the companies ceased to be *under common ownership.
- (7) If a debt of one of the companies mentioned in subsection (2) was *forgiven at any time after the companies ceased to be *under common ownership and before the end of the second income year after the income year in which the cessation occurred, each company that keeps records required by that subsection must retain the records until the time specified in subsection (4).
- (8) You commit an offence if you fail to comply with a provision of this section.
- Penalty: 30 penalty units.
- (9) An offence against subsection (8) is an offence of strict liability.
- Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (10) This section does not limit the application of any other provision of this Act relating to the keeping or retention of records.

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

Division 247—Capital protected borrowings

Guide to Division 247

247-1 What this Division is about

Capital protection provided under a relevant capital protected borrowing to the extent that it is not provided by an explicit put option is treated (for the borrower) as if it were a put option.

An amount attributable to capital protection under any relevant capital protected borrowing is treated (for the borrower) as a payment for a put option.

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Operative provisions

247-5	Object of Division
247-10	What <i>capital protected borrowing</i> and <i>capital protection</i> are
247-15	Application of this Division
247-20	Treating capital protection as a put option
247-25	Number of put options
247-30	Exercise or expiry of option

Operative provisions

247-5 Object of Division

The object of this Division is to ensure that amounts for *capital protection under all relevant *capital protected borrowings are treated (for the borrower) under this Act as a payment for a put option.

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

247-10 What *capital protected borrowing* and *capital protection* are

- (1) An *arrangement under which a *borrowing is made, or credit is provided, is a ***capital protected borrowing*** if the borrower is wholly or partly protected against a fall in the *market value of a thing (the ***protected thing***) to the extent that:
 - (a) the borrower uses the amount borrowed or credit provided to acquire the protected thing; or
 - (b) the borrower uses the protected thing as security for the borrowing or provision of credit.
- (2) That protection is called ***capital protection***.

247-15 Application of this Division

- (1) This Division applies to a *capital protected borrowing only if the protected thing is a beneficial interest in:
 - (a) a *share, a unit in a unit trust or a stapled security; or
 - (b) an entity that holds a beneficial interest in a share, unit in a unit trust or stapled security either directly, or indirectly through one or more interposed entities.
- (2) This Division applies only to borrowers under *capital protected borrowings.
- (3) This Division does not apply to a *capital protected borrowing if:
 - (a) an *ESS interest is acquired under the borrowing; and
 - (b) Subdivision 83A-B or 83A-C (about employee share schemes) applies to the ESS interest.
- (4) This Division does not apply to a *capital protected borrowing entered into before 1 July 2007 (except to the extent that it is extended on or after that day) unless the *share, unit in a unit trust or stapled security is listed for quotation in the official list of an *approved stock exchange.

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

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- (5) This Division does not apply to a *capital protected borrowing entered into on or after 1 July 2007 if:
- (a) the protected thing is a beneficial interest in:
 - (i) a *share, unit or stapled security that is not listed for quotation in the official list of an *approved stock exchange; or
 - (ii) an entity that holds a beneficial interest in a share, unit in a unit trust or stapled security either directly, or indirectly through one or more interposed entities, that is not so listed; and
 - (b) one of these conditions is satisfied:
 - (i) for a non-listed share—the company is not a *widely held company;
 - (ii) for a non-listed unit—the trust is not a widely held unit trust as defined in section 272-105 in Schedule 2F to the *Income Tax Assessment Act 1936*;
 - (iii) for a non-listed stapled security—any company involved is not a widely held company and any trust involved is not such a widely held unit trust.

247-20 Treating capital protection as a put option

- (1) This section applies to a borrower if:
- (aa) the borrower has an excess using the method statement in subsection (3) for:
 - (i) a *capital protected borrowing entered into after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008 (the **2008 Budget time**); or
 - (ii) an extension of the capital protected borrowing; or
 - (a) the borrower has an amount that is reasonably attributable to the *capital protection as mentioned in subsection (2) for a capital protected borrowing entered into or extended on or after 1 July 2007 and at or before the 2008 Budget time; or
 - (b) the borrower has an amount that is reasonably attributable to the capital protection as mentioned in subsection (2) for a capital protected borrowing entered into or extended at or after 9.30 am, by legal time in the Australian Capital Territory, on 16 April 2003 and before 1 July 2007.

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

Note: If a capital protected borrowing covered by paragraph (1)(a) or (b) is extended or otherwise changed after the 2008 Budget time, section 247-85 of the *Income Tax (Transitional Provisions) Act 1997* applies to the capital protected borrowing.

- (2) For paragraphs (1)(a) and (b), the amount that is reasonably attributable to the *capital protection is worked out under Division 247 of the *Income Tax (Transitional Provisions) Act 1997*.
- (3) This is the method statement.

Method statement

- Step 1. Work out the total amount incurred by the borrower under or in respect of the *capital protected borrowing for the income year, ignoring amounts that are not in substance for *capital protection or interest.
- Step 2. Work out the total interest that would have been incurred for the income year on a *borrowing or provision of credit of the same amount as under the *capital protected borrowing at the rate applicable under either or both of subsections (4) and (5A).
- Step 3. If the step 1 amount exceeds the step 2 amount, the excess is reasonably attributable to the *capital protection for the income year.

Example: Amounts that would be ignored under step 1 include amounts that are in substance the repayment of a loan or credit, the payment of an application fee or brokerage commission and the payment of stamp duty or other tax.

- (4) If:
 - (a) the *capital protected borrowing is at a fixed rate for all or part of the term of the capital protected borrowing; and
 - (b) that fixed rate is applicable to the capital protected borrowing for all or part of the income year;use the rate worked out under subsection (5) at the first time an amount covered by step 1 of the method statement in

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

Section 247-25

subsection (3) was incurred, in any income year, during the term of the capital protected borrowing or that part of the term.

- (5) The rate (the *adjusted loan rate*), at a particular time, is the sum of:
- (a) the Reserve Bank of Australia's Indicator Lending Rate for Standard Variable Housing Loans at that time; and
 - (b) 100 basis points.

(5A) If:

- (a) the *capital protected borrowing is at a variable rate for all or part of the term of the capital protected borrowing; and
- (b) a variable rate is applicable to the capital protected borrowing for all or part of the income year;

use the average of the adjusted loan rates applicable during those parts of the income year when the capital protected borrowing is at a variable rate.

- (6) If this section applies to a borrower, this Act applies as if:
- (a) the borrower's excess from the method statement in subsection (3); or
 - (b) the amount that is reasonably attributable to *capital protection as mentioned in paragraph (1)(a) or (b);
- (reduced by any amount the borrower incurred under or in respect of the *capital protected borrowing for an explicit put option) were incurred only for a put option granted by the lender or by another entity under the *arrangement.

247-25 Number of put options

- (1) If a *capital protected borrowing specifies more than one occasion on which the *capital protection can be invoked, this Act applies as if there were a separate put option for each of those occasions. So much of the amount to which subsection 247-20(6) applies as is reasonably attributable to each option is taken to have been incurred for that option.
- (2) However, if a borrower may invoke the *capital protection under a *capital protected borrowing at any time up to the end of a period, or only at the end of a period, for which there is capital protection, this Act applies as if there were a single put option for that period.

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

247-30 Exercise or expiry of option

- (1) If the *capital protection under a *capital protected borrowing is invoked:
- (a) the borrower is taken to have exercised the put option; and
 - (b) any interest in a *share, unit in a unit trust or stapled security that is acquired by the lender or another entity under the *arrangement as a result of that capital protection being invoked is taken to have been disposed of by the borrower as a result of the exercise of the option.
- (2) If the *capital protection under a *capital protected borrowing is not invoked on or before the last occasion on which it could have been, the put option is taken to have expired.

Note: If a borrower under a capital protected borrowing holds the protected things on capital account, the exercise or expiry of the put option may give rise to a capital gain or capital loss: see sections 104-25 (CGT event C2) and 134-1 (exercise of options).

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

Division 250—Assets put to tax preferred use

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Guide to Division 250

250-1 What this Division is about

This Division denies or reduces certain capital allowance deductions that would otherwise be available to you in relation to an asset if the asset is put to a tax preferred use in certain circumstances.

If the capital allowance deductions are denied or reduced, certain financial benefits in relation to the tax preferred use of the asset are assessed only to the extent of a notional gain component. This component is worked out on the basis of treating the arrangements under which the asset is put to a tax preferred use, and financial benefits are provided in relation to that tax preferred use, as a loan. Subdivision 250-E then applies to determine the amounts that are to be assessed.

Subdivision 250-A—Objects

Table of sections

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

250-5 Main objects

250-5 Main objects

The main objects of this Division are:

- (a) to deny or reduce your *capital allowance deductions in respect of an asset if the asset is put to a *tax preferred use and you have insufficient economic interest in the asset; and
- (b) if your capital allowance deductions are denied or reduced, to treat the *arrangement for the tax preferred use of the asset as a loan that is taxed as a financial arrangement (on a compounding accruals basis).

Subdivision 250-B—When this Division applies to you and an asset

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Tax preferred use of asset

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Financial benefits in relation to tax preferred use

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

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- 250-85 Financial benefits in relation to tax preferred use of an asset
- 250-90 Financial benefit provided directly or indirectly
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- 250-100 Present value of financial benefit that has already been provided

Discount rate to be used in working out present values

- 250-105 Discount rate to be used in working out present values

Predominant economic interest

- 250-110 Predominant economic interest
- 250-115 Limited recourse debt test
- 250-120 Right to acquire asset test
- 250-125 Effectively non-cancellable, long term arrangement test
- 250-130 Meaning of *effectively non-cancellable* arrangement
- 250-135 Level of expected financial benefits test
- 250-140 When to retest predominant economic interest under section 250-135

Overall test

250-10 When this Division applies to you and an asset

This Division applies to you and an asset at a particular time if:

- (a) the general test in section 250-15 is satisfied in relation to you and the asset; and
- (b) none of the exclusions in sections 250-20, 250-25, 250-30, 250-40 and 250-45 apply.

250-15 General test

This Division applies to you and an asset at a particular time if:

- (a) the asset is being *put to a tax preferred use; and
- (b) the *arrangement period for the *tax preferred use of the asset is greater than 12 months; and
- (c) *financial benefits in relation to the tax preferred use of the asset have been, will be or can reasonably be expected to be, *provided to you (or a *connected entity) by:
 - (i) a *tax preferred end user (or a connected entity); or
 - (ii) any *tax preferred entity (or a connected entity); or
 - (iii) any entity that is a foreign resident; and

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

- (d) disregarding this Division, you would be entitled to a *capital allowance in relation to:
 - (i) a decline in the value of the asset; or
 - (ii) expenditure in relation to the asset; and
- (e) you lack a *predominant economic interest in the asset at that time.

250-20 First exclusion—small business entities

This Division does not apply to you and an asset if:

- (a) you are a *small business entity for the income year in which the *arrangement period for the *tax preferred use of the asset starts; and
- (b) you choose to deduct amounts under Subdivision 328-D for the asset for that income year.

250-25 Second exclusion—financial benefits under minimum value limit

- (1) This Division does not apply to you and an asset that is being *put to a tax preferred use under a particular *arrangement if, at the start of the *arrangement period, the total of the nominal values of all the *financial benefits that have been, or will be or can reasonably be expected to be, provided to you (or a *connected entity):
 - (a) by *members of the tax preferred sector; and
 - (b) in relation to the *tax preferred use of the asset or any other asset that is being, or is to be, put to a tax preferred use under the arrangement;does not exceed \$5 million.
- (2) The amount referred to in subsection (1) is indexed annually.

Note: Subdivision 960-M shows you how to index amounts.

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

250-30 Third exclusion—certain short term or low value arrangements

Certain short term or low value arrangements generally excluded

- (1) This Division does not apply to you and an asset that is being *put to a tax preferred use under a particular *arrangement if:
- (a) the *arrangement period for the *tax preferred use of the asset does not exceed:
 - (i) 5 years if the asset is real property and the tax preferred use of the asset is a lease; or
 - (ii) 3 years in any other case; or
 - (b) at the start of the arrangement period, the total of the nominal values of all the *financial benefits that have been, will be or can reasonably be expected to be, provided to you (or a *connected entity):
 - (i) by *members of the tax preferred sector; and
 - (ii) in relation to the tax preferred use of the asset or any other asset that is being, or is to be, put to a tax preferred use under the arrangement;
does not exceed:
 - (iii) \$50 million if the asset is real property and the tax preferred use of the asset is a lease; or
 - (iv) \$30 million in any other case; or
 - (c) at the start of the arrangement period, the total of the values of all the assets that are put to a tax preferred use under the arrangement does not exceed:
 - (i) \$40 million if the asset is real property and the tax preferred use of the asset is a lease; or
 - (ii) \$20 million in any other case.

This subsection has effect subject to section 250-35.

- (2) The amounts referred to in paragraphs (1)(b) and (c) are indexed annually.

Note: Subdivision 960-M shows you how to index amounts.

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

250-35 Exceptions to section 250-30

Debt interests

- (1) Section 250-30 does not apply if the *arrangement (either alone or together with any arrangement in relation to the *tax preferred use of the asset or the provision of *financial benefits in relation to the tax preferred use of the asset) is a *debt interest.
- (2) In applying subsection (1), disregard subsection 974-130(4).

Member of tax preferred sector having certain rights in relation to the asset

- (3) Section 250-30 does not apply if:
 - (a) a *member of the tax preferred sector has:
 - (i) a right, obligation or contingent obligation to purchase or acquire the asset or a legal or equitable interest in the asset; or
 - (ii) a right to require the transfer of the asset or a legal or equitable interest in the asset; or
 - (iii) a residual or reversionary interest in the asset that will arise or become exercisable at or after the end of the *arrangement period; and
 - (b) the consideration for the purchase, acquisition or transfer of the right, obligation or interest is not fixed as the *market value of the asset at the time of the purchase, acquisition or transfer.

To avoid doubt, this subsection does not apply to the asset merely because your interest in the asset is one that ceases to exist after the passage of a particular period of time.

Member of tax preferred sector providing financing

- (4) Section 250-30 does not apply if a *member of the tax preferred sector provides financing, or support for financing, in relation to your interest in the asset (including by way of a loan, a guarantee, an indemnity, a security, hedging or undertaking to provide *financial benefits in the event of the termination of an *arrangement).

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

Section 250-35

Finance leases, non-cancellable operating leases, service concessions and similar arrangements

- (5) Section 250-30 does not apply if an *arrangement in relation to the *tax preferred use of the asset, or the provision of *financial benefits in relation to the tax preferred use of the asset, is or involves:

- (a) a finance lease; or
- (b) a non-cancellable operating lease; or
- (c) a service concession or similar arrangement;

that generally accepted accounting principles, as in force at the start of the *arrangement period, require to be included as an asset or a liability in your balance sheet.

Financial benefits irregular, not based on comparable market-based rates or not reflecting value of tax preferred use of asset

- (6) Section 250-30 does not apply if the *financial benefits that have been, or are to be provided, to you (or a *connected entity) by *members of the tax preferred sector in relation to the *tax preferred use of the asset:

- (a) are not provided on a regular periodic basis (and at least annually); or
- (b) are not based on comparable market-based rates; or
- (c) do not reflect the value of the tax preferred use of the asset.

Special rules if tax preferred use is a lease or hire of the asset

- (7) If the *tax preferred use of the asset is a lease or hire of the asset (or the use of the asset under a lease or hire arrangement), section 250-30 does not apply if:
- (a) the asset is so specialised that the *end user could not carry out one or more of its functions effectively without the asset; and
 - (b) you would be unlikely to be able to re-lease, re-hire or resell the asset to another person who is not a *member of the tax preferred end user group.

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

Note: For particular arrangements that are treated as leases, see section 250-80.

Special rules if tax preferred use is not a lease or hire of the asset

- (8) If the *tax preferred use of the asset is not the lease or hire of the asset (or the use of the asset under a lease or hire arrangement), section 250-30 does not apply if:
- (a) a *member of the tax preferred sector has a right, if particular circumstances occur, to manage, or to assume control over, the asset (other than temporarily for the purpose of ensuring public health or safety, protecting the environment or continuing the supply of an essential service); or
 - (b) the asset is so specialised that it is unlikely that it could effectively be put to any use other than the tax preferred use; or
 - (c) neither you (nor a *connected entity) has effective day to day control and physical possession of the asset.

Note: For particular arrangements that are treated as leases, see section 250-80.

250-40 Fourth exclusion—sum of present values of financial benefits less than amount otherwise assessable

- (1) This Division does not apply to you and an asset that is being *put to a tax preferred use under a particular *arrangement if, when that *tax preferred use of the asset starts, the Division 250 assessable amount is less than the alternative assessable amount.
- (2) For the purposes of subsection (1), the ***Division 250 assessable amount*** is the sum of the present values of all the amounts that would be likely to be included in your assessable income under this Division in relation to the *tax preferred use of the asset if this Division applied to you and the asset.
- (3) This is how to work out the ***alternative assessable amount*** for the purposes of subsection (1):

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

Section 250-45

Method statement

- Step 1. Add up the present values of the amounts that would be included in your assessable income in relation to the *financial benefits *provided in relation to the tax preferred use of the asset during the *arrangement period if this Division did not apply to you and the asset.
- Step 2. Add up the present values of the amounts that you would be able to deduct in relation to the asset, or expenditure in relation to the asset, under Division 40 or Division 43 in relation to the *arrangement period if this Division did not apply to you and the asset.
- Step 3. Deduct the amount obtained in Step 2 from the amount obtained in Step 1. The result is the ***alternative assessable amount***.

- (4) To avoid doubt, the amounts referred to in subsections (2) and (3) are all the amounts that would be likely to be included in your assessable income, or deducted, for all the income years during the whole, or a part, of which the asset is *put to the tax preferred use.
- (5) The point in time to be used in determining, for the purposes of this section:
- (a) the present value of an amount that is included in your assessable income for an income year; or
 - (b) the present value of an amount that you would be able to deduct for an income year;
- is the end of the income year.

250-45 Fifth exclusion—Commissioner determination

This Division does not apply to you and an asset at a particular time if:

- (a) you request the Commissioner to make a determination under this subsection; and

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

- (b) the Commissioner determines that it is unreasonable that the Division should apply to you and the asset at that time, having regard to:
 - (i) the circumstances because of which this Division would apply to you and the asset; and
 - (ii) any other relevant circumstances.

Tax preferred use of asset

250-50 End user of an asset

- (1) An entity (other than you) is an **end user** of an asset if the entity (or a *connected entity):
 - (a) uses, or effectively controls the use of, the asset; or
 - (b) will use, or effectively control the use of, the asset; or
 - (c) is able to use, or effectively control the use of, the asset; or
 - (d) will be able to use, or effectively control the use of, the asset.
- (2) The control referred to in subsection (1) may be direct or indirect.
- (3) For the purposes of subsection (1), disregard any temporary control of the asset that is for the purpose of ensuring public health or safety, protecting the environment or continuing the supply of an essential service.
- (4) To avoid doubt, an entity is taken to be an **end user** of an asset if the entity (or a *connected entity) holds rights as a lessee under a lease of the asset.

Note: For particular arrangements that are treated as leases, see section 250-80.

250-55 Tax preferred end user

An *end user of an asset is a **tax preferred end user** if:

- (a) the end user (or a *connected entity) is a *tax preferred entity;
or
- (b) the end user is an entity that is a foreign resident.

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

250-60 Tax preferred use of an asset

- (1) An asset is **put to a tax preferred use** at a particular time if:
- (a) an *end user (or a *connected entity) holds, at that time, rights as lessee under a lease of the asset; and
 - (b) either or both of the following subparagraphs is satisfied at that time:
 - (i) the asset is, or is to be, used by or on behalf of an end user who is a *tax preferred end user because of paragraph 250-55(a) (tax preferred entity);
 - (ii) the asset is, or is to be, used wholly or principally outside Australia and an end user of the asset is a tax preferred end user because of paragraph 250-55(b) (non-resident).

If this subsection applies, the **tax preferred use** of the asset is the lease referred to in paragraph (a).

Note: For particular arrangements that are treated as leases, see section 250-80.

- (2) An asset is also **put to a tax preferred use** at a particular time if:
- (a) at that time the asset is, or is to be, used (whether or not by you) wholly or partly in connection with:
 - (i) the production, supply, carriage, transmission or delivery of goods; or
 - (ii) the provision of services or facilities; and
 - (b) either or both of the following subparagraphs is satisfied at that time:
 - (i) some or all of the goods, services or facilities are, or are to be, produced for or supplied, carried, transmitted or delivered to or for an *end user who is a *tax preferred end user because of paragraph 250-55(a) (tax preferred entity) but is not an *exempt foreign government agency;
 - (ii) the asset is, or is to be, used wholly or principally outside Australia and an end user of the asset is a tax preferred end user because of paragraph 250-55(b) (foreign resident).

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

If this subsection applies, the **tax preferred use** of the asset is the production, supply, carriage, transmission, delivery or provision referred to in paragraph (a).

- (3) To avoid doubt, the facilities referred to in subsection (2) include:
- (a) hospital or medical facilities; or
 - (b) prison facilities; or
 - (c) educational facilities; or
 - (e) transport facilities; or
 - (f) the supply of water, gas or electricity; or
 - (g) housing or accommodation; or
 - (h) premises from which to operate a *business or other undertaking.
- (4) If the asset is being *put to a tax preferred use:
- (a) the **members of the tax preferred end user group** are:
 - (i) the *tax preferred end user; and
 - (ii) the *connected entities of the tax preferred end user; and
 - (b) the **members of the tax preferred sector** are:
 - (i) the tax preferred end user (and connected entities); and
 - (ii) any *tax preferred entity (or a connected entity); and
 - (iii) any entity that is a foreign resident.

250-65 Arrangement period for tax preferred use

Start of the arrangement period

- (1) The **arrangement period** for a particular *tax preferred use of an asset starts when that tax preferred use of the asset starts.

End of the arrangement period

- (2) Subject to subsection (3), the **arrangement period** for a particular *tax preferred use of an asset is taken to end on the day that is the date on which the tax preferred use of the asset may reasonably be expected, or is likely, to end.

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

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- (3) The **arrangement period** for the *tax preferred use of the asset ends when this Division ceases to apply to you and the asset if that happens before the day referred to in subsection (2).
- (4) In determining when a particular *tax preferred use of an asset is likely to end:
- (a) regard must be had to:
 - (i) the terms of, and any other circumstances relating to, any *arrangement dealing with that tax preferred use of the asset; and
 - (ii) the terms of, and any other circumstances relating to, any arrangement dealing with the *provision of *financial benefits in relation to that tax preferred use of the asset; and
 - (b) it must be assumed that any right that an entity has to renew or extend such an arrangement will not be exercised (unless it is reasonable to assume that the right will be exercised because of the commercial consequences for the entity (or a *connected entity) of not exercising the right).

Tax preferred uses of asset by entity and connected entity

- (5) For the purposes of this section:
- (a) the *tax preferred use of an asset by an entity; and
 - (b) the tax preferred use of the asset by a *connected entity of that entity;
- are taken to constitute a single tax preferred use of the asset.

250-70 New tax preferred use at end of arrangement period if tax preferred use continues

If:

- (a) this Division applies to you and an asset because the asset is *put to a tax preferred use; and
- (b) the *arrangement period for the *tax preferred use of the asset ends on a particular date (the **termination date**); and
- (c) the asset continues to be put to the tax preferred use after the termination date;

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

the tax preferred use of the asset after the termination date is taken to be a separate and distinct tax preferred use of the asset from the tax preferred use of the asset before the termination date.

Note: This means, among other things, that there is a new arrangement period for the tax preferred use after the termination date and that the arrangement is retested under section 250-15 against circumstances as they stand immediately after the termination date.

250-75 What constitutes a separate asset for the purposes of this Division

- (1) This Division applies to:
 - (a) an improvement to land; or
 - (b) a fixture on land;whether the improvement or fixture is removable or not, as if it were an asset separate from the land.
- (2) Whether a particular composite item is itself an asset or whether its components are separate 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 an 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 assets.
- (3) This Division applies to a renewal or extension of an asset that is a right as if the renewal or extension were a continuation of the original right.
- (4) This Division applies to an asset (the *underlying asset*) in which:
 - (a) you have an interest; and
 - (b) one or more other entities also have an interest;as if your interest in the underlying asset were itself the underlying asset.

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

250-80 Treatment of particular arrangements in the same way as leases

This Division applies to an *arrangement that:

- (a) in substance or effect, depends on the use of a specific asset that is:
 - (i) real property; or
 - (ii) goods or a personal chattel (other than money or a money equivalent); and
- (b) gives a right to control the use of the asset (other than temporarily for the purpose of ensuring public health or safety, protecting the environment or continuing the supply of an essential service); and
- (c) is not a lease;

in the same way as it applies to a lease.

Note: Even if this section applies to treat an arrangement in relation to an asset as a lease, the requirements in section 250-50 still need to be satisfied before an entity can be an end user of the asset.

Financial benefits in relation to tax preferred use

250-85 Financial benefits in relation to tax preferred use of an asset

- (1) For the purposes of this Division, the *financial benefits *provided in relation to a tax preferred use of an asset* include (but are not limited to):
 - (a) a financial benefit provided in relation to:
 - (i) bringing the asset into a state, condition or location in which it can be *put to the tax preferred use; or
 - (ii) the start of the *tax preferred use of the asset; and
 - (b) a financial benefit provided in relation to the end of the tax preferred use of the asset; and
 - (c) a financial benefit provided in relation to the termination or expiration of an *arrangement that deals with:
 - (i) the tax preferred use of the asset; or
 - (ii) the provision of financial benefits in relation to the tax preferred use of the asset; and

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

- (d) a financial benefit provided in relation to the purchase or acquisition of the asset by, or transfer of the asset to, the *tax preferred end user (or a *connected entity).
- (2) Without limiting paragraph (1)(b), if the asset has a *guaranteed residual value:
 - (a) the amount of the guaranteed residual value is taken to be a *financial benefit ***provided in relation to the tax preferred use of the asset***; and
 - (b) that financial benefit is taken to be provided when the relevant payment is made in relation to the guaranteed residual value.
- (3) The asset has a ***guaranteed residual value*** if there is an *arrangement that provides to the effect that if:
 - (a) on or after the end of the *arrangement period, you (or a *connected entity) sell or otherwise dispose of the asset to any person; and
 - (b) you (or a connected entity) receives in respect of the sale or disposal:
 - (i) no consideration; or
 - (ii) consideration that is less than an amount (the ***guaranteed amount***) specified in, or ascertainable under, the provision;

a *member of the tax preferred sector will pay to you (or a connected entity), or to someone else for your benefit (or for the benefit of a connected entity), an amount equal to:

 - (c) the guaranteed amount if subparagraph (b)(i) applies; or
 - (d) the amount by which the guaranteed amount exceeds the consideration if subparagraph (b)(ii) applies.

The amount of the guaranteed residual value is taken to be the guaranteed amount.
- (4) If:
 - (a) an asset is *put to a tax preferred use; and
 - (b) an entity is an *end user of the asset because the entity manages the asset or the use to which the asset is put; any *financial benefit that the entity (or a *connected entity) provides that is calculated by reference to the receipts, revenue or

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

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income generated by the use of the asset is also taken to be a financial benefit ***provided in relation to the tax preferred use of the asset.***

- (5) For the purposes of this Division (other than this subsection), a *financial benefit provided by a *member of the tax preferred sector is taken not to be ***provided in relation to the tax preferred use of an asset*** to the extent to which the financial benefit merely passes on, or represents:
- (a) financial benefits provided in relation to the use of the asset; or
 - (b) something derived from the use of the asset;
- by someone who is not a member of the tax preferred sector.
- (6) For the purposes of this Division, disregard a *financial benefit *provided in relation to the tax preferred use of the asset to the extent to which it consists solely of routine maintenance of the asset.
- (7) For the purposes of this Division, if a *financial benefit is provided in relation to the use of a number of assets, a separate financial benefit of an amount or value that is reasonably attributable to each asset is taken to be provided in relation to each asset.
- (8) To avoid doubt, a *financial benefit may be ***provided in relation to a tax preferred use of an asset*** even though it is provided before the *tax preferred use of the asset starts.
- (9) For the purposes of this Division:
- (a) a *financial benefit that is not an amount:
 - (i) is taken to become due and payable when the entity providing the financial benefit becomes liable to provide the financial benefit; and
 - (ii) is taken to be paid when it is provided; and
 - (b) a financial benefit that is paid without becoming due and payable is taken to have become due and payable on the day on which it was paid.

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

250-90 Financial benefit provided directly or indirectly

For the purposes of this Division, a person (the *provider*) is taken to provide a *financial benefit to a person (the *recipient*) in relation to a *tax preferred use of an asset whether the financial benefit is provided to the recipient:

- (a) directly; or
- (b) indirectly (including indirectly through an entity that is not a *connected entity of the recipient and is not a connected entity of the provider).

250-95 Expected financial benefits in relation to an asset put to tax preferred use

For the purposes this Division, the *expected financial benefits* at a particular time in relation to an asset that is *put to a tax preferred use are the *financial benefits that, at that time:

- (a) have been; or
- (b) will, assuming normal operating conditions, be; or
- (c) can, assuming normal operating conditions, reasonably be expected to be;

*provided in relation to the tax preferred use of the asset by a *member of the tax preferred sector to someone who is not a member of the tax preferred sector.

Note: Paragraphs 250-85(1)(b), (c) and (d) provide for certain benefits provided in relation to the end of the tax preferred use of the asset or in relation to the purchase, disposal or transfer of the asset to be treated as financial benefits provided in relation to the tax preferred use of the asset.

250-100 Present value of financial benefit that has already been provided

For the purposes of this Division, the *present value* of a *financial benefit at a particular time is the nominal amount or value of the financial benefit if the financial benefit has been provided before that time.

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

Discount rate to be used in working out present values

250-105 Discount rate to be used in working out present values

- (1) For the purposes of section 250-40, the discount rate to be used in working out the present value of a future amount is the *long term bond rate for the *financial year in which the relevant *arrangement period starts.
- (2) For the purposes of section 250-135 and Subdivisions 250-C and 250-D, the discount rate to be used in working out the present value of a future amount is a rate that reflects a constant periodic rate of return (worked out on a compounding basis) on the investment in:
 - (a) the asset referred to in subparagraph 250-15(d)(i) if that subparagraph applies; or
 - (b) the expenditure referred to in paragraph 250-15(d)(ii) if that subparagraph applies;that is implicit in the *arrangements under which the asset is *put to a tax preferred use and *financial benefits are *provided in relation to that tax preferred use.

Predominant economic interest

250-110 Predominant economic interest

You lack a *predominant economic interest* in an asset at a particular time only if one or more of the following sections apply to you and the asset at that time:

- (a) section 250-115 (limited recourse debt test);
- (b) section 250-120 (right to acquire asset test);
- (c) section 250-125 (effectively non-cancellable, long term arrangement test);
- (d) section 250-135 (level of expected financial benefits test).

250-115 Limited recourse debt test

- (1) You lack a *predominant economic interest* in an asset at a particular time if more than the allowable percentage of the cost of

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

your acquiring or constructing the asset is financed (directly or indirectly) by a *limited recourse debt or debts.

- (2) For the purposes of subsection (1):
 - (a) the amount of a *limited recourse debt is to be reduced by the value of any *debt property (other than the *financed property) that is provided as security for the debt; and
 - (b) if the limited recourse debt finances the acquisition or construction of 2 or more assets, only the amount of the debt that is reasonably attributable to the asset referred to in subsection (1) is to be taken into account.
- (3) For the purposes of subsection (1), the allowable percentage is:
 - (a) 80% if the asset is taken to be *put to a tax preferred use because of subparagraph 250-60(1)(b)(i) or (2)(b)(i) (end use by *tax preferred entities); or
 - (b) 55% if the asset is taken to be put to a tax preferred use because of subparagraph 250-60(1)(b)(ii) or (2)(b)(ii) (end use by foreign residents).
- (4) This section does not apply to the asset if:
 - (a) you are a *corporate tax entity; and
 - (b) the *tax preferred use of the asset is not the lease or hire of the asset (and is not the use of the asset under a lease or hire arrangement); and
 - (c) the asset is *put to the tax preferred use wholly or principally in Australia; and
 - (d) no *member of the tax preferred sector provides financing, or support for financing, in relation to your interest in the asset (including by way of a loan, a guarantee, an indemnity, a security, hedging or undertaking to provide *financial benefits in the event of the termination of an *arrangement).
- (5) Paragraph (4)(b) does not apply if:
 - (a) the asset is real property (or an interest in real property); and
 - (b) the *tax preferred use of the asset is a lease; and
 - (c) the space within the property that is occupied by tenants who are *members of the tax preferred sector is less than half of

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

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the total space within the property that is either occupied by tenants or available to be occupied by tenants.

- (6) This section also does not apply to the asset if:
- (a) you hold the asset as a trustee; and
 - (b) the asset is real property (or an interest in real property); and
 - (c) the *tax preferred use of the asset is a lease; and
 - (d) the space within the property that is occupied by tenants who are *members of the tax preferred sector is less than half of the total space within the property that is either occupied by tenants or available to be occupied by tenants; and
 - (e) the asset is *put to the tax preferred use wholly or principally in Australia; and
 - (f) no member of the tax preferred sector provides financing, or support for financing, in relation to your interest in the asset (including by way of a loan, a guarantee, an indemnity, a security, hedging or undertaking to provide *financial benefits in the event of the termination of an *arrangement).

250-120 Right to acquire asset test

- (1) You lack a *predominant economic interest* in an asset at a particular time if, at that time:
- (a) the asset is to be transferred to a *member of the tax preferred sector after the end of the *arrangement period; and
 - (b) the consideration for the transfer is not fixed as the *market value of the asset at the time of the transfer.
- (2) You also lack a *predominant economic interest* in an asset at a particular time if, at that time:
- (a) a *member of the tax preferred end user group has, or will have:
 - (i) a right, obligation or contingent obligation to purchase or acquire the asset or a legal or equitable interest in the asset; or
 - (ii) a right to require the transfer of the asset or a legal or equitable interest in the asset; and

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

- (b) the consideration for the purchase, acquisition or transfer is not fixed as the *market value of the asset at the time of the purchase, acquisition or transfer.

To avoid doubt, this section does not apply to the asset merely because your interest in the asset is one that ceases to exist after the passage of a particular period of time.

250-125 Effectively non-cancellable, long term arrangement test

- (1) You lack a *predominant economic interest* in an asset at a particular time if:
- (a) any *arrangement that relates to:
 - (i) the *tax preferred use of the asset; or
 - (ii) the *financial benefits to be *provided by the *members of the tax preferred sector in relation to the tax preferred use of the asset;is *effectively non-cancellable (see section 250-130); and
 - (b) the *arrangement period for the tax preferred use of the asset is:
 - (i) greater than 30 years; or
 - (ii) if the arrangement period is less than or equal to 30 years—75% or more of that part of the asset's *effective life that remains when the tax preferred use of the asset starts.
- (2) Disregard section 40-102 in working out the asset's *effective life for the purposes of subparagraph (1)(b)(ii).

250-130 Meaning of *effectively non-cancellable* arrangement

- (1) An *arrangement that relates to *financial benefits to be *provided by a *member of the tax preferred sector in relation to the tax preferred use of an asset is *effectively non-cancellable* if:
- (a) the arrangement can be cancelled only with:
 - (i) your permission; or
 - (ii) the permission of a *connected entity of yours; or
 - (iii) an agent or entity acting on your behalf (or on behalf of a connected entity of yours); or

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

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- (b) the arrangement can be cancelled without the permission of an entity referred to in paragraph (a) but, if the arrangement were cancelled, the member of the tax preferred sector or another member of the tax preferred sector:
 - (i) would be required to enter into a new arrangement for the *provision of financial benefits in relation to the tax preferred use of the asset; or
 - (ii) would incur a penalty and the magnitude of the penalty would be such as to discourage cancellation.
- (2) For these purposes, if a *member of the tax preferred sector defaults under an *arrangement and the arrangement is cancelled, the arrangement is to be taken to have been cancelled without the permission of an entity referred to in paragraph (1)(a).

250-135 Level of expected financial benefits test

Effective guarantee or indemnity for value of asset

- (1) You lack a ***predominant economic interest*** in an asset at a particular time if the asset has a *guaranteed residual value at that time.

Likely financial benefits exceeding 70% limit

- (2) You also lack a ***predominant economic interest*** in an asset at a particular time if, at that time:
 - (a) the *arrangement under which the asset is *put to the tax preferred use (either alone or together with any other arrangement in relation to the *tax preferred use of the asset or the *provision of *financial benefits in relation to the tax preferred use of the asset) is a *debt interest; or
 - (b) the sum of the present values of the *expected financial benefits that *members of the tax preferred sector have provided, or are or are reasonably likely to provide, to you (or a *connected entity) in relation to the tax preferred use of the asset exceeds 70% of:
 - (i) the *market value of the asset if subparagraph 250-15(d)(i) applies; or

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

- (ii) so much of the market value of the asset as is attributable to the expenditure referred to subparagraph 250-15(d)(ii) if that subparagraph applies.

250-140 When to retest predominant economic interest under section 250-135

Purpose for applying section

- (1) This section applies for the purposes of working out whether this Division applies to you and to an asset that is *put to a tax preferred use.

No need to keep retesting if section 250-135 does not apply at start of tax preferred use of asset

- (2) If section 250-135 does not apply to you and the asset at the time when the *tax preferred use of the asset starts, that section is taken, subject to subsection (4), to continue not to apply to you and the asset.

Note: This subsection means that if section 250-135 does not apply to the arrangement when the tax preferred use of the asset starts, the arrangement does not need to be retested against section 250-135 until a change of the kind referred to in subsection (4) occurs.

No need to keep retesting if section 250-135 does not apply when you do something to increase value of expected financial benefits

- (3) If:
- (a) you (or a *connected entity), or a *member of the tax preferred sector, do something, or omit to do something, at a particular time that increases the value of the *expected financial benefits in relation to the *tax preferred use of the asset; and
 - (b) section 250-135 does not apply to the asset at that time;
- that section is taken, subject to subsection (4), to continue not to apply to you and the asset.

Note: This subsection means that if the arrangement is retested against section 250-135 at a particular time and section 250-135 does not apply to the arrangement on that retesting, the arrangement does not

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

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need to be again retested against section 250-135 until a change of the kind referred to in subsection (4) occurs.

Retesting when you do something to increase the value of expected financial benefits

- (4) Subsection (2) or (3) ceases to apply to you and the asset if you (or a *connected entity), or a *member of the tax preferred sector, do something, or omit to do something, that increases the value of the *expected financial benefits in relation to the *tax preferred use of the asset.

Certain financial benefits ignored when retesting

- (5) For the purposes of reapplying section 250-135 to the asset, disregard *financial benefits provided before subsection (2) or (3) of this section ceased to apply to the asset.

Note: If:

- (a) subsection (2) or (3) ceases to apply to the asset at a particular time under this subsection; and
- (b) the asset is retested at that time against section 250-135; and
- (c) on the retesting, that section is found to apply to the asset at that time;

subsection (3) will start to apply to the asset again from that time because paragraph (3)(b) will have been satisfied.

Clarification that retesting only required if you do something to increase value of expected benefits

- (6) To avoid doubt, subsection (2) or (3) does not cease to apply merely because the value of the *expected financial benefits in relation to the asset increase because of something other than action taken, or an omission made, by you (or a *connected entity) or a *member of the tax preferred sector.

Note:

This subsection means that retesting under subsection (4) is not triggered by an increase in the value of expected financial benefits that happens because of external circumstances (circumstances external to activities and omissions of yours, your connected entities and members of the tax preferred sector).

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

Subdivision 250-C—Denial of, or reduction in, capital allowance deductions

Table of sections

250-145	Denial of capital allowance deductions
250-150	Apportionment rule

250-145 Denial of capital allowance deductions

- (1) If this Division applies to you and an asset at a particular time, any condition that needs to be satisfied for you to be able to deduct an amount under a *capital allowance provision in relation to:
 - (a) a decline in the value of the asset; or
 - (b) expenditure in relation to the asset;is taken not to be satisfied at that time.
- (2) This section has effect subject to section 250-150.

250-150 Apportionment rule

- (1) This section applies if:
 - (a) this Division applies to you and an asset that is *put to a tax preferred use; and
 - (b) it is reasonable to expect that, during the *arrangement period for the *tax preferred use of the asset, particular *financial benefits will be provided to you (or a *connected entity); and
 - (c) it is reasonable to expect that those financial benefits:
 - (i) will be provided in relation to a use of the asset that is not that tax preferred use and is not a private use; or
 - (ii) will be *provided in relation to that tax preferred use of the asset but will not be attributable, directly or indirectly, to financial benefits that are provided by *members of the tax preferred sector; and
 - (d) the amount or value of those financial benefits is known or can reasonably be estimated; and
 - (e) you choose to have this section apply to the asset.In applying paragraph (c), disregard financial benefits that are provided under an *arrangement that is a *debt interest.

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

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- (2) A choice under paragraph (1)(e) in relation to an asset:
- (a) must be made before the due date for you to lodge your *income tax return for the income year in which the *arrangement period for the *tax preferred use of the asset starts; and
 - (b) must be made for the whole of the arrangement period for the tax preferred use of the asset; and
 - (c) must extend to all assets that are, or are to be, *put to a tax preferred use under the *arrangement under which the asset is put to that use; and
 - (d) is irrevocable.

The choice may extend to an asset referred to in paragraph (c) even if it is likely that paragraphs (1)(b) and (c) will not apply to that asset.

- (3) If this section applies, section 250-145 applies to you and the asset only to the extent of the *disallowed capital allowance percentage.
- (4) Subject to subsection (6), the ***disallowed capital allowance percentage*** is the following ratio (expressed as a percentage):

$$\frac{\text{Sum of present values of financial benefits that are subject to deemed loan treatment}}{\text{Market value of asset}}$$

- (5) The Commissioner may, before the due date for you to lodge your *income tax return for the income year to which the *arrangement period for the *tax preferred use of the asset starts, approve an alternative method for working out the *disallowed capital allowance percentage for you and the asset.
- (6) If the Commissioner approves an alternative method under subsection (5), the ***disallowed capital allowance percentage*** is the percentage worked out in accordance with that alternative method.

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

Subdivision 250-D—Deemed loan treatment of financial benefits provided for tax preferred use

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250-155	Arrangement treated as loan
250-160	Financial benefits that are <i>subject to deemed loan treatment</i>
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250-185	Financial benefits subject to deemed loan treatment not assessed

250-155 Arrangement treated as loan

Loan with characteristics provided for in this section taken to exist

- (1) If this Division applies to you and an asset at a particular time in an income year, a *financial arrangement in the form of a loan (with the characteristics provided for in this section) is taken to exist at that time for the purposes of working out your taxable income for that income year.

Note: See Subdivision 250-E for the taxation treatment of the financial arrangement.

Lender

- (2) You are taken to be the lender in relation to the loan.

Amount lent and unpaid at the start of the arrangement period

- (3) The amount worked out under subsection (4) is taken to be the amount that you have lent, and that the borrower has not repaid, at the start of the *arrangement period.
- (4) The amount is worked out by taking:
- (a) the amount that, at the start of the *arrangement period, is:
 - (i) the *adjustable value of the asset if subparagraph 250-15(d)(i) applies; or
 - (ii) the amount worked out under subsection (5) if subparagraph 250-15(d)(ii) applies; or
 - (b) if section 250-150 applies—the amount that, at the start of the arrangement period, is the *disallowed capital allowance percentage of:

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

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- (i) the adjustable value of the asset if subparagraph 250-15(d)(i) applies; or
 - (ii) the amount worked out under subsection (5) if subparagraph 250-15(d)(ii) applies;
- and deducting the sum of all *financial benefits that are *subject to deemed loan treatment and that have become due and payable before the start of the arrangement period.
- (5) If subparagraph 250-15(d)(ii) applies, the amount worked out under this subsection for the purposes of subsection (4) is:

Item	If the expenditure referred to in that subparagraph is ...	the amount is ...
1	capital expenditure under Division 40	the amount of the capital expenditure in respect of which a deduction has not been allowed (disregarding this Division) under the relevant Subdivision of Division 40
2	capital expenditure under Division 43	the *undeducted construction expenditure in relation to the capital expenditure

Amounts paid to you by borrower under the loan

- (6) Any *financial benefit that:
- (a) a person provides; and
 - (b) is *subject to deemed loan treatment;
- is taken to be an amount that the borrower pays you under the loan.

Note 1: Section 250-160 tells you which financial benefits are subject to the deemed loan treatment.

Note 2: These benefits may be ones that are provided either to you or to a connected entity.

Period of the loan

- (7) The *arrangement period is taken to be the period of the loan.

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

Applying Subdivision 250-E to the loan

- (8) For the purposes of applying Subdivision 250-E to the loan:
- (a) you are taken to have an overall gain from the loan and that overall gain is taken to be sufficiently certain at the time when you start to have the loan; and
 - (b) the amount of that overall gain is taken to be the sum of the *financial benefits that are *subject to the deemed loan treatment less the amount worked out under subsection (4); and
 - (c) you are taken:
 - (i) to start to have the loan at the start of the *arrangement period; and
 - (ii) to cease to have the loan at the end of the arrangement period; and
 - (d) any right that you (or a connected entity) have to a financial benefit that is subject to deemed loan treatment is taken to be a right that you have under the loan; and
 - (e) if a *connected entity transfers to another person a right to a financial benefit subject to deemed loan treatment:
 - (i) you are taken to transfer the right to that other person; and
 - (ii) any consideration that the connected entity receives in relation to the transfer is taken to be consideration that you receive in relation to the transfer; and
 - (f) if a right that a connected entity has to a financial benefit subject to deemed loan treatment ceases and the connected entity receives consideration in relation to that cessation—you are taken to receive that consideration in relation to the cessation; and
 - (g) you are taken to start to have the loan, or to cease to have the loan, as consideration for something if you start to have the rights to the financial benefits that are subject to deemed loan treatment, or cease to have those rights, as consideration for that thing; and

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

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- (h) in applying sections 250-265 to 250-275:
 - (i) the amount that you are taken, under subsections (3), (4) and (5), to have lent are the only financial benefits that you provide under the loan; and
 - (ii) the financial benefits you have received under the loan are taken to include financial benefits that are subject to deemed loan treatment that a person is, at the end of the arrangement period, liable to provide to you.
- (9) If, under subsection 250-160(2), a particular percentage of a reasonable estimate of the *end value of the asset was taken to be a *financial benefit that is *subject to the deemed loan treatment, subsection 250-275(1) applies to the loan at the end of the *arrangement period as if you had received under the loan a financial benefit equal to the relevant percentage of the end value of the asset.

250-160 Financial benefits that are *subject to deemed loan treatment*

General rule

- (1) Subject to subsections (3) and (4), a *financial benefit is ***subject to deemed loan treatment*** if:
 - (a) the financial benefit:
 - (i) has been; or
 - (ii) will, assuming normal operating conditions, be; or
 - (iii) can, assuming normal operating conditions, reasonably be expected to be;
provided to you (or a *connected entity); and
 - (b) the financial benefit has been, will be or can reasonably be expected to be *provided directly or indirectly by a *member of the tax preferred sector in relation to the *tax preferred use of the asset; and
 - (c) the right to receive, or the obligation to provide, the financial benefit is *cash settleable; and
 - (d) the financial benefit has not been, will not be or can be expected not to be provided by one of your connected entities.

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

Note: Paragraph (d) stops a financial benefit passing between you and any of your connected entities from being counted twice.

End value also taken to be financial benefit subject to deemed loan treatment

- (2) The relevant percentage of a reasonable estimate of the *end value of the asset is also taken to be a *financial benefit that is **subject to deemed loan treatment** if:
- (a) the asset is not to be purchased or acquired by, or transferred to, a *member of the tax preferred sector at the end of the *arrangement period under a legally enforceable *arrangement; or
 - (b) the asset:
 - (i) is, or is to become, a *privatised asset; or
 - (ii) would be, or would become, a privatised asset if it were a *depreciating asset; or
 - (iii) would be a privatised asset if the asset were a depreciating asset and paragraphs 58-5(2)(a) and 58-5(4)(a) were not limited to acquisitions of depreciating assets that occurred on or after 1 July 2001.

The relevant percentage is the *disallowed capital allowance percentage if section 250-150 applies. Otherwise it is 100%.

Note: See section 250-180 for how to work out the end value of the asset.

Financial benefits only subject to deemed loan treatment to the extent to which they represent a return on investment

- (3) The *financial benefit is **subject to deemed loan treatment** only to the extent to which it reasonably represents a return of, or on, an investment in the asset (as distinct, for example, from representing consideration for the provision of services or the recovery of production costs), having regard to:
- (a) the *market value of the asset; and
 - (b) the discount rate applicable under subsection 250-105(2); and
 - (c) your costs in relation to funding your interest in the asset; and
 - (d) any other relevant matter.

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

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The regulations may provide rules to be applied in determining the extent to which a financial benefit reasonably represents a return of or on an investment in the asset.

Only financial benefits provided after Division starts applying to you and the asset

- (4) If the *tax preferred use of the asset starts before this Division starts applying to you and the asset, only *financial benefits provided after this Division starts applying to you and the asset are **subject to deemed loan treatment**.

250-180 End value of asset

- (1) The **end value** of an asset is worked out in accordance with this section.
- (2) If the asset has a *guaranteed residual value, the **end value** of the asset is:
- (a) the amount of the guaranteed residual amount if subparagraph 250-15(d)(i) applies; or
 - (b) so much of the amount referred to in paragraph (a) as is attributable to the expenditure referred to in subparagraph 250-15(d)(ii) if that subparagraph applies.
- (3) If the asset does not have a *guaranteed residual value and is a *depreciating asset, the **end value** of the asset is:
- (a) if subparagraph 250-15(d)(i) applies—the amount that would have been the *adjustable value of the asset at the end of the *arrangement period if:
 - (i) this Division had not applied to you and the asset; and
 - (ii) the decline in the asset's value were worked out on the basis of the asset's *effective life and using the *prime cost method; or
 - (b) if subparagraph 250-15(d)(ii) applies—so much of the amount referred to in paragraph (a) as is attributable to the expenditure referred to in that subparagraph.
- (4) Disregard section 40-102 in working out the asset's *effective life for the purposes of subparagraph (3)(a)(ii).

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

(5) If neither subsection (2) nor subsection (3) applies and an estimate of the value of the asset is recognised for accounting purposes, the **end value** of the asset is:

- (a) the value of the relevant asset at the end of the *arrangement period that would be recognised for accounting purposes if subparagraph 250-15(d)(i) applies; or
- (b) so much of the value of referred to in paragraph (a) as is attributable to the expenditure referred to subparagraph 250-15(d)(ii) if that subparagraph applies.

The **end value** must not, however, exceed the amount worked out under subsections 250-155(4) and (5) (amount taken to have been lent).

(6) If none of subsections (2), (3) and (5) apply to the asset, the **end value** of the asset is:

- (a) a reasonable estimate of the *market value of the asset at the end of the *arrangement period if subparagraph 250-15(d)(i) applies; or
- (b) so much of the estimate referred to in paragraph (a) as is attributable to the expenditure referred to in subparagraph 250-15(d)(ii) if that subparagraph applies.

The **end value** must not, however, exceed the amount worked out under subsections 250-155(4) and (5) (amount taken to have been lent).

250-185 Financial benefits subject to deemed loan treatment not assessed

A *financial benefit is not included in your assessable income if the financial benefit:

- (a) is *provided to you in relation to the tax preferred use of the asset; and
- (b) is provided directly or indirectly by a *member of the tax preferred sector; and
- (c) is *subject to deemed loan treatment.

The financial benefit is not assessable income and is not *exempt income.

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

Subdivision 250-E—Taxation of deemed loan

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

Guide to Subdivision 250-E

250-190 What this Subdivision is about

This Subdivision is about the tax treatment of gains and losses from the financial arrangement that you are taken to have under section 250-155.

You recognise gains and losses from the financial arrangement, as appropriate, over the life of the financial arrangement and ignore distinctions between income and capital. You use a compounding accruals method to recognise the gain or loss.

A change in circumstances may cause a re-estimation of gains and losses that the accruals method is being applied to.

A balancing adjustment is made if you transfer particular rights or obligations or particular rights or obligations cease.

Application and objects of Subdivision

250-195 Application of Subdivision

This Subdivision applies for the purposes of working out the amount of the gain or loss that is to be included in your assessable income or allowed as a deduction in relation to the *financial arrangement that is taken to exist under section 250-155.

250-200 Objects of this Subdivision

The objects of this Subdivision are:

- (a) to properly recognise gains and losses from the *financial arrangement by allocating them to appropriate periods of time; and
- (b) to minimise tax deferral.

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

Tax treatment of gains and losses from financial arrangements

250-205 Gains are assessable and losses deductible

Gains

- (1) Your assessable income includes a gain you make from the *financial arrangement.

Losses

- (2) You can deduct a loss you make from the *financial arrangement, but only to the extent that:
 - (a) you make it in gaining or producing your assessable income;
or
 - (b) you necessarily make it in carrying on a *business for the purpose of gaining or producing your assessable income.

250-210 Gain or loss to be taken into account only once under this Act

Purpose of this section

- (1) The purpose of this section is to ensure that your gains that are assessable under this Subdivision, and your losses that are deductible under this Subdivision, are taken into account only once under this Act in working out your taxable income.

Gain or loss

- (2) If a gain or loss is, or is to be, included in your assessable income or allowable as a deduction to you for an income year under this Subdivision, the gain or loss is not to be (to any extent):
 - (a) included in your assessable income; or
 - (b) allowable as a deduction to you;under any other provisions of this Act for the same or any other income year.

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

Associated financial benefits

- (3) If the amount or value of a *financial benefit is taken into account in working out whether you make, or the amount of, a gain or loss that is, or is to be, included in your assessable income or allowable as a deduction for you for an income year under this Subdivision, the benefit is not to be (to any extent):
- (a) included in your assessable income; or
 - (b) allowable as a deduction to you;
- under any other provision of this Act for the same or any other income year.

Method to be applied to take account of gain or loss

250-215 Methods for taking gain or loss into account

The methods that can be applied to take account of a gain or loss you make from the *financial arrangement you have are:

- (a) the accruals method provided for in sections 250-235 to 250-255; or
- (b) a balancing adjustment provided for in sections 250-265 to 250-275.

A gain or loss is not taken into account under the method referred to in paragraph (a) to the extent to which the gain or loss is taken into account under sections 250-265 to 250-275.

General rules

250-220 Consistency in working out gains or losses (integrity measure)

Object of section

- (1) The object of this section is to stop you obtaining an inappropriate tax benefit from not working out your gains and losses in a consistent manner.

Consistent treatment for particular financial arrangement

- (2) If:

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

Section 250-225

- (a) this Subdivision provides that a particular method applies to gains or losses you make from the *financial arrangement; and
 - (b) that method allows you to choose the particular manner in which you apply that method;
- you must use that manner consistently for the arrangement for all income years.

Consistent treatment for financial arrangements of essentially the same nature

- (3) If:
 - (a) this Subdivision provides that a particular method applies to gains or losses you make from 2 or more *financial arrangements; and
 - (b) that method allows you to choose the particular manner in which you apply that method;you must use that same manner consistently for all of those financial arrangements that are essentially of the same nature.

250-225 Rights and obligations include contingent rights and obligations

To avoid doubt:

- (a) a right is treated as a right for the purposes of this Division even it is subject to a contingency; and
- (b) an obligation is treated as an obligation for the purpose of this Division even if it is subject to a contingency.

The accruals method

250-230 Application of accruals method

The accruals method provided for in sections 250-235 to 250-255 applies to a gain or loss you make from the *financial arrangement if:

- (a) the gain or loss is an overall gain or loss from the arrangement; and

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

- (b) the gain or loss is sufficiently certain at the time when you start to have the arrangement.

250-235 Overview of the accruals method

If the accruals method applies to a gain or loss you make from the *financial arrangement:

- (a) you use section 250-240 to work out the period over which the gain or loss is to be spread; and
- (b) you use section 250-245 to work out how to allocate the gain or loss to particular intervals within the period over which the gain or loss is to be spread; and
- (c) if an interval to which part of the gain or loss is allocated straddles 2 income years, you use section 250-250 to work out how to allocate that part of the gain or loss allocated between those 2 income years.

250-240 Applying accruals method to work out period over which gain or loss is to be spread

If you have a sufficiently certain overall gain or loss from the *financial arrangement, the period over which the gain or loss is to be spread is the period that:

- (a) starts when you start to have the arrangement; and
- (b) ends when you will cease to have the arrangement.

In applying paragraph (b), you must assume that you will continue to have the arrangement for the rest of its life.

250-245 How gain or loss is spread

How to spread gain or loss

- (1) This section tells you how to spread a gain or loss to which the accruals method applies.

Compounding accruals or approximation

- (2) The gain or loss is to be spread using:

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

Section 250-250

- (a) compounding accruals (with the intervals to which parts of the gain or loss are allocated complying with subsection (3)); or
- (b) a method whose results approximate those obtained using the method referred to in paragraph (a) (having regard to the length of the period over which the gain or loss is to be spread).

Intervals to which parts of gain or loss allocated

- (3) The intervals to which parts of the gain or loss are allocated must:
 - (a) not exceed 12 months; and
 - (b) all be of the same length.

Paragraph (b) does not apply to the first and last intervals. These may be shorter than the other intervals.

Assumption of continuing hold arrangement for the rest of its life

- (4) The gain or loss is to be spread assuming that you will continue to have the *financial arrangement for the rest of its life.

250-250 Allocating gain or loss to income years

- (1) You are taken, for the purposes of section 250-205, to make, for an income year, a gain or loss equal to a part of a gain or loss if:
 - (a) that part of the gain or loss is allocated to an interval under section 250-245; and
 - (b) that interval falls wholly within that income year.
- (2) If:
 - (a) a part of a gain or loss is allocated to an interval under section 250-245; and
 - (b) that interval straddles 2 income years;you are taken, for purposes of section 250-205, to make a gain or loss equal to so much of that part of the gain or loss as is allocated between those income years on a reasonable basis.
- (3) If:
 - (a) a *consolidated group or *MEC group has a *financial arrangement; and

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

- (b) a subsidiary member of the group ceases to be a member of the group at a particular time (the *exit time*); and
 - (c) immediately after the exit time, the subsidiary member has the financial arrangement;
- an income year of the group is taken, for the purposes of applying this section to the group and the financial arrangement, to end at the exit time.

250-255 When to re-estimate

When re-estimation necessary

- (1) You re-estimate a gain or loss from the *financial arrangement under subsection (4) if circumstances arise that materially affect:
 - (a) the amount or value; or
 - (b) the timing;of *financial benefits that were taken into account in working out the amount of the gain or loss. You must re-estimate the gain or loss as soon as reasonably practicable after you become aware of the circumstances referred to in paragraph (b).
- (2) Without limiting subsection (1), the following are circumstances of the kind referred to in paragraph (1)(b):
 - (a) a material change in market conditions that are relevant to the amount or value of the *financial benefits to be received or provided under the *financial arrangement;
 - (b) cash flows that were previously estimated becoming known and the difference between the cash flows that become known and the cash flows that were previously estimated is not insignificant;
 - (c) a right to, or a part of a right to, a financial benefit under the arrangement is written off as a bad debt.
- (3) You do not re-estimate a gain or loss from a *financial arrangement under subsection (4) merely because of any one or more of the following:
 - (a) a change in the credit rating, or the creditworthiness, of a party or parties to the financial arrangement;

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

- (b) the impairment (within the meaning of the *accounting standards) of the arrangement or a debt that forms part of the arrangement.

Nature of re-estimation

- (4) Making a re-estimation in relation to a gain or loss under this subsection involves:
 - (a) a fresh determination of the amount of the gain or loss; and
 - (b) a reapplication of the accruals method to the redetermined gain or loss to make a fresh allocation of the part of the redetermined gain or loss that has not already been allocated to intervals ending before the re-estimation is made to intervals ending after the re-estimation is made.

Basis for re-estimation

- (5) You may make the fresh allocation of the gain or loss under subsection (4) on either of the following bases:
 - (a) by maintaining the rate of return being used and adjusting the amount to which you apply the rate of return to the present value of the estimated future cash flows discounted at the maintained rate of return;
 - (b) adjusting the rate of return and maintaining the amount to which you apply the rate of return.

The object to be achieved by both bases is allow you to bring the remainder of the gain or loss based on the new estimates properly to account over the remainder of the period over which you spread the gain or loss.

- (6) If you adopt a particular basis under subsection (5) for a gain or loss from the *financial arrangement, you must use the same basis for all the re-estimations you make under this section in relation to your gains and losses from all your financial arrangements.

Balancing adjustment if rate of return maintained

- (7) If you make a fresh allocation of the gain or loss on the basis referred to in paragraph (5)(a), you must make the following balancing adjustment:

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

- (a) if you re-estimate a gain and the amount to which you apply the rate of return increases—you make a gain from the *financial arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;
- (b) if you re-estimate a gain and the amount to which you apply the rate of return decreases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the decrease;
- (c) if you re-estimate a loss and the amount to which you apply the rate of return increases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;
- (d) if you re-estimate a loss and the amount to which you apply the rate of return decreases—you make a gain from the arrangement, the income year in which you make the re-estimation, equal to the amount of the decrease.

250-260 Re-estimation if balancing adjustment on partial disposal

Re-estimation if balancing adjustment on partial disposal

- (1) You also re-estimate a gain or loss from a *financial arrangement under subsection (2) if a balancing adjustment is made in relation to the financial arrangement under sections 250-265 to 250-275 because you transfer to another person:
 - (a) a proportionate share of all of your rights and/or obligations under a *financial arrangement; or
 - (b) a right or obligation that you have under a financial arrangement to a specifically identified *financial benefit; or
 - (c) a proportionate share of a right or obligation that you have under a financial arrangement to a specifically identified financial benefit.

You must re-estimate the gain or loss as soon as reasonably practicable after the transfer occurs.

Nature of re-estimation

- (2) Making a re-estimation in relation to a gain or loss under this subsection involves:

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

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- (a) a fresh determination of the amount of the gain or loss disregarding:
 - (i) *financial benefits; and
 - (ii) amounts of the gain or loss that have already been allocated to intervals ending before the re-estimation is made;
to the extent to which they are reasonably attributable to the proportionate share, or the right or obligation, referred to in paragraph (1)(b); and
- (b) a reapplication of the accruals method to the redetermined gain or loss to make a fresh allocation of the part of that gain or loss that has not already been allocated to intervals ending before the re-estimation is made to intervals ending after the re-estimation is made.

Basis for re-estimation

- (3) You make the fresh allocation of the gain or loss under subsection (2) by maintaining the rate of return being used and adjusting the amount to which you apply the rate of return to the present value of the estimated future cash flows discounted at the maintained rate of return. The object to be achieved by the fresh allocation is allow you to bring the remainder of the redetermined gain or loss properly to account over the remainder of the period over which you spread the gain or loss.

Balancing adjustment

250-265 When balancing adjustment made

When balancing adjustment made

- (1) A balancing adjustment is made under section 250-275 if:
 - (a) you transfer to another person all of your rights and/or obligations under the *financial arrangement; or
 - (b) all of your rights and/or obligations under the financial arrangement otherwise substantially cease; or
 - (c) you transfer to another person:

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

- (i) a proportionate share of all of your rights and/or obligations under the financial arrangement; or
- (ii) a right or obligation that you have under the financial arrangement to a specifically identified *financial benefit; or
- (iii) a proportionate share of a right or obligation that you have under the financial arrangement to a specifically identified financial benefit.

Modifications for arrangements that are assets

- (2) The following modifications are made if the *financial arrangement is an asset of yours at the time the event referred to in subsection (1) occurs:
- (a) paragraphs (1)(a) and (c) do not apply unless the effect of the transfer is to transfer to the other person substantially all the risks and rewards of ownership of the interest transferred;
 - (b) for the purposes of applying section 250-275 to the arrangement, you are treated as transferring a right under the arrangement to another person if:
 - (i) you retain the right but assume a new obligation; and
 - (ii) your assumption of the new obligation has the same effect, in substance, as transferring the right to another person; and
 - (iii) the new obligation arises only to the extent to which the right to *financial benefits under the financial arrangement is satisfied; and
 - (iv) you cannot sell or pledge the right (other than as security in relation to the new obligation); and
 - (v) you must, under the new obligation, provide financial benefits you receive in relation to the right to the person to whom you owe the new obligation without delay.

250-270 Exception for subsidiary member leaving consolidated group

A balancing adjustment is not made under section 250-275 in relation to a subsidiary member of a *consolidated group or a *MEC

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

group that has the *financial arrangement ceasing to be a member of the group.

250-275 Balancing adjustment

Complete cessation or transfer

- (1) Use the following method statement to make the balancing adjustment if paragraph 250-265(1)(a) or (b) applies:

Method statement for balancing adjustment

Step 1. Add up the following:

- (a) the total of all the *financial benefits provided to you under the *financial arrangement;
- (b) the amount or value of any other consideration you receive in relation to the transfer or cessation referred to in subsection 250-265(1);
- (c) the total of the amounts that have been allowed to you as deductions, because of circumstances that have occurred before the transfer or cessation, for losses from the arrangement;
- (d) the total of the other amounts that would have been allowed to you as deductions, because of circumstances that have occurred before the transfer or cessation, for losses from the arrangement if all your losses from the arrangement were allowable as deductions.

Step 2. Add up the following:

- (a) the total of all the *financial benefits you have provided under the *financial arrangement;

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

- (b) the amount or value of any other consideration you provide in relation to the transfer or cessation referred to in subsection 250-265(1);
- (c) the total of the amounts that have been included in your assessable income, because of circumstances that have occurred before the transfer or cessation, as gains from the arrangement;
- (d) the total of the other amounts that would have been included in your assessable income, because of circumstances that have occurred before the transfer or cessation, as gains from the arrangement if all your gains from the arrangement were assessable.

Step 3. Compare the amount obtained under Step 1 (the **Step 1 amount**) with the amount obtained under Step 2 (the **Step 2 amount**). If the Step 1 amount exceeds the Step 2 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a gain you make from the *financial arrangement for the purposes of this Subdivision. If the Step 2 amount exceeds the Step 1 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a loss that you make from the arrangement. If the Step 1 amount and the Step 2 amount are equal, no balancing adjustment is made.

Proportionate transfer of all rights and/or obligations under financial arrangement

- (2) If subparagraph 250-265(1)(c)(i) applies, you make the balancing adjustment by applying the method statement in subsection (1) but reduce:
 - (a) the amounts referred to in paragraphs (a), (c) and (d) in step 1; and
 - (b) the amounts referred to in paragraphs (a), (c) and (d) in step 2;

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

by applying the proportion referred to in subparagraph 250-265(1)(c)(i) to them.

Transfer of specifically identified right or obligation under financial arrangement

- (3) If subparagraph 250-265(1)(c)(ii) applies, you make the balancing adjustment by applying the method statement in subsection (1) as if the references to:
- (a) the amounts referred to in paragraphs (a), (c) and (d) in step 1; and
 - (b) the amounts referred to in paragraphs (a), (c) and (d) in step 2;
- were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 250-265(1)(c)(ii).

Proportionate transfer of specifically identified right or obligation under financial arrangement

- (4) If subparagraph 250-265(1)(c)(iii) applies, you make the balancing adjustment by applying the method statement:
- (a) as if the references to:
 - (i) the amounts referred to in paragraphs (a), (c) and (d) in step 1; and
 - (ii) the amounts referred to in paragraphs (a), (c) and (d) in step 2;were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 250-265(1)(c)(iii); and
 - (b) by reducing those amounts by applying the proportion referred to in subparagraph 250-265(1)(c)(iii) to them.

Attribution must reflect appropriate and commercially accepted valuation principles

- (5) Any attribution made under subsection (3) or paragraph (4)(a) must reflect appropriate and commercially accepted valuation principles that properly take into account:

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

- (a) the nature of the rights and obligations under the *financial arrangement; and
- (b) the risks associated with each *financial benefit, right and obligation under the arrangement; and
- (c) the time value of money.

Income year for which gain or loss is made

- (6) The gain or loss you are taken to make under subsection (1), (2), (3) or (4) is a gain or loss for the income year in which the event referred to in subsection 250-265(1) occurs.

Other provisions

250-280 Financial arrangement received or provided as consideration

- (1) If:
 - (a) this Subdivision applies in relation to your gains and losses from the *financial arrangement; and
 - (b) you start to have the financial arrangement (or a part of the financial arrangement) as consideration (or as part of the consideration) for:
 - (i) something (the ***thing provided***) that you provided, or are to provide, to someone else; or
 - (ii) something (the ***thing acquired***) that someone else has provided, or is to provide, to you; and
 - (c) the thing provided or the thing acquired is not money; the amount of the benefit (or that part of the benefit) that you obtained for the thing provided, or gave for the thing acquired, is taken, for the purposes of applying this Act to you, to be the *market value of the financial arrangement (or that part of the financial arrangement) at the time when you start to have the financial arrangement.

Note 1: This amount may be relevant, for example, for the purposes of applying the provisions of this Act dealing with capital gains, capital allowances or trading stock to the thing provided or the thing acquired.

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

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Note 2: The market value is to be used instead of the nominal value of the financial benefits to be provided under the financial arrangement.

- (2) If subsection (1) applies, you are taken to have received, or provided, as consideration for starting to have the *financial arrangement (or the part of the financial arrangement), *financial benefits whose value is equal to the market value of the financial arrangement (or that part of the financial arrangement) at the time when you started to have the financial arrangement.
- (3) If, but for this subsection:
- (a) subsection (2) would apply to your starting to have a *financial arrangement; and
 - (b) subsection (1) or (4) would also apply to your starting to have the financial arrangement;
- subsection (2) applies to your starting to have the financial arrangement and subsection (1) or (4) does not.
- (4) If:
- (a) this Subdivision applies in relation to your gains and losses from the *financial arrangement; and
 - (b) you cease to have the financial arrangement (or a part of the financial arrangement) as consideration (or as part of the consideration) for:
 - (i) something (the ***thing acquired***) that someone else provides, or is to provide, to you; or
 - (ii) something (the ***thing provided***) that you provided, or are to provide, to someone else; and
 - (c) the thing acquired or the thing provided is not money; the amount of the benefit (or that part of the benefit) that you provided for the thing acquired, or obtained for the thing provided, is taken, for the purposes of applying this Act to you, to be the *market value of the financial arrangement (or that part of the financial arrangement) at the time when you cease to have the financial arrangement (or that part of the financial arrangement).

Note 1: This amount may be relevant, for example, for the purposes of applying the provisions of this Act dealing with capital gains, capital allowances or trading stock to the thing acquired or the thing provided.

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

Note 2: The market value is to be used instead of the nominal value of the financial benefits to be provided under the financial arrangement.

- (5) If subsection (4) applies, you are taken to have provided, or received, as consideration for ceasing to have the *financial arrangement (or the part of the financial arrangement), *financial benefits whose value is equal to the market value of the financial arrangement (or that part of the financial arrangement) at the time when you ceased to have the financial arrangement.
- (6) If, but for this subsection:
 - (a) subsection (5) would apply to your ceasing to have a *financial arrangement; and
 - (b) subsection (1) or (4) would also apply to your ceasing to have the financial arrangement;subsection (5) applies to your ceasing to have the financial arrangement and subsection (1) or (4) does not.
- (7) Without limiting subsections (1) and (4), the thing provided, or the thing acquired, need not be a tangible thing and may take the form of services, conferring a right, incurring an obligation or extinguishing or varying a right or obligation.

Subdivision 250-F—Treatment of asset when Division ceases to apply to the asset

Table of sections

250-285	Treatment of asset after Division ceases to apply to the asset
250-290	Balancing adjustment under Subdivision 40-D in some circumstances

250-285 Treatment of asset after Division ceases to apply to the asset

- (1) For the purposes of Division 40, if:
 - (a) this Division applies to you and an asset; and
 - (b) the *arrangement period for the *tax preferred use of the asset ends at a particular time; and
 - (c) the asset would have had an *adjustable value at that time, for the purposes of Division 40, if this Division had never applied to the asset;

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

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the adjustable value of the asset, immediately after the end of the arrangement period, is taken to be equal to the amount worked out using the following method statement:

Method statement

- Step 1. Work out whether section 250-150 applies.
- Step 2. If section 250-150 does not apply, the amount is the *end value of the asset at the end of the arrangement period.
- Step 3. If section 250-150 does apply, the amount is worked out by:
- (a) multiplying the *end value of the asset at the end of the *arrangement period by the *disallowed capital percentage; and
 - (b) then multiplying the adjustable value of the asset at the end of the arrangement period (worked out under section 40-85) by 100% minus the disallowed capital percentage); and
 - (c) then adding the amount obtained under paragraph (a) and the amount obtained under paragraph (b).

- (2) If:
- (a) this Division applies to you and an asset; and
 - (b) the *arrangement period for the *tax preferred use of the asset ends; and
 - (c) a net amount is included in your assessable income in relation to the *financial benefits that are *subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);
- the *cost base, and the *reduced cost base, of the asset are each taken to be reduced at the end of the arrangement period by an amount equal to the difference between:

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

- (d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and
- (e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

(3) If:

- (a) this Division applies to you and an asset; and
- (b) the *arrangement period for the *tax preferred use of the asset ends; and
- (c) a net amount is allowed to you as a deduction in relation to the *financial benefits that are *subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

the *cost base, and the *reduced cost base, of the asset are each taken to be reduced at the end of the arrangement period by an amount equal to the sum of:

- (d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and
- (e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

(4) If:

- (a) this Division applies to you and an asset; and
- (b) the *arrangement period for the *tax preferred use of the asset ends; and
- (c) a net amount is included in your assessable income in relation to the *financial benefits that are *subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

then, in determining the profit or loss on the sale of the asset, a deduction equal to the difference between the following is taken to have been allowed for expenditure by you in connection with the asset:

- (d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and
- (e) the net amount referred to in paragraph (c).

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

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Note: See subsection (6) in relation to the application of paragraph (d).

(5) If:

- (a) this Division applies to you and an asset; and
- (b) the *arrangement period for the *tax preferred use of the asset ends; and
- (c) a net amount is allowed to you as a deduction in relation to the *financial benefits that are *subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

then, in determining the profit or loss on the sale of the asset, a deduction equal to the sum of the following is taken to have been allowed for expenditure by you in connection with the asset:

- (d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and
- (e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

- (6) In applying paragraphs (2)(d), (3)(d), (4)(d) and (5)(d), disregard subsection 250-160(2) (reasonable estimate of end value treated as financial benefit subject to deemed loan treatment).

250-290 Balancing adjustment under Subdivision 40-D in some circumstances

(1) This section applies if:

- (a) this Division applies to you and an asset; and
- (b) the *arrangement period for the *tax preferred use of the asset ends because a particular event happens; and
- (c) the event would have been a *balancing adjustment event for the asset for the purposes of Subdivision 40-D if this Division had not applied to you and the asset when the event happened.

(2) A balancing adjustment is made under Subdivision 40-D as if:

- (a) the event were a *balancing adjustment event for the asset; and

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

- (b) the *adjustable value of the asset, just before the event happened, were the adjustable value worked out under subsection 250-285(1); and
- (c) sections 40-290, 40-292 and 40-293 did not apply.

Subdivision 250-G—Objections against determinations and decisions by the Commissioner

Table of sections

250-295 Objections against determinations and decisions by the Commissioner

250-295 Objections against determinations and decisions by the Commissioner

- (1) This section applies to a determination by the Commissioner under section 250-45.
- (2) This section also applies to a decision by the Commissioner under subsection 250-150(5).
- (3) A person who is dissatisfied with a determination or decision to which this section applies may object against the determination or decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

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

Division 253—Financial claims scheme for account-holders with insolvent ADIs

Table of Subdivisions

253-A Tax treatment of entitlements under financial claims scheme

Subdivision 253-A—Tax treatment of entitlements under financial claims scheme

Guide to Subdivision 253-A

253-1 What this Subdivision is about

This Act applies to a payment of an entitlement under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* as if the payment were made by the ADI under the agreement for the account concerned.

Special rules prevent the arising and payment of such an entitlement from creating inappropriate capital gains or losses affecting assessable income.

Table of sections

Operative provisions

- | | |
|--------|--|
| 253-5 | Payment of entitlement under financial claims scheme treated as payment from ADI |
| 253-10 | Disposal of rights against ADI to APRA and meeting of financial claims scheme entitlement have no CGT effects |
| 253-15 | Cost base of financial claims scheme entitlement and any remaining part of account that gave rise to entitlement |

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

Operative provisions

253-5 Payment of entitlement under financial claims scheme treated as payment from ADI

- (1) This Act applies to you as if an amount paid to you, or applied for your benefit, to meet your entitlement under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* connected with an account with an *ADI had been paid to you by the ADI under the terms and conditions of the agreement for keeping the account.

Note: This section has effect subject to more detailed provisions about:

- (a) entitlements relating to retirement savings accounts (see section 306-25); and
 - (b) entitlements relating to farm management deposits (see Subdivision 393-C).
- (2) To avoid doubt, subsection (1) does not affect the operation of Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: Division 21 in Schedule 1 to the *Taxation Administration Act 1953* contains special provisions about how Part 2-5 in that Schedule operates in relation to the meeting of entitlements under Division 2AA of Part II of the *Banking Act 1959*.

253-10 Disposal of rights against ADI to APRA and meeting of financial claims scheme entitlement have no CGT effects

Disregard a *capital gain or *capital loss you make:

- (a) because of the operation of section 16AI of the *Banking Act 1959*; or
- (b) because your entitlement under Subdivision C of Division 2AA of Part II of that Act is met.

Note: Section 16AI of the *Banking Act 1959* reduces the right of an account-holder who has a protected account with a declared ADI to be paid an amount by the ADI, by the account-holder's entitlement under Subdivision C of Division 2AA of Part II of that Act to be paid an amount by APRA in connection with the account.

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

253-15 Cost base of financial claims scheme entitlement and any remaining part of account that gave rise to entitlement

- (1) This section applies if an entitlement arises under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* in connection with an account-holder's account with an *ADI.
- (2) The *cost base and *reduced cost base of the *CGT asset consisting of the entitlement are each the amount of the entitlement.
- (3) The *cost base of the *CGT asset representing the part (if any) of the account-holder's right to be paid an amount by the *ADI in connection with the account that remains after the reduction of that right by section 16AI of the *Banking Act 1959* (by the amount of the entitlement) is the difference (if any) between:
 - (a) the cost base of the right as it was immediately before the reduction; and
 - (b) the amount of the entitlement.The *reduced cost base is worked out similarly.
- (4) This section has effect despite:
 - (a) Division 110 (Cost base and reduced cost base); and
 - (b) subsections 112-30(2), (3), (4) and (5) (which are about apportioning a *cost base if a *CGT event happens to only part of a *CGT asset).

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

Part 3-25—Particular kinds of trusts

Division 275—Australian managed investment trusts

Table of Subdivisions

	Guide to Division 275
275-A	Extended concept of managed investment trust for the purposes of this Division
275-B	Choice for capital treatment of managed investment trust gains and losses
275-C	Carried interests in managed investment trusts

Guide to Division 275

275-1 What this Division is about

The trustee of certain Australian managed investment trusts may make a choice that certain assets of the trust be dealt with under CGT rules. If the trustee does not make such a choice, those assets will be treated as revenue assets (see Subdivision 275-B).

Gains and profits from carried interests held in entities that are or were Australian managed investment trusts are included in the assessable income of the holder of the interests. The holder is entitled to a deduction from losses from such interests (see Subdivision 275-C).

Subdivision 275-A—Extended concept of managed investment trust for the purposes of this Division

Table of sections

275-5	Treatment of trading trusts etc.
275-10	Trust with investment management activities outside Australia
275-15	Every member of trust is a managed investment trust
275-20	No fund payment made in relation to the income year
275-30	Temporary circumstances outside the control of the trustee

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

Section 275-5

275-35 Application of subsections 102L(15) and 102T(16)

275-5 Treatment of trading trusts etc.

For the purposes of this Division, treat a trust in the same way as a *managed investment trust in relation to an income year if it would be a managed investment trust in relation to the income year if paragraph 12-400(2)(a) in Schedule 1 to the *Taxation Administration Act 1953* were disregarded.

Note: If a trading trust is treated as a managed investment trust for the purposes of this Division for an income year, sections 275-100 (CGT to be primary code for calculating MIT gains or losses) and 275-120 (revenue account treatment) will not apply to the trust for the year (see subsections 275-100(1), 275-110(1) and 275-120(1)).

275-10 Trust with investment management activities outside Australia

For the purposes of this Division, treat a trust in the same way as a *managed investment trust in relation to an income year if it would be a managed investment trust in relation to the income year if paragraph 12-400(1)(c) in Schedule 1 to the *Taxation Administration Act 1953* were disregarded.

275-15 Every member of trust is a managed investment trust

- (1) For the purposes of this Division, treat a trust in the same way as a *managed investment trust in relation to an income year if:
- (a) the condition in paragraph 12-400(1)(a) in Schedule 1 to the *Taxation Administration Act 1953* is satisfied; and
 - (b) either:
 - (i) the only *member of the trust is an entity covered by subsection 12-402(3) of that Schedule (other than an entity mentioned in paragraph (e) of that subsection); or
 - (ii) the only member of the trust is an entity treated in the same way as a managed investment trust in relation to the income year because of this Subdivision; and
 - (c) the trust satisfies the licensing requirements in section 12-403 of that Schedule in relation to the income year.

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

- (2) A requirement in paragraph (1)(a) is satisfied if, and only if, it is satisfied:
- (a) at the time the trustee of the trust makes the first *fund payment in relation to the income year; or
 - (b) if the trustee does not make such a payment in relation to the income year—at both the start and the end of the income year.

275-20 No fund payment made in relation to the income year

For the purposes of this Division, treat a trust in the same way as a *managed investment trust in relation to an income year if:

- (a) the trustee of the trust does not make a *fund payment in relation to the income year; and
- (b) the trust would be a managed investment trust in relation to the income year (or a trust that would be treated in the same way as a managed investment trust in relation to the income year through the operation of this Subdivision) if the trustee of the trust had made the first fund payment in relation to the income year on the first day of the income year; and
- (c) the trust would be a managed investment trust in relation to the income year (or a trust that would be treated in the same way as a managed investment trust in relation to the income year through the operation of this Subdivision) if the trustee of the trust had made the first fund payment in relation to the income year on the last day of the income year.

275-30 Temporary circumstances outside the control of the trustee

If, apart from a particular circumstance, a trust would be treated under this Subdivision in the same way as a *managed investment trust in relation to an income year, treat the trust in the same way as a managed investment trust in relation to the income year for the purposes of this Division if:

- (a) the circumstance is temporary; and
- (b) the circumstance arose outside the control of the trustee of the trust; and

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

Section 275-35

- (c) it is fair and reasonable to treat the trust as a managed investment trust in relation to the income year, having regard to the following matters:
 - (i) the matters in paragraphs (a) and (b);
 - (ii) the nature of the circumstance;
 - (iii) the actions (if any) taken by the trustee of the trust to address or remove the circumstance, and the speed with which such actions are taken;
 - (iv) the extent to which treating the trust as a managed investment trust in relation to the income year would increase or reduce the amount of tax otherwise payable by the trustee, the beneficiaries of the trust or any other entity;
 - (v) any other relevant matter.

275-35 Application of subsections 102L(15) and 102T(16)

To avoid doubt, subsections 102L(15) and 102T(16) of the *Income Tax Assessment Act 1936* do not apply for the purposes of this Division.

Subdivision 275-B—Choice for capital treatment of managed investment trust gains and losses

Table of sections

275-100	Consequences of making choice—CGT to be primary code for calculating MIT gains or losses
275-105	Covered assets
275-110	MIT not to be corporate unit trust or trading trust
275-115	MIT CGT choices
275-120	Consequences of not making choice—revenue account treatment

275-100 Consequences of making choice—CGT to be primary code for calculating MIT gains or losses

- (1) The modifications in subsection (2) apply if:
 - (a) a *CGT event happens at a time involving a *CGT asset; and

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

- (b) the CGT asset is owned at that time by an entity that is a *managed investment trust in relation to the income year in which the time occurs; and
 - (c) the CGT event happens because the managed investment trust *disposes of, ceases to own or otherwise realises the asset; and
 - (d) the asset is covered by section 275-105; and
 - (e) the entity meets the requirement in section 275-110 at the time; and
 - (f) a choice under section 275-115 covering the entity is in force for the income year in which the time occurs.
- (2) These provisions do not apply to the *CGT event:
- (a) sections 6-5 (about *ordinary income), 8-1 (about amounts you can deduct), and 15-15 and 25-40 (about profit-making undertakings or plans);
 - (b) sections 25A and 52 of the *Income Tax Assessment Act 1936* (about profit-making undertakings or schemes);
 - (c) section 118-20 (about reducing capital gains if amount otherwise assessable);
 - (d) Division 70 and section 118-25 (about trading stock).

General exceptions

- (3) The provisions referred to in subsection (2) can apply to the *CGT event if a *capital gain or *capital loss from the event is disregarded because of one of the provisions in this table:

Where gain or loss disregarded because of CGT provision

Item	Provision	Brief description
1	Paragraph 104-15(4)(a)	Title in a CGT asset does not pass when a hire purchase or similar agreement ends
2	Section 118-13	Shares in a PDF
3	Section 118-60	Certain gifts

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

Trading stock and profit-making undertakings or plans involving land etc.

- (4) The provisions referred to in subsection (2) can also apply to the *CGT event if:
- (a) where the *CGT asset is land (including an interest in land), or a right or option to *acquire or *dispose of land (including an interest in land):
 - (i) the CGT asset is *trading stock; or
 - (ii) the circumstances existing at the time of the event would, disregarding this Subdivision, give rise to an amount being included in the assessable income of the entity under section 15-15 or to a deduction for the entity under section 25-40 (about profit-making undertakings or plans); or
 - (b) where paragraph (a) does not apply:
 - (i) the *managed investment trust acquired the CGT asset in an income year for which the choice mentioned in paragraph (1)(f) was not in force; and
 - (ii) the CGT asset was treated as trading stock in the managed investment trust's financial report for the most recent income year ending before the start of the income year in which that choice first came into force; and
 - (iii) the CGT asset was treated as trading stock in the *income tax return for the managed investment trust for the most recent income year ending before the start of the income year in which that choice first came into force; and
 - (iv) the CGT asset was treated as trading stock in the managed investment trust's financial report for the most recent income year ending before the time of the event; and
 - (v) the CGT asset was treated as trading stock in the income tax return for the managed investment trust for the most recent income year ending before the time of the event.

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

Treatment of outgoings to acquire trading stock

- (5) The modifications in subsection (6) apply if:
- (a) an entity that is a *managed investment trust in relation to the income year *acquires a *CGT asset at a time in that income year; and
 - (b) the CGT asset is an item of *trading stock; and
 - (c) the CGT asset is *not* land (including an interest in land), or a right or option to acquire or *dispose of land (including an interest in land); and
 - (d) the entity incurs an outgoing in connection with acquiring the asset; and
 - (e) the asset is covered by section 275-105; and
 - (f) the entity meets the requirement in section 275-110 at the time; and
 - (g) a choice under section 275-115 covering the entity is in force for the income year in which the time occurs.
- (6) The modifications are as follows:
- (a) section 8-1 (about amounts you can deduct) does not apply to the *acquisition;
 - (b) Division 70 (about trading stock) does not apply in relation to the asset in respect of:
 - (i) the income year in which the time occurs; and
 - (ii) any later income year in relation to which the entity is a *managed investment trust and throughout which the entity meets the requirement in section 275-110.

275-105 Covered assets

- (1) An asset is covered by this section if it is any of the following:
- (a) a *share in a company (including a share in a *foreign hybrid company);
 - (b) a *non-share equity interest in a company;
 - (c) a unit in a unit trust;
 - (d) land (including an interest in land);
 - (e) a right or option to *acquire or *dispose of an asset of a kind mentioned in paragraph (a), (b), (c) or (d).

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

Section 275-110

- (2) However, the asset is *not* covered by this section if it is any of the following:
- (a) a *Division 230 financial arrangement;
 - (b) a *debt interest.

275-110 MIT not to be corporate unit trust or trading trust

- (1) An entity that is a trust meets the requirement in this section at a time if the entity is *not* any of the following at that time:
- (a) a corporate unit trust (within the meaning of section 102J of the *Income Tax Assessment Act 1936*) in relation to the income year in which the time occurs;
 - (b) a trading trust for the purposes of Division 6C of Part III of that Act in relation to that income year.
- (2) If, apart from a particular circumstance, a trust would meet the requirement in paragraph (1)(b) at a time, the trust also meets the requirement in this section at a time if:
- (a) the circumstance is temporary; and
 - (b) the circumstance arose outside the control of the trustee of the trust; and
 - (c) the trustee of the trust is *not* liable to pay income tax on the net income of the trust under section 102S of the *Income Tax Assessment Act 1936* for the income year in which the time occurs; and
 - (d) it is fair and reasonable to treat the trust as meeting the requirement in this section at that time, having regard to the following matters:
 - (i) the matters in paragraphs (a), (b) and (c);
 - (ii) the nature of the circumstance;
 - (iii) the actions (if any) taken by the trustee of the trust to address or remove the circumstance, and the speed with which such actions are taken;
 - (iv) the extent to which treating the trust as meeting the requirement in this section at that time would increase or reduce the amount of tax otherwise payable by the trustee, the beneficiaries of the trust or any other entity;
 - (v) any other relevant matter.

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

275-115 MIT CGT choices

- (1) The trustee of an entity that is a *managed investment trust may make a choice under this section that covers the managed investment trust.
- (2) The choice must be made in the *approved form.
- (3) The choice can be made only:
 - (a) if the entity became a *managed investment trust in the 2009-10 income year or a later income year (whether or not the entity existed before it became a managed investment trust)—on or before the latest of the following days:
 - (i) the day it is required to lodge its *income tax return for the income year in which it became a managed investment trust;
 - (ii) if the Commissioner allows a later day for the managed investment trust—that later day; or
 - (b) otherwise—on or before the latest of the following days:
 - (i) the last day in the 3 month period starting on the day on which this section commences;
 - (ii) the last day of the 2009-10 income year;
 - (iii) if the Commissioner allows a later day for the managed investment trust—that later day.
- (4) The choice, once made, cannot be revoked.
- (5) The choice is in force:
 - (a) in the circumstances mentioned in paragraph (3)(a)—for the income year in which the entity became a *managed investment trust (whether or not the entity existed before it became a managed investment trust) and later income years; or
 - (b) in the circumstances mentioned in paragraph (3)(b)—for the 2008-09 income year and later income years.

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

275-120 Consequences of not making choice—revenue account treatment

- (1) This section applies if:
- (a) the requirements in subsection 275-100(1) are met in relation to a *CGT asset held by a *managed investment trust, apart from the requirement in paragraph 275-100(1)(f); and
 - (b) the CGT asset is not:
 - (i) land (including an interest in land); or
 - (ii) a right or option to *acquire or *dispose of land (including an interest in land); and
 - (c) the managed investment trust disposes of, ceases to own or otherwise realises the asset; and
 - (d) disregarding this section:
 - (i) the net proceeds (if any) from the disposal, cessation or realisation would not be reflected in an amount being included in the assessable income of the managed investment trust (other than under Part 3-1 or 3-3); and
 - (ii) the gain or profit (if any) on the disposal, cessation or realisation would not be reflected in an amount being included in the assessable income of the managed investment trust (other than under Part 3-1 or 3-3); and
 - (iii) the loss (if any) on the disposal, cessation or realisation would not be reflected in an amount being deductible by the managed investment trust.
- (2) For the purposes of this Act, treat the disposal, cessation of ownership of or realisation of the asset in the same way as the disposal, cessation of ownership of or realisation of a *revenue asset.

Subdivision 275-C—Carried interests in managed investment trusts

Table of sections

275-200	Gains and losses etc. from carried interests in managed investment trusts reflected in assessable income or deduction
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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

275-200 Gains and losses etc. from carried interests in managed investment trusts reflected in assessable income or deduction

- (1) This section applies if:
- (a) you hold a *CGT asset in an income year that carries an entitlement to a distribution from an entity; and
 - (b) the entitlement to such a distribution is contingent upon the attainment of profits by the entity; and
 - (c) the entity satisfies any of these requirements:
 - (i) it is a *managed investment trust in relation to the income year;
 - (ii) it was a managed investment trust in relation to a previous income year; and
 - (d) you acquired the asset because of services you or your *associate provided, or will provide, to the entity; and
 - (e) you or your associate provided, or will provide, those services:
 - (i) as a manager of the entity; or
 - (ii) as an associate of a manager of the entity; or
 - (iii) as an employee of a manager of the entity; or
 - (iv) as an associate of an employee of a manager of the entity; and
 - (f) any of the following apply:
 - (i) you become entitled in the income year to such a distribution (regardless of whether the distribution is made immediately, or is to be made in the future);
 - (ii) a *CGT event happens in relation to the asset in the income year.
- (2) Include in your assessable income for the income year:
- (a) the amount of the distribution (except to the extent that it represents a return of capital that you or your associate contributed in order for you to *acquire the asset); or
 - (b) the amount of your gain or profit (if any) on the *CGT event.

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

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- (3) Subsection (2) does not apply to the extent that the amount is included in your assessable income as:
 - (a) *ordinary income under section 6-5; or
 - (b) *statutory income under a section of this Act, other than a provision in Part 3-1 or 3-3.
- (4) An amount to which subsection (2) applies is taken, for the purposes of the *income tax laws, to have a source in Australia. For the purposes of this subsection, disregard subsection (3).
- (5) You are entitled to a deduction for the income year for the amount of your loss (if any) on the *CGT event.
- (6) Subsection (5) does not apply to the extent that you can deduct the amount under another provision of this Act.
- (7) Subdivision 115-C does not apply to the amount of a distribution mentioned in subparagraph (1)(f)(i) if:
 - (a) that amount is included in your assessable income under subsection (2); or
 - (b) an amount referable to that amount is included in your assessable income under Division 6 of Part III of the *Income Tax Assessment Act 1936*.

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

Part 3-30—Superannuation

Division 280—Guide to the superannuation provisions

Table of sections

- 280-1 Effect of this Division
- 280-5 Overview

Contributions phase

- 280-10 Contributions phase—deductibility
- 280-15 Contributions phase—limits on superannuation tax concessions

Investment phase

- 280-20 Investment phase

Benefits phase

- 280-25 Benefits phase—different types of superannuation benefit
- 280-30 Benefits phase—taxation varies with age of recipient and type of benefit
- 280-35 Benefits phase—roll-overs

The regulatory scheme outside this Act

- 280-40 Other relevant legislative schemes

280-1 Effect of this Division

- (1) This Division is a *Guide.
- (2) Tax concessions in this Part are intended to encourage Australians to save in order to make provision for their retirement, recognising that superannuation investments, and the income from them, are quarantined for retirement.

280-5 Overview

- (1) There are 3 phases in the tax treatment of superannuation, as follows:
 - (a) the contributions phase;
 - (b) the investment phase;

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

- (c) the benefits phase.
- (2) In the contributions phase, contributions are made to a superannuation plan in respect of a member of the plan.
 - (3) In the investment phase, these contributions are invested by the superannuation provider.
 - (4) In the benefits phase, these contributions, plus earnings from investing them, are usually paid as benefits to the member when he or she retires after reaching preservation age. In the event of death, the benefits are usually paid to the member's dependants.
 - (5) There is also a regulatory scheme outside this Act that is relevant to the taxation treatment of superannuation. For example, other Acts set out prudential and operating standards for superannuation providers.

Contributions phase

280-10 Contributions phase—deductibility

Contributions that can be deducted

- (1) Employers can usually deduct contributions they make in respect of their employees. Individuals can usually deduct contributions they make in respect of themselves if less than 10% of their total assessable income (plus reportable fringe benefits) for the income year is attributable to employment or similar activities.

Other contributions cannot be deducted

- (2) Other contributions cannot be deducted. These include personal contributions made by individuals whose employment income is 10% or more of their total income, and contributions made by others in respect of them (such as contributions by a spouse or family member, or Government co-contributions).

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

280-15 Contributions phase—limits on superannuation tax concessions

- (1) There is a limit to contributions that can be made in respect of an individual in a year that receive favourable tax treatment. This limit takes the form of a tax on excessive contributions, and neutralises the favourable tax treatment arising from the excessive contributions.
- (2) If concessional contributions exceed an indexed cap, the individual concerned is taxed on the excess. This tax liability can be met by releasing money from his or her superannuation interests.
- (3) If non-concessional contributions (including any excess for the purposes of the first cap) exceed a second indexed cap, the individual is taxed on the excess. The second cap is equivalent to three times the first cap. The payment of this tax liability must be accompanied by releasing money equivalent to the liability from his or her superannuation interests.

Investment phase

280-20 Investment phase

- (1) Contributions that can be deducted are assessable income of the superannuation provider. Contributions that cannot be deducted are not assessable income of the superannuation provider. (There are some exceptions.)
- (2) Earnings on the investment of amounts in a superannuation plan are assessable income of the superannuation provider.
- (3) The superannuation provider's taxable income is generally taxed at the concessional rate of 15%.
- (4) However, superannuation providers pay no tax on earnings from the assets that support the payment of benefits in the form of income streams, once the income streams have commenced.

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

Benefits phase

280-25 Benefits phase—different types of superannuation benefit

Superannuation benefits can be drawn down as lump sums, income streams (such as pensions or annuities), or combinations of both. Different tax treatment may apply depending on whether a lump sum or income stream is paid.

280-30 Benefits phase—taxation varies with age of recipient and type of benefit

- (1) The taxation of superannuation benefits depends primarily on the age of the member.
- (2) If the member is aged 60 or over, superannuation benefits (both lump sums and income streams) are tax free if the benefits have already been subject to tax in the fund (that is, where the benefits comprise a taxed element). This covers the great majority of superannuation members.
- (3) Where a superannuation benefit contains an amount that has not been subject to tax in the fund (an untaxed element), this element is subject to tax for those aged 60 or over, though at concessional rates. This is relevant generally to those people (for example, public servants), who are members of a superannuation fund established by the Australian Government or a state government.
- (4) If the member is less than 60, superannuation benefits may receive concessional taxation treatment, though the treatment is less concessional than for those aged 60 and over.
- (5) Superannuation benefits may also include a “tax free component”; this component of the benefit is always paid tax free.
- (6) Additional tax concessions may apply when superannuation benefits are paid after a member’s death.

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

280-35 Benefits phase—roll-overs

A member can “roll over” their superannuation benefits from one complying superannuation plan to another, or between different interests in the same plan. This is usually done to keep the benefits invested in the superannuation system, or to convert a lump sum to a superannuation income stream. No tax is generally payable until the benefits are finally drawn down.

The regulatory scheme outside this Act

280-40 Other relevant legislative schemes

- (1) The *Superannuation Industry (Supervision) Act 1993* and the *Retirement Savings Accounts Act 1997* regulate the prudential and operating standards for superannuation providers. Concessional tax treatment is generally available only if providers comply with these standards.
- (2) Other legislative schemes relevant to superannuation include the following:
 - (a) the *Superannuation Guarantee (Administration) Act 1992*, which requires that employers provide a minimum level of superannuation contributions for each of their eligible employees;
 - (b) the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*, which provides for Government co-contributions to low income earners’ superannuation;
 - (c) the *Small Superannuation Accounts Act 1995*, which provides a facility to accept payments of superannuation guarantee shortfalls;
 - (d) the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, which provides for the payment of unclaimed superannuation money, and the maintenance of a register of lost members.

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

Division 285—General concepts relating to superannuation

285-5 Transfers of property

- (1) Any of the following payments covered by this Part can be or include a transfer of property:
 - (a) a contribution;
 - (b) a *superannuation lump sum.
- (2) The amount of the payment is or includes the *market value of the property.
- (3) The *market value is reduced by the value of any consideration given for the transfer of the property.

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

Division 290—Contributions to superannuation funds

Table of Subdivisions

	Guide to Division 290
290-A	General rules
290-B	Deduction of employer contributions and other employment-connected contributions
290-C	Deducting personal contributions
290-D	Tax offsets for spouse contributions

Guide to Division 290

290-1 What this Division is about

This Division sets out the rules for deductions and tax offsets for superannuation contributions.

Subdivision 290-A—General rules

Table of sections

290-5	Non-application to roll-over superannuation benefits etc.
290-10	No deductions other than under this Division

290-5 Non-application to roll-over superannuation benefits etc.

This Division does not apply to a contribution that is any of the following:

- (a) a *roll-over superannuation benefit;
- (b) a *superannuation lump sum that is paid from a *foreign superannuation fund;
- (c) an amount transferred to a *complying superannuation fund or an *RSA from a scheme for the payment of benefits in the nature of superannuation upon retirement or death that:
 - (i) is not, and never has been, an *Australian superannuation fund or a *foreign superannuation fund;and

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

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- (ii) was not established in Australia; and
- (iii) is not centrally managed or controlled in Australia;
- (d) a payment from an *FHSA required under the *First Home Saver Accounts Act 2008*;
- (e) a *Government FHSA contribution.

290-10 No deductions other than under this Division

- (1) You cannot deduct under this Act an amount you pay as a contribution to a *complying superannuation fund or *RSA, except as provided by this Division.
- (2) You cannot deduct under this Act an amount you pay as a contribution to a *non-complying superannuation fund, except as provided by this Division.

Note: Under Subdivision 290-B (Deduction of employer contributions and other employment-connected contributions), you may be able to deduct contributions you make to a non-complying fund that you believe to be a complying fund.

Subdivision 290-B—Deduction of employer contributions and other employment-connected contributions

Table of sections

Deducting employer contributions

- 290-60 Employer contributions deductible
- 290-65 Application to employees etc.

Conditions for deducting an employer contribution

- 290-70 Employment activity conditions
- 290-75 Complying fund conditions
- 290-80 Age related conditions

Other employment-connected deductions

- 290-85 Contributions for former employees etc.
- 290-90 Controlling interest deductions
- 290-95 Amounts offset against superannuation guarantee charge

Returned contributions

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

290-100 Returned contributions assessable

Deducting employer contributions

290-60 Employer contributions deductible

- (1) You can deduct a contribution you make to a *superannuation fund, or an *RSA, for the purpose of providing *superannuation benefits for another person who is your employee when the contribution is made (regardless whether the benefits are payable to a *SIS dependant of the employee if the employee dies before or after becoming entitled to receive the benefits).

Note: Other provisions of this Act and the *Income Tax Assessment Act 1936* may reduce, increase or deny the deduction in certain circumstances. For example, see sections 85-25 and 86-75 of this Act.

- (2) However, the conditions in sections 290-70, 290-75 and 290-80 must also be satisfied for you to deduct the contribution.
- (3) You can deduct the contribution only for the income year in which you made the contribution.
- (4) You cannot deduct the contribution if it is an amount paid by you, as mentioned in regulations under the *Family Law Act 1975*, to a regulated superannuation fund (within the meaning of that Act), or to an *RSA, to be held for the benefit of your *non-member spouse in satisfaction of his or her entitlement in respect of the *superannuation interest concerned.

290-65 Application to employees etc.

- (1) At a time when an individual is an employee of an entity within the expanded meaning of **employee** given by section 12 of the *Superannuation Guarantee (Administration) Act 1992*, this Subdivision applies as if the individual were an employee of the entity.
- (2) For the purposes of this Subdivision:
 - (a) in relation to a contribution by a partnership in respect of an employee of the partnership—treat the employee as an employee of the partnership; and

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

- (b) in relation to a contribution by a partner in a partnership in respect of an employee of the partnership—treat the employee as an employee of the partner.

Conditions for deducting an employer contribution

290-70 Employment activity conditions

To deduct the contribution, the employee must be:

- (aa) your employee (within the expanded meaning of employee given by section 12 of the *Superannuation Guarantee (Administration) Act 1992*); or
- (a) engaged in producing your assessable income; or
- (b) an Australian resident who is engaged in your business.

290-75 Complying fund conditions

- (1) If the contribution was made to a *superannuation fund, at least one of these conditions must be satisfied:
 - (a) the fund was a *complying superannuation fund for the income year of the fund in which you made the contribution;
 - (b) at the time you made the contribution, you had reasonable grounds to believe that the fund was a complying superannuation fund for that income year;
 - (c) at or before the time you made the contribution, you obtained a written statement (given by or on behalf of the trustee of the fund) that the fund:
 - (i) was a resident regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); and
 - (ii) was not subject to a direction under section 63 of that Act (which prevents a fund from accepting employer contributions).
- (2) However, the condition in paragraph (1)(b) or (c) cannot be satisfied if, when the contribution was made:
 - (a) you were:
 - (i) the trustee or the manager of the fund; or

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

- (ii) an *associate of the trustee or the manager of the fund;
and
- (b) you had reasonable grounds to believe that:
 - (i) the fund was not a resident regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); or
 - (ii) the fund was operating in contravention of a regulatory provision (within the meaning of section 38A of that Act).
- (3) For the purposes of subparagraph (2)(b)(ii), a contravention of the *Superannuation Industry (Supervision) Act 1993* or regulations made under it is to be ignored unless the contravention is:
 - (a) an offence; or
 - (b) a contravention of a civil penalty provision of that Act or those regulations.
- (4) For the purposes of subparagraph (2)(b)(ii), it is sufficient if a contravention is established on the balance of probabilities.

290-80 Age related conditions

- (1) To deduct the contribution, either:
 - (a) you must have made the contribution on or before the day that is 28 days after the end of the month in which the employee turns 75; or
 - (b) you must have been required to make the contribution by an industrial award, determination or notional agreement preserving State awards (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*) that is in force under an *Australian law.
- (2) If only paragraph (1)(b) applies, you can deduct only the amount of the contribution that is required by the industrial award, determination or notional agreement preserving State awards.

Note: An industrial agreement, such as an enterprise agreement within the meaning of the *Fair Work Act 2009*, or a similar agreement made under a State law, is not an award or determination.

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

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- (3) For the purposes of this section, a reference to a determination does not include a reference to a workplace determination made under the *Fair Work Act 2009* or the *Workplace Relations Act 1996*.

Other employment-connected deductions

290-85 Contributions for former employees etc.

- (1) Section 290-60 applies as modified by this section if a contribution you make in respect of another person:
- (a) reduces your charge percentage under sections 22 or 23 of the *Superannuation Guarantee (Administration) Act 1992* in respect of the other person because of section 15B of that Act; or
 - (b) is a one-off payment in lieu of salary or wages that relate to a period of service during which the other person was your employee.
- (1AA) Section 290-60 also applies as modified by this section if:
- (a) a contribution you make in respect of another person relates to a period of service during which the other person was your employee; and
 - (b) you make the contribution within 4 months after the person stops being your employee; and
 - (c) you would have been entitled to a deduction in relation to the contribution if:
 - (i) you had made it at a time when the other person was your employee; and
 - (ii) the law that applied to your entitlement to the deduction at that time had been the same as it was at the time you actually made the contribution.
- (1AB) Section 290-60 also applies as modified by this section if:
- (a) a contribution you make in respect of another person relates to a period of service during which the other person was your employee; and
 - (b) the contribution relates to a *defined benefit interest of the other person; and

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

- (c) you are at *arm's length with the other person in relation to the contribution; and
 - (d) you obtain an *actuary's certificate that:
 - (i) complies with the requirements (if any) specified by the regulations for the purposes of this paragraph; and
 - (ii) is to the effect that the contribution does not exceed the amount required by the relevant *superannuation fund to meet the fund's liabilities in connection with defined benefit interests; and
 - (e) you would have been entitled to a deduction in relation to the contribution if:
 - (i) you had made it at a time when the other person was your employee; and
 - (ii) the law that applied to your entitlement to the deduction at that time had been the same as it was at the time you actually made the contribution.
- (1A) Section 290-60 also applies as modified by this section if:
- (a) you make a contribution in respect of another person at a time; and
 - (b) the other person had been employed by a company or other entity before that time; and
 - (c) section 290-90 would apply in relation to the contribution if the other person were employed by the company or entity at that time; and
 - (d) the contribution:
 - (i) reduces the company's or entity's charge percentage under section 22 or 23 of the *Superannuation Guarantee (Administration) Act 1992* in respect of the other person because of section 15B of that Act; or
 - (ii) is a one-off payment in lieu of salary or wages that relate to a period of service during which the other person was the company's or entity's employee; or
 - (iii) if subsection (1B) or (1C) applies—relates to a period of service during which the other person was the company's or entity's employee.
- (1B) This subsection applies if:

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

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- (a) you make the contribution within 4 months after the person stops being the company's or entity's employee; and
 - (b) you would have been entitled to a deduction in relation to the contribution if you had made it while the other person was the company's or entity's employee.
- (1C) This subsection applies if:
- (a) the contribution relates to a *defined benefit interest of the other person; and
 - (b) you and the company are at *arm's length with the other person in relation to the contribution; and
 - (c) you obtain an *actuary's certificate that:
 - (i) complies with the requirements (if any) specified by the regulations for the purposes of this paragraph; and
 - (ii) is to the effect that the contribution does not exceed the amount required by the relevant *superannuation fund or *RSA to meet the fund's or RSA's liabilities in connection with defined benefit interests; and
 - (d) you would have been entitled to a deduction in respect of the contribution if you had made it while the other person was the company's or entity's employee.
- (2) Treat the other person as your employee for the purposes of subsection 290-60(1).
- (3) Despite subsection 290-60(2):
- (a) if subsection (1) or (1AA) applies—the condition in section 290-70 must be satisfied at the most recent time when the other person was your employee (apart from subsection (2) of this section); or
 - (b) if subsection (1A) applies:
 - (i) the condition in section 290-70 need not be satisfied; and
 - (ii) instead, the condition in subsection 290-90(4) must be satisfied at the most recent time when the other person was the company's or entity's employee.

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

290-90 Controlling interest deductions

- (1) Section 290-60 applies as modified by this section if you make a contribution in respect of another person at a time, and at that time:
 - (a) the other person is an employee of a company in which you have a controlling interest; or
 - (b) you are connected to the other person in the circumstances set out in subsection (5); or
 - (c) you are a company connected to the other person in the circumstances described in subsection (6).

- (2) Treat the other person as your employee at that time for the purposes of subsection 290-60(1).

Note 1: A deduction may be denied by section 85-25 if the employee is your associate.

Note 2: Section 86-60 (read together with section 86-75) limits the extent to which superannuation contributions by personal service entities are deductions.

- (3) Despite subsection 290-60(2), for you to deduct the contribution the condition in subsection (4) needs to be satisfied instead of the condition in section 290-70.

- (4) The other person must be:

- (aa) an employee (within the expanded meaning of employee given by section 12 of the *Superannuation Guarantee (Administration) Act 1992*) of the other person's employer; or
- (a) engaged in producing the assessable income of the other person's employer; or
- (b) an Australian resident engaged in the business of the other person's employer.

- (5) For the purposes of paragraph (1)(b), the circumstances are:

- (a) you are the beneficial owner of shares in a company of which the other person is an employee, but you do not have a controlling interest in the company; and
- (b) you are at *arm's length with the other person in relation to the contribution; and
- (c) neither the other person, nor a *relative of the other person:

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

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- (i) has set apart an amount as a fund, or has made a contribution to a fund, for the purpose of providing *superannuation benefits for you or a relative of yours; or
- (ii) has made an *arrangement under which the other person or relative will or may do so.

Company controlling interest deductions

- (6) For the purposes of paragraph (1)(c), the circumstances are:
 - (a) the other person is an employee of an entity that has a controlling interest in the company; or
 - (b) an entity that has a controlling interest in the company also has a controlling interest in a company of which the other person is an employee.

290-95 Amounts offset against superannuation guarantee charge

You cannot deduct a contribution under this Act if you elect under subsection 23A(1) of the *Superannuation Guarantee (Administration) Act 1992* that the contribution be offset against your liability to pay superannuation guarantee charge.

Note: You cannot deduct a charge imposed by the *Superannuation Guarantee Charge Act 1992*: see section 26-95.

Returned contributions

290-100 Returned contributions assessable

- (1) Your assessable income includes a payment, or the value of a benefit, you receive in the income year so far as it reasonably represents the direct or indirect return of:
 - (a) a contribution for which you or another entity have deducted or can deduct an amount for any income year; or
 - (b) earnings on a contribution of that kind.

Note: An example of an indirect return of a contribution is if the fund to which it was made transfers to another fund assets that include the contribution, and the other fund returns the contribution to the person who made it.

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

- (2) Subsection (1) does not apply if you receive the payment, or the value of the benefit, as a *superannuation benefit.

Subdivision 290-C—Deducting personal contributions

Table of sections

290-150 Personal contributions deductible

Conditions for deducting a personal contribution

290-155 Complying superannuation fund condition
290-160 Maximum earnings as employee condition
290-165 Age-related conditions
290-170 Notice of intent to deduct conditions
290-175 Deduction limited by amount specified in notice
290-180 Notice may be varied but not revoked or withdrawn

290-150 Personal contributions deductible

- (1) You can deduct a contribution you make to a *superannuation fund, or an *RSA, for the purpose of providing *superannuation benefits for yourself (regardless whether the benefits are payable to your *SIS dependants if you die before or after becoming entitled to receive the benefits).

Note: Other provisions of this Act and the *Income Tax Assessment Act 1936* may reduce, increase or deny the deduction in certain circumstances. For example, see section 26-55 of this Act.

- (2) However, the conditions in sections 290-155, 290-160 (if applicable), 290-165 and 290-170 must also be satisfied for you to deduct the contribution.
- (3) You can deduct the contribution only for the income year in which you made the contribution.
- (4) If the contribution is attributable in whole or part to a *capital gain from a *CGT event:
- (a) if you disregarded all or part of the capital gain from the CGT event under subsection 152-305(1) and you were under 55 just before you made the choice mentioned in that

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

subsection—you cannot deduct the contribution to the extent that it is attributable to the capital gain; or

- (b) if a company or trust disregarded all or part of the capital gain from the CGT event under subsection 152-305(2) and you were under 55 just before the contribution was made—you cannot deduct the contribution to the extent that it is attributable to the capital gain.

Conditions for deducting a personal contribution

290-155 Complying superannuation fund condition

If the contribution is made to a *superannuation fund, it must be a *complying superannuation fund for the income year of the fund in which you made the contribution.

290-160 Maximum earnings as employee condition

- (1) This section applies if:
 - (a) in the income year in which you make the contribution, you engage in any of these activities:
 - (i) holding an office or appointment;
 - (ii) performing functions or duties;
 - (iii) engaging in work;
 - (iv) doing acts or things; and
 - (b) the activities result in you being treated as an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992* (assuming that subsection 12(11) of that Act had not been enacted).
- (2) To deduct the contribution, less than 10% of the total of the following must be attributable to the activities:
 - (a) your assessable income for the income year;
 - (b) your *reportable fringe benefits total for the income year;
 - (c) the total of your *reportable employer superannuation contributions for the income year.
- (3) For the purposes of paragraph (2)(a) of this section, disregard any *excess concessional contributions included in your assessable

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

income under paragraph 292-467(2)(a) for the *financial year corresponding to the income year.

290-165 Age-related conditions

- (1) If you were under the age of 18 at the end of the income year in which you made the contribution, you must have *derived income in the income year:
 - (a) from the carrying on of a *business; or
 - (b) attributable to activities covered by subsection 290-160(1).
- (2) In any other case, you must have made the contribution on or before the day that is 28 days after the end of the month in which you turn 75.

290-170 Notice of intent to deduct conditions

Deductibility of contributions

- (1) To deduct the contribution, or a part of the contribution:
 - (a) you must give to the trustee of the fund or the *RSA provider a valid notice, in the *approved form, of your intention to claim the deduction; and
 - (b) the notice must be given before:
 - (i) if you have lodged your *income tax return for the income year in which the contribution was made on a day before the end of the next income year—the end of that day; or
 - (ii) otherwise—the end of the next income year; and
 - (c) the trustee or provider must have given you an acknowledgment of receipt of the notice.

Validity of notices

- (2) The notice is not valid if at least one of these conditions is satisfied:
 - (a) the notice is not in respect of the contribution;
 - (b) the notice includes all or a part of an amount covered by a previous notice;

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

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- (c) when you gave the notice:
 - (i) you were not a member of the fund or the holder of the *RSA; or
 - (ii) the trustee or *RSA provider no longer holds the contribution; or
 - (iii) the trustee or RSA provider has begun to pay a *superannuation income stream based in whole or part on the contribution;
- (d) before you gave the notice:
 - (i) you had made a contributions-splitting application (within the meaning given by the regulations) in relation to the contribution; and
 - (ii) the trustee or RSA provider to which you made the application had not rejected the application.

Acknowledgment of notice

- (3) The trustee or provider must, without delay, give you an acknowledgment of a valid notice, subject to subsection (4).
- (4) The trustee or provider may refuse to give you an acknowledgment of receipt of a valid notice if the *value of the *superannuation interest to which the notice relates, at the end of the day on which the trustee or *RSA provider received the notice, is less than the tax that would be payable in respect of your contribution (or part of the contribution) if the trustee or provider were to acknowledge receipt of the notice.

Application to successor funds

- (5) Subsections (1) to (4) and section 290-180 apply as if:
 - (a) references in those provisions to the fund or *RSA were references to a *successor fund; and
 - (b) references in those provisions to the trustee or *RSA provider were references to the trustee or RSA provider of the successor fund;if:

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

- (c) after making your contribution, all of the *superannuation interest to which the notice relates is transferred to the successor fund; and
- (d) you have not previously given a valid notice under this section to any *superannuation provider in relation to the contribution.

290-175 Deduction limited by amount specified in notice

You cannot deduct more for the contribution (or a part of the contribution) than the amount stated in the notice.

290-180 Notice may be varied but not revoked or withdrawn

- (1) You cannot revoke or withdraw a valid notice in relation to the contribution (or a part of the contribution).
- (2) You can vary a valid notice, but only so as to reduce the amount stated in relation to the contribution (including to nil). You do so by giving notice to the trustee or the *RSA provider in the *approved form.
- (3) However, you cannot vary a valid notice after:
 - (a) if you have lodged your *income tax return for the income year in which the contribution was made on a day before the end of the next income year—the end of that day; or
 - (b) otherwise—the end of the next income year.
- (3A) The variation is not effective if, when you make it:
 - (a) you were not a member of the fund or the holder of the *RSA; or
 - (b) the trustee or *RSA provider no longer holds the contribution; or
 - (c) the trustee or RSA provider has begun to pay a *superannuation income stream based in whole or part on the contribution.
- (4) Subsection (3) does not apply to a variation if:
 - (a) you claimed a deduction for the contribution (or a part of the contribution); and

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

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- (b) the deduction is not allowable (in whole or in part); and
- (c) the variation reduces the amount stated in relation to the contribution by the amount not allowable as a deduction.

Application to successor funds

- (5) Subsections (2) and (3A) apply as if:
 - (a) the reference in subsection (3A) to the fund or *RSA were a reference to a *successor fund; and
 - (b) references in those subsections to the trustee or *RSA provider were references to the trustee or RSA provider of the successor fund;if, after a valid notice is given under section 290-170 in relation to the contribution, all of the *superannuation interest to which the notice relates is transferred to the successor fund.

Subdivision 290-D—Tax offsets for spouse contributions

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290-240	Tax file number

290-230 Offset for spouse contribution

- (1) You are entitled to a *tax offset for an income year for a contribution you make in the income year to a *superannuation fund, or an *RSA, for the purpose of providing *superannuation benefits for your *spouse (regardless whether the benefits are payable to your spouse's *SIS dependants if your spouse dies before or after becoming entitled to receive the benefits).
- (2) You are entitled to the *tax offset only if:
 - (a) he or she was your *spouse when you made the contribution; and
 - (b) both you and your spouse were Australian residents when you made the contribution; and
 - (c) the total of your spouse's:
 - (i) assessable income; and

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

- (ii) *reportable fringe benefits total; and
 - (iii) *reportable employer superannuation contributions;
for the income year is less than \$13,800; and
 - (d) you have not deducted and cannot deduct an amount for the contribution under section 290-60 (employer contributions);
and
 - (e) if the contribution is made to a *superannuation fund—it is a *complying superannuation fund for the income year of the fund in which you make the contribution.
- (3) You are *not* entitled to the *tax offset if, when you make the contribution, you are living separately and apart from your *spouse on a permanent basis.
- (4) You are *not* entitled to the *tax offset for an amount paid by you, as mentioned in regulations under the *Family Law Act 1975*, to a regulated superannuation fund (within the meaning of that Act), or to an *RSA, to be held for the benefit of your *non-member spouse in satisfaction of his or her entitlement in respect of the *superannuation interest concerned.
- (5) For the purposes of subparagraph (2)(c)(iii), reduce (but not below zero) the *reportable employer superannuation contributions by the amount of any contributions disregarded under section 292-467 for your *spouse for the *financial year corresponding to the income year.

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

290-235 Limit on amount of tax offsets

- (1) The total of the amounts of *tax offset to which you are entitled for contributions you make for an income year cannot exceed 18% of the lesser of the following:
 - (a) \$3,000 reduced by the amount (if any) by which the total mentioned in paragraph 290-230(2)(c) for the income year exceeds \$10,800;
 - (b) the sum of the *spouse contributions you make in the income year.
- (2) The maximum *tax offset to which you are entitled for an income year is \$540, even if you are entitled to a tax offset for more than 1 *spouse.

290-240 Tax file number

If you are entitled to the *tax offset for the contribution, you may, with your *spouse's consent, quote your spouse's *tax file number to the trustee (or *RSA provider) of the *superannuation fund (or *RSA) to which the contribution is made.

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

Division 292—Excess contributions tax

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Guide to Division 292

292-1 What this Division is about

This Division limits the superannuation contributions made in a financial year for a person that receive concessional tax treatment.

Subdivision 292-A—Object of this Division

Table of sections

292-5	Object of this Division
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292-5 Object of this Division

The object of this Division is to ensure that the amount of concessional tax *superannuation benefits that a person receives results from superannuation contributions that have been made gradually over the course of the person's life.

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

Subdivision 292-B—Excess concessional contributions tax

292-10 What this Subdivision is about

This Subdivision defines *concessional contributions* and *excess concessional contributions*, and sets liability to pay excess concessional contributions tax.

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292-15	Liability for excess concessional contributions tax
292-20	Your <i>excess concessional contributions</i> for a financial year
292-25	Your <i>concessional contributions</i> for a financial year

Operative provisions

292-15 Liability for excess concessional contributions tax

You are liable to pay *excess concessional contributions tax imposed by the *Superannuation (Excess Concessional Contributions Tax) Act 2007* if you have *excess concessional contributions for a *financial year.

Note: The amount of the tax is set out in that Act.

292-20 Your *excess concessional contributions* for a financial year

- (1) You have *excess concessional contributions* for a *financial year if the amount of your *concessional contributions for the year exceeds your *concessional contributions cap for the year. The amount of the excess concessional contributions is the amount of the excess.
- (2) Your *concessional contributions cap* is:
 - (a) for the 2007-2008 *financial year—\$50,000; or
 - (b) for the 2008-2009 financial year—\$50,000; or
 - (c) for the 2009-2010 financial year—\$25,000; or
 - (d) for the 2010-2011 financial year—\$25,000; or

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

- (e) for the 2011-2012 financial year—\$25,000; or
- (f) for the 2012-2013 financial year—\$25,000; or
- (g) for the 2013-2014 financial year—\$25,000; or
- (h) for the 2014-2015 financial year or a later financial year—the amount worked out by indexing annually the amount mentioned in paragraph (g).

Note 1: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the amount of the cap: see section 960-285.

Note 2: For transitional rules about the period from 1 July 2007 to 30 June 2012, see section 292-20 of the *Income Tax (Transitional Provisions) Act 1997*.

292-25 Your concessional contributions for a financial year

- (1) The amount of your *concessional contributions* for a *financial year is the sum of:
 - (a) each contribution covered under subsection (2); and
 - (b) each amount covered under subsection (3).

Note: For rules about defined benefit interests, see Subdivision 292-D.

- (2) A contribution is covered under this subsection if:
 - (a) it is made in the *financial year to a *complying superannuation plan in respect of you; and
 - (b) it is included in the assessable income of the *superannuation provider in relation to the plan, or, by way of a *roll-over superannuation benefit, in the assessable income of a *complying superannuation fund or *RSA provider in the circumstances mentioned in subsection 290-170(5) (about successor funds); and
 - (c) it is *not* any of the following:
 - (i) an amount mentioned in subsection 295-200(2);
 - (ii) an amount mentioned in item 2 of the table in subsection 295-190(1);
 - (iii) a contribution made to a *constitutionally protected fund.
- (3) An amount in a *complying superannuation plan is covered under this subsection if it is allocated by the *superannuation provider in

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

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relation to the plan for you for the year in accordance with conditions specified in the regulations.

- (4) Disregard Subdivision 295-D for the purposes of paragraph (2)(b).

Subdivision 292-C—Excess non-concessional contributions tax

292-75 What this Subdivision is about

This Subdivision defines *non-concessional contributions* and *excess non-concessional contributions*, and sets liability to pay excess non-concessional contributions tax.

Table of sections

Operative provisions

292-80	Liability for excess non-concessional contributions tax
292-85	Your <i>excess non-concessional contributions</i> for a financial year
292-90	Your <i>non-concessional contributions</i> for a financial year
292-95	Contributions arising from structured settlements or orders for personal injuries
292-100	Contribution relating to some CGT small business concessions
292-105	CGT cap amount

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292-80 Liability for excess non-concessional contributions tax

You are liable to pay *excess non-concessional contributions tax imposed by the *Superannuation (Excess Non-concessional Contributions Tax) Act 2007* if you have *excess non-concessional contributions for a *financial year.

Note: The amount of the tax is set out in that Act.

292-85 Your *excess non-concessional contributions* for a financial year

- (1) You have *excess non-concessional contributions* for a *financial year if the amount of your *non-concessional contributions for the

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

year exceeds your *non-concessional contributions cap for the year. The amount of the excess non-concessional contributions is the amount of the excess.

- (2) Your **non-concessional contributions cap** is:
- (a) for the 2007-2008 *financial year—the amount that is 3 times your *concessional contributions cap for the year; and
 - (b) for the 2008-2009 financial year—the amount that is 3 times your concessional contributions cap for the year; and
 - (c) for the 2009-2010 financial year or a later financial year—the amount that is 6 times your concessional contributions cap for the year.
- (3) However, subsection (4) applies instead of subsection (2) in determining your **non-concessional contributions cap** for a *financial year (the **first year**) if:
- (a) your *non-concessional contributions for the first year exceed the amount mentioned in subsection (2) for that year; and
 - (b) you are under 65 years at any time in the first year; and
 - (c) a previous operation of subsection (4) does not determine your non-concessional contributions cap for the first year.
- (4) Work out your **non-concessional contributions cap** for the first year and for the following 2 *financial years (the **second year** and **third year**) as follows:
- (a) your cap for the first year is 3 times the amount mentioned in subsection (2) for the first year;
 - (b) your cap for the second year is:
 - (i) if your *non-concessional contributions for the first year fall short of your cap for the first year (worked out under paragraph (a))—the shortfall; or
 - (ii) otherwise—nil;
 - (c) your cap for the third year is:
 - (i) if your *non-concessional contributions for the second year fall short of your cap for the second year (worked out under paragraph (b))—the shortfall; or
 - (ii) otherwise—nil.

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

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292-90 Your *non-concessional contributions* for a financial year

- (1) The amount of your *non-concessional contributions* for a *financial year is the sum of:
 - (a) each contribution covered under subsection (2); and
 - (aa) each amount covered under subsection (4); and
 - (b) the amount of your *excess concessional contributions (if any) for the financial year.

- (2) A contribution is covered under this subsection if:
 - (a) it is made in the *financial year to a *complying superannuation plan in respect of you; and
 - (b) it is *not* included in the assessable income of the *superannuation provider in relation to the *superannuation plan, or, by way of a *roll-over superannuation benefit, in the assessable income of any *complying superannuation fund or *RSA provider in the circumstances mentioned in subsection 290-170(5) (about successor funds); and
 - (c) it is *not* any of the following:
 - (i) a Government co-contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*;
 - (ii) a contribution covered under section 292-95 (payments that relate to structured settlements or orders for personal injuries);
 - (iii) a contribution covered under section 292-100 (certain CGT-related payments), to the extent that it does not exceed your *CGT cap amount when it is made;
 - (iv) a contribution made to a *constitutionally protected fund (other than a contribution included in the *contributions segment of your *superannuation interest in the fund);
 - (v) contributions not included in the assessable income of the superannuation provider in relation to the superannuation plan because of a choice made under section 295-180;
 - (vi) a contribution that is a *roll-over superannuation benefit.

- (3) Disregard Subdivision 295-D for the purposes of paragraph (2)(b).

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

- (4) An amount is covered under this subsection if it is any of the following:
- (a) an amount in a *complying superannuation plan that is allocated by the *superannuation provider in relation to that plan for you for the year in accordance with conditions specified in the regulations;
 - (b) the amount of any contribution made to that plan in respect of you in the year that is covered by a valid and acknowledged notice under section 290-170, to the extent that it is not allowable as a deduction for the person making the contribution;
 - (c) the sum of each contribution made to that plan in respect of you at a time on or after 10 May 2006 when that plan was not a complying superannuation plan (other than a contribution covered under this paragraph in relation to a previous financial year).

292-95 Contributions arising from structured settlements or orders for personal injuries

- (1) A contribution is covered under this section if:
- (a) the contribution arises from:
 - (i) the settlement of a claim that satisfies the conditions in subsection (3); or
 - (ii) the settlement of a claim in relation to a personal injury suffered by you under a law of the Commonwealth or of a State or Territory relating to workers compensation; or
 - (iii) the order of a court that satisfies the conditions in subsection (4); and
 - (b) the contribution is made within 90 days after the later of the following:
 - (i) the day of receipt of the payment from which the contribution is made; or
 - (ii) in relation to subparagraph (a)(i) or (iii)—the day mentioned in subsection (2); and
 - (c) 2 legally qualified medical practitioners have certified that, because of the personal injury, it is unlikely that you can ever be *gainfully employed in a capacity for which you are

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

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reasonably qualified because of education, experience or training; and

- (d) no later than the time the contribution is made to a *superannuation plan, you or your *legal personal representative notify the *superannuation provider in relation to the plan, in the *approved form, that this section is to apply to the contribution.
- (2) For the purposes of subparagraph (1)(b)(ii), the day is:
- (a) for a settlement mentioned in subparagraph (a)(i):
 - (i) the day on which the agreement mentioned in paragraph (3)(c) 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 day on which that order was made; or
 - (b) for an order mentioned in subparagraph (1)(a)(iii)—the day on which the order was made.
- (3) For the purposes of subparagraph (1)(a)(i), the conditions are as follows:
- (a) the claim:
 - (i) is for compensation or damages for, or in respect of, personal injury suffered by you; and
 - (ii) is made by you or your *legal personal representative;
 - (b) the claim is based on the commission of a wrong, or on a right created by statute;
 - (c) 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).
- (4) For the purposes of subparagraph (1)(a)(iii), the conditions are as follows:
- (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 you; and
 - (ii) is made by you or your *legal personal representative;

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

- (b) the claim is based on the commission of a wrong, or on a right created by statute;
 - (c) the order is not an order approving or endorsing an agreement as mentioned in paragraph (3)(c).
- (5) If a claim is both:
- (a) for compensation or damages for personal injury suffered by you; and
 - (b) for some other remedy (for example, compensation or damages for loss of, or damage to, property);
- subsections (3) and (4) apply to the claim, but only to the extent that it relates to the compensation or damages referred to in paragraph (a), and only to amounts that, in the settlement agreement, or in the order, are identified as being solely in payment of that compensation or those damages.

292-100 Contribution relating to some CGT small business concessions

- (1) A contribution is covered under this section if:
- (a) the contribution is made by you to a *complying superannuation plan in respect of you in a *financial year; and
 - (b) the requirement in subsection (2), (4), (7) or (8) is met; and
 - (c) you choose, in accordance with subsection (9), to apply this section to an amount that is all or part of the contribution.
- (2) The requirement in this subsection is met if:
- (a) the contribution is equal to all or part of the *capital proceeds from a *CGT event for which you can disregard any *capital gain under section 152-105 (or would be able to do so, assuming that a capital gain arose from the event); and
 - (b) the contribution is made on or before the later of the following days:
 - (i) the day you are required to lodge your *income tax return for the income year in which the CGT event happened;
 - (ii) 30 days after the day you receive the capital proceeds.

*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)(a), ignore the requirement in paragraph 152-105(b) if you are permanently incapacitated at the time of the *CGT event but were not permanently incapacitated at the time the relevant *CGT asset was acquired.
- (4) The requirement in this subsection is met if:
 - (a) just before a *CGT event, you were a *CGT concession stakeholder of an entity that could, under section 152-110, disregard any *capital gain arising from the CGT event (or would be able to do so, assuming that a capital gain arose from the event); and
 - (b) the entity makes a payment to you within 2 years after the CGT event; and
 - (c) the contribution is equal to all or part of your stakeholder's participation percentage (within the meaning of subsection 152-125(2)) of the *capital proceeds from the CGT event (but not exceeding the amount of the payment mentioned in paragraph (b)); and
 - (d) the contribution is made within 30 days after the payment mentioned in paragraph (b).
- (5) In determining whether the conditions in subsection (2) or (4) are satisfied for a *CGT event in relation to a *pre-CGT asset, treat the asset as a *post-CGT asset.
- (6) For the purposes of paragraph (4)(a), ignore the requirement in paragraph 152-110(1)(b) if a *significant individual was permanently incapacitated at the time of the *CGT event but was not permanently incapacitated when the relevant *CGT asset was acquired.
- (7) The requirement in this subsection is met if:
 - (a) the contribution is equal to all or part of the *capital gain from a *CGT event that you disregarded under subsection 152-305(1); and
 - (b) the contribution is made on or before the later of the following days:
 - (i) the day you are required to lodge your *income tax return for the income year in which the CGT event happened;

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

- (ii) 30 days after the day you receive the *capital proceeds from the CGT event.
- (8) The requirement in this subsection is met if:
- (a) just before a *CGT event, you were a *CGT concession stakeholder of an entity that could, under subsection 152-305(2), disregard all or part of a *capital gain arising from the CGT event; and
 - (b) the entity makes a payment to you that satisfies the conditions in section 152-325; and
 - (c) the contribution is equal to all or part of the capital gain arising from the CGT event (but not exceeding the amount of the payment mentioned in paragraph (b)); and
 - (d) the contribution is made within 30 days after the payment mentioned in paragraph (b).
- (9) To make a choice for the purposes of paragraph (1)(c), you must:
- (a) make the choice in the *approved form; and
 - (b) give it to the *superannuation provider in relation to the *complying superannuation plan on or before the time when the contribution is made.

292-105 CGT cap amount

- (1) Your **CGT cap amount** at the start of the 2007-2008 *financial year is \$1,000,000.

Note: For transitional rules about contributions made in the period from 10 May 2006 to 30 June 2007, see section 292-80 of the *Income Tax (Transitional Provisions) Act 1997*.

Reductions and increases

- (2) If a contribution covered by section 292-100 is made in respect of you at a time, reduce your **CGT cap amount** just after that time:
- (a) if the contribution falls short of your *CGT cap amount at that time—by the amount of the contribution; or
 - (b) otherwise—to nil.

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

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- (3) At the start of each *financial year after the 2007-2008 financial year, increase your **CGT cap amount** by the amount (if any) by which the index amount for that financial year exceeds the index amount for the previous financial year.
- (4) For the purposes of subsection (3), the index amount for the 2007-2008 *financial year is \$1,000,000. The index amount is then indexed annually.

Note: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the index amount: see section 960-285.

Subdivision 292-D—Modifications for defined benefit interests

292-155 What this Subdivision is about

This Subdivision modifies the meaning of *concessional contributions* relating to defined benefits interests.

Table of sections

Operative provisions

- 292-160 Application
- 292-165 Concessional contributions—special rules for defined benefit interests
- 292-170 *Notional taxed contributions*
- 292-175 *Defined benefit interest*

Operative provisions

292-160 Application

- (1) This Subdivision applies if, in a *financial year, you have:
 - (a) a *superannuation interest that is or includes a *defined benefit interest; or
 - (b) more than one superannuation interest that is or includes a defined benefit interest.
- (2) However, this Subdivision does not apply in relation to a *superannuation interest in a *constitutionally protected fund.

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

292-165 Concessional contributions—special rules for defined benefit interests

Despite section 292-25, the amount of your *concessional contributions* for the *financial year is the sum of:

- (a) the contributions covered by subsection 292-25(2), and the amounts covered by subsection 292-25(3), to the extent to which they do *not* relate to the *defined benefit interest or interests; and
- (b) your *notional taxed contributions for the financial year in respect of the defined benefit interest or interests.

292-170 Notional taxed contributions

- (1) Your *notional taxed contributions* for a *financial year in respect of a *defined benefit interest has the meaning given by the regulations.
- (2) Regulations made for the purposes of subsection (1) may provide for a method of determining the amount of the *notional taxed contributions*.
- (3) Regulations made for the purposes of subsection (1) may define the *notional taxed contributions, and the amount of notional taxed contributions, in different ways depending on any of the following matters:
 - (a) the person who has the *superannuation interest that is or includes the *defined benefit interest;
 - (b) the *superannuation plan in which the superannuation interest exists;
 - (c) the *superannuation provider in relation to the superannuation plan;
 - (d) any other matter.
- (4) Regulations made for the purposes of subsection (1) may specify circumstances in which the amount of *notional taxed contributions for a *financial year is nil.
- (5) Subsections (2), (3) and (4) do not limit the regulations that may be made for the purposes of this section.

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

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- (6) Despite subsection (1), your **notional taxed contributions** for the *financial year in respect of the *defined benefit interest are equal to your *concessional contributions cap for the financial year if:
- (a) this Subdivision applies in relation to you because you have a defined benefit interest in a financial year; and
 - (b) disregarding this subsection and subsection (8), the notional taxed contributions for the financial year in respect of the defined benefit interest exceed your concessional contributions cap for the financial year; and
 - (c) either:
 - (i) you held the defined benefit interest in a *superannuation fund on 5 September 2006; or
 - (ii) all the requirements in subsection (7) are satisfied; and
 - (d) the conditions (if any) specified in the regulations are satisfied.
- (7) For the purposes of subparagraph (6)(c)(ii), the requirements are as follows:
- (a) you held a *defined benefit interest (the **original interest**) in a *superannuation fund (the **original fund**) on 5 September 2006;
 - (b) the defined benefit interest mentioned in paragraph (6)(a) (the **current interest**) is in a different superannuation fund (the **current fund**);
 - (c) the entire *value of the original interest:
 - (i) was transferred directly to the current interest after 5 September 2006; or
 - (ii) was transferred to another superannuation interest after 5 September 2006, and was later transferred to the current interest (whether directly or through a series of transfers between superannuation interests);
 - (d) your rights to accrue future benefits under the current interest are equivalent to your rights to accrue future benefits under the original interest;
 - (e) either:
 - (i) the notional taxed contributions mentioned in paragraph (6)(b) do not exceed what they would have

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

- been if the transfer mentioned in paragraph (c) had not taken place; or
- (ii) the conditions (if any) specified in the regulations are satisfied;
 - (f) the conditions (if any) specified in the regulations are satisfied.
- (8) Despite subsection (1), your **notional taxed contributions** for the *financial year in respect of the *defined benefit interest are equal to your *concessional contributions cap for the financial year if:
- (a) this Subdivision applies in relation to you because you have a defined benefit interest in a financial year; and
 - (b) disregarding this subsection, the notional taxed contributions for the financial year in respect of the defined benefit interest exceed your concessional contributions cap for the financial year; and
 - (c) either:
 - (i) you held the defined benefit interest in a *superannuation fund on 12 May 2009; or
 - (ii) all the requirements in subsection (9) are satisfied; and
 - (d) the conditions (if any) specified in the regulations are satisfied; and
 - (e) the financial year is the 2009-2010 financial year or a later financial year.
- (9) For the purposes of subparagraph (8)(c)(ii), the requirements are as follows:
- (a) you held a *defined benefit interest (the **original interest**) in a *superannuation fund (the **original fund**) on 12 May 2009;
 - (b) the defined benefit interest mentioned in paragraph (8)(a) (the **current interest**) is in a different superannuation fund (the **current fund**);
 - (c) the entire *value of the original interest:
 - (i) was transferred directly to the current interest after 12 May 2009; or
 - (ii) was transferred to another *superannuation interest after 12 May 2009, and was later transferred to the current

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

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- interest (whether directly or through a series of transfers between superannuation interests);
- (d) your rights to accrue future benefits under the current interest are equivalent to your rights to accrue future benefits under the original interest;
 - (e) either:
 - (i) the notional taxed contributions mentioned in paragraph (8)(b) do not exceed what they would have been if the transfer mentioned in paragraph (c) had not taken place; or
 - (ii) the conditions (if any) specified in the regulations are satisfied;
 - (f) the conditions (if any) specified in the regulations are satisfied.

292-175 Defined benefit interest

- (1) An individual's *superannuation interest is a **defined benefit interest** to the extent that it defines the individual's entitlement to *superannuation benefits payable from the interest by reference to one or more of the following matters:
 - (a) the individual's salary, or allowance in the nature of salary, at a particular date or averaged over a period;
 - (b) another individual's salary, or allowance in the nature of salary, at a particular date or averaged over a period;
 - (c) a specified amount;
 - (d) specified conversion factors.
- (2) However, an individual's *superannuation interest is *not* a **defined benefit interest** if it defines that entitlement solely by reference to one or more of the following:
 - (a) *disability superannuation benefits;
 - (b) *superannuation death benefits;
 - (c) payments of amounts mentioned in paragraph 307-10(a) (temporary disability payments).

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

Subdivision 292-E—Excess contributions tax assessments

Guide to Subdivision 292-E

292-225 What this Subdivision is about

The Commissioner may make an assessment of a person's liability to pay excess contributions tax, and the excess contributions on which that liability is based.

Table of sections

Operative provisions

292-230	Commissioner must make an <i>excess contributions tax assessment</i>
292-235	Part-year assessment
292-240	Validity of assessment
292-245	Objections
292-250	Evidence

Operative provisions

292-230 Commissioner must make an *excess contributions tax assessment*

- (1) The Commissioner must make an assessment (an *excess contributions tax assessment*) of:
 - (a) if a person has *excess concessional contributions for a *financial year—the amount of the excess concessional contributions; and
 - (b) the amount (if any) of *excess concessional contributions tax which the person is liable to pay in relation to the financial year.
- (2) The Commissioner must make an assessment (also an *excess contributions tax assessment*) of:
 - (a) if a person has *excess non-concessional contributions for a financial year—the amount of the excess non-concessional contributions; and

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

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- (b) the amount (if any) of *excess non-concessional contributions tax which the person is liable to pay in relation to the financial year.
- (3) The Commissioner must give the person notice in writing of an *excess contributions tax assessment as soon as practicable after making the assessment.
- (4) The notice may be included in a notice of any other assessment under this Act (including an assessment under this section).

292-235 Part-year assessment

- (1) The Commissioner may, at any time during a *financial year (the *actual financial year*), make an assessment of the matters mentioned in subsection 292-230(1) for a person for a particular period within that year as if the beginning and end of that period were the beginning and end of a financial year.
- (2) This Division applies, for the purposes of that assessment, as if:
 - (a) the start and end of the period were the start and end of a *financial year; and
 - (b) the assessment were an *excess contributions tax assessment* for that financial year.
- (3) If the Commissioner makes an assessment under subsection (1), he or she must make an assessment under section 292-230 in relation to the actual financial year as soon as possible after the end of that year.
- (4) However, the Commissioner does not need to make an assessment mentioned in subsection (3) if he or she is satisfied that the assessment would not differ in a material way from the assessment under subsection (1).

292-240 Validity of assessment

The validity of an *excess contributions tax assessment is not affected because any of the provisions of this Act have not been complied with.

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

292-245 Objections

If a person is dissatisfied with an *excess contributions tax assessment made in relation to the person, the person may object against the assessment in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

292-250 Evidence

Section 177 of the *Income Tax Assessment Act 1936* applies as if a reference in that section to an assessment or a notice of assessment included a reference to an *excess contributions tax assessment or a notice of an excess contributions tax assessment, as required.

Subdivision 292-F—Amending excess contributions tax assessments

Guide to Subdivision 292-F

292-300 What this Subdivision is about

The Commissioner may amend excess contributions tax assessments within certain time limits.

Table of sections

Operative provisions

- 292-305 Amendments within 4 years of the original assessment
- 292-310 Amended assessments are treated as excess contributions tax assessments
- 292-315 Later amendments—on request
- 292-320 Later amendments—fraud or evasion
- 292-325 Further amendment of an amended particular
- 292-330 Amendment on review etc.

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

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292-305 Amendments within 4 years of the original assessment

- (1) The Commissioner may amend an *excess contributions tax assessment for a person for a *financial year at any time during the period of 4 years after the *original excess contributions tax assessment day for the person for that year.
- (2) The *original excess contributions tax assessment day* for a person for a *financial year is the day on which the Commissioner gives the first *excess contributions tax assessment to the person for the financial year.

292-310 Amended assessments are treated as excess contributions tax assessments

- (1) Once an amended *excess contributions tax assessment for a person for a *financial year is made, it is taken to be an *excess contributions tax assessment* for the person for the year.
- (2) If the Commissioner amends a person's *excess contributions tax assessment, the Commissioner must give the person notice in writing of the amendment as soon as practicable after making the amendment.
- (3) The notice may be included in a notice of any other assessment under this Act.

292-315 Later amendments—on request

The Commissioner may amend an *excess contributions tax assessment for a person for a *financial year after the end of the period of 4 years after the *original excess contributions tax assessment day for the person for the year if, within that 4 year period:

- (a) the person applies for the amendment in the *approved form; and
- (b) the person gives the Commissioner all the information necessary for making the amendment.

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

292-320 Later amendments—fraud or evasion

- (1) If:
- (a) a person (or a *superannuation provider covered under subsection (2)) does not make a full and true disclosure to the Commissioner of the information necessary for an *excess contributions tax assessment for the person for a *financial year; and
 - (b) in making the assessment, the Commissioner makes an under-assessment; and
 - (c) the Commissioner is of the opinion that the under-assessment is due to fraud or evasion;
- the Commissioner may amend the assessment at any time.
- (2) A *superannuation provider is covered under this subsection if any of the following conditions are satisfied:
- (a) contributions have been made to a *superannuation plan of the provider on behalf of the person in the *financial year;
 - (b) an amount is included in the person's *concessional contributions for the financial year under subsection 292-25(3) because the superannuation provider allocated it to the person;
 - (c) *notional taxed contributions are included in the person's concessional contributions for the financial year under section 292-165 because of the person's *defined benefit interest in a superannuation plan of the provider.

292-325 Further amendment of an amended particular

- If:
- (a) an *excess contributions tax assessment has been amended (the *earlier amendment*) in any particular; and
 - (b) the Commissioner is of the opinion that it would be just to further amend the assessment in that particular;
- the Commissioner may do so within a period of 4 years after the earlier amendment.

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

292-330 Amendment on review etc.

Nothing in this Subdivision prevents the amendment of an *excess contributions tax assessment:

- (a) to give effect to a decision on a review or appeal; or
- (b) as a result of an objection or pending an appeal or review.

Note: A person may make a complaint to the Superannuation Complaints Tribunal under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993* if the person is dissatisfied with a statement given to the Commissioner by a superannuation provider under section 390-5 in Schedule 1 to the *Taxation Administration Act 1953*.

Subdivision 292-G—Collection and recovery

Guide to Subdivision 292-G

292-380 What this Subdivision is about

Excess contributions tax is due and payable at the end of 21 days after notice of assessment and the general interest charge applies to unpaid amounts. Money may be released from a superannuation plan to pay the tax.

Table of sections

Operative provisions

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292-425	Interest for late payments of money received by the Commissioner in accordance with release authority

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

Operative provisions

292-385 Due date for payment of excess contributions tax

*Excess contributions tax assessed for a person for a *financial year is due and payable at the end of 21 days after the Commissioner gives the person notice of the *excess contributions tax assessment.

292-390 General interest charge

If *excess contributions tax or *shortfall interest charge payable by a person remains unpaid after the time by which it is due and payable, the person is liable to pay the *general interest charge on the unpaid amount for each day in the period that:

- (a) starts at the beginning of the day on which the excess contributions tax or shortfall interest charge was due to be paid; and
- (b) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the excess contributions tax or shortfall interest charge;
 - (ii) general interest charge on any of the excess contributions tax or shortfall interest charge.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

292-395 Refunds of amounts overpaid

Section 172 of the *Income Tax Assessment Act 1936* applies for the purposes of this Part as if references in that section to tax included references to *excess contributions tax.

292-405 Release authority

- (1) As soon as practicable after making an *excess contributions tax assessment for a person, the Commissioner must give the person the following, in accordance with this section:
 - (a) if the person is liable to pay an amount of *excess concessional contributions tax in accordance with the assessment—a release authority in respect of the amount;

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

Section 292-410

- (b) if the person is liable to pay an amount of *excess non-concessional contributions tax in accordance with the assessment—a release authority in respect of the amount.
- (2) A release authority must:
 - (a) state the amount of *excess concessional contributions tax or *excess non-concessional contributions tax (whichever is applicable) that the person is liable to pay as a result of the assessment; and
 - (b) be dated; and
 - (c) contain any other information that the Commissioner considers relevant.

292-410 Giving a release authority to a superannuation provider

- (1) The person may give the release authority to a *superannuation provider that holds a *superannuation interest (other than a *defined benefit interest) for the person in a *complying superannuation plan within 90 days after the date of the release authority.

Note: Excess contributions tax is due and payable at the end of 21 days after notice of assessment: see section 292-385.

- (2) However, if:
 - (a) the release authority is for *excess non-concessional contributions tax; and
 - (b) a *superannuation provider holds a *superannuation interest for the person in a *complying superannuation plan (other than a *defined benefit interest);

the person must give the release authority to a superannuation provider holding a superannuation interest for the person in a complying superannuation plan (other than a defined benefit interest) within 21 days after the date of the release authority.

Note: Section 288-90 in Schedule 1 to the *Taxation Administration Act 1953* provides for an administrative penalty for failing to comply with this subsection.

- (3) Subsection (4) applies if:
 - (a) the release authority is for *excess non-concessional contributions tax; and

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

- (b) a *superannuation provider holds a *superannuation interest for the person (other than a *defined benefit interest); and
- (c) any of the following conditions are satisfied:
 - (i) the person does not give the release authority to a superannuation provider holding a superannuation interest for the person in a *complying superannuation plan within 90 days after the date of the release authority in accordance with subsection (1);
 - (ii) if the person has made one or more requests as mentioned in paragraph 292-415(1)(a) in relation to the release authority within 90 days after the date of the release authority—the total of the amounts (if any) paid by superannuation providers in relation to the release authority falls short of the amount of the excess non-concessional contributions tax stated in the release authority;
 - (iii) the total of the *values of every superannuation interest (other than a defined benefit interest) held for the person by a superannuation provider to which the release authority is given falls short of the amount of the excess non-concessional contributions tax stated in the release authority.
- (4) If the conditions in subsection (3) are satisfied, the Commissioner may give the release authority to one or more *superannuation providers that hold a *superannuation interest (other than a *defined benefit interest) for the person.

292-415 Superannuation provider given release authority must pay amount

- (1) A *superannuation provider that has been given a release authority in accordance with section 292-410 must pay to the person or the Commissioner within 30 days after receiving the release authority the least of the following amounts:
 - (a) if the person or Commissioner requests the superannuation provider, in writing, to pay a specified amount in relation to the release authority—that amount;

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

Section 292-415

- (b) the amount of *excess concessional contributions tax or *excess non-concessional contributions tax (whichever is applicable) stated in the release authority;
- (c) the sum of the *values of every *superannuation interest (other than a *defined benefit interest) held by the superannuation provider for the person in:
 - (i) for a release authority given under subsection 292-410(1)—*complying superannuation plans; or
 - (ii) for a release authority given under subsection 292-410(4)—*superannuation plans.

Note 1: Section 288-95 in Schedule 1 to the *Taxation Administration Act 1953* provides for an administrative penalty for failing to comply with this subsection.

Note 2: Section 288-100 in Schedule 1 to the *Taxation Administration Act 1953* provides that the person giving the release authority to the superannuation provider can be liable to an administrative penalty if excess amounts are paid in relation to the release authority.

Note 3: For reporting obligations on the superannuation provider in these circumstances, see section 390-65 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 4: For the taxation treatment of the payment, see section 304-15.

- (2) The payment must be made out of one or more *superannuation interests (other than a *defined benefit interest) held by the *superannuation provider for the person in:
 - (a) for a release authority given under subsection 292-410(1)—*complying superannuation plans; or
 - (b) for a release authority given under subsection 292-410(4)—*superannuation plans.
- (3) If the payment is made to the Commissioner, it is taken to be made in satisfaction (in whole or part) of the person's liability for *excess concessional contributions tax or *excess non-concessional contributions tax stated in the release authority.
- (4) If:
 - (a) the release authority was given by the Commissioner in accordance with subsection 292-410(4); and
 - (b) the payment is made to the Commissioner;

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

the Commissioner must, as soon as possible, give the person written notice that the payment has been made.

- (5) Section 307-125 (the proportioning rule) does not apply to a payment made as required under this section.

292-420 Release authorities for refunded excess concessional contributions

Commissioner may issue release authorities

- (1) If:
- (a) the Commissioner makes a determination under section 292-467 (refunded excess concessional contributions) for a person in relation to *excess concessional contributions; and
 - (b) the person has one or more *superannuation interests; and
 - (c) any amount paid in accordance with section 292-415 that relates to an amount of *excess concessional contributions tax for the person for the *financial year to which the determination relates does not equal or exceed 85% of the excess concessional contributions;

the Commissioner may issue a release authority relating to the excess concessional contributions to a *superannuation provider that holds such a superannuation interest for the person.

- (2) The release authority must:
- (a) state the amount that is 85% of the *excess concessional contributions; and
 - (b) be dated; and
 - (c) contain any other information that the Commissioner considers relevant.

Note: If the release authority relates to a determination as varied under section 292-468, the amount stated in the release authority is as provided in subsection 292-468(8).

- (3) Despite paragraph (2)(a), if:
- (a) an amount has been paid in accordance with section 292-415 in relation to an *excess contributions tax assessment for the

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

Section 292-420

person for the *financial year to which the determination relates; and

- (b) the amount relates wholly or partly to *excess concessional contributions by the person for the financial year; the amount stated under paragraph (2)(a) must be reduced (but not below zero) by so much of the amount as relates to those excess concessional contributions.

Obligations of superannuation providers

- (4) A *superannuation provider that has been issued with a release authority under this section must:
- (a) within 30 days after the release authority is issued, pay to the Commissioner the amount stated in the release authority; and
 - (b) within 30 days after the release authority is issued, or within 7 days after the payment is made if that is earlier, give to the Commissioner a statement, in the *approved form, advising the Commissioner of the payment.

Note 1: Section 288-95 in Schedule 1 to the *Taxation Administration Act 1953* provides for an administrative penalty for failing to comply with paragraph (a).

Note 2: Subsection 286-75(1) in Schedule 1 to the *Taxation Administration Act 1953* provides for an administrative penalty for failing to comply with paragraph (b).

Note 3: For the taxation treatment of the payment, see section 303-15. As a result of the determination made under section 292-467, the excess concessional contributions are included in the person's assessable income: see paragraph 292-467(2)(a).

- (5) However, subsection (4) does not apply if:
- (a) the sum of the *values of every *superannuation interest (other than an interest of a kind mentioned in paragraph (b)) held by the *superannuation provider for the person is less than the amount stated in the release authority; or
 - (b) the superannuation provider holds only one or more of the following kinds of superannuation interests for the person:
 - (i) a *defined benefit interest;
 - (ii) a superannuation interest in a *non-complying superannuation fund;

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

- (iii) a superannuation interest that is treated as a separate interest under regulations made for the purposes of section 307-200 in circumstances where the interest is supporting a *superannuation income stream.
- (6) If subsection (4) does not apply, the *superannuation provider must, within 30 days after the release authority is issued, advise the Commissioner, in the *approved form, that the superannuation provider is not required to comply with the release authority.

Note: Subsection 286-75(1) in Schedule 1 to the *Taxation Administration Act 1953* provides for an administrative penalty for failing to comply with this subsection.

Commissioner may vary or revoke release authorities

- (7) The Commissioner may vary or revoke a release authority at any time before the Commissioner receives a payment relating to the release authority in accordance with subsection (4).

Entitlement to credits

- (8) If the *superannuation provider pays an amount to the Commissioner in accordance with this section, the person is entitled to a credit equal to that amount. The credit arises:
- (a) if the Commissioner receives the amount before making or amending an *assessment of the person's taxable income to give effect to the determination—on the date of the assessment or amended assessment; or
 - (b) otherwise—on the day the Commissioner receives the amount.

Note: Division 3 of Part IIB of the *Taxation Administration Act 1953* provides for the treatment of credits that an entity is entitled to under a taxation law.

292-425 Interest for late payments of money received by the Commissioner in accordance with release authority

- (1) The person is entitled to an amount of interest worked out under subsection (2) if:

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

Section 292-425

- (a) the Commissioner issues a release authority under section 292-420 to a *superannuation provider that holds a *superannuation interest for the person; and
 - (b) the superannuation provider pays an amount to the Commissioner in accordance with that release authority; and
 - (c) the person is entitled to a credit mentioned in subsection 292-420(8) for that amount; and
 - (d) the Commissioner is required to refund all or part of that credit as mentioned in Division 3A of Part IIB of the *Taxation Administration Act 1953*; and
 - (e) the Commissioner does not so refund all or part of that credit within 60 days after receiving that amount.
- (2) The interest is to be calculated:
- (a) on the sum of so much of the following amounts that the Commissioner fails to refund under that Division:
 - (i) the amount of that credit;
 - (ii) so much of the amount of any *tax offset to which the person is entitled under paragraph 292-467(2)(b), for the *excess concessional contributions to which the release authority relates, that the Commissioner is required to refund under that Division; and
 - (b) for the period:
 - (i) beginning 60 days after the day the Commissioner receives the amount; and
 - (ii) ending on the day the Commissioner refunds the amount; and
 - (c) on a daily basis; and
 - (d) at the *base interest rate for the day the interest is calculated.

Subdivision 292-H—Other provisions

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292-465	Commissioner's discretion to disregard contributions etc. in relation to a financial year
292-467	Refunded excess concessional contributions
292-468	Variations etc. of refunded excess concessional contributions determinations

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

292-469 Objections against determinations etc.

292-470 Power of Commissioner to obtain information

292-465 Commissioner's discretion to disregard contributions etc. in relation to a financial year

- (1) If you make an application in accordance with subsection (2), the Commissioner may make a written determination that, for the purposes of this Division:
 - (a) all or part of your *concessional contributions for a *financial year is to be disregarded, or allocated instead for the purposes of another financial year specified in the determination; and
 - (b) all or part of your *non-concessional contributions for a financial year is to be disregarded, or allocated instead for the purposes of another financial year specified in the determination.
- (2) You may apply to the Commissioner in the *approved form for a determination under subsection (1). The application can only be made:
 - (a) after all of the contributions sought to be disregarded or reallocated have been made; and
 - (b) if you receive an *excess contributions tax assessment for the *financial year—before the end of:
 - (i) the period of 60 days starting on the day you receive the assessment; or
 - (ii) if the Commissioner allows a longer period—that longer period.
- (3) The Commissioner may make the determination only if he or she considers that:
 - (a) there are special circumstances; and
 - (b) making the determination is consistent with the object of this Division.
- (4) In making the determination the Commissioner may have regard to the matters in subsections (5) and (6) and any other relevant matters.

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

Section 292-467

- (5) The Commissioner may have regard to whether a contribution made in the relevant *financial year would more appropriately be allocated towards another financial year instead.
- (6) The Commissioner may have regard to whether it was reasonably foreseeable, when a relevant contribution was made, that you would have *excess concessional contributions or *excess non-concessional contributions for the relevant *financial year, and in particular:
 - (a) if the relevant contribution is made in respect of you by another person—the terms of any agreement or arrangement between you and that person as to the amount and timing of the contribution; and
 - (b) the extent to which you had control over the making of the contribution.
- (7) The Commissioner must give you a copy of the determination.
- (8) A determination under this section may be included in a notice of assessment.

Review of determinations

- (9) To avoid doubt:
 - (a) you may object under section 292-245 against an *excess contributions tax assessment made in relation to you on the ground that you are dissatisfied with a determination that you applied for under this section; and
 - (b) for the purposes of paragraph (e) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977*, the making of a determination under this section is a decision forming part of the process of making an assessment of tax under this Act.

292-467 Refunded excess concessional contributions

- (1) If:
 - (a) the Commissioner is satisfied you have *excess concessional contributions for a *financial year; and

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

- (b) the amount of those excess concessional contributions is \$10,000 or less; and
 - (c) disregarding any previous application of this section, you do not have excess concessional contributions for an earlier financial year beginning on or after 1 July 2011; and
 - (d) you have lodged an *income tax return with the Commissioner for the income year that corresponds to that financial year:
 - (i) within 12 months after the end of that income year; or
 - (ii) within such longer period as the Commissioner allows; and
 - (e) you accept an offer made by the Commissioner in accordance with subsection (3);
- the Commissioner may make a written determination that, for the purposes of this Division, the excess concessional contributions mentioned in paragraph (a) for that financial year are to be disregarded.
- (2) If the Commissioner makes the determination:
 - (a) an amount equal to the *excess concessional contributions is included in your assessable income for your income year that corresponds to that *financial year; and
 - (b) you are entitled to a *tax offset for that income year equal to 15% of the excess concessional contributions.
 - (3) If the Commissioner is satisfied you have *excess concessional contributions for the *financial year, the Commissioner may issue a notice to you, in writing, offering to make a determination under this section. You may accept the offer, in the *approved form:
 - (a) within 28 days after the Commissioner issues the notice; or
 - (b) within such longer period as the Commissioner allows.
 - (4) The Commissioner must notify you in writing of the determination.
 - (5) Notification of the determination may be included in a notice of *assessment.
 - (6) The Commissioner may take such action as the Commissioner considers necessary to give effect to the determination.

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

292-468 Variations etc. of refunded excess concessional contributions determinations

- (1) This section applies in relation to a determination under section 292-467 if the Commissioner is satisfied that the amount of *excess concessional contributions mentioned in that section for a *financial year is incorrect.
- (2) The Commissioner may revoke the determination at any time before receiving a payment made in accordance with subsection 292-420(4) in relation to the amount, if the Commissioner is satisfied that:
 - (a) the person to whom the determination relates has *excess concessional contributions greater than \$10,000 for the *financial year; or
 - (b) the person has no excess concessional contributions for the financial year.
- (3) The Commissioner may vary the determination at any time before receiving a payment made in accordance with subsection 292-420(4) in relation to the amount, if the Commissioner is satisfied that the person to whom the determination relates has *excess concessional contributions for the *financial year not greater than \$10,000.
- (4) The Commissioner may vary the determination at any time after receiving a payment made in accordance with subsection 292-420(4) in relation to the amount, if the Commissioner is satisfied that the person to whom the determination relates has *excess concessional contributions for the *financial year:
 - (a) greater than the amount of the excess concessional contributions mentioned in the determination; and
 - (b) not greater than \$10,000.
- (5) The Commissioner cannot otherwise vary or revoke the determination.
- (6) The Commissioner must issue to the person to whom the determination relates written notice of:
 - (a) the variation or revocation of the determination; or

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

- (b) a decision of the Commissioner not to vary or revoke the determination, if the person requested the variation or revocation.
- (7) If the determination is varied:
- (a) the determination as varied has effect, for all purposes other than this subsection and subsection (8) of this section, as if it were a determination under section 292-467; and
 - (b) subsections 292-467(4), (5) and (6) apply in relation to the determination as varied; and
 - (c) the Commissioner may issue another release authority in accordance with section 292-420 in relation to the determination as varied; and
 - (d) that other release authority has effect, for all purposes other than this subsection, as if it were issued under section 292-420.
- (8) Despite paragraph 292-420(2)(a), the release authority issued as mentioned in paragraph (7)(c) of this section must state the difference between:
- (a) the amount stated in the determination as in force just before the variation; and
 - (b) 85% of the *excess concessional contributions as varied.
- (9) The amount of *excess concessional contributions covered by a determination to which this section applies is disregarded for the purposes of applying Subdivision 292-E in relation to the person to whom the determination relates if the Commissioner is satisfied that:
- (a) the person has excess concessional contributions greater than \$10,000 for the *financial year to which the determination relates; and
 - (b) the determination cannot be varied or revoked under this section.

292-469 Objections against determinations etc.

If you are dissatisfied with:

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

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- (a) a determination of the Commissioner under section 292-467;
or
- (b) a determination of the Commissioner under that section as varied in accordance with section 292-468; or
- (c) a decision of the Commissioner to revoke a determination under section 292-467 in accordance with section 292-468;
or
- (d) a decision of the Commissioner not to vary or revoke a determination under section 292-467 in accordance with section 292-468;

you may object against the determination or decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

292-470 Power of Commissioner to obtain information

Section 264 of the *Income Tax Assessment Act 1936* applies for the purposes of this Division as if the reference in paragraph (1)(b) of that section to a person's income or assessment were a reference to a matter relevant to the administration or operation of this Division.

Note: For superannuation providers' reporting obligations see Division 390 in Schedule 1 to the *Taxation Administration Act 1953*.

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

Division 295—Taxation of superannuation entities

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Guide to Division 295

295-1 What this Division is about

This Division sets out special rules about the taxation of superannuation entities.

It sets out how to calculate the taxable income of those entities and to identify the components of that taxable income for the purpose of applying the appropriate tax rate.

It sets out how to calculate the no-TFN contributions income of relevant entities for an income year for the purpose of applying the appropriate tax rate.

Subdivision 295-A—Provisions of general operation

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

Section 295-5

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295-25	Assessments on basis of anticipated SIS Act notice
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295-35	Acronyms used in tables

295-5 Entities to which Division applies

- (1) This Division applies to these entities:
 - (a) a *complying superannuation fund;
 - (b) a *non-complying superannuation fund;
 - (c) a *complying approved deposit fund;
 - (d) a *non-complying approved deposit fund;
 - (e) a *pooled superannuation trust;whether they are established by an *Australian law, by a public authority constituted by or under such a law or in some other way.
- (2) The *superannuation provider in relation to an entity referred to in paragraph (1)(a) to (d) is liable to pay tax on the taxable income of the entity.

Note: A superannuation provider in relation to an entity referred to in paragraphs (1)(a) and (b) or in relation to an RSA is liable to pay tax on the no-TFN contributions income of the entity: see section 295-605.
- (3) The trustee of a *pooled superannuation trust is liable to pay tax on the taxable income of the trust.
- (4) This Division also applies to an *RSA provider that is not a *life insurance company.

Note 1: Division 320 deals with RSA providers that are life insurance companies.

Note 2: However, Subdivisions 295-I and 295-J apply to RSA providers that are life insurance companies: see section 320-155.

295-10 How to work out the tax payable by superannuation entities

- (1) Use this method for *superannuation funds, *approved deposit funds and *pooled superannuation trusts:

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

Method statement

- Step 1. For a *superannuation fund, work out the *no-TFN contributions income. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to that income.
- Step 2. Work out the entity's assessable income and deductions taking account of the special rules in this Division. The special rules modify some provisions of this Act. They also include amounts in assessable income, allow deductions and exempt amounts from income tax.
- Step 3. Work out the entity's taxable income as if its trustee:
- (a) were an Australian resident (except where paragraph (b) applies); or
 - (b) for a *non-complying superannuation fund that is a *foreign superannuation fund for the income year—were not an Australian resident.
- Step 4. Work out the *low tax component and *non-arm's length component of the taxable income of a *complying superannuation fund, *complying approved deposit fund or *pooled superannuation trust.
- Step 5. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to the components, or to the taxable income of a *non-complying superannuation fund or *non-complying approved deposit fund.
- Step 6. Subtract the entity's *tax offsets from the step 5 amount or, for a *superannuation fund, from the sum of the fund's step 1 and step 5 amounts.

- (2) Use this method for *RSA providers:

Method statement

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

Section 295-15

- Step 1. Work out the entity's *no-TFN contributions income. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to that income.
- Step 2. Work out the entity's assessable income and deductions taking account of the special rules in this Division.
- Step 3. Work out the *RSA component and *standard component of the entity's taxable income.
- Step 4. If the entity is also an *FHSA provider, work out the *FHSA component of the entity's taxable income.
- Step 5. Apply the applicable rates as set out in the *Income Tax Rates Act 1986* to the components. The *RSA component and the *FHSA component are taxed at a concessional rate.
- Step 6. Subtract the entity's *tax offsets from the sum of the entity's step 1 and step 5 amounts.

295-15 Division does not impose a tax on property of a State

This Division does not impose a tax on property of any kind belonging to a State (within the meaning of section 114 of the Constitution).

295-20 Exempting laws ineffective

A *Commonwealth law (other than this Act) does not have the effect of exempting the trustee of an entity to which this Division applies from the liability to pay tax unless it does so expressly.

295-25 Assessments on basis of anticipated SIS Act notice

- (1) The Commissioner may make an assessment for a fund or trust that is not a *complying superannuation fund, *complying approved deposit fund or *pooled superannuation trust for the income year as if it were such an entity if the Commissioner considers it likely that

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

a notice will be given under section 40 of the *Superannuation Industry (Supervision) Act 1993* having the effect that it will become such an entity.

- (2) However, the grounds for making an assessment under subsection (1) are taken never to have existed if:
- (a) the Commissioner becomes satisfied that the notice will not be given; or
 - (b) *APRA does not receive the documents referred to in subsection 36(1) of the *Superannuation Industry (Supervision) Act 1993* about the fund or trust before the end of 12 months after the assessment is made.

295-30 Effect of revocation etc. of SIS Act notices

This Division has effect as if a notice given under section 342 of the *Superannuation Industry (Supervision) Act 1993* (about pre-1 July 88 funding credits) or under regulations made for the purposes of that section had never been given if:

- (a) the notice is revoked; or
- (b) the decision to give the notice is set aside.

295-35 Acronyms used in tables

In tables in this Division, these acronyms are used for these entities:

Acronyms used in tables		
Item	Entity	Acronym
1	*Complying superannuation fund	CSF
2	*Non-complying superannuation fund	N-CSF
3	*Complying approved deposit fund	CADF
4	*Non-complying approved deposit fund	N-CADF
5	*Pooled superannuation trust	PST

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

Subdivision 295-B—Modifications of provisions of this Act

Table of sections

295-85	CGT to be primary code for calculating gains or losses
295-90	CGT rules for pre-30 June 1988 assets
295-95	Deductions related to contributions
295-100	Deductions for investing in PSTs and life policies
295-105	Distributions to PST unitholders

295-85 CGT to be primary code for calculating gains or losses

- (1) The modifications in subsection (2) apply if a *CGT event happens involving a *CGT asset that was owned by one of these entities just before the time of the event:
 - (a) a *complying superannuation fund;
 - (b) a *complying approved deposit fund;
 - (c) a *pooled superannuation trust.
- (2) These provisions do not apply to the *CGT event:
 - (a) sections 6-5 (about *ordinary income), 8-1 (about amounts you can deduct), and 15-15 and 25-40 (about profit-making undertakings or plans);
 - (aa) section 230-15 (about financial arrangements);
 - (b) sections 25A and 52 of the *Income Tax Assessment Act 1936* (about profit-making undertakings or schemes).

Exceptions

- (3) The provisions referred to in subsection (2) can apply to the *CGT event if:
 - (a) any *capital gain or *capital loss from the event is attributable to currency exchange rate fluctuations; or
 - (b) the *CGT asset is one of these:
 - (i) debenture stock, a bond, *debenture, certificate of entitlement, bill of exchange, promissory note or other security;
 - (ii) a deposit with a bank, building society or other financial institution;

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

- (iii) a loan (secured or not);
 - (iv) some other contract under which an entity is liable to pay an amount (whether the liability is secured or not).
- (4) The provisions referred to in subsection (2) can also apply to the *CGT event if a *capital gain or *capital loss from the event is disregarded because of one of the provisions in this table:

Where gain or loss disregarded because of CGT provision		
Item	Provision	Brief description
1	Paragraph 104-15(4)(a)	Title in a CGT asset does not pass when a hire purchase or similar agreement ends
2	Section 118-5	Cars, motor cycles and valour decorations
3	Section 118-10	Collectables and personal use assets
4	Section 118-13	Shares in a PDF
5	Section 118-25	Trading stock
6	Section 118-30	Film copyright
7	Section 118-35	R&D
8	Section 118-55	Foreign currency hedging gains and losses
9	Section 118-60	Certain gifts
10	Section 118-300	Insurance policies
11	Section 118-305	Superannuation
12	Section 118-310	CGT event happens to right to, or part of, RSA

Note: For item 5, certain assets (particularly shares, units in a unit trust, and land) are not trading stock when owned by the entity (see paragraph 70-10(2)(b)).

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

295-90 CGT rules for pre-30 June 1988 assets

- (1) This section applies to the trustee of:
 - (a) a *complying superannuation fund; or
 - (b) a *complying approved deposit fund; or
 - (c) a *pooled superannuation trust.
- (2) Parts 3-1 and 3-3 (about capital gains and losses) apply to a *CGT asset that:
 - (a) the trustee or a former trustee owned at the end of 30 June 1988; and
 - (b) the trustee owned at the commencement of this section; as if the trustee had *acquired the asset on 30 June 1988.
- (3) Subsection (2) does not affect how to work out the asset's *cost base or *reduced cost base.

Note: See Subdivision 295-B of the *Income Tax (Transitional Provisions) Act 1997* for rules about cost base.
- (4) Subsection 104-30(5) applies to an option granted by the trustee as if the reference in that subsection to 20 September 1985 were a reference to 1 July 1988.

295-95 Deductions related to contributions

- (1) Provisions of this Act about deducting amounts apply to these entities as if all contributions made to them were included in their assessable income:
 - (a) *complying superannuation funds;
 - (b) *non-complying superannuation funds that are *Australian superannuation funds;
 - (c) *complying approved deposit funds;
 - (d) *non-complying approved deposit funds;
 - (e) *RSA providers.

Note 1: This means that the entities can deduct amounts incurred in obtaining the contributions.

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

Note 2: Examples of contributions that are not assessable are:

- contributions which the contributor cannot deduct;
- contributions excluded from assessable income under Subdivision 295-D.

- (2) A *superannuation fund is an ***Australian superannuation fund*** at a time, and for the income year in which that time occurs, if:
- (a) the fund was established in Australia, or any asset of the fund is situated in Australia at that time; and
 - (b) at that time, the central management and control of the fund is ordinarily in Australia; and
 - (c) at that time either the fund had no member covered by subsection (3) (an ***active member***) or at least 50% of:
 - (i) the total *market value of the fund's assets attributable to *superannuation interests held by active members; or
 - (ii) the sum of the amounts that would be payable to or in respect of active members if they voluntarily ceased to be members;is attributable to superannuation interests held by active members who are Australian residents.
- (3) A member is covered by this subsection at a time if the member is:
- (a) a contributor to the fund at that time; or
 - (b) an individual on whose behalf contributions have been made, other than an individual:
 - (i) who is a foreign resident; and
 - (ii) who is not a contributor at that time; and
 - (iii) for whom contributions made to the fund on the individual's behalf after the individual became a foreign resident are only payments in respect of a time when the individual was an Australian resident.
- (4) To avoid doubt, the central management and control of a *superannuation fund is ordinarily in Australia at a time even if that central management and control is temporarily outside Australia for a period of not more than 2 years.

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

295-100 Deductions for investing in PSTs and life policies

- (1) Provisions of this Act about deducting amounts apply to *complying superannuation funds and *complying approved deposit funds as if *ordinary income and *statutory income received from these investments were included in their assessable income:

- (a) units in a *pooled superannuation trust;
- (b) *life insurance policies issued by a *life insurance company;
- (c) an interest in a trust whose assets consist only of life insurance policies issued by a life insurance company.

Note: Income from these investments is not assessable: see for example sections 295-105 and 118-350.

- (2) A *complying superannuation fund cannot deduct an amount (otherwise than under section 295-465) for fees or charges incurred for:

- (a) *complying superannuation/FHSA life insurance policies; or
- (b) *exempt life insurance policies; or
- (c) units in a *pooled superannuation trust that are *segregated current pension assets of the fund.

295-105 Distributions to PST unitholders

The assessable income of a *complying superannuation fund, *complying approved deposit fund or *pooled superannuation trust does not include amounts *derived by the entity because it holds units in a *pooled superannuation trust.

Note: These entities will not be subject to any tax liability when they dispose of the units: see subsection 295-85(2) and section 118-350.

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

Subdivision 295-C—Contributions included

Guide to Subdivision 295-C

295-155 What this Subdivision is about

There are basically 3 types of assessable contributions:

- (a) those made by a contributor (for example, an employer) on behalf of someone else (for example, an employee); and
- (b) those made on the contributor's own behalf for which the contributor is entitled to a deduction; and
- (c) those transferred from a foreign superannuation fund to an Australian superannuation fund.

There are some additions and exceptions.

Table of sections

Contributions and payments

- 295-160 Contributions and payments
- 295-165 Exception—spouse contributions
- 295-170 Exception—Government co-contributions and contributions for a child
- 295-171 Exception—payments from FHSAs and Government FHSA contributions
- 295-173 Exception—trustee contributions
- 295-175 Exception—payments by a member spouse
- 295-180 Exception—choice to exclude certain contributions
- 295-185 Exception—temporary residents

Personal contributions and roll-over amounts

- 295-190 Personal contributions and roll-over amounts
- 295-195 Exclusion of personal contributions—contributions
- 295-197 Exclusion of personal contributions—successor funds

Transfers from foreign funds

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

Section 295-160

295-200 Transfers from foreign superannuation funds

Application of tables to RSA providers

295-205 Application of tables to RSA providers

Former constitutionally protected funds

295-210 Former constitutionally protected funds

Contributions and payments

295-160 Contributions and payments

The assessable income of an entity includes contributions or payments as set out in this table for the income year in which the contributions or payments are received.

Note: For an explanation of the acronyms used, see section 295-35.

Contributions and payments included in assessable income		
Item	Assessable income of this entity:	Includes:
1	CSF N-CSF that is an *Australian superannuation fund for the income year *RSA provider	Contribution to provide *superannuation benefits for someone else (except a contribution that is a *roll-over superannuation benefit)
2	N-CSF that is a *foreign superannuation fund for the income year	Contribution to provide *superannuation benefits for someone else to the extent that it relates to a period when that person was: (a) an Australian resident; or (b) a foreign resident who *derives *withholding payments covered by subsection 900-12(3) (except a contribution that is a *roll-over superannuation benefit)
3	CSF CADF *RSA provider	Payment under section 65 of the <i>Superannuation Guarantee (Administration) Act 1992</i>

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

Contributions and payments included in assessable income

Item	Assessable income of this entity:	Includes:
4	CSF *RSA provider	Payment under section 61 or 61A of the <i>Small Superannuation Accounts Act 1995</i>

295-165 Exception—spouse contributions

- (1) Item 1 of the table in section 295-160 does not include in assessable income a contribution made by an individual to a *complying superannuation fund or an *RSA:
 - (a) to provide *superannuation benefits for the individual's *spouse (regardless whether the benefits are payable to the individual's spouse's *SIS dependants if the individual's spouse dies before or after becoming entitled to receive the benefits); and
 - (b) that the individual cannot deduct under Subdivision 290-B.
- (2) Paragraph (1)(a) does not apply to *superannuation benefits for a *spouse living permanently separately and apart from the individual.

295-170 Exception—Government co-contributions and contributions for a child

- (1) Item 1 of the table in section 295-160 does not include in assessable income a contribution:
 - (a) that is a Government co-contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*; or
 - (b) for the benefit of a person under 18 that is not made by or on behalf of the person's employer.

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

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- (2) Item 4 of the table in section 295-160 does not include in assessable income a payment to the extent to which it represents a Government co-contribution or co-contributions made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.

295-171 Exception—payments from FHSAs and Government FHSA contributions

Item 1 of the table in section 295-160 does not include in assessable income a contribution that is:

- (a) a payment from an *FHSA required under the *First Home Saver Accounts Act 2008*; or
- (b) a *Government FHSA contribution.

295-173 Exception—trustee contributions

Item 1 of the table in section 295-160 does not include in assessable income a contribution made by an entity that, when the contribution was made, was:

- (a) the trustee of a *complying superannuation fund, a *complying approved deposit fund or a *pooled superannuation trust; or
- (b) covered by section 102MD of the *Income Tax Assessment Act 1936* because of paragraph (a) of that section (trustees etc. of exempt life assurance funds).

295-175 Exception—payments by a member spouse

Contributions are not included in assessable income under section 295-160 if they are an amount paid by a member spouse, as mentioned in regulations under the *Family Law Act 1975*, to a regulated superannuation fund (within the meaning of that Act), or to an *RSA provider, to be held for the benefit of the *non-member spouse in satisfaction of the non-member spouse's entitlement in respect of the *superannuation interest concerned.

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

295-180 Exception—choice to exclude certain contributions

- (1) Item 1 of the table in section 295-160 does not include an amount in the assessable income of a *public sector superannuation scheme for an income year to the extent that the trustee chooses that it not be included.
- (2) The entity that made the contributions must consent to the choice.
Note: Making this choice effectively shifts the liability for tax on the contributions to the recipient of the benefit. The benefit is treated as an element untaxed in the fund: see Subdivision 301-C.
- (3) However, the choice cannot be made for an income year for an amount that exceeds the sum of amounts covered by notices given by the trustee under section 307-285 for *superannuation benefits paid in the income year.
- (4) A choice under this section cannot be revoked or withdrawn.
- (5) A choice under this section cannot be made in relation to a *public sector superannuation scheme that comes into operation after 5 September 2006.

295-185 Exception—temporary residents

Item 2 of the table in section 295-160 does not include a contribution in the assessable income of an entity if the individual (for whom it was made) is a *temporary resident at the end of the income year to which the contribution relates.

Personal contributions and roll-over amounts

295-190 Personal contributions and roll-over amounts

- (1) The assessable income of an entity includes amounts as set out in this table.
Note: For an explanation of the acronyms used, see section 295-35.

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

Chapter 3 Specialist liability rules

Part 3-30 Superannuation

Division 295 Taxation of superannuation entities

Section 295-190

Personal contributions and roll-over amounts included in assessable income		
Item	Assessable income of this entity:	Includes:
1	CSF *RSA provider	A contribution: (a) made to the CSF or *RSA; and (b) covered by a valid and acknowledged notice given to the *superannuation provider of the CSF or RSA under section 290-170
2	CSF CADF N-CADF *RSA provider	A *roll-over superannuation benefit that an individual is taken to receive under section 307-15 to the extent that: (a) it consists of an *element untaxed in the fund; and (b) is not an *excess untaxed roll-over amount for that individual
2A	CSF *RSA provider	A *roll-over superannuation benefit that an individual is taken to receive under section 307-15 to the extent that: (a) the CSF or *RSA is a *successor fund; and (b) the benefit relates to a contribution that, before it was transferred to the successor fund, was not covered by a valid and acknowledged notice given to any *superannuation provider under section 290-170; and (c) while the benefit is held in the successor fund, the contribution becomes covered by a valid and acknowledged notice given to the superannuation provider of the successor fund under that section
3	CSF CADF *RSA provider	The *taxable component of a directed termination payment (within the meaning of section 82-10F of the <i>Income Tax (Transitional Provisions) Act 1997</i>)

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

- (1A) Items 2 and 2A of the table in subsection (1) do not apply to a *roll-over superannuation benefit that is a *departing Australia superannuation payment made under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Income years in which amounts are included in assessable income

- (2) A contribution referred to in item 1 is included in the income year in which it is received if the notice is received by the *superannuation provider by the day the provider lodges its *income tax return for that income year.
- (3) Otherwise it is included in the income year in which the notice is received.
- (4) A payment referred to in item 2 or 3 is included in the income year in which it is received by the *superannuation provider.
- (5) A benefit referred to in item 2A is included in the income year in which it is received if the notice is received by the *superannuation provider by the day the provider lodges its *income tax return for that income year.
- (6) Otherwise it is included in the income year in which the notice is received.

295-195 Exclusion of personal contributions—contributions

Variation notice received before return lodged

- (1) A contribution is not included in the assessable income of a *complying superannuation fund or *RSA provider under item 1 of the table in subsection 295-190(1) to the extent that it has been reduced by a notice under section 290-180 if the notice is received by the *superannuation provider before it has lodged its *income tax return for the income year in which the contribution was made.

Variation notice received after return lodged

- (2) A contribution is not included in the assessable income of a *complying superannuation fund or *RSA provider under item 1 of the table in subsection 295-190(1) for the income year in which the

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

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contribution was made to the extent that it has been reduced by a notice under section 290-180 if:

- (a) the notice is received by the *superannuation provider after it has lodged its *income tax return for the income year; and
 - (b) the provider exercises the option mentioned in subsection (3).
- (3) An amount referred to in subsection (2) may, at the option of the provider, be excluded from the assessable income of the fund or *RSA provider for the income year referred to in subsection (2) if excluding it would result in a greater reduction in tax for that year than the reduction that would occur for the income year in which the notice is received if a deduction were allowed under item 2 of the table in subsection 295-490(1).

Note: The exclusion is an alternative to the fund deducting the amount under item 2 of the table in subsection 295-490(1).

295-197 Exclusion of personal contributions—successor funds

Scope

- (1) This section applies to the *superannuation provider (the **successor provider**) of a *complying superannuation fund or *RSA if, apart from this section, a *roll-over superannuation benefit would be included in the assessable income of the fund or *RSA provider under item 2A of the table in subsection 295-190(1).

Variation notice received before return lodged

- (2) The benefit is not so included, to the extent that the relevant contribution has been reduced by a notice under section 290-180, if the notice is received by the successor provider before the successor provider has lodged its *income tax return for the income year in which the benefit was transferred.

Variation notice received after return lodged

- (3) The benefit is not so included in the assessable income for the income year in which the benefit was transferred, to the extent that the relevant contribution has been reduced by a notice under section 290-180, if:

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

- (a) the notice is received by the successor provider after the successor provider has lodged its *income tax return for the income year; and
 - (b) the successor provider exercises the option mentioned in subsection (4).
- (4) An amount referred to in subsection (3) may, at the option of the successor provider, be excluded from the assessable income of the fund or *RSA provider for the income year referred to in subsection (3) if excluding it would result in a greater reduction in tax for that year than the reduction that would occur for the income year in which the notice is received if a deduction were allowed under item 2B of the table in subsection 295-490(1).

Note: The exclusion is an alternative to the fund deducting the amount under item 2B of the table in subsection 295-490(1).

Transfers from foreign funds

295-200 Transfers from foreign superannuation funds

- (1) The assessable income of a fund that is an *Australian superannuation fund for the income year includes an amount transferred to the fund from a fund that was a *foreign superannuation fund for the income year in relation to a member of the foreign fund to the extent that the amount transferred exceeds amounts vested in the member at the time of the transfer.
- (2) The assessable income of a fund that is a *complying superannuation fund for the income year includes so much of an amount transferred to the fund from a fund that was a *foreign superannuation fund for the income year as is specified in a choice made by a former member of the foreign fund under section 305-80.
- (3) The amount is included in the income year in which the transfer happens.
- (4) This section also applies to an amount transferred from a scheme for the payment of benefits in the nature of superannuation upon retirement or death that:

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

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- (a) is not, and never has been, an *Australian superannuation fund or a *foreign superannuation fund; and
- (b) was not established in Australia; and
- (c) is not centrally managed or controlled in Australia.

Application of tables to RSA providers

295-205 Application of tables to RSA providers

The tables in this Subdivision apply to *RSA providers only to the extent that amounts are paid to *RSAs they provide.

Former constitutionally protected funds

295-210 Former constitutionally protected funds

- (1) This section applies to a *complying superannuation fund for an income year if the fund ceased to be a *constitutionally protected fund during the year or at the end of the previous year.
- (2) The assessable income of the fund for the income year includes the sum of the *roll-over superannuation benefits to the extent that they consist of the *element untaxed in the fund of the *taxable component that would be included in that assessable income if all contributions and earnings accumulated in the fund when the fund ceased to be a *constitutionally protected fund:
 - (a) had been paid out of the fund immediately before it ceased to be a constitutionally protected fund; and
 - (b) were paid to the fund as roll-over superannuation benefits immediately after that time.

Subdivision 295-D—Contributions excluded

Table of sections

295-260	Transfer of liability to investment vehicle
295-265	Application of pre-1 July 88 funding credits
295-270	Anticipated funding credits

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

295-260 Transfer of liability to investment vehicle

- (1) The *superannuation provider in relation to a *complying superannuation fund or a *complying approved deposit fund (the *transferor*) may reduce the amount that would otherwise be included in the fund's assessable income for an income year under Subdivision 295-C by agreement with another entity (the *transferee*) in which it holds investments.

What the transferee must be

- (2) The transferee must be a *life insurance company or a *pooled superannuation trust.

Note: Amounts transferred are included in the transferee's assessable income: see section 295-320 (for PSTs) and paragraph 320-15(1)(i) (for life insurance companies).

Agreement requirements

- (3) The transferor may make one agreement only for an income year with a particular transferee.
- (4) An agreement:
- (a) must be in writing, and must be signed by or for the transferor and transferee; and
 - (b) must be made by the day the transferor lodges its *income tax return for its income year to which the agreement relates; and
 - (c) cannot be revoked.

Limits on transfer

- (5) The total amount covered by the agreements cannot exceed the amount that would otherwise be included in the transferor's assessable income under Subdivision 295-C for that income year.
- (6) The amount covered by an agreement with a particular transferee cannot exceed this amount:

$$\frac{\text{Greatest equity value}}{\text{Transferor's low tax component tax rate}}$$

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

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where:

greatest equity value is the greatest of these amounts during the transferor's income year:

- (a) if the transferee is a *pooled superannuation trust—the *market value of the transferor's investment in units in the trust;
- (b) if not—the market value of the transferor's investment in:
 - (i) *life insurance policies issued by the transferee; or
 - (ii) a trust whose assets consist only of life insurance policies issued by the transferee.

transferor's low tax component tax rate is the rate of tax imposed on the *low tax component of the fund's taxable income for the income year.

295-265 Application of pre-1 July 88 funding credits

Choice to reduce contributions included in assessable income

- (1) The *superannuation provider in relation to a *complying superannuation fund can choose to reduce the amount of contributions that would otherwise be included in the fund's assessable income for an income year under item 1 of the table in section 295-160 if it has pre-1 July 88 funding credits available for the income year.

When funding credits are available

- (2) Use this method to work out whether a fund has pre-1 July 88 funding credits available for an income year:

Method statement

Step 1. Identify the amount of pre-1 July 88 funding credits unused at the end of the previous income year.

Step 2. Index that amount.

Note: Subdivision 960-M shows you how to index amounts.

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

Step 3. Add any pre-1 July 88 funding credits transferred to the fund in the income year under regulations made for the purposes of subsection 342(7) of the *Superannuation Industry (Supervision) Act 1993*.

Step 4. Deduct from the step 3 amount:

- (a) pre-1 July 88 funding credits transferred from the fund in the income year under regulations made for the purposes of subsection 342(7) of that Act; and
- (b) amounts specified in a notice given to the *superannuation provider in relation to the fund under subsection 342(6) of that Act for the income year.

Step 5. The result is the pre-1 July 88 funding credits available to the fund for the income year.

That amount, reduced by any amount specified in a choice made under subsection (1) for the income year, is the amount of pre-1 July 88 funding credits unused at the end of the income year.

Note 1: Regulations under subsection 342(7) of the SIS Act allow APRA to approve transfers of pre-1 July 88 funding credits between funds.

Note 2: Subsection 342(6) of that Act covers the situation where the fund's rules are changed to produce a reduction in pre-1 July 88 funding credits and the trustee notifies APRA of the change.

- (3) If a notice is given to the *superannuation provider in relation to the fund under subsection 342(2) of the *Superannuation Industry (Supervision) Act 1993* granting the trustee a pre-1 July 88 funding credit, this section applies as if the pre-1 July 88 funding credit had arisen at the beginning of the income year in which 1 July 1988 occurred.
- (4) However, if a notice is given to the *superannuation provider in relation to the fund under subsection 342(4) of the *Superannuation Industry (Supervision) Act 1993* for the income year, the fund has no pre-1 July 88 funding credits.

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

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Note: Subsection 342(4) of that Act covers the situation where the fund's rules are changed to produce a reduction in pre-1 July 88 funding credits and the provider fails to notify APRA of the change.

Limit on choice

- (5) The total amount covered by the choice cannot exceed the pre-1 July 88 funding credits available to the fund for the income year.
- (6) The total amount covered by the choice also cannot exceed the amount of contributions that would otherwise be included in the fund's assessable income for the income year under item 1 of the table in section 295-160 that are used to fund liabilities that accrued before 1 July 1988.
- (7) The regulations may prescribe either or both of the following:
 - (a) the manner in which the *superannuation provider in relation to a *superannuation fund is to work out the amount applicable to the fund under subsection (6) for an income year;
 - (b) methods (other than the method specified in subsection (6)) of working out how the provider of a superannuation fund can apply pre-1 July 88 funding credits.
- (8) Methods prescribed under paragraph (7)(b) may be applicable to particular *superannuation funds or to a class or classes of superannuation funds.

295-270 Anticipated funding credits

- (1) Subsection (2) has effect if the *superannuation provider in relation to a *complying superannuation fund expects a notice to be given under subsection 342(2) of the *Superannuation Industry (Supervision) Act 1993* or under regulations made for the purposes of subsection 342(7) of that Act to the effect that pre-1 July 88 funding credits of a particular amount will be available to the fund for the income year.

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

- (2) Section 295-265 applies to the fund as if pre-1 July 88 funding credits of the anticipated amount were available to the fund for the income year (in addition to any other pre-1 July 88 funding credits available to the fund for the year).
- (3) However, section 295-265 applies to the fund for the income year as if pre-1 July 88 funding credits of the anticipated amount were not available to the fund for the income year if:
 - (a) it becomes clear that the expected notice will not be given or that the specified amount of pre-1 July 88 funding credits will not be available; or
 - (b) *APRA does not receive the things referred to in subsection 342(3) of the *Superannuation Industry (Supervision) Act 1993* (for a notice expected under subsection 342(2) of that Act) or the things required to be given under regulations made for the purposes of subsection 342(7) of that Act (for a notice under those regulations) before the earlier of:
 - (i) the end of 12 months after the fund's assessment is made for the income year; and
 - (ii) the time the things are required to be given by the regulations.

Subdivision 295-E—Other income amounts

Table of sections

Amounts included

295-320	Other amounts included in assessable income
295-325	Previously complying funds
295-330	Previously foreign funds

Amounts excluded

295-335	Amounts excluded from assessable income
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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 295-320

Amounts included

295-320 Other amounts included in assessable income

The assessable income of an entity includes the amounts as set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

Amounts included in assessable income			
Item	Assessable income of this entity:	Includes:	For the income year:
1	PST	Amount transferred to it by a CSF or CADF under section 295-260	Of the PST that includes the last day of the transferor's income year to which the agreement relates
2	N-CSF that was a CSF for the previous income year	*Ordinary income and *statutory income from previous years worked out under section 295-325	Following the income year in which it was a CSF
3	CSF; or N-CSF that is an *Australian superannuation fund for the income year and that was a *foreign superannuation fund for the previous income year	*Ordinary income and *statutory income from previous years worked out under section 295-330	Following the income year in which it was a foreign superannuation fund

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

Amounts included in assessable income			
Item	Assessable income of this entity:	Includes:	For the income year:
4	CSF	The part of a rebate or refund of an insurance premium that is attributable to an amount deducted under an item of the table in subsection 295-465(1)	In which the rebate or refund is received
5	*RSA provider	The part of a rebate or refund of an insurance premium that is attributable to an amount deducted under section 295-475	In which the rebate or refund is received

295-325 Previously complying funds

The amount of *ordinary income and *statutory income from previous years included in the assessable income of a fund in an income year under item 2 of the table in section 295-320 is:

Sum of the *market values of the fund's assets just before the start of the income year	–	Sum of the part of the *crystallised undeducted contributions that relates to the period after 30 June 1983 and the *contributions segment for current members at that time so far as they have not been, and cannot be, deducted
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295-330 Previously foreign funds

The amount of *ordinary income and *statutory income from previous years included in the assessable income of a fund in an income year under item 3 of the table in section 295-320 is:

Sum of the *market values of the fund's assets just before the start of the income year	–	Amount in the fund at that time representing contributions made by current members
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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Amounts excluded

295-335 Amounts excluded from assessable income

The assessable income of an entity does not include the amounts set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

Amounts excluded from assessable income		
Item	This entity:	Does not include this in assessable income:
1	CSF CADF PST	A bonus on a *life insurance policy (except a reversionary bonus)
2	PST	Amount attributable to amounts received from a *constitutionally protected fund
3	*RSA provider	A bonus on a *life insurance policy that is an *RSA (except a reversionary bonus)

Subdivision 295-F—Exempt income

Table of sections

295-385	Income from assets set aside to meet current pension liabilities
295-390	Income from other assets used to meet current pension liabilities
295-395	Meaning of <i>segregated non-current assets</i>
295-400	Income of a PST attributable to current pension liabilities
295-405	Other exempt income
295-410	Amount credited to RSA

295-385 Income from assets set aside to meet current pension liabilities

- (1) The *ordinary income and *statutory income of a *complying superannuation fund for an income year is exempt from income tax to the extent that:
- it would otherwise be assessable income; and
 - it is from *segregated current pension assets.

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

Exception

- (2) Subsection (1) does not apply to:
- (a) *non-arm's length income; or
 - (b) amounts included in assessable income under Subdivision 295-C.

Meaning of segregated current pension assets

- (3) Assets of a *complying superannuation fund are **segregated current pension assets** at a time if:
- (a) the assets are invested, held in reserve or otherwise dealt with at that time solely to enable the fund to discharge all or part of its liabilities (contingent or not) in respect of *superannuation income stream benefits that are payable by the fund at that time; and
 - (b) the trustee of the fund obtains an *actuary's certificate before the date for lodgment of the fund's *income tax return for the income year to the effect that the assets and the earnings that the actuary expects will be made from them would provide the amount required to discharge in full those liabilities, or that part of those liabilities, as they fall due.
- (4) Assets of a *complying superannuation fund are also **segregated current pension assets** of the fund at a time if the assets are invested, held in reserve or otherwise being dealt with at that time for the sole purpose of enabling the fund to discharge all or part of its liabilities (contingent or not), as they become due, in respect of *superannuation income stream benefits:
- (a) that are payable by the fund at that time; and
 - (b) prescribed by the regulations for the purposes of this section.
- (5) Subsection (4) does not apply unless, at all times during the income year, the liabilities of the fund (contingent or not) to pay *superannuation income stream benefits payable by the fund were liabilities in respect of superannuation income stream benefits that are prescribed by the regulations for the purposes of this section.

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

Section 295-390

- (6) However, assets of a *complying superannuation fund that are supporting a *superannuation income stream benefit that is prescribed by the regulations for the purposes of this section are not *segregated current pension assets* to the extent that the *market value of the assets exceeds the account balance supporting the benefit.

295-390 Income from other assets used to meet current pension liabilities

- (1) A proportion of the *ordinary income and *statutory income of a *complying superannuation fund that would otherwise be assessable income is exempt from income tax under this section. The proportion is worked out under subsection (3).

Exception

- (2) Subsection (1) does not apply to:
- (a) *non-arm's length income; or
 - (b) amounts included in assessable income under Subdivision 295-C; or
 - (c) income *derived from *segregated non-current assets; or
 - (d) income that is exempt from income tax under section 295-385.

Formula

- (3) The proportion is:

$$\frac{\text{Average value of current pension liabilities}}{\text{Average value of superannuation liabilities}}$$

where:

average value of current pension liabilities is the average value for the income year of the fund's current liabilities (contingent or not) in respect of *superannuation income stream benefits that are payable by the fund in that year. This does not include liabilities for which *segregated current pension assets are held.

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

average value of superannuation liabilities is the average value for the income year of the fund's current and future liabilities (contingent or not) in respect of *superannuation benefits in respect of which contributions have, or were liable to have, been made. This does not include liabilities for which *segregated current pension assets or *segregated non-current assets are held.

Actuary's certificate

- (4) The value of particular liabilities of the fund at a particular time is the amount of the fund's assets, together with future contributions in respect of the benefits concerned and expected earnings on the assets and contributions after that time, that would provide the amount required to discharge those liabilities as they fall due. This must be specified in an *actuary's certificate obtained by the trustee of the fund before the date for lodgment of the fund's *income tax return for the income year.
- (5) The expected earnings are worked out at the rate the actuary expects will be the rate of the fund's earnings on its assets (except *segregated current pension assets or *segregated non-current assets).

Superannuation liabilities where no current certificate

- (6) The superannuation liabilities do not have to be valued by an actuary for the income year if the fund has no *segregated current pension assets or *segregated non-current assets for the income year. Instead, the value can be worked out using this formula:

$$\frac{\text{Last value of superannuation liabilities}}{\text{Last value of assets}} \times \text{Current value of assets}$$

where:

current value of assets is the value of all of the fund's assets at a time in the income year, as specified in an *actuary's certificate obtained by the trustee of the fund before the date for lodgment of the fund's *income tax return for the income year.

last value of assets is the most recent value of all of the fund's assets specified in an *actuary's certificate.

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

Section 295-395

last value of superannuation liabilities is the value, at the time of that most recent valuation, of the fund's superannuation liabilities specified in an *actuary's certificate.

Note: This allows a fund to avoid the expense of an actuarial valuation of its superannuation liabilities, except in those years that a valuation is required by the SIS Act in order for the fund to continue to be complying.

- (7) Subsections (4), (5) and (6) do not apply in working out the amounts to be used in the formula in subsection (3) if, at all times during the income year, the liabilities of the fund in respect of *superannuation income stream benefits payable at those times were liabilities in respect of superannuation income stream benefits that are prescribed by the regulations for the purposes of this subsection.

295-395 Meaning of *segregated non-current assets*

- (1) Assets of a *complying superannuation fund are ***segregated non-current assets*** at a time in an income year if:
- (a) the assets are invested, held in reserve or otherwise dealt with at that time solely to enable the fund to discharge all or part of its current and future liabilities (contingent or not) to pay benefits in respect of which contributions have, or were liable to have, been made; and
 - (b) the trustee of the fund obtains an *actuary's certificate before the date for lodgment of the fund's *income tax return for the income year to the effect that the amount of the assets, together with any future contributions, and the earnings that the actuary expects will be made from them will provide the amount required to discharge in full those liabilities, or that part of those liabilities, as they fall due.
- (2) The liabilities referred to in paragraph (1)(a) do not include liabilities (contingent or not) in respect of *superannuation income stream benefits payable by the fund at that time.

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

295-400 Income of a PST attributable to current pension liabilities

- (1) This proportion of the *ordinary income and *statutory income that would otherwise be assessable income of a *pooled superannuation trust is *exempt income:

$$\frac{\text{Average number of units in the trust during the income year that are *segregated current pension assets of unitholders that are *complying superannuation funds}}{\text{Average number of units in the trust during the income year}}$$

Exceptions

- (2) Subsection (1) does not apply to:
- (a) *non-arm's length income; or
 - (b) amounts included in assessable income under item 1 of the table in section 295-320.

Alternative exemption

- (3) However, the trustee of the *pooled superannuation trust can choose that a different amount be *exempt income of the trust under this section if a percentage of the assessable income of the trust would have been exempt income under section 295-385 or 295-390 if it had been *derived instead by the unitholders in the trust in proportion to their holdings.
- (4) That percentage of the trust's *ordinary income and *statutory income is then *exempt income.

295-405 Other exempt income

The *ordinary income or *statutory income of an entity is exempt from income tax as set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

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

Section 295-410

*Exempt income		
Item	For this entity:	This is exempt:
1	CSF N-CSF CADF N-CADF	A grant of financial assistance under Part 23 of the <i>Superannuation Industry (Supervision) Act 1993</i>
2	*RSA provider	Amount credited to the *RSA where a pension (within the meaning of the <i>Retirement Savings Accounts Act 1997</i>) was paid from the RSA for all of the period in the income year that the RSA existed
3	*RSA provider	Part of an amount credited to the *RSA (worked out under section 295-410) where a pension (within the meaning of the <i>Retirement Savings Accounts Act 1997</i>) was paid from the RSA for part of the period in the income year that the RSA existed

295-410 Amount credited to RSA

For item 3 of the table in section 295-405, the part of the amount credited to the *RSA that is *exempt income is worked out by:

- (a) multiplying the amount by the number of days in the income year for which the pension (within the meaning of the *Retirement Savings Accounts Act 1997*) was paid; and
- (b) dividing the result by the number of days in the income year that the RSA existed.

Subdivision 295-G—Deductions

Table of sections

Death or disability benefits

295-460	Benefits for which deductions are available
295-465	Complying funds—deductions for insurance premiums
295-470	Complying funds—deductions for future liability to pay benefits
295-475	RSA providers—deductions for insurance premiums
295-480	Meaning of <i>whole of life policy</i> and <i>endowment policy</i>

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

Increased amount of superannuation lump sum death benefits

295-485 Deductions for increased amount of superannuation lump sum death benefit

Other deductions

295-490 Other deductions

Certain amounts cannot be deducted

295-495 Amounts that cannot be deducted

Death or disability benefits

295-460 Benefits for which deductions are available

Sections 295-465 (about deductions for complying funds for insurance premiums), 295-470 (about deductions for complying funds for future liability to pay benefits) and 295-475 (about deductions for *RSA providers for insurance premiums) apply to these benefits:

- (a) a *superannuation death benefit;
- (aa) a benefit consisting of an amount payable to an individual because a *terminal medical condition exists in relation to the individual;
- (b) a *disability superannuation benefit;
 - Note: *Disability superannuation benefit* has an extended meaning for the 2007-08 to 2010-11 income years for the purposes of subsections 295-465(1) and (2): see sections 295-466 and 295-467 of the *Income Tax (Transitional Provisions) Act 1997*.
- (c) a benefit consisting of an amount payable to an individual under an income stream because of the individual's temporary inability to engage in *gainful employment, that is payable for no longer than:
 - (i) 2 years; or
 - (ii) if an approval under section 62 of the *Superannuation Industry (Supervision) Act 1993* is in force for benefits of that kind and the approval specifies a longer maximum period—that longer period; or
 - (iii) if there is no such approval in force—a longer period allowed by the Commissioner.

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

Section 295-465

- Note 1: The fund can deduct amounts in relation to these benefits under either section 295-465 or 295-470, but not both.
- Note 2: The taxable component of the superannuation lump sums will contain an element untaxed in the fund: see section 307-290.

295-465 Complying funds—deductions for insurance premiums

Deductions for insurance premiums

- (1) A *complying superannuation fund can deduct the proportions specified in this table of premiums it pays for insurance policies that are (wholly or partly) for current or contingent liabilities of the fund to provide benefits referred to in section 295-460 for its members. It can deduct the amounts for the income year in which the premiums are paid.

Deductions of *complying superannuation funds

Item The fund can deduct this amount:

1	30% of the premium for a *whole of life policy if all individuals whose lives are insured are members of the fund
2	10% of the premium for an *endowment policy if all individuals whose lives are insured are members of the fund
3	30% of the part of an insurance policy premium (for a policy that is not a *whole of life policy or an *endowment policy) that is specified in the policy as being for a distinct part of the policy, if that part would have been a whole of life policy had it been a separate policy
4	10% of the part of an insurance policy premium (for a policy that is not a *whole of life policy or an *endowment policy) that is specified in the policy as being for a distinct part of the policy, if that part would have been an endowment policy had it been a separate policy
5	The part of a premium that is specified in the policy as being wholly for the liability to provide certain benefits, if those benefits are benefits referred to in section 295-460
6	So much of other insurance policy premiums as are attributable to the liability to provide benefits referred to in section 295-460

- Note: If the fund receives a rebate or refund of an insurance premium, the amount may be included in its assessable income: see table item 4 in section 295-320.

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

- (1A) If item 5 of the table applies to part, but not all, of an insurance policy premium, item 6 of the table applies to the rest of the premium as if item 5 did not apply to the premium.
- (1B) For the purposes of item 6 of the table, the regulations may provide that a specified proportion of a specified insurance policy premium may be treated as being attributable to the *complying superannuation fund's liability to provide benefits referred to in section 295-460.

Note: The fund may deduct a proportion other than that specified in the regulations for the premium, but must obtain an actuary's certificate in accordance with subsection (3) in order to do so. The same applies if the insurance policy premium is not specified in the regulations.

Deductions for self-insurance

- (2) A *complying superannuation fund can also deduct the amount it could reasonably be expected to pay in an *arm's length transaction to obtain an insurance policy to cover it for that part of its current or contingent liabilities to provide benefits referred to in section 295-460 for which it does not have insurance coverage. It can deduct the amount for the income year when it has the liability.
- (2A) For the purposes of subsection (2), the regulations may provide that a specified proportion of an amount mentioned in subsection (2B) may be treated as being the amount the fund could reasonably be expected to pay in an *arm's length transaction to obtain an insurance policy to cover it for its current or contingent liabilities to provide benefits referred to in section 295-460.

Example: If:

- (a) an actuary certifies the amount a fund could reasonably be expected to pay in an arm's length transaction to obtain an insurance policy; and
 - (b) the insurance policy covers liabilities of the fund to provide a class of total and permanent disability benefits broader than that covered by section 295-460; and
 - (c) the insurance policy is specified in the regulations; and
 - (d) the fund does not have insurance coverage for the liabilities;
- the fund may deduct, under subsection (2), so much of that certified amount as is specified in the regulations.

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

Section 295-470

- (2B) The amount is the amount a *complying superannuation fund could reasonably be expected to pay in an *arm's length transaction to obtain an insurance policy specified in the regulations.

Actuary's certificate

- (3) The trustee must obtain an *actuary's certificate before the date for lodgment of the fund's *income tax return for the income year in order to deduct an amount referred to in item 6 of the table or in subsection (2).
- (3A) Subsection (3) does not apply to an amount referred to in item 6 of the table in relation to an insurance policy premium, if the trustee deducts, under that item, only the proportion (if any) of the premium specified in the regulations made for the purposes of subsection (1B).

Choice not to deduct amounts under this section

- (4) The trustee may choose not to deduct amounts under this section for an income year and to deduct instead (under section 295-470) amounts based on the fund's future liability to pay the benefits.
- (5) The choice applies also to future income years unless the Commissioner decides that it should not.

295-470 Complying funds—deductions for future liability to pay benefits

- (1) A *complying superannuation fund can deduct an amount under this section for an income year if:
- (a) the trustee of the fund makes a choice under subsection 295-465(4) and the choice applies to the income year; and
 - (b) the trustee pays:
 - (i) a benefit referred to in paragraph 295-460(a), (aa) or (b) for the income year in consequence of the termination of a member's employment; or
 - (ii) a benefit referred to in paragraph 295-460(c).

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

(2) The amount the fund can deduct is:

$$\text{Benefit amount} \times \frac{\text{Future service days}}{\text{Total service days}}$$

where:

benefit amount is:

- (a) for a benefit that is a *superannuation lump sum—the amount of the lump sum; or
- (b) for a benefit that is a *superannuation income stream—the *value of the *superannuation interest supporting the income stream; or
- (c) for a benefit referred to in paragraph 295-460(c)—the total of the amounts paid during the income year.

future service days is the number of days in the period starting when:

- (a) the termination happened; or
- (b) for a benefit referred to in paragraph 295-460(c)—the member became unable to engage in *gainful employment; and ending on the member's *last retirement day.

total service days is the sum of future service days and the number of days in:

- (a) for a benefit that is a *superannuation lump sum—the *service period for the superannuation lump sum; or
- (b) for another benefit—the period ending on the first day of the period to which the first payment of the benefit relates and starting on the earliest of:
 - (i) the day on which the member joined the relevant *superannuation fund; and
 - (ii) the first day of the period of employment to which the benefit relates (including a qualifying period before the member could join the fund and any period when the member was not a member of the fund); and
 - (iii) the day applicable under subsection (3).

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

Section 295-475

- (3) The applicable day is the first day of the *service period for a *superannuation lump sum that is a *roll-over superannuation benefit if all or part of the *value of the other benefit is attributable to the roll-over superannuation benefit.

295-475 RSA providers—deductions for insurance premiums

An *RSA provider can deduct premiums it pays for insurance policies that are wholly for its liability to provide benefits referred to in section 295-460 for its *RSA holders. It can deduct the amounts for the income year in which the premiums are paid.

Note: If the RSA provider receives a rebate or refund of an insurance premium, the amount may be included in its assessable income: see table item 5 in section 295-320.

295-480 Meaning of *whole of life policy* and *endowment policy*

- (1) A ***whole of life policy*** is an insurance policy:
- (a) that includes an investment component; and
 - (b) the premiums for which are not dissected; and
 - (c) where the sum insured (and any bonuses) are payable on:
 - (i) the death of the individual insured; or
 - (ii) the earlier of the death of the individual insured and the individual attaining the age specified in the policy (being at least the age of 85).
- (2) An ***endowment policy*** is an insurance policy:
- (a) that includes an investment component; and
 - (b) the premiums for which are not dissected; and
 - (c) where the sum insured (and any bonuses) are payable on:
 - (i) a day specified in, or worked out under, the policy; or
 - (ii) the death of the individual insured if that happens before that day;
- but does not include a *whole of life policy.

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

Increased amount of superannuation lump sum death benefits

295-485 Deductions for increased amount of superannuation lump sum death benefit

- (1) An entity that is a *complying superannuation fund, or a *complying approved deposit fund, and has been since 1 July 1988 (or since it came into existence if that was later) can deduct an amount under this section if:
- (a) it pays a *superannuation lump sum because of the death of a person to the trustee of the deceased's estate or an individual who was a *spouse, former spouse or *child of the deceased at the time of death or payment; and
 - (b) it increases the lump sum by an amount, or does not reduce the lump sum by an amount (the **tax saving amount**) so that the amount of the lump sum is the amount that the fund could have paid if no tax were payable on amounts included in assessable income under Subdivision 295-C.

Note: Paragraph (1)(b) has effect as if the reference to amounts included in assessable income under Subdivision 295-C included a reference to amounts included in assessable income under former section 274 of the *Income Tax Assessment Act 1936*: see section 295-485 of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) The fund can deduct the amount in the income year in which the lump sum is paid.
- (3) The amount the fund can deduct is:

$$\frac{\text{Tax saving amount}}{\text{Low tax component rate}}$$

where:

low tax component rate is the rate of tax imposed on the *low tax component of the fund's taxable income for the income year.

Note: The deduction is designed to compensate the fund for the tax payable on the contributions that are used to fund the lump sum.

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

Section 295-490

- (4) The amount the fund can deduct for a *superannuation lump sum paid because of the death of a person to the trustee of the deceased's estate is so much of the subsection (3) amount as is appropriate having regard to the extent to which individuals referred to in paragraph (1)(a) can reasonably be expected to benefit from the estate.

Other deductions

295-490 Other deductions

- (1) An entity can deduct amounts as set out in this table.

Note: For an explanation of the acronyms used, see section 295-35.

Other deductions			
Item	This entity:	Can deduct:	For the income year in which:
1	CSF N-CSF CADF N-CADF PST	An amount included in the entity's assessable income under Subdivision 295-C that is a *fringe benefit	The contribution is included in assessable income
2	CSF *RSA provider	Contributions made to the CSF or *RSA to the extent they have been reduced by a notice under section 290-180 received by the *superannuation provider of the CSF or RSA after it lodged its *income tax return for the income year in which the contributions were made, but only if the provider has <i>not</i> exercised the option mentioned in subsection 295-195(3)	The notice is received

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

Other deductions			
Item	This entity:	Can deduct:	For the income year in which:
2A	CSF *RSA provider	A *roll-over superannuation benefit, to the extent that: <ul style="list-style-type: none"> (a) the CSF or *RSA is a *successor fund; and (b) the benefit relates to a contribution that, before it was transferred to the successor fund, was covered by a valid and acknowledged notice given to any *superannuation provider under section 290-170; and (c) the contribution is reduced by a notice under section 290-180 received by the superannuation provider of the successor fund (whether or not the contribution has previously been reduced by a notice given to any superannuation provider under that section) 	The notice mentioned in paragraph (c) is received

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

Section 295-490

Other deductions			
Item	This entity:	Can deduct:	For the income year in which:
2B	CSF *RSA provider	A *roll-over superannuation benefit, to the extent that: (a) the benefit is included in the assessable income of the CSF or RSA provider under item 2A of the table in subsection 295-490(1); and (b) the relevant contribution has been reduced by a notice under section 290-180 received by the *superannuation provider of the CSF or *RSA after it lodged its *income tax return for the income year in which the transfer occurred; and (c) the provider has <i>not</i> exercised the option mentioned in subsection 295-197(4)	The notice mentioned in paragraph (b) is received
3	CSF N-CSF CADF N-CADF	A levy imposed by regulations under section 6 of the <i>Superannuation (Financial Assistance Funding) Levy Act 1993</i>	The levy is incurred
4	Entity that is a N-CSF and has been since 1 July 1988, or since it came into existence if that was later	An amount paid to an entity who includes it in assessable income under section 290-100	It is included in the entity's assessable income

- (2) A fund cannot deduct an amount under item 3 of the table for a levy imposed by regulations under section 6 of the *Superannuation (Financial Assistance Funding) Levy Act 1993* to the extent that:
- the levy is remitted; or
 - there is a refund or other application of an overpayment of the levy.

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

- (3) No other provision of this Act affects a fund's income tax liability in relation to the levy.

Certain amounts cannot be deducted

295-495 Amounts that cannot be deducted

These entities cannot deduct anything for these amounts:

Note: For an explanation of the acronyms used, see section 295-35.

Amounts that cannot be deducted		
Item	This entity	Cannot deduct anything for:
1	CSF	*Superannuation benefits
2	N-CSF	*Superannuation benefits (except amounts paid as mentioned in item 4 of the table in section 295-490)
3	*RSA provider	*Superannuation benefits paid from, or amounts withdrawn from, *RSAs
4	*RSA provider	Amounts credited to *RSAs
4A	*RSA provider that is also an *FHSA provider	Amounts credited to *FHSAs
5	CSF N-CSF CADF N-CADF	A repayment of a grant of financial assistance under Part 23 of the <i>Superannuation Industry (Supervision) Act 1993</i>

Subdivision 295-H—Components of taxable income

Table of sections

295-545	Components of taxable income—complying superannuation funds, complying ADFs and PSTs
295-550	Meaning of <i>non-arm's length income</i>
295-555	Components of taxable income—RSA providers

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

295-545 Components of taxable income—complying superannuation funds, complying ADFs and PSTs

- (1) The taxable income of these entities is split into a *non-arm's length component and a *low tax component:
 - (a) *complying superannuation funds;
 - (b) *complying approved deposit funds;
 - (c) *pooled superannuation trusts.

Note: A concessional rate applies to the low tax component, while the non-arm's length component is taxed at the highest marginal rate. The rates are set out in the *Income Tax Rates Act 1986*.

- (2) The **non-arm's length component** for an income year is the entity's *non-arm's length income for that year less any deductions to the extent that they are attributable to that income.
- (3) The **low tax component** is any remaining part of the entity's taxable income for the income year.

295-550 Meaning of non-arm's length income

- (1) An amount of *ordinary income or *statutory income is **non-arm's length income** of a *complying superannuation fund, a *complying approved deposit fund or a *pooled superannuation trust (other than an amount to which subsection (2) applies or an amount *derived by the entity in the capacity of beneficiary of a trust) if:
 - (a) it is derived from a *scheme the parties to which were not dealing with each other at *arm's length in relation to the scheme; and
 - (b) that amount is more than the amount that the entity might have been expected to derive if those parties had been dealing with each other at arm's length in relation to the scheme.
- (2) An amount of *ordinary income or *statutory income is also **non-arm's length income** of the entity if it is:
 - (a) a *dividend paid to the entity by a *private company; or
 - (b) ordinary income or statutory income that is reasonably attributable to such a dividend;unless the amount is consistent with an *arm's length dealing.

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

- (3) In deciding whether an amount is consistent with an *arm's length dealing under subsection (2), have regard to:
- (a) the value of *shares in the company that are assets of the entity; and
 - (b) the cost to the entity of the shares on which the *dividend was paid; and
 - (c) the rate of that dividend; and
 - (d) whether the company has paid a dividend on other shares in the company and, if so, the rate of that dividend; and
 - (e) whether the company has issued any shares to the entity in satisfaction of a dividend paid by the company (or part of it) and, if so, the circumstances of the issue; and
 - (f) any other relevant matters.
- (4) Income *derived by the entity as a beneficiary of a trust, other than because of holding a fixed entitlement to the income, is ***non-arm's length income*** of the entity.
- (5) Other income *derived by the entity as a beneficiary of a trust through holding a fixed entitlement to the income of the trust is ***non-arm's length income*** of the entity if:
- (a) the entity acquired the entitlement under a *scheme, or the income was derived under a scheme, the parties to which were not dealing with each other at *arm's length; and
 - (b) the amount of the income is more than the amount that the entity might have been expected to derive if those parties had been dealing with each other at arm's length.
- (6) This section:
- (a) applies to a *non-share equity interest in the same way as it applies to a *share; and
 - (b) applies to an *equity holder in a company in the same way as it applies to a shareholder in the company; and
 - (c) applies to a *non-share dividend in the same way as it applies to a *dividend.

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

295-555 Components of taxable income—RSA providers

- (1) The taxable income of an *RSA provider is split into:
- (a) an *RSA component; and
 - (b) if the RSA provider is also an *FHSA provider—an *FHSA component; and
 - (c) a *standard component.

Note: The RSA component and the FHSA component (if applicable) are taxed at the same concessional rate that applies to the low tax component of complying superannuation funds, complying approved deposit funds and pooled superannuation trusts (see section 23 of the *Income Tax Rates Act 1986*). The standard component is taxed at the standard company rate.

- (2) The ***RSA component*** for an income year is worked out in this way:

Method statement

Step 1. Add these amounts included in the provider's assessable income for the income year:

- (a) amounts included under Subdivision 295-C; and
- (b) other amounts credited during the year to *RSAs that it provides.

Step 2. Subtract from the step 1 amount amounts paid from those *RSAs (except benefits for the RSA holders or tax).

Step 3. The result is the ***RSA component***.

- (3) However, if the sum of the *RSA component and the *FHSA component (if any) is more than the *RSA provider's taxable income:
- (a) the provider's taxable income is equal to that sum; and
 - (b) this Act applies to the provider as if it had a *tax loss for the income year of an amount that would have been that loss if the RSA component and the FHSA component (if any) were not *ordinary income or *statutory income.

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

- (4) The **standard component** is the remaining part (if any) of the *RSA provider's taxable income for the income year after subtracting the *RSA component and the *FHSA component (if any).

Subdivision 295-I—No-TFN contributions

Table of sections

295-605	Liability for tax on no-TFN contributions income
295-610	No-TFN contributions income
295-615	Meaning of <i>quoted (for superannuation purposes)</i>
295-620	No reduction under Subdivision 295-D
295-625	Assessments

295-605 Liability for tax on no-TFN contributions income

- (1) A *superannuation provider in relation to a *complying superannuation fund is liable to pay tax on the *no-TFN contributions income of the fund for an income year.
- (2) A *superannuation provider in relation to a *non-complying superannuation fund is liable to pay tax on the *no-TFN contributions income of the fund for an income year.
- (3) An *RSA provider is liable to pay tax on its *no-TFN contributions income for an income year.

Note 1: The tax is imposed by the *Income Tax Act 1986*.

Note 2: The no-TFN contributions income is subject to a special rate of tax under the *Income Tax Rates Act 1986*.

Note 3: The Commissioner may make an assessment of the amount of income tax on the no-TFN contributions income: see section 169 of the *Income Tax Assessment Act 1936*.

295-610 No-TFN contributions income

- (1) An amount included by Subdivision 295-C in the assessable income of a *complying superannuation fund, a *non-complying superannuation fund or an *RSA provider for an income year is **no-TFN contributions income** for the year if:

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

Section 295-615

- (a) it is included by that Subdivision in the assessable income of the income year of the fund or RSA provider in which 1 July 2007 occurs, or a later income year; and
- (b) it is a contribution made to the fund or *RSA on or after 1 July 2007 to provide *superannuation benefits for an individual; and
- (c) by the end of the income year, the individual has not *quoted (for superannuation purposes) his or her *tax file number to the *superannuation provider.

Exception

- (2) However, an amount is not ***no-TFN contributions income*** if:
 - (a) the contribution was made in relation to a *superannuation interest or an *RSA of the individual that existed prior to 1 July 2007; and
 - (b) the total contributions made in relation to the superannuation interest or RSA for the income year that are included in assessable income under Subdivision 295-C did not exceed \$1,000.

295-615 Meaning of *quoted (for superannuation purposes)*

- (1) An individual has ***quoted (for superannuation purposes)*** a *tax file number to an entity at a time if the individual:
 - (a) quotes his or her tax file number to the entity at that time; or
 - (b) is taken by the *Superannuation Industry (Supervision) Act 1993*, the *Retirement Savings Accounts Act 1997*, the *First Home Saver Accounts Act 2008* or this Act to quote his or her tax file number to the entity at that time;in connection with the operation or the possible future operation of one or more of the following Acts:
 - (c) the Superannuation Acts (within the meaning of Part 25A of the *Superannuation Industry (Supervision) Act 1993*);
 - (d) the *Retirement Savings Accounts Act 1997*;
 - (e) the *First Home Saver Accounts Act 2008*.

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

- (2) An individual is taken to have *quoted (for superannuation purposes)* a *tax file number to an entity at a time if the Commissioner gives notice of the individual's tax file number to the entity at that time.

295-620 No reduction under Subdivision 295-D

There is no reduction of the amount of *no-TFN contributions income by Subdivision 295-D.

Note: Subdivision 295-D can reduce an amount that would otherwise be included in assessable income. It does not reduce the amount of *no-TFN contributions income*. An amount is still no-TFN contributions income even if, because of Subdivision 295-D, the amount (or part of it) is not included in assessable income.

295-625 Assessments

- (1) If the Commissioner makes an assessment of the amount of income tax on the *no-TFN contributions income, notice of the assessment may be included in a notice of any other assessment under this Act.

Self-assessment

- (2) If the conditions in subsection (3) are met, the Commissioner is taken to have made an assessment of a kind set out in subsection (4).
- (3) The conditions are:
- (a) one of the following gives the Commissioner an *income tax return for an income year on a particular day (the *return day*):
 - (i) a *superannuation provider in relation to a *complying superannuation fund;
 - (ii) a superannuation provider in relation to a *non-complying superannuation fund;
 - (iii) an *RSA provider; and
 - (b) the return is the first income tax return given by the provider for the year; and
 - (c) the Commissioner has not already made an assessment of a kind set out in subsection (4) for the provider for the year.

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

Section 295-675

- (4) The assessment is taken to have been made for the provider for the income year on the return day, and to be an assessment, in accordance with the information stated in the return, of the amount of income tax payable on the *no-TFN contributions income (if any) of the provider (or to be an assessment that no tax is payable).
- (5) The return is taken to be notice of the assessment signed by the Commissioner and given to the provider on the return day.

Note: The return may also be taken to be a notice of another assessment: see section 166A of the *Income Tax Assessment Act 1936*.

Subdivision 295-J—Tax offset for no-TFN contributions income (TFN quoted within 4 years)

Table of sections

295-675	Entitlement to a tax offset
295-680	Amount of the tax offset

295-675 Entitlement to a tax offset

- (1) A *superannuation provider in relation to a *superannuation fund or an *RSA provider is entitled to a *tax offset for an income year (the **current year**) commencing on or after 1 July 2007 for amounts of tax that count towards the offset for the provider for the current year.
- (2) An amount of tax counts towards the offset for the provider for the current year if:
 - (a) the tax was payable by the provider in one of the most recent 3 income years ending before the current year; and
 - (b) the tax was payable on an amount of *no-TFN contributions income of the fund or *RSA provider; and
 - (c) the amount of no-TFN contributions income was a contribution made to the fund or provider to provide *superannuation benefits for an individual who, in the current year, has *quoted (for superannuation purposes) his or her *tax file number to the provider for the first time.

Note: In certain circumstances the superannuation provider or RSA provider can get a refund of the tax offset under Division 67.

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

295-680 Amount of the tax offset

The amount of the *tax offset is the sum of each amount of tax that counts towards the offset for the provider for the current year.

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

Division 301—Superannuation member benefits paid from complying plans etc.

Table of Subdivisions

	Guide to Division 301
301-A	Application
301-B	Member benefits: general rules
301-C	Member benefits: elements untaxed in fund
301-D	Departing Australia superannuation payments
301-E	Superannuation lump sum member benefits less than \$200

Guide to Division 301

301-1 What this Division is about

This Division sets out the tax treatment of superannuation benefits received by members of complying plans etc. This treatment varies depending on the age of the member when they receive the benefit. This Division also sets out the tax treatment of departing Australia superannuation payments and certain payments less than \$200.

Subdivision 301-A—Application

Table of sections

301-5	Division applies to superannuation member benefits paid from complying plans etc.
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301-5 Division applies to superannuation member benefits paid from complying plans etc.

This Division applies to:

- (a) *superannuation member benefits that are paid from a *complying superannuation plan; and
- (b) *superannuation guarantee payments; and
- (c) *small superannuation account payments; and

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

- (d) *unclaimed money payments; and
- (e) *superannuation co-contribution benefit payments; and
- (f) *superannuation annuity payments.

Note: For the tax treatment of superannuation death benefits paid from complying plans, see Division 302. Superannuation benefits paid from superannuation plans that are not complying superannuation plans are dealt with in Division 305.

Subdivision 301-B—Member benefits: general rules

Table of sections

Member benefits—recipient aged 60 or above

301-10 All superannuation benefits are tax free

Member benefits—recipient aged over preservation age and under 60

301-15 Tax free status of tax free component

301-20 Superannuation lump sum—taxable component taxed at 0% up to low rate cap amount, 15% on remainder

301-25 Superannuation income stream—taxable component attracts 15% offset

Member benefits—recipient aged under preservation age

301-30 Tax free status of tax free component

301-35 Superannuation lump sum—taxable component taxed at 20%

301-40 Superannuation income stream—taxable component is assessable income, 15% offset for disability benefit

Member benefits—recipient aged 60 or above

301-10 All superannuation benefits are tax free

If you are 60 years or over when you receive a *superannuation benefit, the benefit is not assessable income and is not *exempt income.

Note 1: Your superannuation benefit may be a superannuation lump sum or a superannuation income stream benefit: see sections 307-65 and 307-70.

Note 2: If your superannuation benefit includes an element untaxed in the fund, see Subdivision 301-C.

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

Member benefits—recipient aged over preservation age and under 60

301-15 Tax free status of tax free component

If you are under 60 years but have reached your *preservation age when you receive a *superannuation benefit, the *tax free component of the benefit is not assessable income and is not *exempt income.

Note 1: Your superannuation benefit may be a superannuation lump sum or a superannuation income stream benefit: see sections 307-65 and 307-70).

Note 2: For *tax free component*, see Subdivision 307-C.

301-20 Superannuation lump sum—taxable component taxed at 0% up to low rate cap amount, 15% on remainder

- (1) If you are under 60 years but have reached your *preservation age when you receive a *superannuation lump sum, the *taxable component of the lump sum is assessable income.

Note 1: For *taxable component*, see Subdivision 307-C.

Note 2: If your lump sum includes an element untaxed in the fund, see Subdivision 301-C.

- (2) You are entitled to a *tax offset that ensures that the rate of income tax on the amount mentioned in subsection (3) does not exceed 0%.
- (3) The amount is so much of the total of the *taxable components included in your assessable income for the income year under subsection (1) as does not exceed your *low rate cap amount (see section 307-345) for the income year.
- (4) You are entitled to a *tax offset that ensures that the rate of income tax on the amount mentioned in subsection (5) does not exceed 15%.

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

- (5) The amount is so much of the total of the *taxable components included in your assessable income for an income year under subsection (1) as exceeds your *low rate cap amount for the income year.

Note: This amount will be nil if the total of the taxable components falls short of your low rate cap amount for the income year.

301-25 Superannuation income stream—taxable component attracts 15% offset

- (1) If you are under 60 years but have reached your *preservation age when you receive a *superannuation income stream benefit, the *taxable component of the benefit is assessable income.
- (2) You are entitled to a *tax offset equal to 15% of the *taxable component of the benefit.

Note 1: For *taxable component*, see Subdivision 307-C.

Note 2: If your superannuation income stream benefit includes an element untaxed in the fund, see Subdivision 301-C.

Member benefits—recipient aged under preservation age

301-30 Tax free status of tax free component

If you are under your *preservation age when you receive a *superannuation benefit, the *tax free component of the benefit is not assessable income and is not *exempt income.

Note 1: Your superannuation benefit may be a superannuation lump sum or a superannuation income stream benefit: see sections 307-65 and 307-70.

Note 2: For *tax free component*, see Subdivision 307-C.

301-35 Superannuation lump sum—taxable component taxed at 20%

- (1) If you are under your *preservation age when you receive a *superannuation lump sum, the *taxable component of the lump sum is assessable income.

Note: For *taxable component*, see Subdivision 307-C.

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

Section 301-40

- (2) You are entitled to a *tax offset that ensures that the rate of income tax on the *taxable component of the lump sum does not exceed 20%.

Note: If your lump sum includes an element untaxed in the fund, see Subdivision 301-C.

301-40 Superannuation income stream—taxable component is assessable income, 15% offset for disability benefit

- (1) If you are under your *preservation age when you receive a *superannuation income stream benefit, the *taxable component of the benefit is assessable income.

Note: For *taxable component*, see Subdivision 307-C.

Offset for disability benefit

- (2) If the benefit is a *superannuation income stream benefit and a *disability superannuation benefit, you are entitled to a *tax offset equal to 15% of the *taxable component of the benefit.

Subdivision 301-C—Member benefits: elements untaxed in fund

Table of sections

301-90 Tax free component and element taxed in fund dealt with under Subdivision 301-B, but element untaxed in the fund dealt with under this Subdivision

Member benefits (element untaxed in fund)—recipient aged 60 or above

301-95 Superannuation lump sum—element untaxed in fund taxed at 15% up to untaxed plan cap amount, top rate on remainder

301-100 Superannuation income stream—element untaxed in fund attracts 10% offset

Member benefits (element untaxed in fund)—recipient aged over preservation age and under 60

301-105 Superannuation lump sum—element untaxed in fund taxed at 15% up to low rate cap amount, 30% up to untaxed plan cap amount, top rate on remainder

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

301-110 Superannuation income stream—element untaxed in fund is assessable income

Member benefits (element untaxed in fund)—recipient aged under preservation age

301-115 Superannuation lump sum—element untaxed in fund taxed at 30% up to untaxed plan cap amount, top rate on remainder

301-120 Superannuation income stream—element untaxed in fund is assessable income

Miscellaneous

301-125 Unclaimed money payments by the Commissioner

301-90 Tax free component and element taxed in fund dealt with under Subdivision 301-B, but element untaxed in the fund dealt with under this Subdivision

If you receive a *superannuation benefit that includes an *element untaxed in the fund:

- (a) the *tax free component (if any) of the benefit is treated in the same way as the tax free component of a superannuation benefit under Subdivision 301-B; and
- (b) the *element taxed in the fund (if any) included in the benefit is treated in the same way as the taxable component of a superannuation benefit under Subdivision 301-B; and
- (c) the element untaxed in the fund is treated in accordance with this Subdivision.

Member benefits (element untaxed in fund)—recipient aged 60 or above

301-95 Superannuation lump sum—element untaxed in fund taxed at 15% up to untaxed plan cap amount, top rate on remainder

- (1) If you are 60 years or over when you receive a *superannuation lump sum from a *superannuation plan, the *element untaxed in the fund of the lump sum is assessable income.

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

Section 301-100

- (2) You are entitled to a *tax offset that ensures that the rate of income tax on the amount mentioned in subsection (3) does not exceed 15%.

Note: The remainder of the element untaxed in the fund is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (3) The amount is so much of the *element untaxed in the fund as does not exceed your *untaxed plan cap amount for the *superannuation plan at the time you receive the benefit.

301-100 Superannuation income stream—element untaxed in fund attracts 10% offset

- (1) If you are 60 years or over when you receive a *superannuation income stream benefit, the *element untaxed in the fund of the benefit is assessable income.
- (2) You are entitled to a *tax offset equal to 10% of the *element untaxed in the fund of the benefit.

Member benefits (element untaxed in fund)—recipient aged over preservation age and under 60

301-105 Superannuation lump sum—element untaxed in fund taxed at 15% up to low rate cap amount, 30% up to untaxed plan cap amount, top rate on remainder

- (1) If you are under 60 years but have reached your *preservation age when you receive a *superannuation lump sum from a *superannuation plan, the *element untaxed in the fund of the lump sum is assessable income.
- (2) You are entitled to a *tax offset that ensures that the rate of income tax on the amount worked out under subsection (3) does not exceed 30%.
- (3) The amount is so much of the *element untaxed in the fund as does not exceed your *untaxed plan cap amount for the *superannuation plan at the time you receive the benefit.

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

Note: To the extent that the element untaxed in the fund exceeds the amount worked out under this subsection, it is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (4) If you are entitled to one or more *tax offsets under subsection (2) for *superannuation benefits that you receive in an income year, you are entitled to a tax offset that ensures that the rate of income tax on the amount worked out under subsection (5) does not exceed 15%.
- (5) The amount is so much of the total of the one or more amounts worked out under subsection (3) as does not exceed your *low rate cap amount for the income year.
- (6) If you are also entitled to a *tax offset under subsection 301-20(2) for the income year, reduce your *low rate cap amount for the purposes of subsection (5) of this section for the income year by the amount mentioned in subsection 301-20(3).

301-110 Superannuation income stream—element untaxed in fund is assessable income

If you are under 60 years but have reached your *preservation age when you receive a *superannuation income stream benefit, the *element untaxed in the fund of the benefit is assessable income.

Member benefits (element untaxed in fund)—recipient aged under preservation age

301-115 Superannuation lump sum—element untaxed in fund taxed at 30% up to untaxed plan cap amount, top rate on remainder

- (1) If you are under your *preservation age when you receive a *superannuation lump sum from a *superannuation plan, the *element untaxed in the fund of the lump sum is assessable income.
- (2) You are entitled to a *tax offset that ensures that the rate of income tax on the amount mentioned in subsection (3) does not exceed 30%.

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

Chapter 3 Specialist liability rules

Part 3-30 Superannuation

Division 301 Superannuation member benefits paid from complying plans etc.

Section 301-120

Note: The remainder of the element untaxed in the fund is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (3) The amount is so much of the *element untaxed in the fund as does not exceed your *untaxed plan cap amount for the *superannuation plan at the time you receive the benefit.

301-120 Superannuation income stream—element untaxed in fund is assessable income

If you are under your *preservation age when you receive a *superannuation income stream benefit, the *element untaxed in the fund of the benefit is assessable income.

Miscellaneous

301-125 Unclaimed money payments by the Commissioner

For the purposes of this Subdivision, treat a *superannuation lump sum paid by the Commissioner under subsection 17(2) or section 20H or 24G of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* as if it were paid from a *superannuation plan.

Subdivision 301-D—Departing Australia superannuation payments

Table of sections

301-170	<i>Departing Australia superannuation payments</i>
301-175	Treatment of departing Australia superannuation benefits

301-170 *Departing Australia superannuation payments*

- (1) A *superannuation lump sum is a *departing Australia superannuation payment* if it:
- (a) is paid to a person who has departed Australia; and
 - (b) is paid:

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

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- (i) in accordance with regulations under the *Superannuation Industry (Supervision) Act 1993* or the *Retirement Savings Accounts Act 1997* that are specified in regulations made for the purposes of this definition; or
 - (ii) in accordance with section 67A of the *Small Superannuation Accounts Act 1995*; or
 - (iii) by an exempt public sector superannuation scheme (within the meaning of section 10 of the *Superannuation Industry (Supervision) Act 1993*) and is made in accordance with rules of the fund that are substantially similar to the regulations specified as mentioned in subparagraph (i).
- (2) Also, a *superannuation lump sum is a ***departing Australia superannuation payment*** if it is paid under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.
- (3) Despite subsection (2), a *superannuation lump sum paid under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* because a person has been identified in a notice under section 20C of that Act is not a ***departing Australia superannuation payment*** if, when it is paid, the Commissioner is satisfied that:
- (a) the person has not been, under the *Migration Act 1958*, the holder of a temporary visa that ceased to be in effect at least 6 months ago; or
 - (b) the person has been the holder of such a visa but has not left Australia (within the meaning of that Act) at least 6 months ago but after starting to be the holder of the visa.
- (4) Despite subsection (2), a *superannuation lump sum that is paid under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* and is prescribed by the regulations for the purposes of this subsection is not a ***departing Australia superannuation payment***.

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

301-175 Treatment of departing Australia superannuation benefits

- (1) Despite anything else in this Division, if you receive a *superannuation benefit that is a *departing Australia superannuation payment, the benefit is not assessable income and is not *exempt income.
- (2) However, you are liable to pay income tax on that payment at the rate declared by the Parliament in respect of *departing Australia superannuation payments.

Note 1: The tax is imposed in the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007* and the amount of the tax is set out in that Act.

Note 2: See the *Taxation Administration Act 1953* for provisions dealing with the payment of the tax.

Subdivision 301-E—Superannuation lump sum member benefits less than \$200

Table of sections

301-225 Superannuation lump sum member benefits less than \$200 are tax free

301-225 Superannuation lump sum member benefits less than \$200 are tax free

- (1) Despite anything else in this Division (apart from Subdivision 301-D), a *superannuation member benefit that you receive is not assessable income and is not *exempt income if:
 - (a) the benefit is a *superannuation lump sum; and
 - (b) the amount of the benefit is less than \$200; and
 - (c) the *value of the *superannuation interest from which the benefit is paid is nil just after the benefit is paid; and
 - (d) the requirements (if any) specified in the regulations in relation to the benefit are satisfied.
- (2) Despite anything else in this Division (apart from Subdivision 301-D), a *superannuation member benefit that you receive is not assessable income and is not *exempt income if:
 - (a) the benefit is a *superannuation lump sum; and

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

- (b) the benefit is paid to you under subsection 24G(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* in a case covered by paragraph (d) of that subsection; and
- (c) the amount of the benefit is less than \$200.

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

Division 302—Superannuation death benefits paid from complying plans etc.

Table of Subdivisions

	Guide to Division 302
302-A	Application
302-B	Death benefits to dependant
302-C	Death benefits to non-dependant
302-D	Definitions relating to dependants

Guide to Division 302

302-1 What this Division is about

This Division sets out the tax treatment of superannuation death benefits received by members of complying plans etc. This treatment varies depending on the age of the deceased when they died (and in some cases on the age of the recipient of the benefit).

Subdivision 302-A—Application

Table of sections

302-5	Division applies to superannuation death benefits paid from complying plans etc.
302-10	Superannuation death benefits paid to trustee of deceased estate

302-5 Division applies to superannuation death benefits paid from complying plans etc.

This Division applies to *superannuation death benefits that:

- (a) are paid from a *complying superannuation plan; or

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

- (b) are *superannuation guarantee payments, *small superannuation account payments, *unclaimed money payments, *superannuation co-contribution benefit payments or *superannuation annuity payments.

Note: For the tax treatment of superannuation member benefits paid from complying plans, see Division 301. Superannuation benefits paid from superannuation plans that are not complying superannuation plans are dealt with in Division 305.

302-10 Superannuation death benefits paid to trustee of deceased estate

- (1) This section applies to you if:
- (a) you are the trustee of a deceased estate; and
 - (b) you receive a *superannuation death benefit in your capacity as trustee.
- (2) To the extent that 1 or more beneficiaries of the estate who were *death benefits dependants of the deceased have benefited, or may be expected to benefit, from the *superannuation death benefit:
- (a) the benefit is treated as if it had been paid to you as a person who was a death benefits dependant of the deceased; and
 - (b) the benefit is taken to be income to which no beneficiary is presently entitled.
- (3) To the extent that 1 or more beneficiaries of the estate who were *not* *death benefits dependants of the deceased have benefited, or may be expected to benefit, from the *superannuation death benefit:
- (a) the benefit is treated as if it had been paid to you as a person who was *not* a death benefits dependant of the deceased; and
 - (b) the benefit is taken to be income to which no beneficiary is presently entitled.

Subdivision 302-B—Death benefits to dependant

Table of sections

Lump sum death benefits to dependants are tax free

302-60 All of superannuation lump sum is tax free

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

Section 302-60

Superannuation income stream—either deceased died aged 60 or above or dependant aged 60 or above

302-65 Superannuation income stream benefits are tax free

Superannuation income stream—deceased died aged under 60 and dependant aged under 60

302-70 Superannuation income stream—tax free status of tax free component

302-75 Superannuation income stream—taxable component attracts 15% offset

Death benefits to dependant—elements untaxed in fund

302-80 Treatment of element untaxed in the fund of superannuation income stream death benefit to dependant

302-85 Deceased died aged 60 or above or dependant aged 60 years or above—superannuation income stream—element untaxed in fund attracts 10% offset

302-90 Deceased died aged under 60 and dependant aged under 60—superannuation income stream—element untaxed in fund is assessable income

Lump sum death benefits to dependants are tax free

302-60 All of superannuation lump sum is tax free

A *superannuation lump sum that you receive because of the death of a person of whom you are a *death benefits dependant is not assessable income and is not *exempt income.

Superannuation income stream—either deceased died aged 60 or above or dependant aged 60 or above

302-65 Superannuation income stream benefits are tax free

A *superannuation income stream benefit that you receive because of the death of a person of whom you are a *death benefits dependant is not assessable income and is not *exempt income in either or both of the following cases:

- (a) you are 60 years or over when you receive the benefit;
- (b) the deceased died aged 60 or over.

Note: If your superannuation income stream benefit includes an element untaxed in the fund, see section 302-85.

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

Superannuation income stream—deceased died aged under 60 and dependant aged under 60

302-70 Superannuation income stream—tax free status of tax free component

The *tax free component of a *superannuation income stream benefit that you receive because of the death of a person of whom you are a *death benefits dependant is not assessable income and is not *exempt income if:

- (a) you are under 60 when you receive the benefit; and
- (b) the deceased died aged under 60.

Note: For *tax free component*, see Subdivision 307-C.

302-75 Superannuation income stream—taxable component attracts 15% offset

- (1) The *taxable component of a *superannuation income stream benefit that you receive because of the death of a person of whom you are a *death benefits dependant is assessable income if:
 - (a) you are under 60 when you receive the benefit; and
 - (b) the deceased died aged under 60.

Note: For *taxable component*, see Subdivision 307-C.

- (2) You are entitled to a *tax offset equal to 15% of the *taxable component of the benefit.

Death benefits to dependant—elements untaxed in fund

302-80 Treatment of element untaxed in the fund of superannuation income stream death benefit to dependant

If a *superannuation income stream benefit that you receive because of the death of a person of whom you are a *death benefits dependant includes an *element untaxed in the fund:

- (a) the *tax free component (if any) of the benefit is treated in the same way as the tax free component of a superannuation income stream benefit under section 302-65 or 302-70; and

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

Section 302-85

- (b) the *element taxed in the fund (if any) of the benefit is treated in the same way as the *taxable component of a superannuation income stream benefit under section 302-65 or 302-75; and
- (c) the element untaxed in the fund is treated in accordance with section 302-85 or 302-90.

302-85 Deceased died aged 60 or above or dependant aged 60 years or above—superannuation income stream: element untaxed in fund attracts 10% offset

- (1) The *element untaxed in the fund of a *superannuation income stream benefit that you receive because of the death of a person of whom you are a *death benefits dependant is assessable income in either or both of the following cases:
 - (a) you are 60 years or over when you receive the benefit;
 - (b) the deceased died aged 60 or above.
- (2) You are entitled to a *tax offset equal to 10% of the *element untaxed in the fund of the benefit.

302-90 Deceased died aged under 60 and dependant aged under 60—superannuation income stream: element untaxed in fund is assessable income

The *element untaxed in the fund of a *superannuation income stream benefit that you receive because of the death of a person of whom you are a *death benefits dependant is assessable income if:

- (a) you are aged under 60 when you receive the benefit; and
- (b) the deceased died aged under 60.

Subdivision 302-C—Death benefits to non-dependant

Table of sections

Superannuation lump sum

- 302-140 Superannuation lump sum—tax free status of tax free component
- 302-145 Superannuation lump sum—element taxed in the fund taxed at 15%, element untaxed in the fund taxed at 30%

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

Superannuation lump sum

302-140 Superannuation lump sum—tax free status of tax free component

The *tax free component of a *superannuation lump sum that you receive because of the death of a person of whom you are *not* a *death benefits dependant is not assessable income and is not *exempt income.

Note: For *tax free component*, see Subdivision 307-C.

302-145 Superannuation lump sum—element taxed in the fund taxed at 15%, element untaxed in the fund taxed at 30%

- (1) If you receive a *superannuation lump sum because of the death of a person of whom you are *not* a *death benefits dependant, the *taxable component of the lump sum is assessable income.

Note: For *taxable component*, see Subdivision 307-C.

- (2) You are entitled to a *tax offset that ensures that the rate of income tax on the *element taxed in the fund of the lump sum does not exceed 15%.
- (3) You are entitled to a *tax offset that ensures that the rate of income tax on the *element untaxed in the fund of the lump sum does not exceed 30%.

Subdivision 302-D—Definitions relating to dependants

Table of sections

302-195	Meaning of <i>death benefits dependant</i>
302-200	What is an <i>interdependency relationship</i> ?

302-195 Meaning of *death benefits dependant*

- (1) A *death benefits dependant*, of a person who has died, is:
 - (a) the deceased person's *spouse or former spouse; or
 - (b) the deceased person's *child, aged less than 18; or

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

Section 302-200

- (c) any other person with whom the deceased person had an interdependency relationship under section 302-200 just before he or she died; or
 - (d) any other person who was a dependant of the deceased person just before he or she died.
- (2) For the purposes of this Division, treat an individual who receives a *superannuation lump sum because of the death of another person as a ***death benefits dependant*** of the deceased person in relation to the lump sum if the deceased person *died in the line of duty (see subsection (3)) as:
- (a) a member of the Defence Force; or
 - (b) a member of the Australian Federal Police or the police force of a State or Territory; or
 - (c) a protective service officer (within the meaning of the *Australian Federal Police Act 1979*).
- (3) For the purposes of subsection (2), a person ***died in the line of duty*** if the person died in the circumstances specified in the regulations.

302-200 What is an *interdependency relationship*?

- (1) Two persons (whether or not related by family) have an ***interdependency relationship*** under this section if:
- (a) they have a close personal relationship; and
 - (b) they live together; and
 - (c) one or each of them provides the other with financial support; and
 - (d) one or each of them provides the other with domestic support and personal care.
- (2) In addition, 2 persons (whether or not related by family) also have an ***interdependency relationship*** under this section if:
- (a) they have a close personal relationship; and
 - (b) they do not satisfy one or more of the requirements of an interdependency relationship mentioned in paragraphs (1)(b), (c) and (d); and

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

- (c) the reason they do not satisfy those requirements is that either or both of them suffer from a physical, intellectual or psychiatric disability.
- (3) The regulations may specify:
 - (a) matters that are, or are not, to be taken into account in determining under subsection (1) or (2) whether 2 persons have an *interdependency relationship* under this section; and
 - (b) circumstances in which 2 persons have, or do not have, an *interdependency relationship* under this section.

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

Division 303—Superannuation benefits paid in special circumstances

Table of sections

303-5	Commutation of income stream if you are under 25 etc.
303-10	Superannuation lump sum member benefit paid to member having a terminal medical condition
303-15	Payments from release authorities for refunded excess concessional contributions

303-5 Commutation of income stream if you are under 25 etc.

- (1) A *superannuation lump sum that you receive from a *complying superannuation plan is not assessable income and is not *exempt income if:
 - (a) the superannuation lump sum arises from the commutation of a *superannuation income stream; and
 - (b) any of these conditions are satisfied:
 - (i) you are under 25 when you receive the superannuation lump sum;
 - (ii) the commutation takes place because you turn 25;
 - (iii) you are permanently disabled when you receive the superannuation lump sum; and
 - (c) you had received one or more *superannuation income stream benefits from the superannuation income stream before the commutation because of the death of a person of whom you are a *death benefits dependant.
- (2) Subsection (1) applies despite Divisions 301 and 302.

303-10 Superannuation lump sum member benefit paid to member having a terminal medical condition

- (1) This section applies to a *superannuation member benefit that:
 - (a) is a *superannuation lump sum; and

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

- (b) is:
- (i) paid from a *complying superannuation plan; or
 - (ii) a *superannuation guarantee payment, a *small superannuation account payment, an *unclaimed money payment, a *superannuation co-contribution benefit payment or a *superannuation annuity payment.
- (2) The lump sum is not assessable income and is not *exempt income if a *terminal medical condition exists in relation to you when you receive the lump sum or within 90 days after you receive it.

Note: For a lump sum you receive in the 2007-08 financial year, the period of 90 days may be extended until 30 June 2008: see section 303-10 of the *Income Tax (Transitional Provisions) Act 1997*.

303-15 Payments from release authorities for refunded excess concessional contributions

- (1) A *superannuation benefit that you are taken to receive under section 307-15, paid in relation to a release authority issued in relation to you in accordance with section 292-420, is not assessable income and is not *exempt income.
- (2) Section 307-125 (the proportioning rule) does not apply to such a *superannuation benefit.

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

Division 304—Superannuation benefits in breach of legislative requirements etc.

Guide to Division 304

304-1 What this Division is about

This Division overrides the tax treatment in Divisions 301 and 302 if payments from complying superannuation plans etc. are in breach of payment and other rules.

Table of sections

Operative provisions

304-5	Application
304-10	Superannuation benefits in breach of legislative requirements etc.
304-15	Excess payments from release authorities

Operative provisions

304-5 Application

This Division applies despite Divisions 301, 302 and 303.

304-10 Superannuation benefits in breach of legislative requirements etc.

- (1) Include in your assessable income the amount of a *superannuation benefit if:
 - (a) any of the following applies:
 - (i) you received the benefit from a *complying superannuation fund or from a *superannuation fund that was previously a complying superannuation fund;
 - (ii) the benefit is attributable to the assets of a complying superannuation fund or from a superannuation fund that was previously a complying superannuation fund; and
 - (b) any of the following applies:

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

- (i) the fund was not (when you received the benefit) maintained as required by section 62 of the *Superannuation Industry (Supervision) Act 1993*;
 - (ii) you received the benefit otherwise than in accordance with payment standards prescribed under subsection 31(1) of the *Superannuation Industry (Supervision) Act 1993*.
- (2) Include in your assessable income the amount of a *superannuation benefit if:
- (a) any of the following applies:
 - (i) you received the benefit from a *complying approved deposit fund or from an *approved deposit fund that was previously a complying approved deposit fund;
 - (ii) the benefit is attributable to the assets of a complying approved deposit fund or from an approved deposit fund that was previously a complying approved deposit fund; and
 - (b) you received the benefit otherwise than in accordance with payment standards prescribed under subsection 32(1) of the *Superannuation Industry (Supervision) Act 1993*.
- (3) Include in your assessable income the amount of a *superannuation benefit you receive from an *RSA in breach of the *Retirement Savings Accounts Act 1997*, regulations under that Act or payment standards prescribed under subsection 38(2) of that Act.
- (4) However, you do not have to include the amount in your assessable income to the extent that the Commissioner is satisfied that it is unreasonable that it be included having regard to:
- (a) for subsection (1) or (2)—the nature of the fund; and
 - (b) any other matters that the Commissioner considers relevant.
- (5) For the purposes of this section, treat your receipt of a benefit (other than a *superannuation benefit) out of, or attributable to, the assets of a *superannuation plan as your receipt of a superannuation benefit.

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

304-15 Excess payments from release authorities

- (1) This section applies to a *superannuation benefit that you receive, paid in relation to a release authority given in relation to you in accordance with section 292-410.
- (2) The *superannuation benefit is not assessable income and is not *exempt income to the extent that it does not exceed the amount mentioned in subsection (3).
- (3) The amount is the amount of *excess contributions tax stated in the release authority, reduced (but not below zero) by the amount of any *superannuation benefit that was not assessable income and not *exempt income under a previous operation of subsection (2) in relation to the release authority.
- (4) The *superannuation benefit is assessable income to the extent (if any) that it exceeds the amount mentioned in subsection (3).

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

Division 305—Superannuation benefits paid from non-complying superannuation plans

Table of Subdivisions

	Guide to Division 305
305-A	Superannuation benefits from Australian non-complying superannuation funds
305-B	Superannuation benefits from foreign superannuation funds

Guide to Division 305

305-1 What this Division is about

This Division sets out the tax treatment of superannuation benefits received by members of non-complying plans (including foreign superannuation funds).

Subdivision 305-A—Superannuation benefits from Australian non-complying superannuation funds

Table of sections

305-5	Tax treatment of superannuation benefits from certain Australian non-complying superannuation funds
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305-5 Tax treatment of superannuation benefits from certain Australian non-complying superannuation funds

A *superannuation benefit that you receive from a *non-complying superannuation fund that is an *Australian superannuation fund (for the income year in which the benefit is paid) is *exempt income if:

- (a) the fund:
 - (i) has never been a *complying superannuation fund; or
 - (ii) last stopped being a complying superannuation fund for the income year in which 1 July 1995 occurred or a later income year; and
- (b) the fund:

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

- (i) has never been a *foreign superannuation fund; or
- (ii) last stopped being a foreign superannuation fund for the income year in which 1 July 1995 occurred or a later income year.

Subdivision 305-B—Superannuation benefits from foreign superannuation funds

Table of sections

Application of Subdivision

305-55 Restriction to lump sums received from certain foreign superannuation funds

Lump sums received within 6 months after Australian residency or termination of foreign employment etc.

305-60 Lump sums tax free—foreign resident period

305-65 Lump sums tax free—Australian resident period

Lump sums to which sections 305-60 and 305-65 do not apply

305-70 Lump sums received more than 6 months after Australian residency or termination of foreign employment etc.

305-75 Lump sums—*applicable fund earnings*

305-80 Lump sums paid into complying superannuation plans—choice

Application of Subdivision

305-55 Restriction to lump sums received from certain foreign superannuation funds

- (1) This Subdivision applies if:
 - (a) you receive a *superannuation lump sum from a *foreign superannuation fund; and
 - (b) the fund is an entity mentioned in item 4 of the table in subsection 295-490(1) (which deals with deductions for superannuation entities).

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

- (2) This Subdivision also applies if you receive a payment, other than a pension payment, from a scheme for the payment of benefits in the nature of superannuation upon retirement or death that:
- (a) is not, and never has been, an *Australian superannuation fund or a *foreign superannuation fund; and
 - (b) was not established in Australia; and
 - (c) is not centrally managed or controlled in Australia.
- (3) This Subdivision applies to a payment mentioned in subsection (2) from a scheme mentioned in that subsection in the same way as it applies to a *superannuation lump sum from a *foreign superannuation fund.

Lump sums received within 6 months after Australian residency or termination of foreign employment etc.

305-60 Lump sums tax free—foreign resident period

A *superannuation lump sum you receive from a *foreign superannuation fund is not assessable income and is not *exempt income if:

- (a) you receive it within 6 months after you become an Australian resident; and
- (b) it relates only to a period:
 - (i) when you were not an Australian resident; or
 - (ii) starting after you became an Australian resident and ending before you receive the payment; and
- (c) it does not exceed the amount in the fund that was vested in you when you received the payment.

Note: If you received the lump sum after that period of 6 months, or the lump sum exceeds the vested amount, the payment will fall within section 305-70.

305-65 Lump sums tax free—Australian resident period

- (1) A *superannuation lump sum you receive is not assessable income and is not *exempt income if:
- (a) you receive it in consequence of:

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

Section 305-70

- (i) the termination of your employment as an employee, or as the holder of an office, in a foreign country; or
- (ii) the termination of your engagement on qualifying service on an approved project (within the meaning of section 23AF of the *Income Tax Assessment Act 1936*), in relation to a foreign country; and
- (b) it relates only to the period of that employment, holding of office, or engagement; and
- (c) you were an Australian resident during the period of the employment, holding of office or engagement; and
- (d) you receive the lump sum within 6 months after the termination; and
- (e) the lump sum is not exempt from taxation under the law of the foreign country; and
- (f) for a period of employment or holding an office—your foreign earnings from the employment or office are exempt from income tax under section 23AG of the *Income Tax Assessment Act 1936*; and
- (g) for a period of engagement on qualifying service on an approved project—your eligible foreign remuneration from the service is exempt from income tax under section 23AF of that Act.

Note: If you received the lump sum after that period of 6 months, the lump sum will fall within section 305-70.

- (2) For the purposes of subsection (1), treat the termination of employment, holding of office, or engagement as including:
 - (a) retirement from the employment, office or engagement; and
 - (b) cessation of the employment, office or engagement because of death.

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

Lump sums to which sections 305-60 and 305-65 do not apply**305-70 Lump sums received more than 6 months after Australian residency or termination of foreign employment etc.***Superannuation lump sums to which section applies*

- (1) This section applies to a *superannuation lump sum you receive from a *foreign superannuation fund if:
 - (a) you are an Australian resident when you receive the lump sum; and
 - (b) sections 305-60 and 305-65 do not apply to the lump sum.

Assessable part

- (2) Include in your assessable income so much of the lump sum (excluding any amount mentioned in subsection (4)) as equals:
 - (a) your *applicable fund earnings (worked out under section 305-75); or
 - (b) if you have made a choice under section 305-80—your applicable fund earnings, less the amount covered by the choice.

Note: Under section 305-80, if your lump sum is paid into a complying superannuation plan, you can choose to have some or all of the applicable fund earnings excluded from your assessable income. The amount you choose is included in the assessable income of the plan: see section 295-200.

Non-assessable, non-exempt part

- (3) The remainder of the lump sum is not assessable income and is not *exempt income.

Amount paid into another foreign superannuation fund

- (4) Any part of the lump sum that is paid into another *foreign superannuation fund is not assessable income and is not *exempt income.

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

Section 305-75

Note: However, your applicable fund earnings under section 305-75 in relation to a later lump sum payment out of the other foreign superannuation fund may include an amount (*previously exempt fund earnings*) attributable to the lump sum.

305-75 Lump sums—*applicable fund earnings*

- (1) This section applies if you need to work out an amount (your *applicable fund earnings*) in relation to a *superannuation lump sum to which section 305-70 applies that you receive from a *foreign superannuation fund.

If you were an Australian resident at all times

- (2) If you were an Australian resident at all times during the period to which the lump sum relates, the amount of your *applicable fund earnings* is the amount (not less than zero) worked out as follows:
- (a) work out the total of the following amounts:
 - (i) the part of the lump sum that is attributable to contributions made by or in respect of you on or after the day when you became a member of the fund (the *start day*);
 - (ii) the part of the lump sum (if any) that is attributable to amounts transferred into the fund from any other *foreign superannuation fund during the period;
 - (b) subtract that total amount from the amount in the fund that was vested in you when the lump sum was paid (before any deduction for *foreign income tax);
 - (c) add the total of all your previously exempt fund earnings (if any) covered by subsections (5) and (6).

If you were not an Australian resident at all times

- (3) If you become an Australian resident after the start of the period to which the lump sum relates (but before you received it) the amount of your *applicable fund earnings* is the amount (not less than zero) worked out as follows:
- (a) work out the total of the following amounts:

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

- (i) the amount in the fund that was vested in you just before the day (the **start day**) you first became an Australian resident during the period;
 - (ii) the part of the payment that is attributable to contributions to the fund made by or in respect of you during the remainder of the period;
 - (iii) the part of the payment (if any) that is attributable to amounts transferred into the fund from any other *foreign superannuation fund during the remainder of the period;
- (b) subtract that total amount from the amount in the fund that was vested in you when the lump sum was paid (before any deduction for *foreign income tax);
 - (c) multiply the resulting amount by the proportion of the total days during the period when you were an Australian resident;
 - (d) add the total of all previously exempt fund earnings (if any) covered by subsections (5) and (6).

Previous lump sums from the fund

- (4) If the lump sum is not the first lump sum from the fund you have received to which this section applies, for subsections (2) and (3) the **start day** is the day after you received the most recent such lump sum.

Previously exempt fund earnings

- (5) You have an amount of **previously exempt fund earnings** in respect of the lump sum if:
 - (a) part or all of the amount in the fund that was vested in you when the lump sum was paid (before any deduction for *foreign income tax) is attributable to the amount; and
 - (b) the amount is attributable to a payment received from a *foreign superannuation fund; and
 - (c) the amount would have been included in your assessable income under subsection 305-70(2) by the application of this section, but for the payment having been received by another foreign superannuation fund.

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

Section 305-80

- (6) The amount of your *previously exempt fund earnings* is the amount mentioned in paragraph (5)(c) (disregarding the addition of previously exempt fund earnings under subsection (2) or (3) of this section).

305-80 Lump sums paid into complying superannuation plans—choice

- (1) This section applies if:
- (a) section 305-70 applies to a *superannuation lump sum that is paid from a *foreign superannuation fund; and
 - (b) you are taken to receive the lump sum under section 307-15; and
 - (c) all of the lump sum is paid into a *complying superannuation fund; and
 - (d) immediately after the lump sum is paid into the complying superannuation fund, you no longer have a *superannuation interest in the foreign superannuation fund.

- (2) You may choose for all or part of your *applicable fund earnings worked out under section 305-75 (but not exceeding the amount of the lump sum) to be included in the assessable income of the *complying superannuation plan.

Note: Section 295-200 provides for the amount specified in the choice to be included in the assessable income of the complying superannuation plan.

- (3) Your choice:
- (a) must be in writing; and
 - (b) must comply with the requirements (if any) specified in the regulations.

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

Division 306—Roll-overs etc.

Guide to Division 306

306-1 What this Division is about

This Division sets out the tax treatment of payments made from one superannuation plan to another superannuation plan, and of similar payments.

Table of sections

Operative provisions

306-5	Effect of a roll-over superannuation benefit
306-10	<i>Roll-over superannuation benefit</i>
306-15	Tax on <i>excess untaxed roll-over amounts</i>
306-20	Effect of payment to government of unclaimed superannuation money
306-25	Payments connected with financial claims scheme to RSAs

Operative provisions

306-5 Effect of a roll-over superannuation benefit

A *roll-over superannuation benefit that you are taken to receive under section 307-15 is not assessable income and is not *exempt income.

Note: Roll-over superannuation benefits are paid into a complying superannuation plan or are used to purchase a superannuation annuity on your behalf. However, you are taken to receive the benefit under subsection 307-15(1).

306-10 ***Roll-over superannuation benefit***

A *superannuation benefit is a ***roll-over superannuation benefit*** if:

- (a) the benefit is a *superannuation lump sum and a *superannuation member benefit; and
- (b) the benefit is *not* a superannuation benefit of a kind specified in the regulations; and

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

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- (c) the benefit satisfies any of the following conditions:
 - (i) it is paid from a *complying superannuation plan;
 - (ii) it is an *unclaimed money payment;
 - (iii) it arises from the commutation of a *superannuation annuity; and
- (d) the benefit satisfies any of the following conditions:
 - (i) it is paid to a complying superannuation plan;
 - (ii) it is paid to an entity to purchase a superannuation annuity from the entity.

Note 1: A superannuation benefit may be paid from one superannuation plan of a superannuation provider to another superannuation plan of the same provider.

Note 2: For the treatment of amounts transferred within a superannuation plan, see subsection 307-5(8).

306-15 Tax on excess untaxed roll-over amounts

- (1) This section applies to a *superannuation benefit if:
 - (a) it is a *roll-over superannuation benefit that is paid into a *superannuation plan; and
 - (b) you are taken to receive the benefit under section 307-15; and
 - (c) the benefit consists of, or includes, an amount that is an *element untaxed in the fund; and
 - (d) the amount mentioned in paragraph (c) exceeds your *untaxed plan cap amount (see section 307-350), for the superannuation plan from which the benefit is paid, just before you are taken to receive the benefit.

Note: To work out your untaxed plan cap amount in relation to an unclaimed money payment from the Commissioner, see subsection 307-350(2B).

- (1A) However, this section does not apply to a *roll-over superannuation benefit that is transferred from one *superannuation interest in a *superannuation plan to another superannuation interest in the same plan.

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

Note 1: A superannuation benefit may be paid from one superannuation plan of a superannuation provider to another superannuation plan of the same provider. Such a benefit may be a roll-over superannuation benefit: see section 306-10.

Note 2: For the treatment of amounts transferred within the same superannuation plan, see subsection 307-5(8).

- (2) The **excess untaxed roll-over amount** is the amount of the excess mentioned in paragraph (1)(d).
- (3) You are liable to pay income tax on the *excess untaxed roll-over amount at the rate declared by the Parliament in respect of such amounts.

Note 1: The tax is imposed in the *Superannuation (Excess Untaxed Roll-over Amounts Tax) Act 2007*, and the amount of tax is set out in that Act.

Note 2: See the *Taxation Administration Act 1953* for provisions dealing with the payment of the tax.

306-20 Effect of payment to government of unclaimed superannuation money

An *unclaimed money payment that you are taken to receive under section 307-15 because it is paid in accordance with the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, or because it is paid as mentioned in subsection 18(4) of that Act, to the Commissioner or a State or Territory authority (within the meaning of that Act) is not assessable income and is not *exempt income.

306-25 Payments connected with financial claims scheme to RSAs

- (1) This section applies if:
- (a) a person is the holder of an *RSA (the **old RSA**) of which an *ADI is the *RSA provider; and
 - (b) an entitlement of the person arises under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* in connection with the old RSA; and

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

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- (c) either:
- (i) the entitlement, so far as it relates to the old RSA, is met wholly or partly by the making of a payment to another RSA (the *new RSA*) that the person is the holder of (whether or not the new RSA was established under section 16AH of the *Banking Act 1959*); or
 - (ii) a liquidator of the ADI pays a distribution from the liquidation of the ADI, so far as the distribution is attributable to the old RSA, to another RSA (also the *new RSA*) that the person is the holder of (whether or not the new RSA was established under section 16AR of the *Banking Act 1959*).
- (2) This Part (except this section), and the other provisions of this Act (except this section) so far as they relate to this Part, apply in relation to the payment to the new RSA as if:
- (a) the payment were made from the old RSA to the new RSA; and
 - (b) the entity that made the payment (rather than the *ADI) were the *RSA provider of the old RSA.
- Note: The effects of this include:
- (a) the payment is a superannuation member benefit of the person (because of sections 307-5 and 307-15); and
 - (b) the payment is a superannuation lump sum under Subdivision 307-B (unless regulations prevent this); and
 - (c) the payment is a roll-over superannuation benefit under section 306-10 (unless regulations prevent this); and
 - (d) reporting obligations (such as those in section 390-10 in Schedule 1 to the *Taxation Administration Act 1953*) apply to the entity that made the payment as if it were the RSA provider of the old RSA.
- (3) However, for the purposes of section 307-125, determine the *value of the *superannuation interest, and the amount of each of the *tax free component and the *taxable component of the interest:
- (a) when the entitlement arose; or
 - (b) if a *superannuation income stream benefit had been paid from the old RSA before that time—at the time the relevant *superannuation income stream commenced.

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

- (4) Subsection (3) has effect despite:
- (a) subsection 307-125(3) (as it applies because of subsection (2) of this section); and
 - (b) paragraph 307-125(3)(a) of the *Income Tax (Transitional Provisions) Act 1997*.
- (5) This section has effect despite:
- (a) Division 253; and
 - (b) Division 21 in Schedule 1 to the *Taxation Administration Act 1953*.

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

Division 307—Key concepts relating to superannuation benefits

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Guide to Division 307

307-1 What this Division is about

This Division defines concepts used in Divisions 301 to 306, such as *superannuation benefit*, and the *tax free component* and *taxable component* of such benefits. To work out those components, it is often necessary to work out the corresponding components of the *superannuation interest* from which the benefit is paid (see Subdivision 307-D).

This Division also defines the *element taxed in the fund* and the *element untaxed in the fund* of superannuation benefits, which are relevant to superannuation benefits paid from untaxed funds etc. (see Subdivision 307-D).

Subdivision 307-F defines the concessional limits used in Division 301 known as the low rate cap amount and untaxed plan cap amount.

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

Subdivision 307-A—Superannuation benefits generally

Table of sections

307-5	What is a <i>superannuation benefit</i> ?
307-10	Payments that are not <i>superannuation benefits</i>
307-15	Payments for your benefit or at your direction or request

307-5 What is a *superannuation benefit*?

(1) A *superannuation benefit* is a payment described in the table.

Types of superannuation benefits			
Item	Column 1 Superannuation benefit type	Column 2 Superannuation member benefit	Column 3 Superannuation death benefit
1	<i>superannuation fund payment</i>	A payment to you from a *superannuation fund because you are a fund member.	A payment to you from a superannuation fund, after another person's death, because the other person was a fund member.
2	<i>RSA payment</i>	A payment to you from an *RSA because you are the holder of the RSA.	A payment to you from an RSA, after another person's death, because the other person was the holder of the RSA.
3	<i>approved deposit fund payment</i>	A payment to you from an *approved deposit fund because you are a depositor with the fund.	A payment to you from an approved deposit fund after another person's death, because the other person was a depositor with the fund.

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

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Types of superannuation benefits			
Item	Column 1 Superannuation benefit type	Column 2 Superannuation member benefit	Column 3 Superannuation death benefit
4	<i>small superannuation account payment</i>	A payment to you under section 63, 64, 65, 66, 67 or 67A, or subsection 76(6), of the <i>Small Superannuation Accounts Act 1995</i> . (These provisions authorise payment of money held under the Act.)	A payment to you under section 68 or subsection 76(7) of the <i>Small Superannuation Accounts Act 1995</i> . (These provisions authorise payment of money held under the Act to the legal personal representative of the deceased.)
5	<i>unclaimed money payment</i>	A payment to you: (a) under subsection 17(1) or (2) or 20F(1) or section 20H, 24E or 24G of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> ; or (b) as mentioned in subsection 18(4) or (5) of that Act; otherwise than because of another person's death.	A payment to you: (a) under subsection 17(1) or (2) or section 20H or 24G of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> ; or (b) as mentioned in subsection 18(4) or (5) of that Act; because of another person's death.
6	<i>superannuation co-contribution benefit payment</i>	A payment to you under paragraph 15(1)(c) of the <i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i> .	A payment to you under paragraph 15(1)(d) of the <i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i> .

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

Types of superannuation benefits			
Item	Column 1 Superannuation benefit type	Column 2 Superannuation member benefit	Column 3 Superannuation death benefit
7	<i>superannuation guarantee payment</i>	A payment to you under section 65A or 66 of the <i>Superannuation Guarantee (Administration) Act 1992</i> . (This provides for money collected under the Act to be paid to a person who retires because of incapacity or invalidity.)	A payment to you under section 67 of the <i>Superannuation Guarantee (Administration) Act 1992</i> . (This provides for money collected under the Act to be paid to the legal personal representative of the deceased.)
8	<i>superannuation annuity payment</i>	A payment to you: (a) from a *superannuation annuity; or (b) arising from the commutation of a superannuation annuity; because you are the annuitant.	A payment to you: (a) from a superannuation annuity; or (b) arising from the commutation of a superannuation annuity; because of the death of the annuitant.

(2) A *superannuation member benefit* is a payment described in column 2 of the table.

(3) A *superannuation benefit is also a *superannuation member benefit* if:

- (a) the superannuation benefit arises from the commutation of a *superannuation income stream; and
- (b) it would be a *superannuation death benefit apart from this subsection; and

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

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- (c) the benefit is paid after the latest of the following:
 - (i) 6 months after the death of the deceased person;
 - (ii) 3 months after the grant of probate of that deceased person's will or letters of administration of that deceased person's estate;
 - (iii) if the payment of the benefit is delayed because of legal action about entitlement to the benefit—6 months after the legal action ceases;
 - (iv) if the payment of the benefit is delayed because of reasonable delays in the process of identifying and making initial contact with potential recipients of the benefit—6 months after that process is completed; and
 - (d) the Commissioner has *not* made a decision about the benefit under subsection (3A).
- (3A) For the purposes of paragraph (3)(d), the Commissioner may make a decision in writing that the superannuation benefit is *not* a ***superannuation member benefit*** under subsection (3), if:
- (a) both of these conditions are satisfied:
 - (i) the payment of the benefit is delayed because of legal action about entitlement to the benefit;
 - (ii) the benefit is paid more than 6 months after the legal action ceases; or
 - (b) both of these conditions are satisfied:
 - (i) the payment of the benefit is delayed because of reasonable delays in the process of identifying and making initial contact with potential recipients of the benefit;
 - (ii) the benefit is paid more than 6 months after that process is completed.
- (3B) In making a decision under subsection (3A), the Commissioner must have regard to the following matters:
- (a) whether there was any action taken to try to pay the benefit within the 6 months after the cessation of the legal action or the completion of the process, and if so, the nature of that action;

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

- (b) whether there were any factors beyond the control of the entity that paid the benefit, or of the person to whom the benefit was paid, that prevented the payment of the benefit within those 6 months;
 - (c) the circumstances of the person to whom the benefit was paid, and the actions of that person in relation to the benefit.
 - (4) A **superannuation death benefit** is a payment described in column 3 of the table.
 - (5) Subsection (6) applies if a *contributions-splitting superannuation benefit or a *family law superannuation payment is paid to you because another person is a member of a *superannuation fund, holder of an *RSA or depositor with an *approved deposit fund, or the annuitant under a *superannuation annuity.
 - (6) For the purposes of this section (and despite section 307-15):
 - (a) treat yourself as a member of the fund, holder of the *RSA, depositor with the fund or annuitant under the *superannuation annuity; and
 - (b) do not treat the other person as a member of the fund, holder of the RSA, depositor with the fund or annuitant under the superannuation annuity.
- Note: This means that the benefit is a superannuation benefit for you but not for the other person.
- (7) A **family law superannuation payment** is a payment that:
 - (a) is a payment of any of the following kinds:
 - (i) a payment in accordance with Part VIIIIB of the *Family Law Act 1975*;
 - (ii) a payment in accordance with the *Family Law (Superannuation) Regulations 2001*;
 - (iii) a payment in accordance with Part 7A of the *Superannuation Industry (Supervision) Regulations 1994*;
 - (iv) a payment in accordance with Part 4A of the *Retirement Savings Accounts Regulations 1997*;
 - (v) a payment specified in the regulations; and
 - (b) satisfies the requirements (if any) specified in the regulations.

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

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Treatment of amounts transferred within a superannuation plan

- (8) If an amount is transferred from one *superannuation interest in a *superannuation plan to another superannuation interest in the same plan, treat the transfer as a payment in determining whether the transfer of the amount is a superannuation benefit or a roll-over superannuation benefit.

307-10 Payments that are not *superannuation benefits*

A payment of any of the following kinds is *not* a ***superannuation benefit***:

- (a) an amount payable to a person under an income stream because of the person's temporary inability to engage in *gainful employment;
- (aa) a benefit to which subsection 26AF(1) or 26AFA(1) of the *Income Tax Assessment Act 1936* applies;
- (ab) an amount required by the *Bankruptcy Act 1966* to be paid to a trustee;
- (b) an amount:
 - (i) received by you, or to which you are entitled, as the result of the commutation of a pension payable from a *constitutionally protected fund; and
 - (ii) wholly applied in paying any superannuation contributions surcharge (as defined in section 38 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*);
- (c) an amount:
 - (i) received by you, or to which you are entitled, as the result of the commutation of a pension payable by a superannuation provider (within the meaning of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*); and
 - (ii) wholly applied in paying any superannuation contributions surcharge (as defined in section 43 of that Act);
- (d) a payment of a pension or an *annuity from a *foreign superannuation fund.

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

307-15 Payments for your benefit or at your direction or request

- (1) This section applies for the purposes of:
 - (a) determining whether a payment is a *superannuation benefit*, and
 - (b) determining whether a *superannuation benefit is made to you, or received by you.
- (2) A payment is treated as being made to you, or received by you, if it is made:
 - (a) for your benefit; or
 - (b) to another person or to an entity at your direction or request.

Note: Paragraph (b) would cover, for example, a direction by you that a payment be rolled over from your original superannuation fund into another superannuation fund.

Subdivision 307-B—Superannuation lump sums and superannuation income stream benefits

Table of sections

307-65	Meaning of <i>superannuation lump sum</i>
307-70	Meaning of <i>superannuation income stream</i> and <i>superannuation income stream benefit</i>

307-65 Meaning of *superannuation lump sum*

A *superannuation lump sum* is a *superannuation benefit that is not a *superannuation income stream benefit (see section 307-70).

307-70 Meaning of *superannuation income stream* and *superannuation income stream benefit*

- (1) A *superannuation income stream benefit* is a *superannuation benefit specified in the regulations that is paid from a *superannuation income stream.
- (2) A *superannuation income stream* has the meaning given by the regulations.

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

Subdivision 307-C—Components of a superannuation benefit

Table of sections

307-120	Components of superannuation benefit
307-125	Proportioning rule
307-130	Superannuation guarantee payment consists entirely of taxable component
307-135	Superannuation co-contribution benefit payment consists entirely of tax free component
307-140	Contributions-splitting superannuation benefit consists entirely of taxable component
307-142	Components of certain unclaimed money payments
307-145	Modification for disability benefits
307-150	Modification in respect of superannuation lump sum with element untaxed in fund

307-120 Components of superannuation benefit

- (1) Work out the following components of a *superannuation benefit under this Subdivision:
 - (a) the *tax free component*;
 - (b) the *taxable component*.
- (2) Work out those components under:
 - (a) if the benefit is not mentioned in paragraph (b), (c), (d) or (e)—section 307-125; or
 - (b) if the benefit is a *superannuation guarantee payment—section 307-130; or
 - (c) if the benefit is a *superannuation co-contribution benefit payment—section 307-135; or
 - (d) if the benefit is a *contributions-splitting superannuation benefit—section 307-140; or
 - (e) if the benefit is a payment under subsection 17(2) or section 20H or 24G of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*—section 307-142.
- (3) Those components may be modified under sections 307-145 (which deals with certain disability benefits) and 307-150 (which deals with certain *elements untaxed in fund).

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

307-125 Proportioning rule

- (1) The object of this section is to ensure that the *tax free component and *taxable component of a *superannuation benefit are calculated by:
 - (a) first, determining the proportions of the *value of the *superannuation interest that those components represent; and
 - (b) next, applying those proportions to the benefit.
- (2) The *superannuation benefit is taken to be paid in a way such that each of those components of the benefit bears the same proportion to the amount of the benefit that the corresponding component of the *superannuation interest bears to the *value of the superannuation interest.

Example: The amount of a superannuation lump sum is \$100. Just before the benefit is paid, the value of the superannuation interest was \$1000 (of which \$200 was the tax free component and \$800 was the taxable component). For the lump sum, the tax free component is \$20 and the taxable component is \$80.
- (3) For the purposes of subsection (2), determine the *value of the *superannuation interest, and the amount of each of those components of the interest, at whichever of the following times is applicable:
 - (a) if the *superannuation benefit is a *superannuation income stream benefit—when the relevant *superannuation income stream commenced;
 - (b) if the superannuation benefit is a *superannuation lump sum—just before the benefit is paid;
 - (c) despite paragraphs (a) and (b), if the superannuation benefit arises from the commutation of a superannuation income stream—when the relevant *superannuation income stream commenced.
- (4) Subsection (2) does not apply to a *superannuation benefit if any of the following applies:
 - (a) the regulations specify an alternative method for determining those components of the benefit;

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

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- (b) a determination under subsection (5) specifies an alternative method for determining those components of the benefit;
 - (c) the Commissioner consents in writing to the use of another method for determining those components of the benefit.
- If so, use that method to determine those components of the benefit.
- (5) For the purposes of paragraph (4)(b), the Commissioner may determine, by legislative instrument, one or more alternative methods for determining those components of a *superannuation benefit.
 - (6) If the *superannuation benefit is an *unclaimed money payment or a *small superannuation account payment, for the purposes of this section:
 - (a) treat the benefit as a superannuation benefit paid from a *superannuation interest; and
 - (b) treat the amount of the benefit as the *value of that superannuation interest just before the time the benefit is paid.

307-130 Superannuation guarantee payment consists entirely of taxable component

The components of a *superannuation benefit that is a *superannuation guarantee payment are as follows:

- (a) the *tax free component is nil;
- (b) the *taxable component is the amount of the benefit.

307-135 Superannuation co-contribution benefit payment consists entirely of tax free component

The components of a *superannuation benefit that is a *superannuation co-contribution benefit payment are as follows:

- (a) the *tax free component is the amount of the benefit;
- (b) the *taxable component is nil.

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

307-140 Contributions-splitting superannuation benefit consists entirely of taxable component

The components of a *superannuation benefit that is a *contributions-splitting superannuation benefit are as follows:

- (a) the *tax free component is nil;
- (b) the *taxable component is the amount of the benefit.

307-142 Components of certain unclaimed money payments

Preliminary

- (1) This section explains how to work out the *tax free component, and the *taxable component, of a *superannuation benefit that is a payment by the Commissioner under subsection 17(2) or section 20H or 24G of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, or by a State or Territory authority as mentioned in subsection 18(5) of that Act, in respect of a person.

Tax free component

- (2) Work out the *tax free component as follows:

Method statement

Step 1. Work out the amount (the ***unclaimed amount***) (or amounts), set out in column 1 of the table in subsection (3), to which the *superannuation benefit is attributable.

Note: A payment made under subsection 17(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* is attributable to a single unclaimed amount set out in item 1 or 2 of the table.

A payment under section 20H of that Act may be attributable to more than one unclaimed amount.

A payment made under section 24G of that Act is attributable to a single unclaimed amount set out in item 4 of the table.

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

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Step 2. Assume that the unclaimed amount (or each unclaimed amount), instead of being paid to the Commissioner, had been paid to the person as the payment (the ***claimed equivalent***) set out in column 2 of the table.

Step 3. The *tax free component of the *superannuation benefit consists of so much of the superannuation benefit as is attributable to the amount set out in column 3 of the table for the claimed equivalent (or as is attributable to the amounts set out in that column for the claimed equivalents).

(3) This is the table mentioned in subsection (2):

Tax free component			
Item	Column 1 Unclaimed amount	Column 2 Claimed equivalent	Column 3 Tax free component of claimed equivalent
1	an amount paid, on or after 1 July 2007, to: (a) the Commissioner under subsection 17(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> ; or (b) a State or Territory authority, as mentioned in subsection 18(4) of that Act;	a *superannuation benefit paid from a *superannuation plan	the *tax free component of that superannuation benefit
	in respect of the person		

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

Tax free component			
Item	Column 1 Unclaimed amount	Column 2 Claimed equivalent	Column 3 Tax free component of claimed equivalent
2	an amount paid, before 1 July 2007, to: (a) the Commissioner under subsection 17(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> ; or (b) a State or Territory authority, as mentioned in subsection 18(4) of that Act;	an eligible termination payment (within the meaning of subsection 27A(1) of the <i>Income Tax Assessment Act 1936</i> , as in force just before 1 July 2007)	the total of the components, of that eligible termination payment, referred to in subsection 307-225(2) of this Act
3	an amount paid to the Commissioner under subsection 20F(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person (other than an amount referred to in section 65AA of the <i>Superannuation Guarantee (Administration) Act 1992</i>)	a *superannuation benefit paid from a *superannuation plan	the *tax free component of that superannuation benefit
4	an amount paid to the Commissioner under section 24E of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *tax free component of that superannuation benefit

Note 1: Section 65AA of the *Superannuation Guarantee (Administration) Act 1992* requires certain shortfall components to be treated as amounts paid to the Commissioner under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of excluding such shortfall components from item 3 of the table in this subsection is that the taxable component includes so much of the superannuation benefit as is attributable to such a shortfall component.

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

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Note 2: The table in this subsection does not cover interest paid by the Commissioner under subsection 20H(2A) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of this is that the taxable component includes so much of the superannuation benefit as is attributable to such interest.

- (3A) Treat the amount set out in column 3 of an item of the table in subsection (3) as being nil, if:
- (a) the unclaimed amount set out in column 1 of the item is an amount paid to the Commissioner by a State or Territory authority (within the meaning of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*) in the circumstances mentioned in section 18AA, 20JA or 24HA of that Act; and
 - (b) the Commissioner does not have sufficient information to work out the amount set out in column 3 of the item.

Taxable component

- (4) The *taxable component is so much (if any) of the *superannuation benefit as is not the *tax free component.

307-145 Modification for disability benefits

- (1) Work out the *tax free component* of the *superannuation benefit under subsection (2) if the benefit is a *superannuation lump sum and a *disability superannuation benefit.

Note: This section does not apply to an unclaimed money payment.

- (2) The *tax free component* is the sum of:
- (a) the *tax free component of the benefit worked out apart from this section; and
 - (b) the amount worked out under subsection (3).

However, the tax free component cannot exceed the amount of the benefit.

- (3) Work out the amount by applying the following formula:

$$\text{Amount of benefit} \times \frac{\text{Days to retirement}}{\text{Service days} + \text{Days to retirement}}$$

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

where:

days to retirement is the number of days from the day on which the person stopped being capable of being *gainfully employed to his or her *last retirement day.

service days is the number of days in the *service period for the lump sum.

- (4) The balance of the *superannuation benefit is the ***taxable component*** of the benefit.

307-150 Modification in respect of superannuation lump sum with element untaxed in fund

- (1) This section applies to a *superannuation lump sum if:
- (a) it is not a *roll-over superannuation benefit; or
 - (b) it is a roll-over superannuation benefit that includes an *element untaxed in the fund, all or part of which will be included in the assessable income of the *superannuation provider in relation to the *superannuation fund into which the benefit is paid.
- (2) However, this section applies to the *superannuation lump sum only to the extent that it is attributable to a *superannuation interest that existed just before 1 July 2007.
- (3) If the *superannuation lump sum includes an *element untaxed in the fund:
- (a) increase the *tax free component of the benefit by the amount that is the lesser of these amounts:
 - (i) the amount worked out under subsection (4); and
 - (ii) the amount of the element untaxed in the fund (apart from this section); and
 - (b) reduce the element untaxed in the fund by the lesser of those amounts.
- (4) Work out the amount by applying the following formula:

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

Section 307-200

$$\text{Original tax free component and untaxed element} \times \frac{\text{Number of days in the *service period for the lump sum that occurred before 1 July 1983}}{\text{Number of days in the *service period for the lump sum}}$$

where:

original tax free component and untaxed element is the sum of:

- (a) the *tax free component of the *superannuation benefit (apart from this section); and
 - (b) the *element untaxed in the fund of the superannuation benefit (apart from this section).
- (5) If the benefit is in part attributable to a *crystallised pre-July 83 amount, in working out the *tax free component of the *superannuation benefit (apart from this section) for the purposes of subsection (4), disregard the amount of the benefit that is attributable to the *crystallised segment of the *superannuation interest from which the benefit is paid.

Subdivision 307-D—Superannuation interests

Table of sections

307-200	Regulations relating to meaning of superannuation interests
307-205	<i>Value</i> of superannuation interest
307-210	<i>Tax free component</i> of superannuation interest
307-215	<i>Taxable component</i> of superannuation interest
307-220	What is the <i>contributions segment</i> ?
307-225	What is the <i>crystallised segment</i> ?

307-200 Regulations relating to meaning of superannuation interests

- (1) In the circumstances specified in the regulations, treat a *superannuation interest* as two or more superannuation interests in the way specified in the regulations.
- (2) In the circumstances specified in the regulations, treat 2 or more *superannuation interests* as one superannuation interest in the way specified in the regulations.

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

- (3) Regulations for the purposes of this section may specify a way of treating a *superannuation interest in relation to one or more of the following aspects of the interest:
 - (a) the *tax free component (and the *contributions segment and *crystallised segment relating to that component);
 - (b) the *taxable component;
 - (c) the *element taxed in the fund of the taxable component;
 - (d) the *element untaxed in the fund of the taxable component.
- (4) Regulations for the purposes of subsection (1) may specify a way of allocating an amount relating to a *superannuation interest treated as two or more superannuation interests in accordance with those regulations to those interests.
- (5) Subsections (3) and (4) do not limit the regulations that may be made for the purposes of this section.

307-205 Value of superannuation interest

The *value* of a *superannuation interest at a particular time is:

- (a) if the regulations specify a method for determining the value of the superannuation interest—that value; or
- (b) otherwise—the total amount of all the *superannuation lump sums that could be payable from the interest at that time.

307-210 Tax free component of superannuation interest

The *tax free component* of a *superannuation interest is so much of the *value of the interest as consists of:

- (a) the *contributions segment of the interest; and
- (b) the *crystallised segment of the interest.

Note: If superannuation benefits have been paid from the superannuation interest, the amount of the tax free component of the interest will be reduced by the tax free components of those superannuation benefits: see section 307-125.

307-215 Taxable component of superannuation interest

The *taxable component* of a *superannuation interest is the *value of the interest less the *tax free component of the interest.

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

307-220 What is the *contributions segment*?

- (1) The *contributions segment* of a *superannuation interest is so much of the *value of the interest as consists of contributions made after 30 June 2007, to the extent that they have not been and will not be included in the assessable income of the *superannuation provider in relation to the *superannuation plan in which the interest is held.
- (2) For the purposes of this section:
 - (a) in determining whether contributions are included in the contributions segment under subsection (1):
 - (i) disregard the *taxable component of a *roll-over superannuation benefit paid into the interest; and
 - (ii) for a *superannuation plan that is a *constitutionally protected fund—treat the superannuation plan as if it were not a constitutionally protected fund; and
 - (b) disregard section 295-180 and Subdivision 295-D.
- (3) For the purposes of subparagraph (2)(a)(i), treat the *excess untaxed roll-over amount (if any) of the *roll-over superannuation benefit as part of the *tax free component of the benefit instead of the *taxable component of the benefit.
- (4) Subparagraph (2)(a)(i) does not apply to a *roll-over superannuation benefit that is a *departing Australia superannuation payment made under section 20H of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Note 1: The whole departing Australia superannuation payment is included in the contributions segment of the superannuation interest, as none of the payment has been or will be included in the superannuation provider's assessable income.

Note 2: Including the whole payment in that segment, and thus the tax free component, of the superannuation interest ensures that the amount of the payment, which is taxed by the *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007*, does not attract more tax when paid as a superannuation benefit from the interest.

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

307-225 What is the *crystallised segment*?

- (1) To work out the *crystallised segment* of a *superannuation interest, first assume that:
 - (a) an eligible termination payment had been made in respect of the holder of the interest just before 1 July 2007; and
 - (b) the amount of the eligible termination payment had been equal to the *value of the interest at that time.
- (2) The *crystallised segment* of the *superannuation interest is so much of the *value of the interest as consists of the total of the following components of the eligible termination payment:
 - (a) the concessional component;
 - (b) the post-June 1994 invalidity component;
 - (c) the undeducted contributions;
 - (d) the CGT exempt component;
 - (e) the pre-July 83 component.
- (3) For the purposes of paragraph (2)(e), disregard the *value of the interest just before 1 July 2007 to the extent that it would consist, apart from this subsection, of the *element untaxed in the fund of the *taxable component of a *superannuation benefit constituted by the eligible termination payment.
- (4) In this section, the following terms have the same meaning as in subsection 27A(1) of the *Income Tax Assessment Act 1936* (as in force just before 1 July 2007):
 - (a) *concessional component*;
 - (b) *post-June 1994 invalidity component*;
 - (c) *undeducted contributions*;
 - (d) *CGT exempt component*;
 - (e) *pre-July 83 component*;
 - (f) *eligible termination payment*.

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

Subdivision 307-E—Elements taxed and untaxed in the fund of the taxable component of superannuation benefit

Table of sections

307-275	<i>Element taxed in the fund and element untaxed in the fund</i> of superannuation benefits
307-280	Superannuation benefits from constitutionally protected funds etc.
307-285	Trustee can choose to convert element taxed in the fund to element untaxed in the fund
307-290	Taxed and untaxed elements of death benefit superannuation lump sums
307-295	Superannuation benefits from public sector superannuation schemes may include untaxed element
307-297	Public sector superannuation schemes—elements set by regulations
307-300	Certain unclaimed money payments

307-275 *Element taxed in the fund and element untaxed in the fund of superannuation benefits*

- (1) The *taxable component of a *superannuation benefit consists of an *element taxed in the fund* or an *element untaxed in the fund*, or both.
- (2) The *taxable component of a *superannuation benefit consists wholly of an *element taxed in the fund* except as provided in a later section of this Subdivision.
- (3) Despite subsection (2), the *taxable component of any of the following kinds of *superannuation benefit consists wholly of an *element untaxed in the fund*:
 - (a) a *small superannuation account payment;
 - (b) a *superannuation guarantee payment.

307-280 Superannuation benefits from constitutionally protected funds etc.

- (1) The *taxable component of a *superannuation benefit paid from a *superannuation fund that is a *constitutionally protected fund consists wholly of an *element untaxed in the fund*.

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

- (2) Despite subsection (1), if:
 - (a) the benefit is a *superannuation lump sum; and
 - (b) the benefit is attributable to one or more *roll-over superannuation benefits that consisted of, or included, an *element taxed in the fund;the *taxable component of the benefit has an *element taxed in the fund* equal to the total of those elements taxed in the fund.
- (3) The *taxable component of a *superannuation income stream benefit consists wholly of an *element untaxed in the fund* if it is paid from a *superannuation fund that was a *constitutionally protected fund on the first day of the period to which the *superannuation income stream relates.

307-285 Trustee can choose to convert element taxed in the fund to element untaxed in the fund

- (1) If:
 - (a) you receive a *superannuation benefit from a *public sector superannuation scheme; and
 - (b) the trustee of the scheme gives you written notice specifying an amount as the *element untaxed in the fund of the *taxable component of the benefit; and
 - (c) the notice is given within the time and in the manner approved by the Commissioner in writing; and
 - (d) the scheme came into operation on or before 5 September 2006;the taxable component consists of an *element untaxed in the fund* equal to the specified amount.
- (2) The trustee of the scheme can give only one notice under subsection (1) in relation to a particular *superannuation lump sum.

307-290 Taxed and untaxed elements of death benefit superannuation lump sums

- (1) This section applies to a *superannuation death benefit that is a *superannuation lump sum, in relation to which a deduction has been, or is to be, claimed under section 295-465 or 295-470.

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

Section 307-295

Note 1: Those sections allow deductions for insurance premiums that have been paid, and for liability for future benefits.

Note 2: Deductions made under former section 279 or 279B of the *Income Tax Assessment Act 1936* are treated for the purposes of this section as having been made under section 295-465 or 295-470 (see section 307-290 of the *Income Tax (Transitional Provisions) Act 1997*).

- (2) The *taxable component of the *superannuation lump sum includes an ***element taxed in the fund*** worked out as follows:
- (a) first, work out the amount under the formula in subsection (3);
 - (b) next, reduce that amount (but not below zero) by the *tax free component (if any) of the superannuation lump sum.
- (3) For the purposes of paragraph (2)(a), the formula is:

$$\text{*superannuation lump sum} \times \frac{\text{Service days}}{\text{Service days} + \text{Days to retirement}}$$

days to retirement is the number of days from the day on which the deceased died to the deceased's *last retirement day.

service days is the number of days in the *service period for the lump sum.

- (4) The ***element untaxed in the fund*** of the *taxable component is the balance of the taxable component.

307-295 Superannuation benefits from public sector superannuation schemes may include untaxed element

- (1) This section applies to a *superannuation benefit that is paid from a *public sector superannuation scheme that is not a *constitutionally protected fund.
- (2) If the *superannuation benefit paid is not sourced to any extent from contributions made into a *superannuation fund or earnings on such contributions, the *taxable component of the superannuation benefit consists wholly of an ***element untaxed in the fund***.

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

- (3) If the benefit is a *superannuation lump sum that is partly sourced from contributions made into a *superannuation fund or earnings on such contributions, the *element taxed in the fund* and the *element untaxed in the fund* of the *taxable component of the benefit are worked out as follows:

Method statement

- Step 1. Subdivide the *taxable component of the *superannuation lump sum (the *original benefit*) into 2 notional superannuation lump sums as follows:
- (a) the amount sourced from contributions made into a *superannuation fund or earnings on such contributions (the *fund benefit*);
 - (b) the remainder of the taxable component of the lump sum (the *non-fund benefit*).
- Step 2. The fund benefit consists of an *element taxed in the fund*, an *element untaxed in the fund*, or both, as worked out under this Subdivision.
- Step 3. The non-fund benefit consists wholly of an *element untaxed in the fund*.
- Step 4. The *element taxed in the fund* of the original benefit equals the element taxed in the fund of the fund benefit.
- Step 5. The *element untaxed in the fund* of the original benefit is the sum of the elements untaxed in the fund worked out under steps 2 and 3.

307-297 Public sector superannuation schemes—elements set by regulations

- (1) This section applies to a *superannuation benefit that is paid from a *public sector superannuation scheme that is not a *constitutionally protected fund.

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

Section 307-300

- (2) Despite any other provision of this Subdivision, the *taxable component of the *superannuation benefit consists of an ***element untaxed in the fund*** equal to the amount (if any) specified by the regulations in relation to the benefit for the purposes of this section.
- (3) The amount specified must not be less than the amount that would be the *element untaxed in the fund under the other provisions of this Subdivision.

307-300 Certain unclaimed money payments

Preliminary

- (1) This section explains how to work out the *element taxed in the fund, and the *element untaxed in the fund, of the *taxable component of a *superannuation benefit that is a payment by the Commissioner under subsection 17(2) or section 20H or 24G of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

Element taxed in the fund

- (2) Work out the ***element taxed in the fund*** as follows:

Method statement

Step 1. Work out the amount (the ***unclaimed amount***) (or amounts), set out in column 1 of the table in subsection (3), to which the *taxable component is attributable.

Note: A payment made under subsection 17(2) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* is attributable to a single unclaimed amount set out in item 1 or 2 of the table.

A payment under section 20H of that Act may be attributable to more than one unclaimed amount.

A payment made under section 24G of that Act is attributable to a single unclaimed amount set out in item 4 of the table.

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

Step 2. Assume that the unclaimed amount (or each unclaimed amount), instead of being paid to the Commissioner, had been paid to the person as the payment (the ***claimed equivalent***) set out in column 2 of the table.

Step 3. The ***element taxed in the fund*** of the *taxable component consists of so much of the taxable component as is attributable to the amount set out in column 3 of the table for the claimed equivalent (or as is attributable to the amounts set out in that column for the claimed equivalents).

(3) This is the table mentioned in subsection (2):

Element taxed in the fund			
Item	Column 1 Unclaimed amount	Column 2 Claimed equivalent	Column 3 Taxed element of claimed equivalent
1	an amount paid, on or after 1 July 2007, to the Commissioner under subsection 17(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit
2	an amount paid, before 1 July 2007, to the Commissioner under subsection 17(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person	an eligible termination payment (within the meaning of subsection 27A(1) of the <i>Income Tax Assessment Act 1936</i> , as in force just before 1 July 2007)	the taxed element of the post-June 83 component of that eligible termination payment under Subdivision AA of Division 2 of Part III of the <i>Income Tax Assessment Act 1936</i> , as in force just before 1 July 2007

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

Chapter 3 Specialist liability rules

Part 3-30 Superannuation

Division 307 Key concepts relating to superannuation benefits

Section 307-300

Element taxed in the fund			
Item	Column 1 Unclaimed amount	Column 2 Claimed equivalent	Column 3 Taxed element of claimed equivalent
3	an amount paid to the Commissioner under subsection 20F(1) of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person (other than an amount referred to in section 65AA of the <i>Superannuation Guarantee (Administration) Act 1992</i>)	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit
4	an amount paid to the Commissioner under section 24E of the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> in respect of the person	a *superannuation benefit paid from a *superannuation plan	the *element taxed in the fund of the *taxable component of that superannuation benefit

Note 1: Section 65AA of the *Superannuation Guarantee (Administration) Act 1992* requires certain shortfall components to be treated as amounts paid to the Commissioner under subsection 20F(1) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of excluding such shortfall components from item 3 of the table in this subsection is that the element untaxed in the fund includes so much of the superannuation benefit as is attributable to such a shortfall component.

Note 2: The table in this subsection does not cover interest paid by the Commissioner under subsection 20H(2A) of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*.

The effect of this is that the element untaxed in the fund of the taxable component includes so much of the superannuation benefit as is attributable to such interest.

Element untaxed in the fund

- (4) The **element untaxed in the fund** of the *taxable component is so much (if any) of the taxable component as is not the element taxed in the fund.

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

Subdivision 307-F—Low rate cap and untaxed plan cap amounts

Table of sections

307-345	<i>Low rate cap amount</i>
307-350	<i>Untaxed plan cap amount</i>

307-345 *Low rate cap amount*

Starting amount

- (1) Your **low rate cap amount** for the 2007-2008 income year is \$140,000.

Note: However, if you became entitled to a rebate under the corresponding provision of the *Income Tax Assessment Act 1936*, see section 307-345 of the *Income Tax (Transitional Provisions) Act 1997*.

Reductions and increases

- (2) If you receive one or more *superannuation member benefits that are *superannuation lump sums in an income year, reduce your **low rate cap amount** for the next income year (but not below zero) by the total of the amounts that:
- (a) are included in your assessable income for the first year in respect of those lump sums; and
 - (b) are counted towards your entitlement to a *tax offset under subsection 301-20(2) or 301-105(4) for the first year.
- (3) At the start of each income year after the 2007-2008 income year, increase your **low rate cap amount** by the amount (if any) by which the index amount for that income year exceeds the index amount for the previous income year.
- (4) For the purposes of subsection (3), the index amount for the 2007-2008 income year is \$140,000. The index amount is then indexed annually.

Note: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the index amount: see section 960-285.

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

307-350 *Untaxed plan cap amount*

- (1) Your ***untaxed plan cap amount*** for a *superannuation plan at the start of the 2007-2008 income year is \$1,000,000.

Reductions and increases

- (1A) Subsection (2) applies if:
- (a) you receive one or more *superannuation member benefits from a *superannuation plan at a time; and
 - (b) the benefit, or one or more of the benefits:
 - (i) is a *superannuation lump sum; and
 - (ii) includes an *element untaxed in the fund.
- (2) Reduce your ***untaxed plan cap amount*** just after that time:
- (a) if the total of the *elements untaxed in the fund of the *superannuation member benefits to which paragraph (1A)(b) applies falls short of your untaxed plan cap amount at that time—by that total; or
 - (b) otherwise—to nil.
- (2A) For the purposes of subsections (1A) and (2), disregard subsection 307-5(8).
- (2B) For the purposes of the application of this section in relation to *superannuation lump sums paid by the Commissioner under subsection 17(2) and sections 20H and 24G of the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, treat all such lump sums as if they were paid from a single *superannuation plan.
- (3) At the start of each income year after the 2007-2008 income year, increase your ***untaxed plan cap amount*** for the *superannuation plan by the amount (if any) by which the index amount for that income year exceeds the index amount for the previous income year.
- (4) For the purposes of subsection (3), the index amount for the 2007-2008 income year is \$1,000,000. The index amount is then indexed annually.

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

Note: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the index amount: see section 960-285.

Subdivision 307-G—Other concepts

Table of sections

307-400 Meaning of *service period* for a superannuation lump sum

307-400 Meaning of *service period* for a superannuation lump sum

- (1) The *service period* for a *superannuation lump sum consists of each day that is in the period worked out under the table or a period covered by subsection (2).

Service period for superannuation lump sum types		
Item	For this superannuation lump sum type:	The <i>service period</i> includes:
1	*Superannuation fund payment	The following: (a) if some or all of the *superannuation lump sum accrued while you were, or the deceased was, a member of the *superannuation fund—the period of membership; (b) if some or all of the superannuation lump sum accrued while you were, or the deceased was, employed (or you or the deceased held office)—each period of employment (or of holding office) to which the lump sum relates.
2	*approved deposit fund payment	The period starting when you or the deceased first made a deposit to the *approved deposit fund and ending when the payment is made.

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

Service period for superannuation lump sum types

Item	For this superannuation lump sum type:	The <i>service period</i> includes:
3	*RSA payment	The following: (a) if some or all of the *superannuation lump sum accrued while you were, or the deceased was, the holder of the *RSA—the period during which you were, or the deceased was, the holder of the RSA; (b) if some or all of the superannuation lump sum accrued while you were, or the deceased was, employed (or you or the deceased held office)—each period of employment (or of holding office) to which the lump sum relates.

- (2) The *service period* for the *superannuation lump sum (the *later lump sum*) also includes each day that is in the *service period for an earlier superannuation lump sum if some or all of the later lump sum is attributable, directly or indirectly, to some or all of the earlier lump sum through the payment of one or more *roll-over superannuation benefits.

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

Division 310—Loss relief for merging superannuation funds

Table of Subdivisions

	Guide to Division 310
310-A	Object of this Division
310-B	Choice to transfer losses
310-C	Consequences of choosing to transfer losses
310-D	Choice for assets roll-over
310-E	Consequences of choosing assets roll-over
310-F	Choices

Guide to Division 310

310-1 What this Division is about

This Division sets out special rules for certain merging superannuation funds. These rules relate to the transfer of losses, the treatment of CGT events related to the merger and the treatment of assets related to the merger.

Note 1: This Division applies to mergers happening between 24 December 2008 and 30 June 2011 (or, in certain cases, 30 September 2011), or between 1 October 2011 and 1 July 2017 (see Part 3 of Schedule 2 to the *Tax Laws Amendment (2009 Measures No. 6) Act 2010*).

Note 2: This Division and associated provisions will be repealed on 1 July 2019 (see Parts 4 and 5 of that Schedule).

Operative provisions

Subdivision 310-A—Object of this Division

310-5 Object

The main object of this Division is to facilitate the consolidation of the superannuation industry by allowing certain merging
*superannuation funds to retain the value, for income tax purposes,

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

of certain losses that might otherwise cease to be able to be utilised as a result of the merger.

Subdivision 310-B—Choice to transfer losses

Table of sections

310-10	Original fund's assets extend beyond life insurance policies and units in pooled superannuation trusts
310-15	Original fund's assets include a complying superannuation/FHSA life insurance policy
310-20	Original fund's assets include units in a pooled superannuation trust

310-10 Original fund's assets extend beyond life insurance policies and units in pooled superannuation trusts

- (1) A trustee of:
- (a) a *complying superannuation fund (other than a *self managed superannuation fund) (the *transferring entity* or the *original fund*); or
 - (b) a *complying approved deposit fund (the *transferring entity* or the *original fund*);

can choose to transfer losses if an *arrangement is made for which the conditions in this section are satisfied.

Transferring entity's assets include other assets

- (2) The first condition is satisfied if, just before the *arrangement was made, the transferring entity's assets included assets other than:
- (a) a *complying superannuation/FHSA life insurance policy; or
 - (b) units in a *pooled superannuation trust.

Note: Other entities may also choose under this Subdivision to transfer losses, for the same arrangement, if the transferring entity holds a complying superannuation/FHSA life insurance policy or units in a pooled superannuation trust.

Original fund's members transfer to a continuing fund

- (3) The second condition is satisfied if, under the *arrangement:

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

- (a) the transferring entity ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) at a particular time (the **completion time**); and
- (b) the individuals who cease to be members (within the meaning of that Act) of the transferring entity become members (within the meaning of that Act) of one or more *complying superannuation funds (the **continuing funds**).

Continuing funds will usually not be able to be small funds

- (4) The third condition is satisfied if either:
 - (a) none of the continuing funds was a *small superannuation fund, and all existed, just before the *arrangement was made; or
 - (b) the following subparagraphs apply:
 - (i) only one of the continuing funds either was a small superannuation fund, or did not exist, just before the arrangement was made;
 - (ii) under the arrangement, a *complying superannuation fund or *complying approved deposit fund, other than the original fund, ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);
 - (iii) under the arrangement, the individuals who cease to be members (within the meaning of that Act) of that other fund become members (within the meaning of that Act) of the continuing fund;
 - (iv) either the other fund or the original fund was not a small superannuation fund just before the arrangement was made;
 - (v) the continuing fund is not a small superannuation fund just after the earliest time when both the other fund and the original fund cease to have any members (within the meaning of that Act).

Ignore members who cannot transfer to a continuing fund

- (5) For the purposes of subsections (3) and (4), ignore an individual who remains a member of a *complying superannuation fund or

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

*complying approved deposit fund because of circumstances beyond the control of the trustee of that fund.

310-15 Original fund's assets include a complying superannuation/FHSA life insurance policy

- (1) A *life insurance company (the *transferring entity*) can choose to transfer losses if an *arrangement is made for which the conditions in this section are satisfied.

Original fund holds a complying superannuation/FHSA life insurance policy

- (2) The first condition is satisfied if, just before the *arrangement was made, a *complying superannuation/FHSA life insurance policy issued by the transferring entity was held by:
- (a) a *complying superannuation fund (the *original fund*); or
 - (b) a *complying approved deposit fund (the *original fund*).

Note: Other entities may also choose under this Subdivision to transfer losses, for the same arrangement, if the original fund holds other assets.

Original fund's members transfer to a continuing fund

- (3) The second condition is satisfied if, under the *arrangement:
- (a) the original fund ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) at a particular time (the *completion time*); and
 - (b) the individuals who cease to be members (within the meaning of that Act) of the original fund become members (within the meaning of that Act) of one or more *complying superannuation funds (the *continuing funds*).

Continuing funds will usually not be able to be small funds

- (4) The third condition is satisfied if either:
- (a) none of the continuing funds was a *small superannuation fund, and all existed, just before the *arrangement was made; or

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

- (b) the following subparagraphs apply:
- (i) only one of the continuing funds either was a small superannuation fund, or did not exist, just before the arrangement was made;
 - (ii) under the arrangement, a *complying superannuation fund or *complying approved deposit fund, other than the original fund, ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);
 - (iii) under the arrangement, the individuals who cease to be members (within the meaning of that Act) of that other fund become members (within the meaning of that Act) of the continuing fund;
 - (iv) either the other fund or the original fund was not a small superannuation fund just before the arrangement was made;
 - (v) the continuing fund is not a small superannuation fund just after the earliest time when both the other fund and the original fund cease to have any members (within the meaning of that Act).

Ignore members who cannot transfer to a continuing fund

- (5) For the purposes of subsections (3) and (4), ignore an individual who remains a member of a *complying superannuation fund or *complying approved deposit fund because of circumstances beyond the control of the trustee of that fund.

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

310-20 Original fund's assets include units in a pooled superannuation trust

- (1) A trustee of a *pooled superannuation trust (the *transferring entity*) can choose to transfer losses if an *arrangement is made for which the conditions in this section are satisfied.

Units in the trust were held by the original fund

- (2) The first condition is satisfied if, just before the *arrangement was made, units in the transferring entity were held by:
- (a) a *complying superannuation fund (the *original fund*); or
 - (b) a *complying approved deposit fund (the *original fund*).

Note: Other entities may also choose under this Subdivision to transfer losses, for the same arrangement, if the original fund holds other assets.

Original fund's members transfer to a continuing fund

- (3) The second condition is satisfied if, under the *arrangement:
- (a) the original fund ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) at a particular time (the *completion time*); and
 - (b) the individuals who cease to be members (within the meaning of that Act) of the original fund become members (within the meaning of that Act) of one or more *complying superannuation funds (the *continuing funds*).

Continuing funds will usually not be able to be small funds

- (4) The third condition is satisfied if either:
- (a) none of the continuing funds was a *small superannuation fund, and all existed, just before the *arrangement was made; or
 - (b) the following subparagraphs apply:
 - (i) only one of the continuing funds either was a small superannuation fund, or did not exist, just before the arrangement was made;
 - (ii) under the arrangement, a *complying superannuation fund or *complying approved deposit fund, other than

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

the original fund, ceases to have any members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*);

- (iii) under the arrangement, the individuals who cease to be members (within the meaning of that Act) of that other fund become members (within the meaning of that Act) of the continuing fund;
- (iv) either the other fund or the original fund was not a small superannuation fund just before the arrangement was made;
- (v) the continuing fund is not a small superannuation fund just after the earliest time when both the other fund and the original fund cease to have any members (within the meaning of that Act).

Ignore members who cannot transfer to a continuing fund

- (5) For the purposes of subsections (3) and (4), ignore an individual who remains a member of a *complying superannuation fund or *complying approved deposit fund because of circumstances beyond the control of the trustee of that fund.

Subdivision 310-C—Consequences of choosing to transfer losses

Table of sections

310-25	Who losses can be transferred to
310-30	Losses that can be transferred
310-35	Effect of transferring a net capital loss
310-40	Effect of transferring a tax loss

310-25 Who losses can be transferred to

An entity choosing under Subdivision 310-B to transfer losses can choose to transfer any or all of the transferring entity's losses set out in section 310-30, in whole or in part, to one or more of the following entities (a *receiving entity*):

- (a) a continuing fund for the choice;

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

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- (b) a *pooled superannuation trust in which units are held by a continuing fund for the choice just after the completion time;
- (c) a *life insurance company with which a *complying superannuation/FHSA life insurance policy is held by a continuing fund for the choice just after the completion time.

310-30 Losses that can be transferred

(1) The transferring entity's losses that can be transferred are:

- (a) any of its *net capital losses for income years earlier than the income year for the transferring entity that includes the completion time (the *transfer year*), to the extent that it was not *utilised before the completion time (an *earlier year net capital loss*); and
- (b) any net capital loss it would have made for the transfer year were the transfer year to have ended at the completion time (a *transfer year net capital loss*); and
- (c) any of its *tax losses for income years earlier than the transfer year, to the extent that it was not utilised before the completion time (an *earlier year tax loss*); and
- (d) any tax loss it would have incurred for the transfer year were the transfer year to have ended at the completion time (a *transfer year tax loss*);

worked out subject to the modifications set out in this section.

Note: If the entity choosing to transfer losses also chooses an asset roll-over under Subdivision 310-D for the same arrangement, none of the transfer events for the roll-over will contribute towards a loss transferred under this Subdivision (see subsections 310-55(1), 310-60(3), 310-65(1) and 310-70(1)).

(2) For a choice under section 310-15 (life insurance companies), work out those losses by only considering the following to the extent that they relate to assets reasonably attributable to a *complying superannuation/FHSA life insurance policy issued by the transferring entity and held by the original fund:

- (a) *capital gains from *complying superannuation/FHSA assets;
- (b) *capital losses from complying superannuation/FHSA assets;
- (c) assessable income covered by subsection 320-137(2) (about complying superannuation/FHSA assets);

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

- (d) deductions covered by subsection 320-137(4) (about complying superannuation/FHSA assets).
- (3) For a choice under section 310-20 (pooled superannuation trusts), work out those losses by only considering *capital gains, *capital losses, assessable income and deductions to the extent that they relate to assets reasonably attributable to units in the transferring entity held by the original fund.

310-35 Effect of transferring a net capital loss

- (1) To the extent that an earlier year net capital loss is transferred to a receiving entity:
 - (a) the transferring entity is taken not to have made the loss for that earlier income year; and
 - (b) an amount equal to the transferred amount is taken to be:
 - (i) if the receiving entity is a *life insurance company—a *capital loss from *complying superannuation/FHSA assets made by the receiving entity for the transfer year; and
 - (ii) otherwise—a capital loss made by the receiving entity for the transfer year.
- (2) To the extent that a transfer year net capital loss is transferred to a receiving entity:
 - (a) if the transferring entity is a *life insurance company—the sum of the transferring entity's *capital losses from *complying superannuation/FHSA assets for the transfer year is reduced by an amount equal to the transferred amount; and
 - (b) if the transferring entity is not a life insurance company—the sum of the transferring entity's capital losses for the transfer year is reduced by an amount equal to the transferred amount; and
 - (c) if the receiving entity is a life insurance company—an amount equal to the transferred amount is taken to be a capital loss from complying superannuation/FHSA assets made by the receiving entity for the transfer year; and

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

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- (d) if the receiving entity is not a life insurance company—an amount equal to the transferred amount is taken to be a capital loss made by the receiving entity for the transfer year.

310-40 Effect of transferring a tax loss

- (1) To the extent that an earlier year tax loss is transferred to a receiving entity:
 - (a) the transferring entity is taken not to have incurred the loss for that earlier income year; and
 - (b) for the purposes of section 36-15, an amount equal to the transferred amount is taken to be:
 - (i) if the receiving entity is a *life insurance company—a *tax loss of the *complying superannuation/FHSA class incurred by the receiving entity for the income year immediately prior to the transfer year; and
 - (ii) otherwise—a tax loss incurred by the receiving entity for the income year immediately prior to the transfer year; and
 - (c) for all other purposes of this Act, an amount equal to the transferred amount is taken to be:
 - (i) if the receiving entity is a life insurance company—a tax loss of the complying superannuation/FHSA class incurred by the receiving entity for the transfer year; and
 - (ii) otherwise—a tax loss incurred by the receiving entity for the transfer year.
- (2) To the extent that a transfer year tax loss is transferred to a receiving entity:
 - (a) if the transferring entity is a *life insurance company—the sum of the transferring entity's deductions covered by subsection 320-137(4) (about complying superannuation/FHSA assets) for the transfer year is reduced by an amount equal to the transferred amount; and
 - (b) if the transferring entity is not a life insurance company—the sum of the transferring entity's deductions for the transfer year is reduced by an amount equal to the transferred amount; and

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

- (c) if the receiving entity is a life insurance company—an amount equal to the transferred amount is taken to be a *tax loss of the *complying superannuation/FHSA class incurred by the receiving entity for the transfer year; and
- (d) if the receiving entity is not a life insurance company—an amount equal to the transferred amount is taken to be a tax loss incurred by the receiving entity for the transfer year.

Subdivision 310-D—Choice for assets roll-over

Table of sections

310-45	Choosing the assets roll-over
310-50	Choosing the form of the assets roll-over

310-45 Choosing the assets roll-over

- (1) An entity can choose a roll-over under this Subdivision if:
 - (a) the entity makes or could make a choice under Subdivision 310-B (the *losses choice*) to transfer the losses of an entity (the *transferring entity*); and
 - (b) the conditions in this section are satisfied for the *arrangement to which the losses choice relates.
- (2) The first condition is that, under the *arrangement, one or more *CGT events (the *transfer events*) happen in relation to the following assets (the *original assets*) of the transferring entity with the result that it ceases to own those assets:
 - (a) for a losses choice under section 310-10 (original funds)—all of its *CGT assets;
 - (b) for a losses choice under section 310-15 (life insurance companies)—all of its CGT assets reasonably attributable to the *complying superannuation/FHSA life insurance policy held by the original fund for the losses choice just before the arrangement was made;
 - (c) for a losses choice under section 310-20 (pooled superannuation trusts)—all of its CGT assets reasonably attributable to the units in that entity held by the original fund for the losses choice just before the arrangement was made.

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

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- (3) The second condition is that the transfer events all happen in the income year (the *transfer year*) for the transferring entity that includes the completion time for the losses choice.
- (4) The third condition is that, for each transfer event, an asset (the *received asset*) becomes an asset of one of the following (the *receiving entity*) as a result of the event:
 - (a) a continuing fund for the losses choice;
 - (b) a *pooled superannuation trust in which units are held by a continuing fund for the losses choice just after the completion time;
 - (c) a *life insurance company with which a *complying superannuation/FHSA life insurance policy is held by a continuing fund for the losses choice just after the completion time.
- (5) For the purposes of subsection (2), ignore any *CGT assets retained by the transferring entity:
 - (a) to pay its existing or expected debts relating to the *arrangement; or
 - (b) to meet its liabilities relating to individuals who have remained members (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of the original fund because of circumstances beyond the control of the trustee of that fund.

310-50 Choosing the form of the assets roll-over

- (1) An entity that chooses a roll-over under this Subdivision must choose the form of the roll-over that applies to each of the following:
 - (a) the original assets that are not *revenue assets;
 - (b) the original assets that are revenue assets.
- (2) In respect of original assets that are not *revenue assets, the entity choosing the roll-over must choose either section 310-55 (global asset approach) or 310-60 (individual asset approach) to apply to the original assets and the corresponding received assets.

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

- (3) In respect of original assets that are *revenue assets, the entity choosing the roll-over must choose either section 310-65 (global asset approach) or 310-70 (individual asset approach) to apply to the original assets and the corresponding received assets.

Note: The entity choosing the form of the roll-over may choose different forms of roll-over for its CGT assets and revenue assets.

Subdivision 310-E—Consequences of choosing assets roll-over

Table of sections

310-55	CGT assets—if global asset approach chosen
310-60	CGT assets—if individual asset approach
310-65	Revenue assets—if global asset approach chosen
310-70	Revenue assets—if individual asset approach
310-75	Further consequences for roll-overs involving life insurance companies

310-55 CGT assets—if global asset approach chosen

Consequences for transferring entity

- (1) For each of the original assets to which this section applies, the transferring entity's *capital proceeds from the relevant transfer event are taken to be an amount equal to:
- (a) if, apart from this subsection, the event would result in a *capital gain—the asset's *cost base just before the event; or
 - (b) if, apart from this subsection, the event would result in a *capital loss—the asset's *reduced cost base just before the event.

Note: This section only applies if it is chosen to apply under subsection 310-50(2).

Consequences for receiving entity

- (2) For each of the received assets to which this section applies, the first element of the *cost base of the asset (in the hands of the receiving entity) is taken to be an amount equal to the cost base of the corresponding original asset just before the relevant transfer event.

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

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- (3) For each of the received assets to which this section applies, the first element of the *reduced cost base of the asset (in the hands of the receiving entity) is taken to be an amount equal to the reduced cost base of the corresponding original asset just before the relevant transfer event.

310-60 CGT assets—individual asset approach

Consequences for transferring entity

- (1) The transferring entity may disregard any *capital gain or *capital loss for a transfer event relating to an original asset to which this section applies.

Note: This section only applies if it is chosen to apply under subsection 310-50(2).

- (2) Subsections (3), (4) and (5) apply if under subsection (1) the transferring entity disregards a *capital gain or *capital loss for a transfer event relating to an original asset.
- (3) The transferring entity's *capital proceeds from the transfer event are taken to be an amount equal to:
 - (a) if, apart from this subsection, the event would result in a *capital gain—the asset's *cost base just before the event; or
 - (b) if, apart from this subsection, the event would result in a *capital loss—the asset's *reduced cost base just before the event.

Consequences for receiving entity

- (4) The first element of the *cost base of the corresponding received asset (in the hands of the receiving entity) is taken to be an amount equal to the cost base of the original asset just before the event.
- (5) The first element of the *reduced cost base of the corresponding received asset (in the hands of the receiving entity) is taken to be an amount equal to the reduced cost base of the original asset just before the event.

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

310-65 Revenue assets—if global asset approach chosen

Consequences for transferring entity

- (1) For each of the original assets to which this section applies, the transferring entity's gross proceeds for the relevant transfer event are taken to be the amount (the **deemed proceeds**) the transferring entity would need to have received in order to have a nil profit and nil loss for the event.

Note: This section only applies if it is chosen to apply under subsection 310-50(3).

Consequences for receiving entity

- (2) For each of the received assets to which this section applies, the receiving entity is taken, for the purposes of this Act, to have paid an amount for that asset at the time of the transfer event that is equal to the deemed proceeds for the corresponding original asset.

310-70 Revenue assets—individual asset approach

Consequences for transferring entity

- (1) If the transferring entity derives assessable income (other than a *capital gain) or incurs a *tax loss for a transfer event relating to an original asset to which this section applies, the entity choosing the roll-over can choose for the transferring entity's gross proceeds for the event to be taken to be the amount (the **deemed proceeds**) the transferring entity would need to have received in order to have a nil profit and nil loss for the event.

Note: This section only applies if it is chosen to apply under subsection 310-50(3).

Consequences for receiving entity

- (2) If a choice is made under subsection (1), the receiving entity is taken to have paid an amount for the corresponding received asset at the time of the transfer event that is equal to the deemed proceeds for the event.

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

Section 310-75

310-75 Further consequences for roll-overs involving life insurance companies

- (1) Section 320-200 (about consequences of transferring assets to or from a complying superannuation/FHSA asset pool) does not apply for a transfer event for the roll-over if either the transferring entity or the receiving entity is a *life insurance company.
- (2) If the receiving entity for the roll-over is a *life insurance company, each received asset of that entity is taken:
 - (a) to be a *complying superannuation/FHSA asset of that entity; and
 - (b) not to be, in whole or in part, a *life insurance premium.

Subdivision 310-F—Choices

Table of sections

310-85 Choices

310-85 Choices

- (1) A choice under this Division must be made:
 - (a) by the day the transferring entity's *income tax return is lodged for the transfer year for the entity; or
 - (b) within a further time allowed by the Commissioner.
- (2) The way the transferring entity's *income tax return is prepared is sufficient evidence of the making of the choice.

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

Part 3-32—Co-operatives and mutual entities

Division 315—Demutualisation of private health insurers

Table of Subdivisions

- Guide to Division 315
- 315-A Capital gains and losses connected with a demutualisation of a private health insurer to be disregarded
 - 315-B Cost base of certain shares and rights in private health insurers
 - 315-C Lost policy holders trust
 - 315-D Special cost base rules for certain shares and rights in holding companies
 - 315-E Special CGT rule for legal personal representatives and beneficiaries
 - 315-F Non-CGT consequences of demutualisation

Guide to Division 315

315-1 What this Division is about

This Division sets out the taxation consequences of the demutualisation of private health insurers.

Policy holders, demutualising health insurers and certain other entities can disregard capital gains and losses arising under a demutualisation (see Subdivision 315-A).

Shares and rights issued under the demutualisation are given a cost base based on the market value of the demutualising health insurer at the time of issue (see Subdivisions 315-B and 315-D).

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

Assets held by a lost policy holders trust are given roll-over relief if transferred to the lost policy holder, or if the lost policy holder becomes absolutely entitled to them. Otherwise the trustee of the lost policy holders trust is taxed on any capital gains (see Subdivision 315-C).

A legal personal representative can disregard capital gains and losses made when passing an asset to a beneficiary of a policy holder's estate (see Subdivision 315-E).

Shares, rights or cash received under a demutualisation are not assessable income and not exempt income (see Subdivision 315-F).

Subdivision 315-A—Capital gains and losses connected with a demutualisation of a private health insurer to be disregarded

Table of sections

Rules for policy holders

- 315-5 Policy holders to disregard capital gains and losses related to demutualisation of private health insurer
- 315-10 Effect on the legal personal representative or beneficiary
- 315-15 Demutualisations to which this Division applies
- 315-20 What assets are covered

Rules for demutualising health insurer

- 315-25 Demutualising health insurers to disregard capital gains and losses related to demutualisation

Rules for other entities

- 315-30 Other entities to disregard capital gains and losses related to demutualisation

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

Rules for policy holders

315-5 Policy holders to disregard capital gains and losses related to demutualisation of private health insurer

Disregard a *capital gain or *capital loss of an individual from a *CGT event that happens in relation to a *CGT asset if:

- (a) the CGT event happens under a demutualisation to which this Division applies; and
- (b) the individual is, or has been, a policy holder (within the meaning of the *Private Health Insurance Act 2007*) of, or another person insured through, the demutualising entity (the *demutualising health insurer*); and
- (c) the CGT asset is covered by section 315-20.

315-10 Effect on the legal personal representative or beneficiary

Disregard a *capital gain or *capital loss of an entity from a *CGT event that happens in relation to a *CGT asset if:

- (a) the CGT asset forms part of the estate of a deceased individual who is mentioned in paragraph 315-5(b); and
- (b) the entity is the deceased individual's *legal personal representative or a beneficiary in the deceased individual's estate; and
- (c) the CGT asset devolves to the entity or *passes to the entity; and
- (d) the CGT event happens under a demutualisation to which this Division applies; and
- (e) the CGT asset is covered by section 315-20.

315-15 Demutualisations to which this Division applies

This Division applies to a demutualisation of an entity if:

- (a) the entity:
 - (i) is an entity to which item 6.3 of the table in section 50-30 applies; and
 - (ii) is not registered under Part 3 of the *Life Insurance Act 1995*; and

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

Section 315-20

(iia) is not an entity to whose demutualisation Division 316 applies; and

(iii) does not have capital divided into shares; and

Note: Item 6.3 of the table in section 50-30 applies to a private health insurer within the meaning of the *Private Health Insurance Act 2007* that is not carried on for the profit or gain of its individual members.

(b) an application by the entity to convert to being registered as a for profit insurer (within the meaning of the *Private Health Insurance Act 2007*) is approved under subsection 126-42(5) of that Act; and

(c) consistently with the conversion scheme mentioned in paragraph 126-42(2)(b) of that Act, the entity becomes registered as a for profit insurer (within the meaning of that Act).

315-20 What assets are covered

These *CGT assets are covered:

- (a) an interest in the demutualising health insurer as a policy holder;
- (b) a membership interest in the demutualising health insurer;
- (c) a right or interest of another kind in the demutualising health insurer;
- (d) a right or interest of another kind that arises under the demutualisation.

Rules for demutualising health insurer

315-25 Demutualising health insurers to disregard capital gains and losses related to demutualisation

Disregard a *capital gain or *capital loss of an entity from a *CGT event if:

- (a) the CGT event happened under a demutualisation to which this Division applies; and
- (b) the entity is the demutualising health insurer.

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

Rules for other entities

315-30 Other entities to disregard capital gains and losses related to demutualisation

Disregard a *capital gain or *capital loss of an entity from a *CGT event if:

- (a) the entity is established solely for the purpose of participating in a demutualisation to which this Division applies; and
- (b) the entity is not a trust covered by Subdivision 315-C (about lost policy holders); and
- (c) the CGT event:
 - (i) happened under a demutualisation to which this Division applies; and
 - (ii) happened before or at the same time as the allocation or distribution (in the form of shares or cash) of the accumulated surplus of the demutualising health insurer; and
 - (iii) was connected to that allocation or distribution.

Note: The allocation or distribution of the accumulated surplus could happen through an arrangement involving more than one transaction.

Subdivision 315-B—Cost base of certain shares and rights in private health insurers

Table of sections

315-80	Cost base and acquisition time of demutualisation assets
315-85	Demutualisation asset
315-90	Participating policy holders

315-80 Cost base and acquisition time of demutualisation assets

Cost base adjustment

- (1) The first element of the *cost base and *reduced cost base of a *CGT asset is its *market value on the day it is issued if:
 - (a) the asset is covered by section 315-85 (a **demutualisation asset**); and

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

Section 315-85

- (b) the asset is issued to an entity (a *participating policy holder*) covered by section 315-90.

Note: There is an exception to this rule in Subdivision 315-D where the asset is a share or right in a holding company with other assets.

Acquisition rule

- (2) The participating policy holder is taken to have *acquired the demutualisation asset at the time it is issued.

315-85 Demutualisation asset

- (1) This section covers an asset if:
- (a) the asset is:
 - (i) a share in the demutualising health insurer; or
 - (ii) a right to *acquire a share in the demutualising health insurer; or
 - (iii) a share in an entity that owns all of the shares in the demutualising health insurer; or
 - (iv) a right to acquire a share in an entity mentioned in subparagraph (iii); and
 - (b) the share or right is issued under a demutualisation to which this Division applies; and
 - (c) the share or right is issued in connection with:
 - (i) the variation or abrogation of rights attaching to or consisting of a *CGT asset covered by section 315-20; or
 - (ii) the conversion, cancellation, extinguishment or redemption of such a CGT asset.

Exclusion for rights with an exercise price

- (2) Despite subsection (1), this section does not cover a right to *acquire a share in an entity if the holder of the right must pay an amount to exercise the right.

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

Exclusion where assets not issued simultaneously

- (3) Despite subsection (1), an asset is not covered by this section unless all of the assets covered by subsection (1) for the demutualisation in question are issued:
- (a) at the same time; and
 - (b) to an entity that is either:
 - (i) a participating policy holder (see section 315-90); or
 - (ii) the trustee of a trust covered by Subdivision 315-C (about the lost policy holders trust).

315-90 Participating policy holders

- (1) This section covers an individual who:
- (a) is, or has been, a policy holder (within the meaning of the *Private Health Insurance Act 2007*) of, or another person insured through, the demutualising health insurer; and
 - (b) is entitled, under the demutualisation, to an allocation of demutualisation assets.
- (2) This section also covers an entity who became entitled to an allocation of demutualisation assets because of the death of an individual mentioned in subsection (1).

Subdivision 315-C—Lost policy holders trust

Table of sections

315-140	Lost policy holders trust
315-145	CGT treatment of demutualisation assets in lost policy holders trust
315-150	Roll-over where assets transferred to lost policy holder
315-155	Trustee assessed if assets dealt with not for benefit of lost policy holder
315-160	Subdivision 126-E does not apply to lost policy holders trust

315-140 Lost policy holders trust

This Subdivision covers a trust (a *lost policy holders trust*) in relation to a demutualisation to which this Division applies if:

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

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- (a) the conversion scheme mentioned in paragraph 126-42(2)(b) of the *Private Health Insurance Act 2007* for the demutualisation provides for the trust; and
- (b) under the demutualisation, demutualisation assets (see section 315-85) are issued to the trustee of the trust; and
- (c) the trust exists solely for the purpose of holding shares or rights to *acquire shares on behalf of:
 - (i) individuals (**lost policy holders**) who are, or have been, policy holders (within the meaning of the *Private Health Insurance Act 2007*) of, or other persons insured through, the demutualising health insurer; or
 - (ii) if the lost policy holder has died—the *legal personal representative of the lost policy holder or a beneficiary in the estate of the lost policy holder.

Example: An example of an individual on whose behalf the trust might hold assets would be an individual who has not completed a formal step required for them to be issued with demutualisation assets directly. Another example might be an individual living overseas.

315-145 CGT treatment of demutualisation assets in lost policy holders trust

Cost base adjustment

- (1) The first element of the *cost base and *reduced cost base of a demutualisation asset issued to the trustee of a lost policy holders trust is its *market value on the day it is issued.

Note: There is an exception to this rule in Subdivision 315-D where the asset is a share or right in a holding company with other assets.

Acquisition rule

- (2) The trustee is taken to have *acquired the demutualisation asset at the time it is issued.

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

315-150 Roll-over where assets transferred to lost policy holder

- (1) This section applies in relation to a *CGT event if:
- (a) the CGT event happens in relation to an asset held by the trustee of a lost policy holders trust on behalf of a lost policy holder; and
 - (b) the CGT event happens because the lost policy holder (or, if the lost policy holder has died, the *legal personal representative of the lost policy holder or a beneficiary in the estate of the lost policy holder) either:
 - (i) is transferred the asset by the trustee; or
 - (ii) becomes absolutely entitled to the asset.

Note: The asset may be a demutualisation asset, or some other asset.

Consequence for trustee

- (2) Disregard a *capital gain or *capital loss the trustee makes from the *CGT event.

Consequence for lost policy holder

- (3) The *cost base of the asset in the hands of the trustee of the lost policy holders trust just before the *CGT event becomes the first element of the cost base and *reduced cost base of the asset in the hands of the lost policy holder, *legal personal representative or beneficiary.
- (4) The lost policy holder, *legal personal representative or beneficiary is taken to have *acquired the asset when the trustee of the lost policy holders trust acquired it.

315-155 Trustee assessed if assets dealt with not for benefit of lost policy holder

- (1) This section applies in relation to a *capital gain from a *CGT event if:
- (a) the CGT event happens in relation to an asset held by the trustee of a lost policy holders trust; and
 - (b) section 315-150 does not apply to the CGT event.

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

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- (2) If this section applies:
- (a) sections 115-215 and 115-220 do not apply in relation to the *capital gain; and
 - (b) for the purposes of this Act, the trustee is taken to be *specifically entitled to all of the capital gain.

315-160 Subdivision 126-E does not apply to lost policy holders trust

Subdivision 126-E does not apply in relation to a demutualisation to which this Division applies.

Subdivision 315-D—Special cost base rules for certain shares and rights in holding companies

Table of sections

315-210 Cost base for shares and rights in certain holding companies

315-210 Cost base for shares and rights in certain holding companies

- (1) This section applies in relation to a *CGT asset that is a demutualisation asset if:
- (a) the demutualisation asset is:
 - (i) a share in an entity mentioned in subparagraph 315-85(1)(a)(iii); or
 - (ii) a right to *acquire a share in an entity mentioned in that subparagraph; and
 - (b) the entity owns other assets in addition to the shares in the demutualising health insurer; and
 - (c) the share or right is issued to a participating policy holder or the trustee of a lost policy holders trust.

This section applies despite sections 315-80 and 315-145.

Cost base adjustment

- (2) The first element of the *cost base and *reduced cost base of the *CGT asset is worked out under the method statement.

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

Method statement

- Step 1. Start with the *market value of the demutualising health insurer on the day the asset is issued.
- Step 2. Divide the result of step 1 by the sum of:
- (a) the number of shares in the entity that are issued under the demutualisation; and
 - (b) the number of shares in the entity that can be *acquired under rights that are demutualisation assets issued under the demutualisation.
- Step 3. The result of step 2 is the first element of the *cost base and *reduced cost base of the asset, unless the asset is a right.
- Step 4. If the asset is a right, multiply the result of step 2 by the number of shares that can be *acquired under the right. The result is the first element of the *cost base and *reduced cost base of the asset.

Example: Wellbeing Health demutualises on 1 April 2008 and has a market value of \$400 million on that day. It distributes its accumulated mutual surplus in the form of rights to acquire shares in its holding company Healthiness Insurance Ltd (Healthiness). The rights do not have an exercise price.

A total of 800 million shares can be acquired in Healthiness under rights issued under the demutualisation. Each right allows the holder to acquire 50 shares. No shares in Healthiness are issued.

Under the method statement, the first element of the cost base and reduced cost base of each right is worked out by dividing the market value of Wellbeing Health (step 1) by the number of shares in Healthiness that can be acquired under the demutualisation (step 2) and multiplying the result by the number of shares that can be acquired under the right (step 4):

$$\frac{\$400 \text{ million}}{800 \text{ million}} \times 50 = \$25$$

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

Acquisition rule

- (3) The participating policy holder or trustee is taken to have *acquired the *CGT asset at the time it is issued.

Subdivision 315-E—Special CGT rule for legal personal representatives and beneficiaries

Table of sections

315-260 Special CGT rule for legal personal representatives and beneficiaries

315-260 Special CGT rule for legal personal representatives and beneficiaries

- (1) This section sets out what happens if a *CGT asset:
- (a) is a demutualisation asset; and
 - (b) forms part of the estate of a participating policy holder mentioned in subsection 315-90(1) who has died, but was not owned by the policy holder just before dying; and
 - (c) *passes to a beneficiary in the policy holder's estate because the asset is transferred to the beneficiary by the policy holder's *legal personal representative.

Note: Division 128 deals with the effect of death in relation to CGT assets a person owns just before dying.

- (2) Disregard a *capital gain or *capital loss the *legal personal representative makes if the asset *passes to a beneficiary in the policy holder's estate.

Consequence for beneficiary

- (3) The *cost base and *reduced cost base of the asset in the hands of the *legal personal representative just before the asset *passes to the beneficiary becomes the first element of the cost base and reduced cost base of the asset in the hands of the beneficiary.
- (4) The beneficiary is taken to have *acquired the asset when the *legal personal representative acquired it.

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

Subdivision 315-F—Non-CGT consequences of demutualisation

Table of sections

315-310 General taxation consequences of issue of demutualisation assets etc.

315-310 General taxation consequences of issue of demutualisation assets etc.

- (1) An amount of *ordinary income or *statutory income of an entity to which subsection (2) applies is not assessable and not *exempt income if:
 - (a) the amount would otherwise be included in the ordinary income or statutory income of the entity only because a demutualisation asset was issued to the entity; or
 - (b) the amount is a payment made to the entity, under a demutualisation to which this Division applies, in connection with:
 - (i) the variation or abrogation of rights attaching to or consisting of a *CGT asset covered by section 315-20; or
 - (ii) the conversion, cancellation, extinguishment or redemption of such a CGT asset.
- (2) This subsection applies to an entity that:
 - (a) is, or has been, a policy holder (within the meaning of the *Private Health Insurance Act 2007*) of, or another person insured through, the demutualising health insurer; or
 - (b) is issued with the demutualisation asset, or receives the payment, because of the death of a policy holder mentioned in paragraph (a).

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

Division 316—Demutualisation of friendly society health or life insurers

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316-A	Application
316-B	Capital gains and losses connected with the demutualisation
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316-D	Lost policy holders trust
316-E	Special CGT rules for legal personal representatives and beneficiaries
316-F	Non-CGT consequences of the demutualisation

Guide to Division 316

316-1 What this Division is about

Special tax consequences follow the demutualisation of a friendly society that provides health insurance or life insurance, or has a wholly-owned subsidiary that does.

Subdivision 316-A—Application

Table of sections

316-5	Application of this Division
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316-5 Application of this Division

This Division applies in relation to a demutualisation of a *friendly society if:

- (a) the society is, or has a *wholly-owned subsidiary (a **health/life insurance subsidiary**) that is:
 - (i) a private health insurer as defined in the *Private Health Insurance Act 2007*; or

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

- (ii) a company registered under section 21 of the *Life Insurance Act 1995*; and
- (b) the society does not have capital divided into *shares held by its *members; and
- (c) after the demutualisation the society is to be carried on for the object of securing a profit or pecuniary gain for its *members.

Subdivision 316-B—Capital gains and losses connected with the demutualisation

Guide to Subdivision 316-B

316-50 What this Subdivision is about

Disregard capital gains and losses made by any entity from a CGT event happening under the demutualisation, unless the entity:

- (a) is or has been a member of the friendly society or insured through the society or any of its wholly-owned subsidiaries; and
- (b) receives money for the event.

Table of sections

Gains and losses of members, insured entities and successors

- 316-55 Disregarding capital gains and losses, except some involving receipt of money
- 316-60 Taking account of some capital gains and losses involving receipt of money
- 316-65 Valuation factor for sections 316-60, 316-105 and 316-165
- 316-70 Value of the friendly society

Friendly society's gains and losses

- 316-75 Disregarding friendly society's capital gains and losses

Other entities' gains and losses

- 316-80 Disregarding other entities' capital gains and losses

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

Gains and losses of members, insured entities and successors

316-55 Disregarding capital gains and losses, except some involving receipt of money

- (1) Disregard an entity's *capital gain or *capital loss from a *CGT event that happens under the demutualisation to a *CGT asset if:
- (a) the entity:
 - (i) is or has been a *member of the *friendly society; or
 - (ii) is or has been insured through the friendly society or a health/life insurance subsidiary of the friendly society; and
 - (b) the CGT asset is one of these (an *interest affected by demutualisation*):
 - (i) an interest in the friendly society as the owner or holder of a policy of insurance with the friendly society or health/life insurance subsidiary;
 - (ii) a *membership interest in the friendly society;
 - (iii) a right or interest of another kind in the friendly society;
 - (iv) a right or interest of another kind that arises under the demutualisation, except an interest in a lost policy holders trust (see section 316-155).
- Note: Subdivision 316-D deals with the effects of CGT events happening to interests in lost policy holders trusts.
- (2) Disregard a *capital gain or *capital loss of an entity (the *successor*) from a *CGT event that happens under the demutualisation to a *CGT asset if:
- (a) the successor is the *legal personal representative, or beneficiary in the estate, of a deceased individual who was:
 - (i) a *member of the *friendly society; or
 - (ii) insured through the friendly society or a health/life insurance subsidiary of the friendly society; and
 - (b) the CGT asset:
 - (i) forms part of the deceased individual's estate; and
 - (ii) devolves or *passes to the successor; and

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

- (iii) is an interest affected by demutualisation (see paragraph (1)(b)).

316-60 Taking account of some capital gains and losses involving receipt of money

- (1) This section applies if:
- (a) a *CGT event happens under the demutualisation to an entity's interest affected by demutualisation (see section 316-55); and
 - (b) the event involves:
 - (i) the variation or abrogation of rights attaching to or consisting of the interest; or
 - (ii) the conversion, cancellation, extinguishment or redemption of the interest; and
 - (c) either:
 - (i) the entity is one described in paragraph 316-55(1)(a); or
 - (ii) the entity is one described in paragraph 316-55(2)(a) and the interest is a *CGT asset described in paragraph 316-55(2)(b); and
 - (d) the *capital proceeds from the event include or consist of money received by the entity.
- (2) Work out whether the entity makes a *capital gain or *capital loss from the *CGT event, and the amount of the gain or loss, assuming that:
- (a) the *capital proceeds from the CGT event were the amount they would be if they did not include any *market value of property other than money; and
 - (b) the *cost base and *reduced cost base for the interest were the amount worked out using the formula:

$$\frac{\text{*Capital proceeds from the *CGT event}}{\text{*Capital proceeds from the *CGT event}} \times \frac{\text{Valuation factor worked out under section 316-65}}{\text{Valuation factor worked out under section 316-65}}$$

Example: Assume the entity receives \$50 in money and 10 shares with a market value of \$4 each in respect of CGT event C2 happening, and that the valuation factor worked out under section 316-65 is 0.9. The entity makes a capital gain from the event of \$5, worked out as follows:

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

Section 316-65

$$\$50 - (\$50 \times 0.9)$$

This ignores the market value of the shares because they are property other than money.

Note: Division 114 (Indexation of cost base) is not relevant, because this section provides exhaustively for working out the amount of the cost base.

- (3) The *capital gain or *capital loss is not to be disregarded, despite:
- (a) section 316-55; and
 - (b) any provision of this Act for disregarding the *capital gain or *capital loss because the interest affected by demutualisation was *acquired before 20 September 1985.

Note: The capital gain is not a discount capital gain: see section 115-55.

316-65 Valuation factor for sections 316-60, 316-105 and 316-165

- (1) For the purposes of sections 316-60, 316-105 and 316-165, the valuation factor is the amount worked out using the formula:

$$\frac{\text{Market value of the friendly society's health insurance business (if any)} + \text{Embedded value of the friendly society's other business (if any)}}{\text{Total *capital proceeds for all entities from *CGT events happening under the demutualisation to interests affected by demutualisation (except those described in subparagraph 316-55(1)(b)(iv))}}$$

where:

embedded value of the friendly society's other business (if any) means the amount that would be the value of the *friendly society worked out under section 316-70 assuming that neither the friendly society, nor any health/life insurance subsidiary of it, *carried on any health insurance business within the meaning of the *Private Health Insurance Act 2007*.

market value of the friendly society's health insurance business (if any) means the total *market value of every health insurance business, within the meaning of the *Private Health Insurance Act 2007*, *carried on by either or both of the *friendly society and its health/life insurance subsidiaries (if any), taking account of any

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

consideration paid to the society or subsidiary for disposal or control of that business.

- (2) Disregard paragraph 316-60(2)(a) for the purposes of the formula in subsection (1) of this section.

316-70 Value of the friendly society

- (1) The value of the *friendly society is the sum, worked out in accordance with this section, of the friendly society's existing business value and its adjusted net worth on the day (the *applicable accounting day*) identified under subsection (3).

Eligible actuary and Australian actuarial practice

- (2) The sum is to be worked out, according to Australian actuarial practice, by an *actuary who is not an employee of:
- (a) the *friendly society; or
 - (b) a health/life insurance subsidiary of the friendly society; or
 - (c) an entity of which the friendly society is to become a *wholly-owned subsidiary under the demutualisation.

Applicable accounting day

- (3) The applicable accounting day is:
- (a) if an accounting period of the *friendly society ends on the day (the *demutualisation resolution day*) identified under subsection (4)—that day; or
 - (b) in any other case—the last day of the most recent accounting period of the friendly society ending before the demutualisation resolution day.

Demutualisation resolution day

- (4) The demutualisation resolution day is:
- (a) the day on which the resolution to proceed with the demutualisation is passed; or
 - (b) if, under the demutualisation, the whole of the *life insurance business of the *friendly society or of a health/life insurance subsidiary of the friendly society is transferred to another

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

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company under a scheme confirmed by the Federal Court of Australia—the day (or the last day) on which the transfer takes place.

Adjustment for changes after applicable accounting day

- (5) In a case covered by paragraph (3)(b), if any significant change in the amount of the existing business value or adjusted net worth occurs between the applicable accounting day and the demutualisation resolution day, the amount is to be adjusted to take account of the change.

Continued business assumption

- (6) In working out the existing business value or the adjusted net worth, assume:
- (a) that after the applicable accounting day the *friendly society, and any health/life insurance subsidiary of the friendly society, will continue to conduct *business and any other activity in the same way as before that day, and will not conduct any different business or other activity; and
 - (b) that the demutualisation will not occur; and
 - (c) that any health/life insurance subsidiary of the friendly society will continue to be a *wholly-owned subsidiary of the friendly society.

Expenditure assumption

- (7) In working out the existing business value, assume that expenditure that the *friendly society and any of its health/life insurance subsidiaries will incur, in conducting *business, on recurring items after the demutualisation resolution day will be of the same kinds and amounts (increased to take account of any inflation) as it incurred in the accounting period, or part of an accounting period, ending on the demutualisation resolution day.

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

Friendly society's gains and losses

316-75 Disregarding friendly society's capital gains and losses

Disregard the *friendly society's *capital gain or *capital loss from a *CGT event that happens under the demutualisation.

Other entities' gains and losses

316-80 Disregarding other entities' capital gains and losses

Disregard an entity's *capital gain or *capital loss from a *CGT event that happens under the demutualisation if:

- (a) the entity is established solely for the purpose of participating in the demutualisation and is not a lost policy holders trust (see section 316-155); and
- (b) the CGT event:
 - (i) happens before or at the same time as the allocation or distribution of the accumulated surplus of the *friendly society; and
 - (ii) is connected to that allocation or distribution.

Note: The allocation or distribution of the accumulated surplus could happen through an arrangement involving more than one transaction.

Subdivision 316-C—Cost base of shares and rights issued under the demutualisation

Guide to Subdivision 316-C

316-100 What this Subdivision is about

The value of the friendly society and its business affects cost bases of shares and certain rights issued under the demutualisation to:

- (a) entities that are or were members of the friendly society; or

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

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- (b) entities insured through the society or its subsidiaries; or
- (c) successors of such entities; or
- (d) the trustee of the lost policy holders trust.

Table of sections

316-105	Cost base and time of acquisition of shares and certain rights issued under demutualisation
316-110	Demutualisation assets
316-115	Entities to which section 316-105 applies

316-105 Cost base and time of acquisition of shares and certain rights issued under demutualisation

First element of cost base

- (1) The first element of the *cost base and *reduced cost base of a *CGT asset is the amount worked out using the formula in subsection (2) if:
 - (a) the asset is a CGT asset (a *demutualisation asset*) covered by section 316-110; and
 - (b) the asset is issued to an entity covered by section 316-115.

- (2) The formula is:

$$\text{Value of the *CGT asset when it was issued} \times \text{Valuation factor worked out under section 316-65}$$

Time of acquisition

- (3) The entity is taken to have *acquired the *CGT asset at the time it is issued.

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

316-110 Demutualisation assets

- (1) This section covers a *CGT asset that:
- (a) is:
 - (i) a *share in the *friendly society; or
 - (ii) a right to *acquire a share in the friendly society; or
 - (iii) a share in an entity that owns all of the shares in the friendly society; or
 - (iv) a right to acquire a share in an entity mentioned in subparagraph (iii); and
 - (b) is issued under the demutualisation; and
 - (c) is issued in connection with:
 - (i) the variation or abrogation of rights attaching to or consisting of an interest affected by demutualisation (see paragraph 316-55(1)(b)); or
 - (ii) the conversion, cancellation, extinguishment or redemption of an interest affected by demutualisation.

Exclusion for rights with an exercise price

- (2) Despite subsection (1), this section does not cover a right to *acquire a *share in an entity if the holder of the right must pay an amount to exercise the right.

Exclusion where assets not issued simultaneously

- (3) Despite subsection (1), a *CGT asset is not covered by this section unless all of the CGT assets covered by subsection (1) for the demutualisation are issued:
- (a) at the same time; and
 - (b) to entities that are covered by section 316-115.

316-115 Entities to which section 316-105 applies

- (1) This section covers an entity that:
- (a) either:
 - (i) is or has been a *member of the *friendly society; or

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

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- (ii) is or has been insured through the friendly society or a health/life insurance subsidiary of the friendly society; and
 - (b) is entitled under the demutualisation to an allocation of demutualisation assets.
- (2) This section also covers an entity that has become entitled to an allocation of demutualisation assets because of the death of an individual who was an entity described in subsection (1).
- (3) This section also covers the trustee of a lost policy holders trust (see section 316-155).

Subdivision 316-D—Lost policy holders trust

Guide to Subdivision 316-D

316-150 What this Subdivision is about

If the demutualisation creates a trust just to hold shares, rights to acquire shares or money for entities that were members of the friendly society or insured through the society or its subsidiary, or are successors of such entities, then:

- (a) capital gains or losses from CGT events happening to beneficiaries' interests in the trust are disregarded, except where the capital proceeds include money; and
- (b) when a CGT event happens involving the transfer of the shares or rights to a beneficiary, or a beneficiary's absolute entitlement to them, the trustee's capital gain or loss is disregarded and the beneficiary has the same cost base and time of acquisition as the trustee; and
- (c) the trustee is assessed on any capital gains from other CGT events happening to the shares or rights.

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

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316-160 Disregarding beneficiaries' capital gains and losses, except some involving receipt of money

316-165 Taking account of some capital gains and losses involving receipt of money by beneficiaries

316-170 Roll-over where shares or rights to acquire shares transferred to beneficiary of lost policy holders trust

316-175 Trustee assessed if shares or rights dealt with not for benefit of beneficiary of lost policy holders trust

316-180 Subdivision 126-E does not apply

Application

316-155 Lost policy holders trust

- (1) This Subdivision applies if the conditions in subsections (2) and (5) are met.

First condition

- (2) The first condition is that, under the demutualisation, a trust (the **lost policy holders trust**) exists solely for one or both of the purposes that are described in subsection (3) in relation to persons (**beneficiaries of the lost policy holders trust**) covered by subsection (4).
- (3) The purposes are as follows:
- (a) holding demutualisation assets (see section 316-110) that are *shares or rights to *acquire shares, or proceeds from disposal of those assets, on behalf of one or more beneficiaries of the lost policy holders trust and transferring those assets or proceeds to those beneficiaries;
 - (b) holding on behalf of one or more beneficiaries of the lost policy holders trust, and paying to them, money payable to them for:

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

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- (i) the variation or abrogation of rights attaching to or consisting of the beneficiaries' interests affected by demutualisation (see paragraph 316-55(1)(b)); or
 - (ii) the conversion, cancellation, extinguishment or redemption of those interests.
- (4) This subsection covers:
- (a) a person who is or has been a *member of the friendly society or is or has been insured through the *friendly society or a health/life insurance subsidiary of the friendly society; and
 - (b) a *legal personal representative, or beneficiary in the estate, of such a person who has died.

Second condition

- (5) The second condition is that, under the demutualisation, the trustee of the lost policy holders trust is:
- (a) issued with demutualisation assets that are *shares, or rights to *acquire shares; or
 - (b) paid money described in paragraph (3)(b) to hold and pay to beneficiaries of the lost policy holders trust.

Effects of CGT events happening to interests and assets in trust

316-160 Disregarding beneficiaries' capital gains and losses, except some involving receipt of money

Disregard a *capital gain or *capital loss of a beneficiary of the lost policy holders trust from a *CGT event that happens to the beneficiary's interest in the trust.

316-165 Taking account of some capital gains and losses involving receipt of money by beneficiaries

- (1) This section applies if:
- (a) a *CGT event happens to an interest of a beneficiary of the lost policy holders trust in that trust; and
 - (b) the *capital proceeds from the event include or consist of money received by the beneficiary.

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

- (2) Work out whether the beneficiary makes a *capital gain or *capital loss from the *CGT event, and the amount of the gain or loss, assuming that:
- (a) the *capital proceeds from the CGT event were the amount they would be if they did not include any *market value of property other than money; and
 - (b) the *cost base and *reduced cost base for the interest were the amount worked out using the formula:

$$\frac{\text{*Capital proceeds from the *CGT event}}{\text{the *CGT event}} \times \frac{\text{Valuation factor worked out under section 316-65}}{\text{under section 316-65}}$$

Example: Assume that the beneficiary of the lost policy holders trust is paid \$50 in money by the trustee to satisfy the beneficiary's interest in the trust so that a CGT event happens, and that the valuation factor worked out under section 316-65 is 0.9. The beneficiary makes a capital gain from the event of \$5, worked out as follows:

$$\$50 - (\$50 \times 0.9)$$

Note: Division 114 (Indexation of cost base) is not relevant, because this section provides exhaustively for working out the amount of the cost base.

- (3) The *capital gain or *capital loss is not to be disregarded, despite sections 316-55 and 316-160.

Note: The capital gain is not a discount capital gain: see section 115-55.

316-170 Roll-over where shares or rights to acquire shares transferred to beneficiary of lost policy holders trust

- (1) This section applies in relation to a *CGT event if:
- (a) the CGT event happens in relation to an asset that:
 - (i) is a *share or a right to *acquire one or more shares; and
 - (ii) is held by the trustee of the lost policy holders trust on behalf of a beneficiary of the lost policy holders trust; and
 - (b) the CGT event happens because the beneficiary of the lost policy holders trust either:
 - (i) is transferred the asset by the trustee; or
 - (ii) becomes absolutely entitled to the asset.

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

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Consequence for trustee

- (2) Disregard a *capital gain or *capital loss the trustee makes from the *CGT event.

Consequences for beneficiary

- (3) The *cost base and *reduced cost base of the asset in the hands of the trustee of the lost policy holders trust just before the *CGT event becomes the first element of the cost base and reduced cost base of the asset in the hands of the beneficiary of the lost policy holders trust.

Note: Section 316-105 affects the cost base of the asset in the hands of the trustee of the lost policy holders trust if the asset is covered by section 316-110.

- (4) The beneficiary of the lost policy holders trust is taken to have *acquired the asset when the trustee acquired it.

316-175 Trustee assessed if shares or rights dealt with not for benefit of beneficiary of lost policy holders trust

- (1) This section applies in relation to a *capital gain from a *CGT event if:
- (a) the CGT event happens in relation to a demutualisation asset that:
 - (i) is a *share or a right to *acquire a share; and
 - (ii) is held by the trustee of a lost policy holders trust; and
 - (b) section 316-170 does not apply to the CGT event.
- (2) If this section applies:
- (a) sections 115-215 and 115-220 do not apply in relation to the *capital gain; and
 - (b) for the purposes of this Act, the trustee is taken to be *specifically entitled to all of the capital gain.

316-180 Subdivision 126-E does not apply

Subdivision 126-E does not apply in relation to the demutualisation.

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

Note: Subdivision 126-E is about an entitlement to shares after demutualisation and scrip for scrip roll-over.

Subdivision 316-E—Special CGT rules for legal personal representatives and beneficiaries

Table of sections

316-200	Demutualisation assets not owned by deceased but passing to beneficiary in deceased estate
316-205	Interest in lost policy holders trust not owned by deceased but passing to beneficiary in deceased estate

316-200 Demutualisation assets not owned by deceased but passing to beneficiary in deceased estate

- (1) This section sets out what happens if a *CGT asset:
- (a) is a demutualisation asset (see section 316-110); and
 - (b) forms part of the estate of an individual who is an entity described in subsection 316-115(1) and has died; and
 - (c) was not owned by the individual just before dying; and
 - (d) *passes to a beneficiary in the individual's estate because the asset is transferred to the beneficiary by the individual's *legal personal representative.

Note: Division 128 deals with the effect of death in relation to CGT assets a person owns just before dying.

Consequence for legal personal representative

- (2) Disregard a *capital gain or *capital loss the *legal personal representative makes because the asset *passes to the beneficiary.

Consequence for beneficiary

- (3) The *cost base and *reduced cost base of the asset in the hands of the *legal personal representative just before the asset *passes to the beneficiary becomes the first element of the cost base and reduced cost base of the asset in the hands of the beneficiary.
- (4) The beneficiary is taken to have *acquired the asset when the *legal personal representative acquired it.

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

316-205 Interest in lost policy holders trust not owned by deceased but passing to beneficiary in deceased estate

- (1) This section sets out what happens if a *CGT asset:
- (a) is an interest in a lost policy holders trust (see section 316-155); and
 - (b) forms part of the estate of an individual who is an entity described in subsection 316-115(1) and has died; and
 - (c) was not owned by the individual just before dying; and
 - (d) *passes to a beneficiary in the individual's estate because the asset is transferred to the beneficiary by the individual's *legal personal representative.

Note: Division 128 deals with the effect of death in relation to CGT assets a person owns just before dying.

Consequence for legal personal representative

- (2) Disregard a *capital gain or *capital loss the *legal personal representative makes because the asset *passes to the beneficiary.

Subdivision 316-F—Non-CGT consequences of the demutualisation

Guide to Subdivision 316-F

316-250 What this Subdivision is about

In many cases, income from demutualisation is assessed through the CGT provisions rather than as ordinary income or other statutory income.

Franking debits arise for the friendly society and its subsidiaries to ensure they do not enjoy a franking surplus. Franking debits and credits arise to negate credits and debits from things attributable to the time before demutualisation.

Table of sections

316-255 General taxation consequences of issue of demutualisation assets etc.

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

- 316-260 Franking debits to stop the friendly society and its subsidiaries having franking surpluses
- 316-265 Franking debits to negate franking credits from some distributions to friendly society and subsidiaries
- 316-270 Franking debits to negate franking credits from post-demutualisation payments of pre-demutualisation tax
- 316-275 Franking credits to negate franking debits from refunds of tax paid before demutualisation

316-255 General taxation consequences of issue of demutualisation assets etc.

- (1) An amount of *ordinary income or *statutory income (other than a *net capital gain) of an entity covered by subsection (2) is not assessable income and is not *exempt income if:
 - (a) the amount would otherwise be included in the ordinary income or statutory income of the entity only because a demutualisation asset (see section 316-110) was issued to the entity; or
 - (b) the amount is a payment made to the entity, under the demutualisation, in connection with:
 - (i) the variation or abrogation of rights attaching to or consisting of an interest affected by demutualisation (see paragraph 316-55(1)(b)); or
 - (ii) the conversion, cancellation, extinguishment or redemption of an interest affected by demutualisation; or
 - (c) the amount would otherwise be included in the ordinary income or statutory income of the entity only because a *share or a right to *acquire one or more shares was transferred to the entity by the trustee of a lost policy holders trust (see section 316-155); or
 - (d) the amount is a payment made to the entity from a lost policy holders trust in connection with:
 - (i) the variation or abrogation of rights attaching to or consisting of an interest affected by demutualisation; or
 - (ii) the conversion, cancellation, extinguishment or redemption of an interest affected by demutualisation.

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

Section 316-260

- (2) This subsection covers an entity that:
- (a) is or has been a *member of the *friendly society; or
 - (b) is or has been insured through the friendly society or a health/life insurance subsidiary of the friendly society; or
 - (c) is issued with the demutualisation asset, or receives the payment, because of the death of a person covered by paragraph (a) or (b); or
 - (d) is a beneficiary of a lost policy holders trust (see section 316-155).

316-260 Franking debits to stop the friendly society and its subsidiaries having franking surpluses

- (1) A *franking debit arises in the *franking account of the *friendly society or a *wholly-owned subsidiary of the society if the account is in *surplus immediately before the demutualisation resolution day identified under subsection 316-70(4).
- (2) The amount of the *franking debit equals the *surplus.
- (3) The *franking debit arises at the start of that day.

316-265 Franking debits to negate franking credits from some distributions to friendly society and subsidiaries

- (1) This section applies if a *franking credit arises in the *franking account of the *friendly society or a *wholly-owned subsidiary of the society because a *distribution declared before the demutualisation resolution day identified under subsection 316-70(4) is made to the society or subsidiary on or after that day.
- (2) A *franking debit arises in that account.
- (3) The amount of the *franking debit equals the amount of the *franking credit.
- (4) The *franking debit arises at the same time as the *franking credit arises.

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

316-270 Franking debits to negate franking credits from post-demutualisation payments of pre-demutualisation tax

- (1) This section applies if a *franking credit arises in the *franking account of the *friendly society or a *wholly-owned subsidiary of the society because, on or after the demutualisation resolution day identified under subsection 316-70(4), the society or subsidiary *pays a PAYG instalment, or *pays income tax, that is wholly or partly attributable to a period before that day.
- (2) A *franking debit arises in that account.
- (3) The amount of the *franking debit is so much of the *franking credit as is attributable to the period before that day.
- (4) The *franking debit arises at the same time as the *franking credit arises.

316-275 Franking credits to negate franking debits from refunds of tax paid before demutualisation

- (1) This section applies if a *franking debit arises in the *franking account of the *friendly society or a *wholly-owned subsidiary of the society because, on or after the demutualisation resolution day identified under subsection 316-70(4), the society or subsidiary *receives a refund of income tax that is wholly or partly attributable to a period before that day.
- (2) A *franking credit arises in that account.
- (3) The amount of the *franking credit is so much of the *franking debit as is attributable to the period before that day.
- (4) The *franking credit arises at the same time as the *franking debit arises.

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

Part 3-35—Insurance business

Division 320—Life insurance companies

Table of Subdivisions

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320-C	Deductions and capital losses
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320-E	No-TFN contributions of life insurance companies that are RSA providers
320-F	Complying superannuation/FHSA asset pool
320-H	Segregation of assets to discharge exempt life insurance policy liabilities
320-I	Transfers of business

Guide to Division 320

320-1 What this Division is about

This Division provides for the taxation of life insurance companies in a broadly comparable way to other entities that derive similar kinds of income.

Because of the nature of the business of life insurance companies, the Division contains special rules for working out their taxable income.

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

Those rules:

- include certain amounts in assessable income;
- identify certain amounts of exempt income and non-assessable non-exempt income;
- identify specific deductions.

Life insurance companies can have one or both of these taxable incomes for any income year for the purposes of working out their income tax for that year:

- a taxable income of the complying superannuation/FHSA class, which consists of taxable income that relates to complying superannuation business or FHSAs, and is taxed at the rate of tax that applies to complying superannuation funds;
- a taxable income of the ordinary class, which consists of taxable income that relates to other businesses and is taxed at the corporate tax rate.

Life insurance companies can also have tax losses that correspond to those 2 classes. The Division provides that tax losses of a particular class can be deducted only from incomes in respect of that class.

The Division ensures that the income tax worked out on the basis of these taxable incomes and tax losses is a single amount of income tax on one taxable income.

The Division also contains rules for segregating the assets of life insurance companies into:

- assets that relate to complying superannuation business or FHSAs;
- assets that relate to immediate annuity and other exempt business.

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

This Division also ensures that life insurance companies that are RSA providers are liable to pay tax on no-TFN contributions income.

Operative provisions

Subdivision 320-A—Preliminary

320-5 Object of Division

- (1) The object of this Division is to provide for the taxation of *life insurance companies in a broadly comparable way to other entities that *derive similar kinds of income.
- (2) To achieve this object, the Division:
 - (a) identifies certain amounts that are included in the assessable income, or are *exempt income or *non-assessable non-exempt income, of a *life insurance company; and
 - (b) identifies certain amounts that a life insurance company can deduct; and
 - (c) enables a life insurance company to have taxable incomes and *tax losses of the following classes for the purposes of working out its income tax for an income year:
 - (i) the *complying superannuation/FHSA class;
 - (ii) the *ordinary class; and
 - (d) contains other provisions necessary to enable the income tax on the taxable income of a life insurance company to be worked out.

Note: Section 320-5 of the *Income Tax (Transitional Provisions) Act 1997* provides that the tax consequences of certain transfers of assets of a life insurance company that is a friendly society to a complying superannuation fund are to be disregarded.

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

Subdivision 320-B—What is included in a life insurance company's assessable income

Guide to Subdivision 320-B

320-10 What this Subdivision is about

This Subdivision provides for certain amounts to be included in a life insurance company's assessable income and for certain other amounts to be exempt income or non-assessable non-exempt income.

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320-15	Assessable income—various amounts
320-30	Assessable income—special provision for certain income years
320-35	Exempt income
320-37	Non-assessable non-exempt income
320-45	Tax treatment of gains or losses from CGT events in relation to complying superannuation/FHSA assets

Operative provisions

320-15 Assessable income—various amounts

- (1) A *life insurance company's assessable income includes:
- (a) the total amount of the *life insurance premiums paid to the company in the income year; and
 - (b) amounts received or recovered under *contracts of reinsurance (except amounts that relate to a risk, or part of a risk, in relation to which subsection 148(1) of the *Income Tax Assessment Act 1936* applies) to the extent to which they relate to the *risk components of claims paid under *life insurance policies; and

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

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- (c) any amount received or recovered that is a refund, or in the nature of a refund, of the life insurance premium paid under a contract of reinsurance (except any amount that relates to a risk, or part of a risk, in relation to which subsection 148(1) of the *Income Tax Assessment Act 1936* applies); and
- (ca) any reinsurance commission received or recovered by the company in respect of a contract of reinsurance (except any commission that relates to a risk, or part of a risk, in relation to which subsection 148(1) of the *Income Tax Assessment Act 1936* applies); and
- (d) any amount received under a profit-sharing arrangement contained in, or entered into in relation to, a contract of reinsurance; and
- (da) the *transfer values of assets transferred by the company from a *complying superannuation/FHSA asset pool under subsection 320-180(1) or 320-195(3); and
- (db) the transfer values of assets transferred by the company to a complying superannuation/FHSA asset pool under subsection 320-180(3) or 320-185(1); and
- (e) if an asset (other than money) is transferred from or to a complying superannuation/FHSA asset pool under subsection 320-180(1) or (3), to a complying superannuation/FHSA asset pool under section 320-185 or from a complying superannuation/FHSA asset pool under subsection 320-195(2) or (3)—the amount (if any) that is included in the company's assessable income of the income year in which the asset was transferred because of section 320-200; and
- (f) the transfer values of assets transferred by the company from the company's *segregated exempt assets under subsection 320-235(1) or 320-250(2); and
- (g) if an asset (other than money) is transferred to the company's segregated exempt assets under subsection 320-235(3) or section 320-240—the amount (if any) that is included in the company's assessable income because of section 320-255; and

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

- (h) subject to subsection (2), if the *value, at the end of the income year, of the company's liabilities under the *net risk components of life insurance policies is less than the value, at the end of the previous income year, of those liabilities—an amount equal to the difference; and
- Note: Where the value at the end of the income year exceeds the value at the end of the previous income year, the excess can be deducted: see section 320-85.
- (i) amounts specified in agreements under section 295-260; and
- (j) *specified roll-over amounts paid to the company; and
- (ja) amounts imposed by the company in respect of risk riders for *ordinary investment policies in an income year in which the company did not receive any life insurance premiums for those policies; and
- (k) fees and charges (not otherwise included in, or taken into account in working out, the company's assessable income) imposed by the company in respect of life insurance policies; and
- (l) if the company is an *RSA provider—contributions made to *RSAs provided by the company that would be included in the company's assessable income under Subdivision 295-C if that Subdivision applied to the company.
- (2) Paragraph (1)(h) does not cover any liabilities under:
- (a) a *life insurance policy that provides for *participating benefits or *discretionary benefits; or
- (b) an *exempt life insurance policy; or
- (c) a *funeral policy.
- (3) An amount included in assessable income under paragraph (1)(i) is included for the income year of the *life insurance company that includes the last day of the transferor's income year to which the agreement referred to in section 295-260 relates.

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

320-30 Assessable income—special provision for certain income years

- (1) This section applies to a *life insurance company for each of the following income years (each a *relevant income year*):
- (a) the income year in which 1 July 2000 occurs;
 - (b) the 4 following income years.

Note: The effect of this section is modified when the life insurance business of a life insurance company is transferred to another life insurance company: see section 320-340.

- (2) If:
- (a) the *value of the company's liabilities at the end of 30 June 2000 under its *continuous disability policies (being the value used by the company for the purposes of its *income tax return);
exceeds
 - (b) the value of the company's liabilities at the end of 30 June 2000 under the *net risk components of its continuous disability policies as calculated under subsection 320-85(4);
- the company's assessable income for each relevant income year includes an amount equal to one-fifth of the excess.
- (3) However, if a *life insurance company ceases in a relevant income year to carry on *life insurance business or to have any liabilities under the *net risk components of *continuous disability policies, subsection (2) does not apply for that income year or any future income years but the company's assessable income for that income year includes so much of the excess referred to in subsection (2) as has not been included in the company's assessable income for any previous relevant income years.

320-35 Exempt income

These amounts *derived by a *life insurance company are exempt from income tax:

- (a) amounts of *ordinary income and *statutory income accrued before 1 July 1988 that were derived from assets that have become *complying superannuation/FHSA assets;

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

- (b) if the company is an *RSA provider—any amounts that are disregarded because of paragraph 320-137(3)(d) or (e) in working out the company's taxable income of the *complying superannuation/FHSA class.

320-37 Non-assessable non-exempt income

- (1) These amounts *derived by a *life insurance company are not assessable income and are not *exempt income:
 - (a) amounts of ordinary income and statutory income derived from *segregated exempt assets, being income that relates to the period during which the assets were segregated exempt assets;
 - (b) amounts of ordinary income and statutory income derived from the *disposal of units in a *pooled superannuation trust;
 - (c) if an *Australian/overseas fund or an *overseas fund established by the company derived foreign establishment amounts—the foreign resident proportion of the foreign establishment amounts;
 - (d) if the company is a *friendly society:
 - (i) amounts derived before 1 July 2001 that are exempt from income tax under section 50-1; and
 - (ii) amounts derived on or after 1 July 2001 but before 1 January 2003, that are attributable to *income bonds, *funeral policies or *sickness policies; and
 - (iii) amounts derived on or after 1 July 2001 but before 1 January 2003, that are attributable to *scholarship plans and would have been exempt from income tax under section 50-1 if they had been received before 1 July 2001; and
 - (iv) amounts derived on or after 1 January 2003 that are attributable to income bonds, funeral policies or *sickness policies, that were issued before 1 January 2003; and
 - (v) amounts derived on or after 1 January 2003 that are attributable to scholarship plans issued before 1 January 2003 and that would have been exempt from income tax if they had been received before 1 July 2001.

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

Section 320-37

Note: The effect of this section is modified when the life insurance business of a life insurance company is transferred to another life insurance company: see section 320-325.

- (1A) For the purposes of paragraph (1)(c), **foreign establishment amounts** for the *life insurance company means the total amount of assessable income that was *derived in the income year:
- (a) in the course of the carrying on by the company of a business in a foreign country at or through a *permanent establishment of the company in that country; and
 - (b) from sources in that or any other foreign country; and
 - (c) from assets that:
 - (i) are attributable to the permanent establishment; and
 - (ii) are held to meet the liabilities under the *life insurance policies issued by the company at or through the permanent establishment.
- (2) For the purposes of paragraph (1)(c), the **foreign resident proportion** of the *foreign establishment amounts is the amount worked out using the formula:

$$\text{Foreign establishment amounts} \times \frac{\text{Foreign resident foreign establishment policy liabilities}}{\text{All foreign establishment policy liabilities}}$$

where:

all foreign establishment policy liabilities means the average value for the income year (as calculated by an *actuary) of the policy liabilities (as defined in the *Valuation Standard) for all *life insurance policies that:

- (a) were included in the class of *life insurance business to which the company's *Australian/overseas fund or *overseas fund relates; and
- (b) were issued by the company at or through the *permanent establishment to which the foreign establishment amounts relate.

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

foreign resident foreign establishment policy liabilities means the average value for the income year (as calculated by an *actuary) of the policy liabilities (as defined in the *Valuation Standard) for all *life insurance policies that:

- (a) are *foreign resident life insurance policies; and
- (b) were issued by the company at or through the *permanent establishment to which the foreign establishment amounts relate.

320-45 Tax treatment of gains or losses from CGT events in relation to complying superannuation/FHSA assets

- (1) If a *CGT event happens in respect of a *CGT asset that is a *complying superannuation/FHSA asset of a *life insurance company, section 295-85 and 295-90 applies for the purpose of working out the amount of any *capital gain or *capital loss that arises from the event.

Note: See Subdivision 295-B of the *Income Tax (Transitional Provisions) Act 1997* for rules about cost base for assets owned by superannuation entities at the end of 30 June 1988.

- (2) Subsection (1) has effect despite anything in Division 230.

Subdivision 320-C—Deductions and capital losses

Guide to Subdivision 320-C

320-50 What this Subdivision is about

This Subdivision specifies particular deductions that are available to a life insurance company, specifies particular amounts that a life insurance company cannot deduct and contains provisions relating to a life insurance company's capital losses.

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Operative provisions

- 320-55 Deduction for life insurance premiums where liabilities under life insurance policies are to be discharged from complying superannuation/FHSA assets

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

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- 320-60 Deduction for life insurance premiums where liabilities under life insurance policies are to be discharged from segregated exempt assets
- 320-65 Deduction for life insurance premiums in respect of life insurance policies that provide for participating or discretionary benefits
- 320-70 No deduction for life insurance premiums in respect of certain life insurance policies payable only on death or disability
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- 320-80 Deduction for certain claims paid under life insurance policies
- 320-85 Deduction for increase in value of liabilities under net risk components of life insurance policies
- 320-87 Deduction for assets transferred from or to complying superannuation/FHSA asset pool
- 320-100 Deduction for life insurance premiums paid under certain contracts of reinsurance
- 320-105 Deduction for assets transferred to segregated exempt assets
- 320-107 Deductions for increased amount of lump sum death benefit
- 320-110 Deduction for interest credited to income bonds
- 320-111 Deduction for funeral policy payout
- 320-112 Deduction for scholarship plan payout
- 320-115 No deduction for amounts credited to RSAs
- 320-120 Capital losses from assets other than complying superannuation/FHSA assets or segregated exempt assets
- 320-125 Capital losses from complying superannuation/FHSA assets

Operative provisions

320-55 Deduction for life insurance premiums where liabilities under life insurance policies are to be discharged from complying superannuation/FHSA assets

- (1) This section applies to a *life insurance company in respect of *life insurance policies where the company's liabilities under the policies are to be discharged out of *complying superannuation/FHSA assets.
- (2) The company can deduct:
 - (a) the amounts of the *life insurance premiums received in respect of the policies that are transferred to its *complying superannuation/FHSA assets in the income year;
less:

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

- (b) so much of those amounts as relate to the company's liability to pay amounts on the death or disability of a person.
- (3) For the purposes of subsection (2) only, the amount of a *life insurance premium that *relates* to the company's liability to pay amounts on the death or disability of a person is:
 - (a) if the policy provides for *participating benefits or *discretionary benefits—nil; or
 - (b) if paragraph (a) does not apply and the policy states that the whole or a specified part of the premium is payable in respect of such a liability—the whole or that part of the premium, as appropriate; or
 - (c) if neither paragraph (a) nor (b) applies:
 - (i) if the policy is an *endowment policy—10% of the premium; or
 - (ii) if the policy is a *whole of life policy—30% of the premium; or
 - (iii) otherwise—so much of the premium as an *actuary determines to be attributable to such a liability.

320-60 Deduction for life insurance premiums where liabilities under life insurance policies are to be discharged from segregated exempt assets

A *life insurance company can deduct the amounts of *life insurance premiums transferred in the income year to its *segregated exempt assets under subsection 320-240(3).

320-65 Deduction for life insurance premiums in respect of life insurance policies that provide for participating or discretionary benefits

A *life insurance company can deduct the amounts of *net premiums received in respect of *life insurance policies (other than *complying superannuation/FHSA life insurance policies or *exempt life insurance policies) that provide for *participating benefits or *discretionary benefits.

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

320-70 No deduction for life insurance premiums in respect of certain life insurance policies payable only on death or disability

- (1) A *life insurance company cannot deduct any part of the amounts of *life insurance premiums received in respect of *life insurance policies under which amounts are to be paid only on the death or disability of a person.
- (2) This section does not apply to:
 - (a) *life insurance policies that provide for *participating benefits or *discretionary benefits; or
 - (b) funeral policies.

320-75 Deduction for ordinary investment policies

- (1) This section applies to a *life insurance company in respect of *ordinary investment policies issued by the company.
- (2) The company can deduct, in respect of *life insurance premiums received in the income year for those policies:
 - (a) the sum of the *net premiums;less:
 - (b) so much of the net premiums as an *actuary determines to be attributable to fees and charges charged in that income year.
- (3) In making a determination under subsection (2), an *actuary is to have regard to:
 - (a) the changes over the income year in the sum of the *net current termination values of the policies; and
 - (b) the movements in those values during the income year.
- (4) In addition, if an *actuary determines that:
 - (a) there has been a reduction in the income year (the **current year**) of exit fees that were imposed in respect of those policies in a previous income year; and
 - (b) the reduction (or a part of it) has not been taken into account in a determination under subsection (2) for the current year;

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

the company can deduct so much of that reduction as has not been so taken into account.

320-80 Deduction for certain claims paid under life insurance policies

- (1) A *life insurance company can deduct the amounts paid in respect of the *risk components of claims paid under *life insurance policies during the income year.
- (2) The *risk component* of a claim paid under a *life insurance policy is:
 - (a) if:
 - (i) the policy does not provide for *participating benefits or *discretionary benefits; and
 - (ii) the policy is neither an *exempt life insurance policy nor a *funeral policy; and
 - (iii) an amount is payable under the policy only on the death or disability of the insured person;
the amount paid under the policy as a result of the occurrence of that event; or
 - (b) if the policy provides for participating benefits or discretionary benefits or is an exempt life insurance policy, *FHSA or a funeral policy—nil; or
 - (c) otherwise—the amount paid under the policy as a result of the death or disability of the insured person *less* the *current termination value of the policy (calculated by an *actuary) immediately before the death, or the occurrence of the disability, of the person.
- (3) Except as provided by subsection (1), a *life insurance company cannot deduct amounts paid in respect of claims under *life insurance policies.

320-85 Deduction for increase in value of liabilities under net risk components of life insurance policies

- (1) A *life insurance company can deduct the amount (if any) by which the *value, at the end of the income year, of its liabilities

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

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under the *net risk components of *life insurance policies exceeds the value, at the end of the previous income year, of those liabilities.

Note 1: Where the value at the end of the income year is less than the value at the end of the previous income year, the difference is included in assessable income: see paragraph 320-15(1)(h).

Note 2: Section 320-85 of the *Income Tax (Transitional Provisions) Act 1997* makes special provision in respect of the calculation of the value of a life insurance company's liabilities under the net risk components of life insurance policies at the end of the income year immediately preceding the income year in which 1 July 2000 occurs.

- (2) Subsection (1) does not cover any liabilities under:
- (a) a *life insurance policy that provides for *participating benefits or *discretionary benefits; or
 - (b) an *exempt life insurance policy; or
 - (ba) is an *FHSA; or
 - (c) a *funeral policy.
- (3) If a *life insurance policy is a *disability policy (other than a *continuous disability policy), the **value** at a particular time of the liabilities of the *life insurance company under the *net risk component of the policy is the *current termination value of the component at that time (calculated by an *actuary).
- (4) In the case of *life insurance policies other than policies to which subsection (3) applies, the **value** at a particular time of the liabilities of the *life insurance company under the *net risk components of the policies is the amount calculated by an *actuary to be:
- (a) the sum of the policy liabilities (as defined in the *Valuation Standard) in respect of the net risk components of the policies at that time;
- less
- (b) the sum of any cumulative losses (as defined in the Valuation Standard) for the net risk components of the policies at that time.

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

320-87 Deduction for assets transferred from or to complying superannuation/FHSA asset pool

- (1) A *life insurance company can deduct the *transfer values of assets that are transferred by the company in the income year from a *complying superannuation/FHSA asset pool under subsection 320-180(1) or 320-195(3).
- (2) A *life insurance company can deduct the *transfer values of assets that are transferred by the company in the income year to a *complying superannuation/FHSA asset pool under subsection 320-180(3) or 320-185(1).
- (3) If an asset (other than money) is transferred by a *life insurance company:
 - (a) from a *complying superannuation/FHSA asset pool under subsection 320-180(1) or 320-195(2) or (3); or
 - (b) to a complying superannuation/FHSA asset pool under subsection 320-180(3) or section 320-185;the company can deduct the amount (if any) that it can deduct because of section 320-200.

320-100 Deduction for life insurance premiums paid under certain contracts of reinsurance

A *life insurance company can deduct amounts that:

- (a) were paid by the company in the income year as *life insurance premiums under *contracts of reinsurance; and
- (b) do not relate to a risk, or part of a risk, in relation to which subsection 148(1) of the *Income Tax Assessment Act 1936* applies.

320-105 Deduction for assets transferred to segregated exempt assets

- (1) A *life insurance company can deduct the *transfer values of assets transferred in the income year to the company's *segregated exempt assets under subsection 320-235(3) or 320-240(1).
- (2) If an asset (other than money) is transferred to a *life insurance company's *segregated exempt assets under subsection 320-235(3)

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

Section 320-107

or section 320-240, the company can deduct the amount (if any) that it can deduct because of section 320-255.

320-107 Deductions for increased amount of lump sum death benefit

- (1) A *life insurance company can deduct an amount under this section if:
- (a) it pays a lump sum because of the death of a person to the trustee of the deceased's estate or an individual who was a *spouse, former spouse or *child of the deceased at the time of death or payment; and
 - (b) the payment is in relation to the commutation of, or is of the capital amount payable on the termination of, an *exempt life insurance policy or a life insurance policy covered by subparagraph (b)(i) of the definition of **complying superannuation/FHSA life insurance policy** in subsection 995-1(1) while the policy was held by the deceased by reason that the deceased would have been entitled to receive the *annuity concerned; and
 - (c) it increases the lump sum by an amount (the **tax saving amount**) so that the amount of the lump sum is the amount that the company could have paid if no tax were payable on amounts included in its assessable income under Subdivision 320-B.
- (2) The company can deduct the amount for the income year in which the lump sum is paid.
- (3) The amount the company can deduct is:

$$\frac{\text{Tax saving amount}}{\text{Complying superannuation/FHSA class rate}}$$

where:

complying superannuation/FHSA class rate is the rate of tax imposed on the *complying superannuation/FHSA class of the company's taxable income for the income year.

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

- (4) The amount the company can deduct for a sum paid because of the death of a person to the trustee of the deceased's estate is so much of the subsection (3) amount as is appropriate having regard to the extent to which individuals referred to in paragraph (1)(a) can reasonably be expected to benefit from the estate.

320-110 Deduction for interest credited to income bonds

- (1) A *life insurance company that is a *friendly society can deduct interest credited in the income year to the holders of *income bonds issued after 31 December 2002 where the interest accrued on or after 1 January 2003.
- (2) This section has effect despite subsection 320-80(3).

320-111 Deduction for funeral policy payout

- (1) A *life insurance company that is a *friendly society can deduct the amount of a benefit provided in the income year by the company under a *funeral policy issued after 31 December 2002, reduced by so much of the sum of the amounts deducted or deductible by the company under section 320-75 for any income year as is reasonably related to the benefit.
- (2) This section has effect despite subsection 320-80(3).

320-112 Deduction for scholarship plan payout

- (1) A *life insurance company that is a *friendly society can deduct the amount of a benefit it provides in the income year and on or after 1 January 2003:
- (a) under a *scholarship plan covered by subsection (2) or (3); and
 - (b) to, or on behalf of, a person nominated in the plan as a beneficiary whose education is to be helped by the benefit;
- reduced by so much of the sum of the amounts deducted or deductible by the company under section 320-75 for any income year as is reasonably related to the benefit.

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

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- (2) This subsection covers a *scholarship plan issued by the *life insurance company after 31 December 2002.
- (3) This subsection covers a *scholarship plan if:
 - (a) the plan was issued by the *life insurance company before 1 January 2003; and
 - (b) no amount received by the company on or after 1 January 2003 and attributable to the plan is *non-assessable non-exempt income of the company under paragraph 320-37(1)(d).
- (4) This section has effect despite subsection 320-80(3).

320-115 No deduction for amounts credited to RSAs

A *life insurance company that is an *RSA provider cannot deduct amounts credited to *RSAs.

320-120 Capital losses from assets other than complying superannuation/FHSA assets or segregated exempt assets

- (1) This section applies to assets (*ordinary assets*) of a *life insurance company other than:
 - (a) *complying superannuation/FHSA assets; or
 - (b) *segregated exempt assets.
- (2) In working out a *life insurance company's *net capital gain or *net capital loss for the income year, *capital losses from ordinary assets can be used only to reduce *capital gains from ordinary assets.
- (3) If some or all of a *capital loss from an ordinary asset cannot be applied in an income year, the unapplied amount can be applied in the next income year in which the company's *capital gains from ordinary assets exceed the company's capital losses (if any) from ordinary assets.
- (4) If the company has 2 or more unapplied *net capital losses from ordinary assets, the company must apply them in the order in which they were made.

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

Note: This section affects the amount of assessable income that is to be taken into account in working out a taxable income or tax loss of the ordinary class: see sections 320-139 and 320-143.

320-125 Capital losses from complying superannuation/FHSA assets

- (1) In working out a *life insurance company's *net capital gain or *net capital loss for the income year, *capital losses from *complying superannuation/FHSA assets can be used only to reduce *capital gains from complying superannuation/FHSA assets.
- (2) If some or all of a *capital loss from a *complying superannuation/FHSA asset cannot be applied in an income year, the unapplied amount can be applied in the next income year in which the company's *capital gains from *complying superannuation/FHSA assets exceed the company's capital losses (if any) from complying superannuation/FHSA assets.
- (3) If the company has 2 or more unapplied *net capital losses from *complying superannuation/FHSA assets, the company must apply them in the order in which they were made.

Note: This section affects the amount of assessable income that is to be taken into account in working out a taxable income or tax loss of the complying superannuation/FHSA class: see sections 320-137 and 320-141.

Subdivision 320-D—Income tax, taxable income and tax loss of life insurance companies

Guide to Subdivision 320-D

320-130 What this Subdivision is about

This Subdivision explains how a life insurance company's income tax is worked out.

For that purpose, this Subdivision enables a life insurance company to have taxable incomes and tax losses of the following classes:

- the complying superannuation/FHSA class;

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

- | |
|---|
| <ul style="list-style-type: none">• the ordinary class. |
|---|

320-131 Overview of Subdivision

Working out the income tax

- (1) In any income year, a life insurance company can have:
 - (a) a taxable income of the complying superannuation/FHSA class and/or a taxable income of the ordinary class; or
 - (b) a tax loss of the complying superannuation/FHSA class and/or a tax loss of the ordinary class; or
 - (c) a taxable income of one class and a tax loss of the other class.

Note: The taxable incomes mentioned in paragraph (a) are taxed at different rates: see section 23A of the *Income Tax Rates Act 1986*.

- (2) Taxable incomes and tax losses of both classes are taken into account in working out the amount of income tax that the company has to pay for the income year (see section 320-134). That amount is then taken to be the income tax on the company's taxable income for that income year.

Working out taxable income and tax loss of each class

- (3) In general, the rules in this Act about working out a company's taxable income or tax loss, or deducting a company's tax loss, apply to a life insurance company in relation to:
 - (a) working out a taxable income or tax loss of a particular class; or
 - (b) deducting a tax loss of a particular class.
- (4) However, that general rule is subject to the following:
 - (a) sections 320-137 to 320-143, which allocate amounts of incomes and deductions for the purposes of working out a taxable income or tax loss of a particular class;
 - (b) subsections 320-141(2) and 320-143(2), which provide that tax losses of a particular class can be deducted only from incomes in respect of that class;

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

- (c) section 320-149, which sets out the provisions in this Act that have effect only in relation to a taxable income or tax loss of the ordinary class.

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320-134 Income tax of a life insurance company
320-135 Taxable income and tax loss of each of the 2 classes

Taxable income and tax loss of life insurance companies

- 320-137 Taxable income—complying superannuation/FHSA class
320-139 Taxable income—ordinary class
320-141 Tax loss—complying superannuation/FHSA class
320-143 Tax loss—ordinary class
320-149 Provisions that apply only in relation to the ordinary class

General rules

320-133 Object of Subdivision

- (1) The object of this Subdivision is to ensure that:
- (a) for the purposes of working out the amount of a *life insurance company's income tax for an income year:
 - (i) the company's taxable income or *tax loss of one *class is worked out separately from its taxable income or tax loss of the other class; and
 - (ii) the company's tax losses of a particular class can be deducted only from its incomes in respect of that class; and
 - (b) for the purposes of this Act, that amount of income tax is treated as the company's income tax on its taxable income for that income year.
- (2) In subsection (1), a **class** means the *complying superannuation/FHSA class or the *ordinary class.

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

320-134 Income tax of a life insurance company

Working out the income tax

- (1) Work out a *life insurance company's income tax for an income year under section 4-10 as follows:
 - (a) apply steps 1 and 2 of the method statement in subsection 4-10(3) to work out separately the amount that would be the company's basic income tax liability for its taxable income of each *class for that year;
 - (b) treat the sum of these amounts as the company's basic income tax liability for that year and apply step 4 of the method statement to subtract its *tax offsets from that sum.
- (2) For the purposes of this Act:
 - (a) the income tax worked out in accordance with subsection (1) is taken to be the company's income tax on its taxable income for the income year; and
 - (b) except as provided by subsection (1) of this section and sections 320-135 to 320-149, the company's taxable income for that year is taken to be equal to the sum of the company's taxable incomes of the 2 *classes for that year.

Note: This means that there is only one assessment in respect of the company's taxable income for the income year and that the income tax constitutes only one debt to the Commonwealth.

Working out the income tax on certain assumptions

- (3) Subsection (1) also has effect in relation to working out an amount that would be the company's income tax if certain assumptions were made. It has that effect in the same way as it has effect in relation to working out the company's income tax under section 4-10 (except in regard to those assumptions).

Note: This means, for example, subsection (1) also has effect in relation to working out the amount of a life insurance company's income tax on the basis of the tax offset priority rules in Division 63.

320-135 Taxable income and tax loss of each of the 2 classes

- (1) Subject to the other provisions in this Subdivision:

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

- (a) this Act has effect for a *life insurance company in relation to working out a taxable income of a particular *class in the same way as it has effect in relation to working out a taxable income of any other company; and
 - (b) this Act has effect for a life insurance company in relation to working out or deducting a *tax loss of a particular class in the same way as it has effect in relation to working out or deducting a tax loss of any other company.
- (2) Sections 320-137 to 320-143 have effect in addition to other provisions in this Act that relate to working out a taxable income or *tax loss, or deducting a tax loss (as appropriate).
- (3) Nothing in this Subdivision prevents a *life insurance company from:
- (a) having taxable incomes, or *tax losses, of both *classes for the same income year; or
 - (b) having a taxable income of one class and a tax loss of the other class for the same income year.

Note: In certain circumstances, a life insurance company can have a taxable income and a tax loss of the same class in an income year (see Subdivision 165-B as it has effect under this Subdivision).

Taxable income and tax loss of life insurance companies

320-137 Taxable income—complying superannuation/FHSA class

- (1) A *life insurance company's taxable income of the ***complying superannuation/FHSA class*** is a taxable income worked out under this Act on the basis of only:
- (a) assessable income of the company that is covered by subsection (2); and
 - (b) deductions of the company that are covered by subsection (4); and
 - (c) *tax losses of the company that are of the *complying superannuation/FHSA class.

Note: For the usual way of working out a taxable income: see subsection 4-15(1). For other ways of working out a taxable income: see subsection 4-15(2).

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

Relevant assessable income

- (2) This subsection covers the following assessable income of a *life insurance company:
- (a) assessable income *derived by the company from the investment of its *complying superannuation/FHSA assets in relation to the period during which those assets were complying superannuation/FHSA assets;
 - (b) so much of the amount that is included in the company's assessable income because of paragraph 320-15(1)(a) as is equal to the total *transfer value of assets transferred in the income year by the company to a *complying superannuation/FHSA asset pool under subsection 320-185(3);
 - (c) if an asset (other than money) is transferred by the company from a complying superannuation/FHSA asset pool under subsection 320-180(1) or 320-195(2) or (3)—amounts that are included in the company's assessable income because of section 320-200;
 - (d) amounts that are included in the company's assessable income because of paragraph 320-15(1)(db), (i) or (j);
 - (e) amounts that are included in the company's assessable income under subsection 115-280(4);
 - (f) subject to subsection (3), so much of the company's assessable income for the income year as is:
 - (i) the total amount credited during that year to the *RSAs provided by the company; less
 - (ii) the total amount debited during that year from the RSAs.

Amounts disregarded for RSAs

- (3) In working out the amount mentioned in paragraph (2)(f), disregard the following amounts:
- (a) contributions credited to the *RSAs that would not be included in the company's assessable income under Subdivision 295-C if that Subdivision applied to the company;

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

- (b) amounts debited from the RSAs that are benefits paid to, or in respect of, the holders of the RSAs;
- (c) income tax debited from the RSAs;
- (d) if an *annuity was paid from an RSA in respect of the whole of the income year, or the whole of the part of the income year in which the RSA existed, the total amount credited to the RSA during the income year;
- (e) if an annuity was paid from an RSA in respect of a part, but not the whole, of the portion of the income year in which the RSA existed, so much of the total amount credited to the RSA during the income year as is equal to the amount worked out using the following formula:

$$\text{Total amount credited to the *RSA during the income year} \times \frac{\text{Number of days in the part of the income year in which the *annuity was paid}}{\text{Number of days in the income year in which the RSA existed}}$$

Relevant deductions

- (4) This subsection covers the following deductions of a *life insurance company:
 - (a) amounts that the company can deduct under section 320-55;
 - (b) amounts that the company can deduct (other than any *tax losses) in respect of the investment of the company's *complying superannuation/FHSA assets in relation to the period during which those assets were complying superannuation/FHSA assets;
 - (c) amounts that the company can deduct under section 320-87 because of subsection (1) or paragraph (3)(a) of that section;
 - (d) amounts that the company can deduct under subsection 115-280(1).

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

320-139 Taxable income—ordinary class

A *life insurance company's taxable income of the **ordinary class** is a taxable income worked out under this Act on the basis of only:

- (a) assessable income of the company that is not covered by subsection 320-137(2); and
- (b) amounts (other than *tax losses) that the company can deduct and are not covered by subsection 320-137(4); and
- (c) tax losses of the company that are of the *ordinary class.

Note: For the usual way of working out a taxable income: see subsection 4-15(1). For other ways of working out a taxable income: see subsection 4-15(2).

320-141 Tax loss—complying superannuation/FHSA class

Working out a tax loss of the complying superannuation/FHSA class

- (1) A *life insurance company's *tax loss of the **complying superannuation/FHSA class** is a tax loss worked out under this Act on the basis of only:
 - (a) assessable income of the company that is covered by subsection 320-137(2); and
 - (b) deductions of the company that are covered by subsection 320-137(4); and
 - (c) *net exempt income of the company that is attributable to *exempt income *derived:
 - (i) from the company's *complying superannuation/FHSA assets; and
 - (ii) in relation to the period during which those assets were complying superannuation/FHSA assets.

Note: For the usual way of working out a tax loss: see section 36-10. For other ways of working out a tax loss: see section 36-25.

Deducting a tax loss of the complying superannuation/FHSA class

- (2) A *life insurance company's *tax loss of the **complying superannuation/FHSA class** can be deducted under this Act only from:

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

- (a) *net exempt income of the company that is attributable to *exempt income *derived:
 - (i) from the company's *complying superannuation/FHSA assets; and
 - (ii) in relation to the period during which those assets were complying superannuation/FHSA assets; and
- (b) assessable income of the company that is covered by subsection 320-137(2), reduced by deductions of the company that are covered by subsection 320-137(4).

Note: For the usual way of deducting a tax loss: see section 36-17. For other ways of deducting a tax loss: see section 36-25.

320-143 Tax loss—ordinary class

Working out a tax loss of the ordinary class

- (1) A *life insurance company's *tax loss of the **ordinary class** is a tax loss worked out under this Act on the basis of only:
 - (a) assessable income of the company that is not covered by subsection 320-137(2); and
 - (b) amounts (other than tax losses) that the company can deduct and are not covered by subsection 320-137(4); and
 - (c) *net exempt income of the company that is not attributable to *exempt income *derived:
 - (i) from the company's *complying superannuation/FHSA assets; and
 - (ii) in relation to the period during which those assets were complying superannuation/FHSA assets.

Note: For the usual way of working out a tax loss: see section 36-10. For other ways of working out a tax loss: see section 36-25.

Deducting a tax loss of the ordinary class

- (2) A *life insurance company's *tax loss of the **ordinary class** can be deducted under this Act only from:
 - (a) *net exempt income of the company that is not attributable to *exempt income *derived:
 - (i) from the company's *complying superannuation/FHSA assets; and

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

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- (ii) in relation to the period during which those assets were complying superannuation/FHSA assets; and
- (b) assessable income of the company that is not covered by subsection 320-137(2), reduced by amounts (other than tax losses) that the company can deduct and are not covered by subsection 320-137(4).

Note: For the usual way of deducting a tax loss: see section 36-17. For other ways of deducting a tax loss: see section 36-25.

320-149 Provisions that apply only in relation to the ordinary class

- (1) The provisions covered by subsection (2):
 - (a) have effect as provided by section 320-135 in relation to a *life insurance company's taxable income, or *tax loss, of the *ordinary class; but
 - (b) have no effect in relation to the company's taxable income, or tax loss, of the *complying superannuation/FHSA class.
- (2) This subsection covers these provisions:
 - (a) section 36-55;
 - (b) Division 165 (except Subdivision 165-CD).

Example 1: A life insurance company that has an amount of excess franking offsets will need to recalculate its tax loss of the ordinary class under section 36-55. But its tax loss of the complying superannuation/FHSA class is unaffected by that section.

Example 2: A life insurance company that fails to meet the relevant tests of Division 165 will need to recalculate the ordinary class of its taxable income and tax loss under Subdivision 165-B. But the complying superannuation/FHSA class of its taxable income and tax loss are unaffected by that Subdivision.

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

Subdivision 320-E—No-TFN contributions of life insurance companies that are RSA providers

Guide to Subdivision 320-E

320-150 What this Subdivision is about

This Subdivision makes Subdivisions 295-I and 295-J apply to life insurance companies that are RSA providers.

The consequence is that those life insurance companies are liable to pay tax on no-TFN contributions income under Subdivision 295-I. They may also be entitled to a tax offset under Subdivision 295-J.

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320-155 Subdivisions 295-I and 295-J apply to companies that are RSA providers

Operative provisions

320-155 Subdivisions 295-I and 295-J apply to companies that are RSA providers

- (1) Despite subsection 295-5(4), Subdivisions 295-I and 295-J apply to a *life insurance company that is an *RSA provider.
- (2) For the purposes of the application of those Subdivisions to a *life insurance company, a contribution included in the assessable income of the company under paragraph 320-15(1)(l) is taken to have been included under Subdivision 295-C.

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

Subdivision 320-F—Complying superannuation/FHSA asset pool

Guide to Subdivision 320-F

320-165 What this Subdivision is about

This Subdivision explains how a life insurance company can segregate assets (to be known as a ***complying superannuation/FHSA asset pool***) to be used for the sole purpose of discharging its complying superannuation liabilities.

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- 320-170 Establishment of complying superannuation/FHSA asset pool
- 320-175 Valuations of complying superannuation/FHSA assets and complying superannuation/FHSA liabilities for each valuation time
- 320-180 Consequences of a valuation under section 320-175
- 320-185 Transfer of assets to complying superannuation/FHSA asset pool otherwise than as a result of a valuation under section 320-175
- 320-190 Complying superannuation/FHSA liabilities
- 320-195 Transfer of assets and payment of amounts from a complying superannuation/FHSA asset pool otherwise than as a result of a valuation under section 320-175
- 320-200 Consequences of transfer of assets to or from complying superannuation/FHSA asset pool

Operative provisions

320-170 Establishment of complying superannuation/FHSA asset pool

- (1) A *life insurance company may, on or after 1 July 2000, segregate in accordance with subsections (2) and (3) any of its assets for the sole purpose of discharging its *complying superannuation/FHSA liabilities out of those assets.

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

- (1A) Except as provided by section 320-170 of the *Income Tax (Transitional Provisions) Act 1997*, an asset is taken not to be included in the *complying superannuation/FHSA assets unless the whole of the asset is included among those assets.
- (2) The assets segregated must, at the time of the segregation, be a representative sample of all the company's assets that support its *complying superannuation/FHSA liabilities immediately before the segregation.
- (3) The assets segregated must have, as at the time of the segregation, a total *transfer value that does not exceed the sum of:
- (a) the company's *complying superannuation/FHSA liabilities as at that time; and
 - (b) any reasonable provision made by the company at that time in its accounts for liability for income tax in respect of the assets segregated.
- (4) A *life insurance company that segregates assets as mentioned in subsections (1) to (3) at a time after 1 July 2000 but before 1 October 2000 is taken to have segregated those assets in accordance with those subsections on 1 July 2000.
- (5) If a segregation of assets is made in accordance with the above subsections, the company must use the segregated assets, and any other assets afterwards included among the segregated assets, only for the purpose of discharging its *complying superannuation/FHSA liabilities.
- (6) The assets from time to time segregated are together to be known as the ***complying superannuation/FHSA asset pool*** and each asset from time to time included among those assets is to be known as a ***complying superannuation/FHSA asset***.
- (7) In this Subdivision:
- (a) a reference to the transfer of an asset to, or from, the *complying superannuation/FHSA asset pool:
 - (i) is a reference to the inclusion of the asset among the segregated assets, or the exclusion of an asset from the segregated assets, as the case may be; and

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

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- (ii) includes a reference to the transfer of money to, or from, the complying superannuation/FHSA asset pool, as the case may be; and
- (b) if an asset transferred to or from the complying superannuation/FHSA asset pool is money, a reference to the *transfer value of the asset transferred is a reference to the amount of the money.

320-175 Valuations of complying superannuation/FHSA assets and complying superannuation/FHSA liabilities for each valuation time

- (1) A *life insurance company that has established a *complying superannuation/FHSA asset pool must cause the following amounts to be calculated within the period of 60 days starting immediately after each *valuation time:
 - (a) the total *transfer value of the company's *complying superannuation/FHSA assets as at the valuation time;
 - (b) the company's *complying superannuation/FHSA liabilities as at the valuation time.
- (2) These are the *valuation times*:
 - (a) the end of the income year in which the *complying superannuation/FHSA asset pool was established;
 - (b) the end of each later income year.

Note: The time when a life insurance company joins or leaves a consolidated group is also a valuation time: see section 713-525.

Note 1: The time when a life insurance company joins or leaves a consolidated group is also a valuation time: see sections 713-525 and 713-585.

Note 2: A life insurance company that fails to comply with this section is liable to an administrative penalty: see section 288-70 in Schedule 1 to the *Taxation Administration Act 1953*.

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

320-180 Consequences of a valuation under section 320-175

Transfer from the complying superannuation/FHSA asset pool

- (1) If the total *transfer value of the company's *complying superannuation/FHSA assets as at a *valuation time exceeds the sum of:
- (a) the company's *complying superannuation/FHSA liabilities as at that time; and
 - (b) any reasonable provision made by the company at that time in its accounts for liability for income tax in respect of those assets;

the company must transfer, from the *complying superannuation/FHSA asset pool, assets of any kind having a total transfer value equal to the excess.

- (2) A transfer under subsection (1) must be made within the period of 30 days starting immediately after:
- (a) the day on which the total *transfer value and the *complying superannuation/FHSA liabilities (as at the *valuation time) were calculated; or
 - (b) if those amounts were calculated on different days—the later of those days.

The transfer, once made, is taken to have been made at the valuation time (whether or not the transfer is made within those 30 days).

Note: A life insurance company that fails to comply with subsections (1) and (2) is liable to an administrative penalty: see section 288-70 in Schedule 1 to the *Taxation Administration Act 1953*.

Transfer to the complying superannuation/FHSA asset pool

- (3) If the total *transfer value of the company's *complying superannuation/FHSA assets as at a *valuation time is less than the sum of:
- (a) the company's *complying superannuation/FHSA liabilities as at that time; and
 - (b) any reasonable provision made by the company at that time in its accounts for liability for income tax in respect of those assets;

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

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the company can transfer, to the *complying superannuation/FHSA asset pool, assets of any kind having a total transfer value not exceeding the difference.

- (4) A transfer under subsection (3) is taken to have been made at the *valuation time if it is made within the period of 30 days starting immediately after:
- (a) the day on which the total *transfer value and the *complying superannuation/FHSA liabilities (as at the valuation time) were calculated; or
 - (b) if those amounts were calculated on different days—the later of those days.

320-185 Transfer of assets to complying superannuation/FHSA asset pool otherwise than as a result of a valuation under section 320-175

- (1) If a *life insurance company determines, at a time other than a *valuation time, that the total *transfer value of the company's *complying superannuation/FHSA assets as at that time is less than the sum of:
- (a) the company's *complying superannuation/FHSA liabilities as at that time; and
 - (b) any reasonable provision made by the company at that time in its accounts for liability for income tax in respect of those assets;

the company can transfer, to the *complying superannuation/FHSA asset pool, assets of any kind having a total transfer value not exceeding the difference.

- (2) A *life insurance company can at any time transfer an asset of any kind to a *complying superannuation/FHSA asset pool in exchange for an amount of money equal to the *transfer value of the asset at the time of the transfer.
- (3) A *life insurance company can transfer to a *complying superannuation/FHSA asset pool in an income year assets of any kind having a total *transfer value not exceeding the total amount of the *life insurance premiums paid to the company in that income

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

year for the purchase of *complying superannuation/FHSA life insurance policies.

- (4) Except as provided by this section and subsection 320-180(3), a *life insurance company cannot transfer an asset to a *complying superannuation/FHSA asset pool.

320-190 Complying superannuation/FHSA liabilities

- (1) The amount of the *complying superannuation/FHSA liabilities of a *life insurance company is to be worked out in accordance with subsection (2) in respect only of *life insurance policies issued by the company:
- (a) that are *complying superannuation/FHSA life insurance policies; and
 - (b) the liabilities under which are to be discharged out of the company's *complying superannuation/FHSA assets.
- (2) The amount of the *complying superannuation/FHSA liabilities* of a *life insurance company at a particular time is the sum of the following amounts at that time, as calculated by an *actuary:
- (a) for policies providing for *participating benefits or *discretionary benefits:
 - (i) the values of supporting assets, as defined in the *Valuation Standard; and
 - (ii) the *policy owners' retained profits;
 - (b) for other policies—the *current termination values.

320-195 Transfer of assets and payment of amounts from a complying superannuation/FHSA asset pool otherwise than as a result of a valuation under section 320-175

- (1) If:
- (a) a *life insurance policy issued by a *life insurance company becomes an *exempt life insurance policy; and
 - (b) immediately before the policy became an exempt life insurance policy, the policy was a policy referred to in subsection 320-190(1);

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

the company can transfer from a *complying superannuation/FHSA asset pool, to its *segregated exempt assets, assets of any kind whose total *transfer value does not exceed the company's liabilities in respect of the policy.

- (2) A *life insurance company can at any time transfer an asset from a *complying superannuation/FHSA asset pool in exchange for an amount of money equal to the *transfer value of the asset at the time of the transfer.
- (3) If a *life insurance company:
- (a) imposes any fees or charges in respect of *complying superannuation/FHSA assets; or
 - (b) imposes any fees or charges in respect of *complying superannuation/FHSA life insurance policies other than policies:
 - (i) that provide *superannuation death benefits, *disability superannuation benefits or temporary disability benefits of a kind referred to in paragraph 295-460(c), that are *participating benefits; and
 - (ii) the liabilities under which are to be discharged out of the company's *complying superannuation/FHSA asset pool; or
 - (c) determines, at a time other than a *valuation time, that the total *transfer value of the company's complying superannuation/FHSA assets as at that time exceeds the sum of:
 - (i) the company's *complying superannuation/FHSA liabilities at that time; and
 - (ii) any reasonable provision made by the company at that time in its accounts for liability for income tax in respect of those assets;

the company must, when the fees or charges are imposed or the excess is determined, as the case may be, transfer, from the *complying superannuation/FHSA asset pool, assets having a total transfer value equal to the fees, charges or excess, as the case may be.

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

- (4) If:
- (a) any liabilities arise for the discharge of which a *life insurance company's *complying superannuation/FHSA asset pool is established; or
 - (b) any expenses are incurred by a life insurance company directly in respect of *complying superannuation/FHSA assets in relation to a period during which the assets are complying superannuation/FHSA assets; or
 - (c) any liabilities to pay *PAYG instalments, or income tax, that are attributable to the company's *complying superannuation/FHSA assets;
- the life insurance company must pay, from the complying superannuation/FHSA asset pool, any amounts required to discharge the liabilities, or amounts equal to the expenses (as appropriate).

320-200 Consequences of transfer of assets to or from complying superannuation/FHSA asset pool

- (1) This section applies if:
- (a) an asset (other than money) is transferred from a *complying superannuation/FHSA asset pool under subsection 320-180(1) or 320-195(2) or (3); or
 - (b) an asset (other than money) is transferred to a complying superannuation/FHSA asset pool under subsection 320-180(3) or section 320-185.
- (2) In determining:
- (a) for the purposes of this Act (other than Parts 3-1 and 3-3) whether an amount is included in, or can be deducted from, the assessable income of a *life insurance company in respect of the transfer of the asset; or
 - (b) for the purposes of Parts 3-1 and 3-3:
 - (i) whether the company made a *capital gain in respect of the transfer of the asset; or
 - (ii) whether the company made a *capital loss in respect of the transfer of the asset;
- the company is taken:

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

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- (c) to have sold, immediately before the transfer, the asset transferred for a consideration equal to its *market value; and
 - (d) to have purchased the asset again at the time of the transfer for a consideration equal to its market value.
- (2A) Without limiting subsection (2), where the asset transferred is a *depreciating asset, Division 40 has effect for the company as if:
- (a) in relation to the sale of the asset that is taken to have occurred under paragraph (2)(c):
 - (i) the sale were a *balancing adjustment event; and
 - (ii) the *termination value of the asset for that event were equal to the consideration for the sale under that paragraph; and
 - (iii) the company had stopped *holding the asset at the time of the sale; and
 - (b) in relation to the purchase of the asset that is taken to have occurred under paragraph (2)(d):
 - (i) the company had only begun to hold the asset after the purchase; and
 - (ii) the first element of the asset's *cost were equal to the consideration for the purchase under that paragraph; and
 - (iii) the company had acquired the asset from an *associate of the company.
- Note: This means that, amongst other things, as a result of the transfer:
- the asset's cost for the purposes of working out a deduction under Division 40 is reset; and
 - the company's assessable income might be adjusted under section 40-285.
- (3) If, apart from this subsection and section 320-55, a *life insurance company could deduct an amount or make a *capital loss as a result of a transfer of an asset to or from its *complying superannuation/FHSA asset pool, the deduction or capital loss is disregarded until:
- (a) the asset ceases to exist; or
 - (b) the asset, or a greater than 50% interest in it, is *acquired by an entity other than an entity that is an *associate of the company immediately after the transfer.

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

- (4) Subsection (3) does not apply in relation to an amount that the company can deduct under a provision in Division 40.

Subdivision 320-H—Segregation of assets to discharge exempt life insurance policy liabilities

Guide to Subdivision 320-H

320-220 What this Subdivision is about

This Subdivision explains how a life insurance company can segregate assets to be used for the sole purpose of discharging its liabilities under life insurance policies where the income derived by the company from those policies is exempt from income tax.

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- 320-255 Consequences of transfer of assets to or from segregated exempt assets

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

Operative provisions

320-225 Segregation of assets for purpose of discharging exempt life insurance policy liabilities

- (1) A *life insurance company may, on or after 1 July 2000, segregate in accordance with subsections (2) and (3) any of its assets for the sole purpose of discharging its *exempt life insurance policy liabilities out of those assets.

Note: Section 320-225 of the *Income Tax (Transitional Provisions) Act 1997* provides that a life insurance company may transfer a part of an asset to its segregated exempt assets before 1 October 2000.

- (1A) Except as provided by section 320-225 of the *Income Tax (Transitional Provisions) Act 1997*, an asset is taken not to be included in the segregated assets under this Subdivision unless the whole of the asset is included among the segregated assets.
- (2) The assets segregated must, at the time of the segregation, be a representative sample of all the company's assets that support its *exempt life insurance policy liabilities immediately before the segregation.
- (3) The assets segregated must have, as at the time of the segregation, a total *transfer value that does not exceed the amount of the company's *exempt life insurance policy liabilities as at that time.
- (4) A *life insurance company that segregates assets as mentioned in subsections (1) to (3) at a time after 1 July 2000 but before 1 October 2000 is taken to have segregated those assets in accordance with those subsections on 1 July 2000.
- (5) If a segregation of assets is made in accordance with the above subsections, the company must use the *segregated exempt assets, and any other assets afterwards included among the segregated assets, only for the purpose of discharging its *exempt life insurance policy liabilities.

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

- (6) In this Subdivision:
- (a) a reference to the transfer of an asset to, or from, a *life insurance company's *segregated exempt assets:
 - (i) is a reference to the inclusion of an asset among the segregated exempt assets, or the exclusion of an asset from the segregated exempt assets, as the case may be; and
 - (ii) includes a reference to the transfer of money to, or from, those assets, as the case may be; and
 - (b) if an asset transferred to or from those assets is money, a reference to the *transfer value of the asset transferred is a reference to the amount of the money.

320-230 Valuations of segregated exempt assets and exempt life insurance policy liabilities for each valuation time

- (1) A *life insurance company that has segregated any of its assets in accordance with section 320-225 must cause the following amounts to be calculated within the period of 60 days starting immediately after each *valuation time:
- (a) the total *transfer value of the company's *segregated exempt assets as at the valuation time;
 - (b) the amount of the company's *exempt life insurance policy liabilities as at the valuation time.

Note: The time when a life insurance company joins or leaves a consolidated group is also a valuation time: see section 713-525.

- (2) These are the *valuation times*:
- (a) the end of the income year in which the segregation occurred;
 - (b) the end of each later income year.

Note 1: The time when a life insurance company joins or leaves a consolidated group is also a valuation time: see sections 713-525 and 713-585.

Note 2: A life insurance company that fails to comply with this section is liable to an administrative penalty: see section 288-70 in Schedule 1 to the *Taxation Administration Act 1953*.

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

320-235 Consequences of a valuation under section 320-230

Transfer from the segregated exempt assets

- (1) If:
- (a) the total *transfer value of the company's *segregated exempt assets as at a *valuation time;
exceeds
 - (b) the amount of the company's *exempt life insurance policy liabilities as at that time;
- the company must transfer, from the segregated exempt assets, assets of any kind having a total transfer value equal to the excess.
- (2) A transfer under subsection (1) must be made within the period of 30 days starting immediately after:
- (a) the day on which the total *transfer value and the *exempt life insurance policy liabilities (as at the *valuation time) were calculated; or
 - (b) if those amounts were calculated on different days—the later of those days.

The transfer, once made, is taken to have been made at the valuation time (whether or not the transfer is made within those 30 days).

Note: A life insurance company that fails to comply with subsections (1) and (2) is liable to an administrative penalty: see section 288-70 in Schedule 1 to the *Taxation Administration Act 1953*.

Transfer to the segregated exempt assets

- (3) If:
- (a) the total *transfer value of the company's *segregated exempt assets as at a *valuation time;
is less than
 - (b) the amount of the company's *exempt life insurance policy liabilities as at that time;
- the company can transfer, to the segregated exempt assets, assets of any kind having a total transfer value not exceeding the difference.

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

- (4) A transfer under subsection (3) is taken to have been made at the *valuation time if it is made within the period of 30 days starting immediately after:
- (a) the day on which the total *transfer value and the *exempt life insurance policy liabilities (as at the valuation time) were calculated; or
 - (b) if those amounts were calculated on different days—the later of those days.

320-240 Transfer of assets to segregated exempt assets otherwise than as a result of a valuation under section 320-230

- (1) If a *life insurance company determines, at a time other than a *valuation time, that:
- (a) the total *transfer value of the company's *segregated exempt assets as at that time;
is less than
 - (b) the company's *exempt life insurance policy liabilities as at that time;
- the company can transfer, to the segregated exempt assets, assets of any kind having a total transfer value not exceeding the difference.
- (2) A *life insurance company can at any time transfer an asset of any kind to its *segregated exempt assets in exchange for an amount of money equal to the *transfer value of the asset at the time of the transfer.
- (3) A *life insurance company can transfer, to its *segregated exempt assets in an income year, assets of any kind having a total *transfer value not exceeding the total amount of the *life insurance premiums paid to the company in that income year for the purchase of *exempt life insurance policies.
- (4) Except as provided by this section and subsections 320-195(1) and 320-235(3), a *life insurance company cannot transfer an asset to its *segregated exempt assets.

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

320-245 Exempt life insurance policy liabilities

- (1) The amount of the *exempt life insurance policy liabilities of a *life insurance company is to be worked out in accordance with subsection (2) in respect only of *life insurance policies issued by the company:
 - (a) that are *exempt life insurance policies; and
 - (b) the liabilities under which are to be discharged out of the company's *segregated exempt assets.
- (2) The amount of the **exempt life insurance policy liabilities** of a *life insurance company at a particular time is the sum of the following amounts at that time, as calculated by an *actuary:
 - (a) for policies providing for allocated benefits (other than *participating benefits or *discretionary benefits)—the *current termination values;
 - (b) for policies providing for participating benefits or discretionary benefits:
 - (i) the values of supporting assets, as defined in the *Valuation Standard; and
 - (ii) the *policy owner's retained profits;
 - (c) for other policies—the policy liabilities, as defined in the Valuation Standard.
- (3) An *exempt life insurance policy **provides for allocated benefits** if:
 - (a) the policy:
 - (i) is held by the trustee of a *complying superannuation fund; and
 - (iii) provides for an *allocated pension; or
 - (b) the policy:
 - (i) is held by a *life insurance company other than the life insurance company that issued the policy; and
 - (ii) is a *segregated exempt asset of the life insurance company that issued the policy; and
 - (iii) provides for an allocated pension; or
 - (c) the policy provides for an *allocated annuity.

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

320-246 Exempt life insurance policy

- (1) An *exempt life insurance policy* is a *life insurance policy (other than an *RSA):
- (a) that is held by the trustee of a *complying superannuation fund and provides solely for the discharge of the fund's liabilities (contingent or not) in respect of *superannuation income stream benefits that are currently payable by the fund; or
 - (b) that is held by the trustee of a *pooled superannuation trust, where:
 - (i) the policy provides solely for the discharge of the liabilities (contingent or not) in respect of *superannuation income stream benefits that are currently payable by complying superannuation funds; and
 - (ii) the funds are unit holders of the trust; or
 - (c) that is held by another *life insurance company and is a *segregated exempt asset of that other company; or
 - (d) that is held by the trustee of a *constitutionally protected fund; or
 - (e) that provides for an *immediate annuity that:
 - (i) was purchased on or before 9 December 1987; or
 - (ii) is a *superannuation income stream; or
 - (iii) satisfies whichever of the conditions in subsection (3) are applicable; or
 - (f) that provides for either or both of the following:
 - (i) a *personal injury annuity, payments of which are exempt from income tax under Division 54;
 - (ii) a *personal injury lump sum, payment of which is exempt from income tax under Division 54.

Note: A part of a life insurance policy may be taken to be an exempt life insurance policy under section 320-247.

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

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(3) The following table sets out the conditions mentioned in subparagraph (1)(e)(iii):

Annuity conditions		
Item	Column 1 The condition in column 2 applies in the following circumstances ...	Column 2 The condition is that ...
1	there is a residual capital value (within the meaning of section 27H of the <i>Income Tax Assessment Act 1936</i>) in relation to the *immediate annuity.	the contract under which the annuity is payable does not permit the residual capital value to exceed the annuity's purchase price (within the meaning of that section).
2	the contract under which the *immediate annuity is payable provides that the annuity is payable until the end of a term of years certain.	the contract does not permit the total of the amounts paid for the annuity's commutation (whether in whole or in part) to exceed the annuity's purchase price (within the meaning of that section), reduced by the sum of the deductible amounts excluded from assessable income under that section.
3	the contract under which the *immediate annuity is payable: (a) provides that the annuity is payable until the later of: (i) the death of a person (or the death of the last of 2 or more persons to die); or (ii) the end of a term of years certain; and (b) permits one or more amounts (<i>commutation payments</i>) to become payable before the end of the term of years certain for the annuity's commutation (whether in whole or in part).	the contract does not permit the total of the commutation payments that may become payable before the end of the term of years certain to exceed the annuity's purchase price (within the meaning of that section), reduced by the sum of the deductible amounts excluded from assessable income under that section.

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

Annuity conditions

Item	Column 1 The condition in column 2 applies in the following circumstances ...	Column 2 The condition is that ...
4	all circumstances.	there is no unreasonable deferral of the payments of the *immediate annuity, having regard to: <ul style="list-style-type: none"> (a) to the extent to which the payments depend on the returns of the investment of the assets of the *life insurance company paying the annuity—when the payments are made and when those returns are *derived; and (b) to the extent to which the payments do not depend on those returns—the relative sizes of the annual totals of the payments from year to year; and (c) any other relevant factors.

320-247 Policy split into an exempt life insurance policy and another life insurance policy

When is a part of a policy taken to be an exempt life insurance policy?

- (1) A part of a *life insurance policy (the **original policy**) is taken to be an *exempt life insurance policy for the purposes of this Act if:
 - (a) the part provides solely for the discharge of the liabilities (contingent or not) in respect of *superannuation income stream benefits that are currently payable by a *complying superannuation fund; and
 - (b) the trustee of the fund holds the original policy.

- (2) A part of a *life insurance policy (the **original policy**) is taken to be an *exempt life insurance policy for the purposes of this Act if:
 - (a) the part provides solely for the discharge of liabilities that are attributable to the liabilities (contingent or not) in respect of

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

- *superannuation income stream benefits that are currently payable by *complying superannuation funds; and
- (b) the trustee of a *pooled superannuation trust holds the original policy; and
- (c) the funds are unit holders of the trust.

What happens to the rest of the policy?

- (3) If a part of a policy (the **original policy**) is taken to be an *exempt life insurance policy under subsection (1) or (2), the rest of the original policy is taken to be another *life insurance policy for the purposes of this Act.

320-250 Transfer of assets and payment of amounts from segregated exempt assets otherwise than as a result of a valuation under section 320-230

- (1) A *life insurance company can at any time transfer an asset from its *segregated exempt assets in exchange for an amount of money equal to the *transfer value of the asset at the time of the transfer.
- (2) If a *life insurance company:
 - (a) imposes any fees or charges in respect of *segregated exempt assets; or
 - (b) imposes any fees or charges in respect of *exempt life insurance policies where the liabilities under the policies are to be discharged out of the company's segregated exempt assets; or
 - (c) determines, at a time other than a *valuation time, that the total *transfer value of the company's segregated exempt assets as at that time exceeds the amount of the company's *exempt life insurance policy liabilities as at that time;the company must, when the fees or charges are imposed or the excess is determined, as the case may be, transfer from the segregated exempt assets, assets having a total transfer value equal to the fees, charges or excess, as the case may be.

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

- (3) If:
- (a) any liabilities arise for the discharge of which a *life insurance company has *segregated exempt assets; or
 - (b) any expenses are incurred by a life insurance company directly in respect of segregated exempt assets in relation to a period during which the assets are segregated exempt assets;
- the life insurance company must pay from the segregated exempt assets any amounts required to discharge the liabilities or amounts equal to the expenses, as the case may be.

320-255 Consequences of transfer of assets to or from segregated exempt assets

- (1) This section applies if:
- (a) an asset (other than money) is transferred from the company's *segregated exempt assets under subsection 320-235(1) or 320-250(1) or (2); or
 - (b) an asset (other than money) is transferred to the company's *segregated exempt assets under subsection 320-235(3) or section 320-240.
- (2) In determining:
- (a) for the purposes of this Act (other than Division 40 and Parts 3-1 and 3-3) whether an amount is included in, or can be deducted from, the assessable income of a *life insurance company in respect of the transfer of the asset; or
 - (b) for the purposes of Parts 3-1 and 3-3:
 - (i) whether the company made a *capital gain in respect of the transfer; or
 - (ii) whether the company made a *capital loss in respect of the transfer;
- the company is taken:
- (c) to have sold, immediately before the transfer, the asset transferred for a consideration equal to its *market value; and
 - (d) to have purchased the asset again at the time of the transfer for a consideration equal to its market value.

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

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- (3) If, apart from this subsection, section 320-60 and subsection 320-105(1), a *life insurance company could deduct an amount or apply a *capital loss as a result of the transfer of an asset to its *segregated exempt assets, the deduction or capital loss is disregarded until:
- (a) the asset ceases to exist; or
 - (b) the asset, or a greater than 50% interest in it, is *acquired by an entity other than an entity that is an *associate of the company, immediately after the acquisition.
- (3A) Subsection (3) does not apply in relation to an amount that the company can deduct under a provision in Division 40.
- (4) A *life insurance company cannot deduct an amount or apply a *capital loss as a result of the transfer of an asset from its *segregated exempt assets.
- (6) If a *depreciating asset is transferred to the *segregated exempt assets of a *life insurance company, then, in determining for the purposes of Division 40 whether an amount is included in, or can be deducted from, the company's assessable income as a result of the transfer, the company is taken:
- (a) to have, at the time immediately before the transfer, sold the asset for a consideration equal to its *market value at that time; and
 - (b) to have, at the time of the transfer, purchased the asset again for a consideration equal to its market value at that time.
- (7) If a *depreciating asset that has been included in the *segregated exempt assets of a *life insurance company since the asset was acquired by the company or the initial segregation of those assets took place is transferred from those assets, then the company must assume for the purposes of Division 40 that:
- (a) if the asset's *market value at the time of the transfer is greater than its *adjustable value at that time, the company:
 - (i) had, at the time immediately before the transfer, sold the asset for a consideration equal to its adjustable value at that time; and

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

- (ii) had, at the time of the transfer, purchased the asset again for a consideration equal to its adjustable value at that time; or
 - (b) if the asset's market value at the time of the transfer is equal to or less than its adjustable value at that time, the company:
 - (i) had, at the time immediately before the transfer, sold the asset for a consideration equal to its market value at that time; and
 - (ii) had, at the time of the transfer, purchased the asset again for a consideration equal to its market value at that time.
- (8) If a *depreciating asset that was previously transferred to the *segregated exempt assets of a *life insurance company is transferred from those assets, then, the company must assume, for the purposes of Division 40 that:
- (a) if the asset's *market value at the time of its transfer from those assets is greater than its market value at the time when it was transferred to those assets, the company:
 - (i) had, at the time immediately before the transfer from those assets, sold the asset for a consideration equal to its market value at the time when it was transferred to those assets; and
 - (ii) had, at the time of the transfer from those assets, purchased the asset again for a consideration equal to its market value at the time when it was transferred to those assets; or
 - (b) if the asset's market value at the time of its transfer from those assets is equal to or less than its market value at the time when it was transferred to those assets, the company:
 - (i) had, at the time immediately before the transfer from those assets, sold the asset for a consideration equal to its market value at that time; and
 - (ii) had, at the time of the transfer from those assets, purchased the asset again for a consideration equal to its market value at that time.

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

Section 320-300

- (9) Division 40 has effect in relation to an asset covered by subsection (6), (7) or (8) as if:
- (a) in relation to the sale of the asset that is taken to have occurred under that subsection:
 - (i) the sale were a *balancing adjustment event; and
 - (ii) the *termination value of the asset for that event were equal to the consideration for the sale under that subsection; and
 - (iii) the company had stopped *holding the asset at the time of the sale; and
 - (b) in relation to the purchase of the asset that is taken to have occurred under that subsection:
 - (i) the company had only begun to hold the asset after the purchase; and
 - (ii) the first element of the asset's *cost were equal to the consideration for the purchase under that subsection; and
 - (iii) the company had acquired the asset from an *associate of the company.

- Note: This means that, amongst other things, as a result of the transfer:
- the asset's cost for the purposes of working out a deduction under Division 40 is reset; and
 - the company's assessable income might be adjusted under section 40-285 if the transfer is a transfer to the company's segregated exempt assets.

Subdivision 320-I—Transfers of business

Guide to Subdivision 320-I

320-300 What this Subdivision is about

This Subdivision contains special rules that apply when all or part of the life insurance business of a life insurance company is transferred to another life insurance company under the *Life Insurance Act 1995* or the *Financial Sector (Business Transfer and Group Restructure) Act 1999*.

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

Table of sections

Operative provisions

320-305	When this Subdivision applies
320-310	Special deductions and amounts of assessable income
320-315	Complying superannuation/FHSA asset pool and segregated exempt assets
320-320	Certain amounts treated as life insurance premiums
320-325	Friendly societies
320-330	Immediate annuities
320-335	Parts of assets treated as separate assets
320-340	Continuous disability policies
320-345	Exemption of management fees

Operative provisions

320-305 When this Subdivision applies

The rules in this Subdivision have effect if all or part of the *life insurance business of a *life insurance company (the **originating company**) is transferred to another life insurance company (the **recipient company**):

- (a) in accordance with a scheme confirmed by the Federal Court of Australia under Part 9 of the *Life Insurance Act 1995*; or
- (b) under the *Financial Sector (Business Transfer and Group Restructure) Act 1999*.

320-310 Special deductions and amounts of assessable income

Deduction for originating company

- (1) If the originating company pays an amount to the recipient company in respect of liabilities under the *net risk components of *life insurance policies transferred to the recipient company, the originating company can deduct that amount for the income year in which the transfer took place.

Amount included in originating company's assessable income

- (2) If the originating company receives an amount from the recipient company in respect of liabilities under the *net risk components of

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

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*life insurance policies transferred to the recipient company, that amount is included in the assessable income of the originating company for the income year in which the transfer took place.

Deduction for recipient company

- (3) If the recipient company pays an amount to the originating company in respect of liabilities under the *net risk components of *life insurance policies transferred to the recipient company, the recipient company can deduct that amount for the income year in which the transfer took place.

320-315 Complying superannuation/FHSA asset pool and segregated exempt assets

- (1) Assets that were *complying superannuation/FHSA assets of the originating company just before the transfer took place and that are transferred to the recipient company become complying superannuation/FHSA assets of the recipient company.
- (2) Assets that were *segregated exempt assets of the originating company just before the transfer took place and that are transferred to the recipient company become segregated exempt assets of the recipient company.

320-320 Certain amounts treated as life insurance premiums

- (1) This Division applies to the recipient company as if the amount or value of any consideration received by the recipient company in respect of liabilities under *life insurance policies transferred to the company were *life insurance premiums paid to the company at the time the transfer took place.
- (2) However, subsection (1) does not apply to consideration:
 - (a) that relates to liabilities that, just before the transfer took place, were discharged out of the originating company's *complying superannuation/FHSA assets or *segregated exempt assets; or
 - (b) that relates to the part of a *life insurance policy that has been reinsured under a *contract of reinsurance (except

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

consideration that relates to a risk, or part of a risk, in relation to which subsection 148(1) of the *Income Tax Assessment Act 1936* applies).

320-325 Friendly societies

- (1) This section has effect if the originating company and the recipient company were *friendly societies just before the transfer took place.
- (2) For the purposes of paragraph 320-37(1)(d), an *income bond, *funeral policy, *sickness policy or *scholarship plan issued by the recipient company in substitution for an income bond, funeral policy, sickness policy or scholarship plan (the **original policy**) transferred from the originating company is taken to have been issued at the time the original policy was issued if the terms of the substituted policy are not materially different from those of the original policy.

320-330 Immediate annuities

For the purposes of section 320-246, a *life insurance policy that provides for an *immediate annuity issued by the recipient company in substitution for a policy (also the **original policy**) transferred from the originating company is taken to have been issued at the time the original policy was issued if the terms of the substituted policy are not materially different from those of the original policy.

320-335 Parts of assets treated as separate assets

If:

- (a) an asset is transferred to the recipient company from the originating company; and
- (b) parts of that asset were, under section 320-170 or 320-225 of the *Income Tax (Transitional Provisions) Act 1997*, treated as separate assets of the originating company just before the transfer took place;

those parts of that asset are also treated as separate assets of the recipient company.

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

320-340 Continuous disability policies

- (1) This section has effect if:
 - (a) the originating company and the recipient company were members of the same *wholly-owned group just before the transfer took place; and
 - (b) all of the liabilities under the *continuous disability policies of the originating company are transferred to the recipient company; and
 - (c) the transfer took place before the income year in which 1 July 2005 occurs; and
 - (d) an amount (the *section 320-30 amount*) would have been included in the assessable income of the originating company under section 320-30 for the income year in which the transfer took place if the transfer had not taken place.
- (2) Section 320-30 does not apply to the originating company for the income year in which the transfer took place or a later income year.
- (3) The amount worked out using this formula is included in the assessable income of the originating company for the income year in which the transfer took place:

$$\text{Section 320-30 amount} \times \frac{\text{Continuous disability policy days}}{365}$$

where:

continuous disability policy days means the number of days during the income year in which the transfer took place that the originating company held *continuous disability policies.

- (4) The section 320-30 amount, reduced by the amount included in the assessable income of the originating company under subsection (3), is included in the assessable income of the recipient company for the income year in which the transfer took place.
- (5) For each income year after the year in which the transfer took place and that is a relevant income year for the purposes of section 320-30, the recipient company's assessable income includes the amount that would have been included in the

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

originating company's assessable income under that section for that year if the transfer had not taken place.

320-345 Exemption of management fees

- (1) This section has effect if:
 - (a) the originating company and the recipient company were members of the same *wholly-owned group just before the transfer took place; and
 - (b) a *life insurance policy (also the *original policy*):
 - (i) is constituted by a contract made with the originating company before 1 July 2000; and
 - (ii) is transferred to the recipient company before 1 July 2005.
- (2) For the purposes of section 320-40, a *life insurance policy issued by the recipient company in substitution for the original policy is taken to have been constituted by a contract made with the recipient company before 1 July 2000 if the terms of the substituted policy are not materially different from those of the original policy.
- (3) Subsection 320-40(4) applies to so much of the sum of the amounts applicable in respect of the substituted policy under subsections 320-40(5), (6) and (7) as does not exceed any fees or charges made by the recipient company that the originating company would have been entitled to make under the terms of the original policy as applying just before 1 July 2000.

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

Division 321—General insurance companies and companies that self-insure in respect of workers' compensation liabilities

Table of Subdivisions

321-A	Provision for, and payment of, claims by general insurance companies
321-B	Premium income of general insurance companies
321-C	Companies that self-insure in respect of workers' compensation liabilities

Subdivision 321-A—Provision for, and payment of, claims by general insurance companies

Table of sections

321-10	Assessable income to include amount for reduction in outstanding claims liability
321-15	Deduction for increase in outstanding claims liability
321-20	How value of outstanding claims liability is worked out
321-25	Deduction for claims paid during current year

321-10 Assessable income to include amount for reduction in outstanding claims liability

A *general insurance company's assessable income for the *current year includes an amount equal to the amount (if any) by which:

- (a) the value, at the end of the previous income year, of the company's liability for *outstanding claims under *general insurance policies; exceeds
- (b) the value, at the end of the current year, of that liability.

Note: Those values are worked out under section 321-20.

321-15 Deduction for increase in outstanding claims liability

A *general insurance company can deduct for the *current year an amount equal to the amount (if any) by which:

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

- (a) the value, at the end of the current year, of the company's liability for *outstanding claims under *general insurance policies; exceeds
- (b) the value, at the end of the previous income year, of that liability.

Note: Those values are worked out under section 321-20.

321-20 How value of outstanding claims liability is worked out

Work out the value, at the end of an income year, of a *general insurance company's liability for *outstanding claims under *general insurance policies in this way:

Method statement

Step 1. Add up the amounts that, at the end of the income year, the company determines, based on proper and reasonable estimates, to be appropriate to set aside and invest in order to meet:

- (a) liabilities for outstanding claims under those policies; and
- (b) direct settlement costs associated with those outstanding claims.

Step 2. Reduce the step 1 amount by so much of it as the company expects at the end of the income year to recover:

- (a) under a contract of reinsurance; or
- (b) in any other way;

other than under a contract of reinsurance to which subsection 148(1) of the *Income Tax Assessment Act 1936* (about reinsurance with non-residents) applies.

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

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Part 3-35 Insurance business

Division 321 General insurance companies and companies that self-insure in respect of workers' compensation liabilities

Section 321-25

321-25 Deduction for claims paid during current year

A *general insurance company can deduct for the *current year amounts paid during that year in respect of claims under *general insurance policies.

Subdivision 321-B—Premium income of general insurance companies

Table of sections

321-45	Assessable income to include gross premiums
321-50	Assessable income to include amount for reduction in value of unearned premium reserve
321-55	Deduction for increase in value of unearned premium reserve
321-60	How value of unearned premium reserve is worked out

321-45 Assessable income to include gross premiums

A *general insurance company's assessable income for the *current year includes the gross premiums received or receivable by the company during the current year in respect of *general insurance policies.

321-50 Assessable income to include amount for reduction in value of unearned premium reserve

A *general insurance company's assessable income for the *current year includes an amount equal to the amount (if any) by which:

- (a) the value, at the end of the previous income year, of the company's unearned premium reserve; exceeds
- (b) the value, at the end of the current year, of that reserve.

Note: Those values are worked out under section 321-60.

321-55 Deduction for increase in value of unearned premium reserve

A *general insurance company can deduct for the *current year an amount equal to the amount (if any) by which:

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

- (a) the value, at the end of the current year, of the company's unearned premium reserve; exceeds
- (b) the value, at the end of the previous income year, of that reserve.

Note: Those values are worked out under section 321-60.

321-60 How value of unearned premium reserve is worked out

Work out the value, at the end of an income year, of a *general insurance company's unearned premium reserve in this way:

Method statement

- Step 1. Add up the gross premiums received or receivable by the company, in relation to *general insurance policies issued in the course of carrying on *insurance business, in that or an earlier income year.
- Step 2. Reduce the step 1 amount by so much of the costs incurred by the company in connection with the issue of those policies as relate to the gross premiums, including, for example, costs such as:
 - (a) commission and brokerage fees; and
 - (b) administration costs of processing insurance proposals and renewals; and
 - (c) administration costs of collecting premiums; and
 - (d) selling and underwriting costs; and
 - (e) fire brigade charges; and
 - (f) stamp duty; and
 - (g) other charges, levies and contributions imposed by governments or governmental authorities that directly relate to general insurance policies.

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

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Division 321 General insurance companies and companies that self-insure in respect of workers' compensation liabilities

Section 321-60

Step 3. Reduce the step 2 amount by any premiums (the *relevant reinsurance premiums*) paid or payable by the company, in that or an earlier income year, for the reinsurance of risks covered by those policies, except:

(a) reinsurance premiums that the company cannot deduct because of subsection 148(1) of the *Income Tax Assessment Act 1936* (about reinsurance with non-residents); and

(b) reinsurance premiums that were paid or payable in respect of a particular class of *insurance business where, under the contract of reinsurance, the reinsurer agreed to pay, in respect of a loss incurred by the company that is covered by the relevant policy, some or all of the excess over an agreed amount.

Step 4. Add to the step 3 amount any reinsurance commissions received or receivable by the company that relate to the relevant reinsurance premiums.

Step 5. The value, at the end of an income year, of the unearned premium reserve is so much of the step 4 amount as the company determines, based on proper and reasonable estimates, to relate to risks covered by the policies in respect of later income years.

Subdivision 321-C—Companies that self-insure in respect of workers' compensation liabilities

Table of sections

321-80	Assessable income to include amount for reduction in outstanding claims liability
321-85	Deduction for outstanding claims liability
321-90	How value of outstanding claims liability is worked out
321-95	Deductions for claims paid during current year

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

321-80 Assessable income to include amount for reduction in outstanding claims liability

The assessable income for the *current year of a company that is not required by law to insure, and does not insure, against liability for workers' compensation claims includes an amount equal to the amount (if any) by which:

- (a) the value, at the end of the previous income year, of the company's liability for such claims that:
 - (i) arose from events that occurred in that or an earlier income year; and
 - (ii) were not paid in full before the end of the previous income year; exceeds
- (b) the value, at the end of the current year, of that liability.

Note: Those values are worked out under section 321-90.

321-85 Deduction for outstanding claims liability

A company that is not required by law to insure, and does not insure, against liability for workers' compensation claims can deduct for the *current year an amount equal to the amount (if any) by which:

- (a) the value, at the end of the current year, of the company's liability for such claims that:
 - (i) arose from events that occurred in the current or an earlier income year; and
 - (ii) were not paid in full before the end of the current year; exceeds
- (b) the value, at the end of the previous income year, of that liability.

Note: Those values are worked out under section 321-90.

321-90 How value of outstanding claims liability is worked out

Work out the value, at the end of an income year, of a company's liability for claims covered by section 321-80 or 321-85 by adding up the amounts that, at the end of that income year, the company

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

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Section 321-95

determines, based on proper and reasonable estimates, to be appropriate to set aside and invest in order to meet:

- (a) liabilities for those claims; and
- (b) direct settlement costs associated with those claims.

321-95 Deductions for claims paid during current year

A company that is not required by law to insure, and does not insure, against liability for workers' compensation claims can deduct for the *current year amounts paid during that year in respect of such claims.

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

Division 322—Assistance for policyholders with insolvent general insurers

Guide to Division 322

322-1 What this Division is about

This Division sets out special measures to assist in the rescue package provided in response to the collapse of the HIH group and deals with the tax treatment of entitlements under Part VC (Financial claims scheme for policyholders with insolvent general insurers) of the *Insurance Act 1973*.

Table of sections

322-5	Rescue payments treated as insurance payments by HIH
322-10	HIH Trust exempt from tax
322-15	Certain capital gains and capital losses disregarded

Subdivision 322-A—HIH rescue package

322-5 Rescue payments treated as insurance payments by HIH

- (1) This Act applies to you as if a payment you receive from the Commonwealth, the *HIH Trust or a prescribed entity for assignment of your rights under or in relation to a *general insurance policy you held with an *HIH company:
 - (a) had been made by the HIH company; and
 - (b) had been made under the terms and conditions of the general insurance policy you held with the HIH company.
- (2) The **HIH Trust** is the HIH Claims Support Trust (established on 6 July 2001).
- (3) An **HIH company** is:
 - (a) CIC Insurance Limited; or
 - (b) FAI General Insurance Company Limited; or
 - (c) FAI Reinsurances Pty Limited; or
 - (d) FAI Traders Insurance Company Pty Limited; or

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

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- (e) HIH Casualty and General Insurance Limited; or
- (f) HIH Underwriting and Insurance (Australia) Pty Limited; or
- (g) World Marine and General Insurances Pty Limited; or
- (h) another related company specified in writing by the Commissioner.

322-10 HIH Trust exempt from tax

The total *ordinary income and *statutory income of:

- (a) the HIH Trust; and
 - (b) an entity prescribed for the purposes of this Division;
- is exempt from income tax.

322-15 Certain capital gains and capital losses disregarded

A *capital gain or *capital loss you make because you assign a right under or in relation to a *general insurance policy you held with an *HIH company to the Commonwealth, the trustee of the *HIH Trust or a prescribed entity is disregarded.

Subdivision 322-B—Tax treatment of entitlements under financial claims scheme

Guide to Subdivision 322-B

322-20 What this Subdivision is about

This Act applies to a payment of an entitlement under Part VC (Financial claims scheme for policyholders with insolvent general insurers) of the *Insurance Act 1973* as if the payment were made by the insurer under the insurance policy concerned.

Disregard a capital gain or loss from:

- (a) the disposal to APRA under that Part of rights against the insurer under an insurance policy; or
- (b) the payment of an entitlement under that Part.

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

Table of sections

Operative provisions

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| 322-25 | Payment of entitlement under financial claims scheme treated as payment from insurer |
| 322-30 | Disposal of rights against insurer to APRA and meeting of financial claims scheme entitlement have no CGT effects |

Operative provisions

322-25 Payment of entitlement under financial claims scheme treated as payment from insurer

- (1) This Act applies to you as if an amount paid to you, or applied for your benefit, to meet your entitlement under Part VC (Financial claims scheme for policyholders with insolvent general insurers) of the *Insurance Act 1973* relating to a *general insurance policy issued by a *general insurance company had been paid to you by the company under the terms and conditions of the policy.
- (2) To avoid doubt, subsection (1) does not affect the operation of Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: Division 21 in Schedule 1 to the *Taxation Administration Act 1953* contains special provisions about how Part 2-5 in that Schedule operates in relation to the meeting of entitlements under Part VC of the *Insurance Act 1973*.

322-30 Disposal of rights against insurer to APRA and meeting of financial claims scheme entitlement have no CGT effects

Disregard a *capital gain or *capital loss you make because:

- (a) under section 62ZZL of the *Insurance Act 1973*, you *dispose of a *CGT asset consisting of your rights against a *general insurance company to *APRA; or
- (b) your entitlement under Division 3 of Part VC of that Act is met.

Note 1: Section 62ZZL of the *Insurance Act 1973* causes you to cease to be the owner, and APRA to become the owner, of rights against a general insurance company relating to a general insurance policy when your entitlement arises under Part VC of that Act in relation to the policy.

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

Chapter 3 Specialist liability rules

Part 3-35 Insurance business

Division 322 Assistance for policyholders with insolvent general insurers

Section 322-30

Note 2: Division 3 of Part VC of the *Insurance Act 1973* entitles persons with valid claims based on general insurance policies issued by certain general insurance companies that have since become insolvent to be paid the amount of those claims by APRA.

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

Part 3-45—Rules for particular industries and occupations

Division 328—Small business entities

Table of Subdivisions

- 328-B Objects of this Division
- 328-C What is a small business entity
- 328-D Capital allowances for small business entities
- 328-E Trading stock for small business entities

Guide to Division 328

328-5 What this Division is about

This Division explains the meaning of the terms *small business entity*, *annual turnover*, *aggregated turnover* and related concepts (Subdivision 328-C).

If you are a small business entity, this Division allows you to change the way the income tax law applies to you in these ways:

- (a) you can choose to put your depreciating assets into a general pool and treat the pool as a single asset (Subdivision 328-D);
- (b) you can choose not to account for annual changes in trading stock value that are not more than \$5,000 (Subdivision 328-E).

In usual circumstances, these changes will simplify the working out of your taxable income, and so reduce your compliance costs.

Table of sections

- 328-10 Concessions available to small business entities

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

328-10 Concessions available to small business entities

- (1) If you are a small business entity for an income year, you can choose to take advantage of the concessions set out in the following table. Some of the concessions have additional, specific conditions that must also be satisfied.

Item	Concession	Provision
1	CGT 15-year asset exemption	Subdivision 152-B of this Act
2	CGT 50% active asset reduction	Subdivision 152-C of this Act
3	CGT retirement exemption	Subdivision 152-D of this Act
4	CGT roll-over	Subdivision 152-E of this Act
5	Simpler depreciation rules	Subdivision 328-D of this Act
6	Simplified trading stock rules	Subdivision 328-E of this Act
7	Deducting certain prepaid business expenses immediately	Sections 82KZM and 82KZMD of the <i>Income Tax Assessment Act 1936</i>
8	Accounting for GST on a cash basis	Section 29-40 of the GST Act
9	Annual apportionment of input tax credits for acquisitions and importations that are partly creditable	Section 131-5 of the GST Act
10	Paying GST by quarterly instalments	Section 162-5 of the GST Act
11	FBT car parking exemption	Section 58GA of the <i>Fringe Benefits Tax Assessment Act 1986</i>
12	PAYG instalments based on GDP-adjusted notional tax	Section 45-130 in Schedule 1 to the <i>Taxation Administration</i>

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

Item	Concession	Provision
		<i>Act 1953</i>

- (2) Also, if you are a small business entity for an income year, the standard 2-year period for amending your assessment applies to you (section 170 of the *Income Tax Assessment Act 1936*).

Subdivision 328-B—Objects of this Division

328-50 Objects of this Division

- (1) The main object of this Division is to offer eligible small businesses the choice of a new platform to deal with their tax. The platform is designed to benefit those businesses in one or more of these ways:
- reducing their tax;
 - providing simpler rules for determining their income and deductions;
 - providing simpler capital allowances and trading stock requirements;
 - reducing their compliance costs.
- (2) This Division also provides rules that are intended to prevent other businesses from taking advantage of those benefits.

Subdivision 328-C—What is a small business entity

Guide to Subdivision 328-C

328-105 What this Subdivision is about

This Subdivision explains the meaning of the terms *small business entity*, *annual turnover*, *aggregated turnover* and related concepts.

Table of sections

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

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Operative provisions

- 328-110 Meaning of *small business entity*
- 328-115 Meaning of *aggregated turnover*
- 328-120 Meaning of *annual turnover*
- 328-125 Meaning of *connected with* an entity
- 328-130 Meaning of *affiliate*

Operative provisions

328-110 Meaning of *small business entity*

General rule: based on aggregated turnover worked out as at the beginning of the current income year

- (1) You are a *small business entity* for an income year (the *current year*) if:
 - (a) you carry on a *business in the current year; and
 - (b) one or both of the following applies:
 - (i) you carried on a business in the income year (the *previous year*) before the current year and your *aggregated turnover for the previous year was less than \$2 million;
 - (ii) your aggregated turnover for the current year is likely to be less than \$2 million.
- Note 1: If you are a small business entity for an income year, you may apply to the Commissioner under section 61C of the *Excise Act 1901* for permission to deliver goods for home consumption (without entering them for that purpose) in respect of a calendar month.
- Note 2: If you are a small business entity for an income year, you may apply under section 69 of the *Customs Act 1901* for permission to deliver like customable goods or excise-equivalent goods into home consumption (without entering them for that purpose) in respect of a calendar month.
- (2) You work out your *aggregated turnover for the current year for the purposes of subparagraph (1)(b)(ii):
 - (a) as at the first day of the current year; or
 - (b) if you start to carry on a *business during the current year—as at the day you start to carry on the business.

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

Note: Subsection 328-120(5) provides for how to work out your annual turnover (which is relevant to working out your aggregated turnover) if you do not carry on a business for the whole of an income year.

Exception: aggregated turnover for 2 previous income years was \$2 million or more

- (3) However, you are not a **small business entity** for an income year (the **current year**) because of subparagraph (1)(b)(ii) if:
- (a) you carried on a *business in each of the 2 income years before the current year; and
 - (b) your *aggregated turnover for each of those income years was \$2 million or more.

Note: Section 328-110 of the *Income Tax (Transitional Provisions) Act 1997* affects the operation of this subsection in relation to the 2007-08 and 2008-09 income years.

Additional rule: based on aggregated turnover worked out as at the end of the current income year

- (4) You are also a **small business entity** for an income year (the **current year**) if:
- (a) you carry on a *business in the current year; and
 - (b) your *aggregated turnover for the current year, worked out as at the end of that year, is less than \$2 million.

Note: If you are a small business entity only because of subsection (4), you cannot choose any of the following concessions:

- (a) paying PAYG instalments based on GDP-adjusted notional tax: see section 45-130 in Schedule 1 to the *Taxation Administration Act 1953*;
- (b) accounting for GST on a cash basis: see section 29-40 of the GST Act;
- (c) making an annual apportionment of input tax credits for acquisitions and importations that are partly creditable: see section 131-5 of the GST Act;
- (d) paying GST by quarterly instalments: see section 162-5 of the GST Act;
- (e) applying for permission under the *Excise Act 1901* to deliver goods for home consumption (without entering them for that purpose) in respect of a calendar month: see section 61C of that Act;
- (f) applying for permission under the *Customs Act 1901* to deliver like customable goods or excise-equivalent goods for home

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

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consumption (without entering them for that purpose) in respect of a calendar month: see section 69 of that Act.

Winding up a business previously carried on

- (5) This Subdivision applies to you as if you carried on a *business in an income year if:
- (a) in that year you were winding up a business you previously carried on; and
 - (b) you were a *small business entity for the income year in which you stopped carrying on that business.

Note 1: Subsection 328-120(5) provides for how to work out your annual turnover (which is relevant to working out your aggregated turnover) if you do not carry on a business for the whole of an income year.

Note 2: A special rule applies if you were an STS taxpayer under this Division (as in force immediately before the commencement of this section) in the income year in which you stopped carrying on the business: see section 328-111 of the *Income Tax (Transitional Provisions) Act 1997*.

Partners in a partnership

- (6) A person who is a partner in a partnership in an income year is not, in his or her capacity as a partner, a **small business entity** for the income year.

328-115 Meaning of aggregated turnover

- (1) Your **aggregated turnover** for an income year is the sum of the relevant annual turnovers (see subsection (2)) excluding any amounts covered by subsection (3).

Note: For small business CGT relief purposes, additional entities may be treated as being connected with you or your affiliate under sections 152-48 and 152-78.

- (2) The **relevant annual turnovers** are:
- (a) your *annual turnover for the income year; and
 - (b) the annual turnover for the income year of any entity (a **relevant entity**) that is *connected with you at any time during the income year; and

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

- (c) the annual turnover for the income year of any entity (a **relevant entity**) that is an *affiliate of yours at any time during the income year.
- (3) Your **aggregated turnover** for an income year does not include the following amounts:
 - (a) amounts *derived in the income year by you or a relevant entity from dealings between you and the relevant entity while the relevant entity is *connected with you or is your *affiliate;
 - (b) amounts derived in the income year by a relevant entity from dealings between the relevant entity and another relevant entity while each relevant entity is connected with you or is your affiliate;
 - (c) amounts derived in the income year by a relevant entity while the relevant entity is not connected with you and is not your affiliate.

328-120 Meaning of *annual turnover*

General rule

- (1) An entity's **annual turnover** for an income year is the total *ordinary income that the entity *derives in the income year in the ordinary course of carrying on a *business.

Exclusion of amounts relating to GST

- (2) In working out an entity's *annual turnover for an income year, do not include any amount that is *non-assessable non-exempt income under section 17-5 (which is about GST).

Exclusion of amounts derived from sales of retail fuel

- (3) In working out an entity's *annual turnover for an income year, do not include any amounts of *ordinary income the entity *derives from sales of *retail fuel.

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

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Amounts derived from dealings with associates

- (4) In working out an entity's *annual turnover for an income year, the amount of *ordinary income the entity *derives from any dealing with an *associate of the entity is the amount of ordinary income the entity would derive from the dealing if it were at *arm's length.

Note: Amounts derived in an income year from any dealings between an entity and an associate that is a relevant entity within the meaning of section 328-115 are not included in the entity's aggregated turnover for that year: see subsection 328-115(3).

Business carried on for part of income year only

- (5) If an entity does not carry on a *business for the whole of an income year, the entity's *annual turnover for the income year must be worked out using a reasonable estimate of what the entity's annual turnover for the income year would be if the entity carried on a business for the whole of the income year.

Regulations may provide for different calculation of annual turnover

- (6) The regulations may provide that an entity's *annual turnover for an income year is to be calculated in a different way, but only so that it would be less than the amount worked out under this section.

328-125 Meaning of *connected with* an entity

- (1) An entity is ***connected with*** another entity if:
- (a) either entity controls the other entity in a way described in this section; or
 - (b) both entities are controlled in a way described in this section by the same third entity.

Direct control of an entity other than a discretionary trust

- (2) An entity (the ***first entity***) controls another entity if the first entity, its *affiliates, or the first entity together with its affiliates:
- (a) except if the other entity is a discretionary trust—beneficially own, or have the right to acquire the beneficial ownership of, interests in the other entity that carry between them the right

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

to receive a percentage (the **control percentage**) that is at least 40% of:

- (i) any distribution of income by the other entity; or
 - (ii) if the other entity is a partnership—the net income of the partnership; or
 - (iii) any distribution of capital by the other entity; or
- (b) if the other entity is a company—beneficially own, or have the right to acquire the beneficial ownership of, *equity interests in the company that carry between them the right to exercise, or control the exercise of, a percentage (the **control percentage**) that is at least 40% of the voting power in the company.

Direct control of a discretionary trust

- (3) An entity (the **first entity**) controls a discretionary trust if a trustee of the trust acts, or could reasonably be expected to act, in accordance with the directions or wishes of the first entity, its *affiliates, or the first entity together with its affiliates.
- (4) An entity (the **first entity**) controls a discretionary trust for an income year if, for any of the 4 income years before that year:
- (a) the trustee of the trust paid to, or applied for the benefit of:
 - (i) the first entity; or
 - (ii) any of the first entity's *affiliates; or
 - (iii) the first entity and any of its affiliates;any of the income or capital of the trust; and
 - (b) the percentage (the **control percentage**) of the income or capital paid or applied is at least 40% of the total amount of income or capital paid or applied by the trustee for that year.

Note: Section 328-112 of the *Income Tax (Transitional Provisions) Act 1997* affects the operation of this subsection in relation to the 2007-08, 2008-09, 2009-10 and 2010-11 income years.

- (5) An entity does not control a discretionary trust because of subsection (4) if the entity is:
- (a) an *exempt entity; or
 - (b) a *deductible gift recipient.

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

Commissioner may determine that an entity does not control another entity

- (6) If the control percentage referred to in subsection (2) or (4) is at least 40%, but less than 50%, the Commissioner may determine that the first entity does not control the other entity if the Commissioner thinks that the other entity is controlled by an entity other than, or by entities that do not include, the first entity or any of its *affiliates.

Indirect control of an entity

- (7) This section applies to an entity (the **first entity**) that directly controls another entity (the **second entity**) as if the first entity also controlled any other entity that is directly, or indirectly by any other application or applications of this section, controlled by the second entity.
- (8) However, subsection (7) does not apply if the second entity is an entity of any of the following kinds:
- (a) a company *shares in which (except shares that carry the right to a fixed rate of *dividend) are listed for quotation in the official list of an *approved stock exchange;
 - (b) a *publicly traded unit trust;
 - (c) a *mutual insurance company;
 - (d) a *mutual affiliate company;
 - (e) a company (other than one covered by paragraph (a)) all the shares in which are beneficially owned by one or more of the following:
 - (i) a company covered by paragraph (a);
 - (ii) a publicly traded unit trust;
 - (iii) a mutual insurance company;
 - (iv) a mutual affiliate company.

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

328-130 Meaning of *affiliate*

- (1) An individual or a company is an *affiliate* of yours if the individual or company acts, or could reasonably be expected to act, in accordance with your directions or wishes, or in concert with you, in relation to the affairs of the *business of the individual or company.
- (2) However, an individual or a company is not your *affiliate* merely because of the nature of the business relationship you and the individual or company share.

Note: For small business relief purposes, a spouse or a child under 18 years may also be an affiliate under section 152-47.

Example: A partner in a partnership would not be an affiliate of another partner merely because the first partner acts, or could reasonably be expected to act, in accordance with the directions or wishes of the second partner, or in concert with the second partner, in relation to the affairs of the partnership.

Directors of the same company and trustees of the same trust, or the company and a director of that company, would be in a similar position.

Subdivision 328-D—Capital allowances for small business entities

Guide to Subdivision 328-D

328-170 What this Subdivision is about

If you are a small business entity, you can choose to deduct amounts for most of your depreciating assets on a diminishing value basis using a pool that is treated as a single depreciating asset.

Broadly, the pool is made up of the costs of the depreciating assets that are allocated to it or, in some cases, a proportion of those costs.

The pool rate is 30%.

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

There is a deduction for assets whose cost is less than \$6,500 in the income year in which you start to use the asset or have it installed ready for use.

This Subdivision sets out how to calculate the pool deductions, and also sets out the consequences of:

- (a) disposal of depreciating assets; and
- (b) not choosing to use this Subdivision for an income year after having chosen to do so for an earlier income year; and
- (c) changing the business use of depreciating assets.

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

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Operative provisions

328-175 Calculations for depreciating assets

- (1) You can choose to calculate your deductions and some amounts of assessable income under this Subdivision instead of under Division 40 for an income year for all the *depreciating assets that you *hold if:
- (a) you are a *small business entity for the income year; and
 - (b) you started to use the assets or have them *installed ready for use, for a *taxable purpose during or before that income year.

This subsection has effect subject to subsections (2) to (10).

Note: If you choose to use this Subdivision for an income year, you continue to use this Subdivision for your general small business pool for a later income year even if you are not a small business entity, or do not choose to use this Subdivision, for the later year: see section 328-220.

Exception: assets to which Division 40 does not apply

- (2) This Subdivision does not apply to a *depreciating asset to which Division 40 does not apply because of section 40-45.

Exception: primary production

- (3) If you are a *small business entity for the income year, for each *depreciating asset you use to carry on a *primary production business and for which you could deduct amounts under Subdivision 40-F (about primary production depreciating assets) or Subdivision 40-G (about capital expenditure of primary producers and other landholders) apart from subsection (1), you can choose:
- (a) to deduct amounts for it under Subdivision 40-F or 40-G; or
 - (b) to calculate your deductions for it under this Subdivision.

Note: A choice made by a transferor under this subsection for an asset applies also to the transferee if roll-over relief under subsection 40-340(1) or (3) is chosen: see section 328-245.

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

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- (4) You must make the choice under subsection (3) for each *depreciating asset of the kind referred to in that subsection for the later of:
- (a) the first income year for which you are, or last were, a *small business entity; or
 - (b) the income year in which you started to use the asset, or have it *installed ready for use, for a *taxable purpose.
- Once you have made the choice for an asset, you cannot change it.

Exception: horticultural plants

- (5) You cannot deduct amounts for *horticultural plants (including grapevines) under this Subdivision.

Exception: asset let on depreciating asset lease

- (6) You cannot deduct amounts for a *depreciating asset under this Subdivision if the asset is being or might reasonably be expected to be let predominantly on a *depreciating asset lease.

Exception: assets in a low-value or software development pool

- (7) You cannot deduct amounts for a *depreciating asset under this Subdivision if:
- (a) the asset was allocated to your low-value pool under Subdivision 40-E, or to your pool under the former Subdivision 42-L, during an income year for which you were not a *small business entity or had not chosen to use this Subdivision; or
 - (b) the asset is *in-house software and expenditure on the asset is allocated to a software development pool under that Subdivision.

Note: You will have to continue deducting amounts for these assets under Division 40.

- (8) A *depreciating asset referred to in subsection (7) is not allocated to your *general small business pool under this Subdivision and does not qualify for a deduction under section 328-180.

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

Exception: assets for which previously entitled to a tax offset under the R&D provisions

- (9) You cannot deduct amounts for a *depreciating asset for any period under this Subdivision if you are entitled under section 355-100 to a *tax offset for a deduction under section 355-305 for the asset for the same or an earlier period.

Exception: restriction on choosing to use this Subdivision

- (10) If:
- (a) you choose to use this Subdivision to deduct amounts for your *depreciating assets for an income year; and
 - (b) you do not choose to use this Subdivision for a later income year for which you satisfy the conditions to make this choice (see subsection (1));

you cannot choose to use this Subdivision until at least 5 years after the first later income year for which you satisfied the conditions to make this choice but did not do so.

Note 1: Your ability to choose to use this Subdivision may also be restricted by section 328-440 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 2: If you choose to use this Subdivision for an income year, you continue to use it for assets that have been allocated to your general small business pool for a later income year even if you are not a small business entity, or do not choose to use this Subdivision, for the later year: see section 328-220.

328-180 Assets costing less than \$6,500

- (1) You deduct the *taxable purpose proportion of the *adjustable value of a *depreciating asset for the income year in which you start to use the asset, or have it *installed ready for use, for a *taxable purpose if:
- (a) you were a *small business entity for that year and the year in which you started to *hold it; and
 - (ab) you chose to use this Subdivision for each of those years; and
 - (b) the asset is a depreciating asset whose *cost as at the end of the income year in which you start to use it, or have it

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

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installed ready for use, for a taxable purpose is less than \$6,500.

- (2) You can also deduct, for an income year for which you are a *small business entity and you choose to use this Subdivision, the *taxable purpose proportion of an amount included in the second element of the *cost of an asset for which you have deducted an amount under subsection (1) if:
 - (a) the amount so included is less than \$6,500; and
 - (b) you started to use the asset, or have it *installed ready for use, for a *taxable purpose during an earlier income year.
- (3) An asset for which you have deducted an amount under this section is allocated to your *general small business pool if:
 - (a) an amount of \$6,500 or more is included in the second element of the asset's *cost; or
 - (b) any amount is included in the second element of the asset's cost and you have deducted or can deduct an amount under subsection (2) for an amount previously included in the second element of the asset's cost.
- (4) This Division applies to the asset as if its *adjustable value were the amount included in the second element of its *cost as mentioned in subsection (3).
- (5) Subsection (3) applies even if the amount is included in the second element of the asset's *cost during an income year for which you are not a *small business entity or do not choose to use this Subdivision.

328-185 Pooling

- (1) If you are a *small business entity for an income year and you have chosen to use this Subdivision for that year, you deduct amounts for your *depreciating assets (except assets for which you have deducted or can deduct an amount under section 328-180) through a pool, which allows you to deduct amounts for them as if they were a single asset, thereby simplifying your calculations. You use one rate for the pool.

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

- (2) There is a **general small business pool** to which *depreciating assets are allocated.

Allocating assets to a pool

- (3) A *depreciating asset:
- (a) that you *hold just before, and at the start of, the first income year for which you are, or last were, a *small business entity; and
 - (b) for which you calculate your deductions under this Subdivision instead of under Division 40; and
 - (c) that has not previously been allocated to your *general small business pool; and
 - (d) that you have started to use, or have *installed ready for use, for a *taxable purpose;
- is automatically allocated to your general small business pool.

- (4) A *depreciating asset that you start to use, or have *installed ready for use, for a *taxable purpose during an income year for which you are a *small business entity and you choose to use this Subdivision is allocated to the *general small business pool at the end of that year.

Note: The allocation happens even if you no longer hold the asset at the end of that income year.

Exception for assets used or installed before 1 July 2001

- (5) You can choose not to have a *depreciating asset allocated to the *general small business pool if you started to use it, or have it *installed ready for use, for a *taxable purpose before 1 July 2001.

Note: If you make this choice, you would continue to deduct amounts for the asset under Division 40.

- (6) You must make that choice for the first income year for which you are a *small business entity and you choose to use this Subdivision. Once you have made the choice for an asset, you cannot change it.

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

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No re-allocation

- (7) Once a *depreciating asset is allocated to your *general small business pool, it is not re-allocated, even if you are not a *small business entity for a later income year or you do not choose to use this Subdivision for that later year.

Note: If you chose to use this Subdivision for an income year, you continue to use it for your general small business pool for a later income year even if you are not a small business entity, or do not choose to use this Subdivision, for the later year: see section 328-220.

328-190 Calculation

- (1) You calculate your deduction for your *general small business pool for an income year using this formula:

$$\text{*Opening pool balance} \times 30\%$$

Note: You use section 328-210 instead if the pool has a low pool value.

- (2) Your deduction for each *depreciating asset that you start to use, or have *installed ready for use, for a *taxable purpose during an income year for which you are a *small business entity and choose to use this Subdivision is 15% of the *taxable purpose proportion of its *adjustable value.
- (2A) Subsection (2) does not apply to a *depreciating asset that is a *motor vehicle if section 328-237 applies to the asset for the income year.
- (3) You can also deduct for an income year for which you are a *small business entity and choose to use this Subdivision the amount worked out under subsection (4) for an amount (the **cost addition amount**) included in the second element of the *cost of a *depreciating asset for that year if you started to use the asset, or have it *installed ready for use, for a *taxable purpose during an earlier income year.
- Note: The second element of cost is worked out under section 40-190.
- (4) The amount you can deduct is 15% of the *taxable purpose proportion of the cost addition amount.

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

Note: The amounts that a transferor and transferee can deduct under this section are modified if roll-over relief under section 40-340 is chosen: see sections 328-243 and 328-247.

328-195 Opening pool balance

- (1) For the first income year for which you are a *small business entity and choose to use this Subdivision, the **opening pool balance** of your *general small business pool is the sum of the *taxable purpose proportions of the *adjustable values of *depreciating assets allocated to the pool under subsection 328-185(3).
- (2) For a later income year, the **opening pool balance** of your *general small business pool is that pool's *closing pool balance for the previous income year, reduced or increased by any adjustment required under section 328-225 (about change in the business use of an asset).

Note: You continue to deduct amounts using your general small business pool even if you are not a small business entity, or do not choose to use this Subdivision, for a later income year: see section 328-220.

- (3) However, if:
 - (a) you are not a *small business entity for an income year or you do not choose to use this Subdivision for that year; but
 - (b) you are a small business entity for a later income year and you choose to use this Subdivision for the later year;the **opening pool balance** of your *general small business pool includes the sum of the *taxable purpose proportions of the *adjustable values of *depreciating assets allocated to the pool under subsection 328-185(3) for that year.

328-200 Closing pool balance

You work out the **closing pool balance** of your *general small business pool for an income year in this way:

Method statement

- Step 1. Add to the *opening pool balance of the pool for the income year:

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

- (a) the sum of the *taxable purpose proportions of the *adjustable values of *depreciating assets you started to use, or have *installed ready for use, for a *taxable purpose during the income year and that are allocated to the pool; and
- (b) the taxable purpose proportion of any cost addition amounts (see subsection 328-190(3)) for the income year for assets allocated to the pool.

Step 2. Subtract from the step 1 amount:

- (a) the *taxable purpose proportions of the *termination values of *depreciating assets allocated to the pool and for which a *balancing adjustment event occurred during the income year; and
- (b) your deduction under subsection 328-190(1) for the pool for the income year; and
- (c) your deductions under subsection 328-190(2), and subsection 328-237(2) (if relevant), for *depreciating assets you started to use, or have *installed ready for use, for a *taxable purpose during the income year and that are allocated to the pool; and
- (d) your deductions under subsection 328-190(3) for the income year for cost addition amounts for assets allocated to the pool.

Step 3. The result is the *closing pool balance* of the pool for the income year.

Note: A transferor does not subtract anything for certain balancing adjustment events under paragraph (a) of step 2 if roll-over relief under section 40-340 is chosen: see sections 328-243 and 328-245.

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

328-205 Estimate of taxable use

(1) You must, for the first income year for which you are, or last were, a *small business entity, make a reasonable estimate for that year of the proportion you will use, or have *installed ready for use, each *depreciating asset that you *held just before, and at the start of, that year for a *taxable purpose if:

- (a) the asset has not previously been allocated to your *general small business pool; and
- (b) you have started to use it, or have it installed ready for use, for a taxable purpose; and
- (c) you have chosen to calculate your deductions for it under this Subdivision.

Note 1: That proportion will be 100% for an asset that you expect to use, or have installed ready for use, solely for a taxable purpose.

Note 2: Your estimate will be zero for an income year if another provision of this Act denies a deduction for that year: see section 328-230.

Note 3: This subsection does not apply to a transferee for certain assets if roll-over relief under section 40-340 is chosen: see sections 328-243 and 328-257.

(2) You must also make this estimate for each *depreciating asset that you *hold and start to use, or have *installed ready for use, for a *taxable purpose during an income year for which you are a *small business entity and you choose to use this Subdivision. You must make the estimate for the income year in which you start to use it, or have it installed ready for use, for such a purpose.

(3) The **taxable purpose proportion** of a *depreciating asset's *adjustable value, or of an amount included in the second element of its *cost, is that part of that amount that represents:

- (a) the proportion you estimated under subsection (1) or (2); or
- (b) if you have had to make an adjustment under section 328-225 for the asset—the proportion most recently applicable to the asset under that section.

Note: An amount included in the second element of the cost of a depreciating asset is referred to in this Division as a cost addition amount: see subsection 328-190(3).

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

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- (4) The *taxable purpose proportion* of a *depreciating asset's *termination value is that part of that amount that represents:
- (a) if you have not had to make an adjustment under section 328-225 for the asset—the proportion you estimated under subsection (1) or (2); or
 - (b) if you have had to make at least one such adjustment—the average of:
 - (i) the proportion you estimated under subsection (1) or (2); and
 - (ii) the proportion applicable to the asset for each of the 3 income years you *held the asset after the one in which the asset was allocated to the pool.

Example: When Bria's computer was allocated to her general small business pool for the 2012-13 income year, she estimated that it would be used 50% for her florist business. Due to increasing business, Bria estimates the computer's use to be 70% for the 2013-14 year, and 90% for the 2014-15 year. She makes an adjustment under section 328-225 for both those years.

Bria sells the computer for \$1,000 at the start of the 2016-17 income year. She must now average the business use estimates for the computer for the year it was allocated to the pool and the next 3 years to work out the taxable purpose proportion of its termination value. The average is worked out as follows:

- 50% (original estimate); plus
 - 70% (2013-14 estimate); plus
 - 90% (2014-15 estimate); plus
 - 90% (no change on previous year);
- =300% ÷ 4 = 75%

The taxable purpose proportion of the computer's termination value is, therefore:

$$75\% \text{ of } \$1,000 = \$750$$

328-210 Low pool value

- (1) Your deduction for a *general small business pool for an income year is the amount worked out under subsection (2) (instead of an amount calculated under section 328-190) if that amount is less than \$6,500 but more than zero.

Note: See section 328-215 for the result when the amount is less than zero.

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

- (2) The amount is the sum of:
- (a) the pool's *opening pool balance for the income year; and
 - (b) the *taxable purpose proportion of the *adjustable value of each *depreciating asset you started to use, or have *installed ready for use, for a *taxable purpose during the income year and that is allocated to the pool; and
 - (c) the taxable purpose proportion of any cost addition amounts (see subsection 328-190(3)) for the income year for assets allocated to the pool;
- less the sum of the taxable purpose proportion of the *termination values of depreciating assets allocated to the pool and for which a *balancing adjustment event occurred during the income year.
- (3) In that case, the *closing pool balance of the pool for that income year then becomes zero.

Example: Amanda's Graphics is a small business entity for the 2012-13 income year and chooses to use this Subdivision for that year. The business has an opening pool balance of \$7,000 for its general small business pool for that year.

During that year, Amanda acquired a new computer for \$8,000. The taxable purpose proportion of its adjustable value is:

$$\$8,000 \times 85\% \text{ business use estimate} = \$6,800$$

Amanda also sold her business car for \$9,600 during that year. The car was used 100% in the business.

To work out whether she can deduct an amount under this section, Amanda uses this calculation:

$$\$7,000 + \$6,800 - \$9,600 = \$4,200$$

Because the result is less than \$6,500, Amanda can deduct the \$4,200 for the income year. The pool's closing balance for the year is zero.

328-215 Disposal etc. of depreciating assets

- (1) This section sets out adjustments you may have to make if a *balancing adjustment event occurs for a *depreciating asset for which you calculate your deductions under this Subdivision.
- (2) If the asset is allocated to your *general small business pool and:
- (a) the *closing pool balance of the pool for the income year in which the event occurred is less than zero; or

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

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- (b) the amount worked out under subsection 328-210(2) for that income year is less than zero;
the amount by which that balance or amount is less than zero is included in your assessable income for that year.
- (3) In that case, the *closing pool balance of the pool for that income year then becomes zero.
- (4) If the asset was one for which you deducted an amount under section 328-180 (about assets costing less than \$6,500), you include the *taxable purpose proportion of the asset's *termination value in your assessable income.

328-220 What happens if you are not a small business entity or do not choose to use this Subdivision for an income year

- (1) If you are not a *small business entity for an income year or you do not choose to use this Subdivision for that year, this Subdivision continues to apply to your *general small business pool for that year and later income years.
- (2) However, *depreciating assets you started to use, or have *installed ready for use, for a *taxable purpose during an income year for which you are not a *small business entity or do not choose to use this Subdivision cannot be allocated to your *general small business pool under this Subdivision until an income year for which you are a small business entity and you choose to use this Subdivision.
- (3) This section applies to a transferee referred to in subsection 328-243(1) or (1A) who:
 - (a) was not a *small business entity for the income year in which the relevant *balancing adjustment events occurred; or
 - (b) did not choose to use this Subdivision for that year;as if the transferee had been a small business entity for an earlier income year and had chosen to use this Subdivision for the earlier year. This rule applies even if roll-over relief is not chosen.

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

328-225 Change in business use

- (1) You must, for each income year (the *present year*) after the year in which a *depreciating asset is allocated to a pool, make a reasonable estimate of the proportion you use the asset, or have it *installed ready for use, for a *taxable purpose in that year.

Note: This section is modified in its application to a transferee for certain assets if roll-over relief under section 40-340 is chosen: see sections 328-243 and 328-257.

- (1A) You must make an adjustment for the present year if your estimate for that year under subsection (1) is different by more than 10 percentage points from:
- (a) your original estimate (see section 328-205); or
 - (b) if you have made an adjustment under this section—the most recent estimate you made under subsection (1) that resulted in an adjustment under this section.

- (2) The adjustment is made to the *opening pool balance of the *general small business pool to which the asset was allocated, and it must be made before you calculate your deduction under this Subdivision for the present year.

Note: The opening pool balance will be reduced if the adjustment worked out under subsection (3) is a negative amount. It will be increased if the adjustment is positive.

- (3) The adjustment is:

$$\text{Reduction factor} \times \text{Asset value} \times \left[\begin{array}{c} \text{Present year} \\ \text{estimate} \end{array} - \text{Last estimate} \right]$$

where:

asset value is:

- (a) for a *depreciating asset you started to use, or have *installed ready for use, for a *taxable purpose during an income year for which you were a *small business entity and chose to use this Subdivision—the asset's *adjustable value at that time; or
- (b) for an asset you started to use, or have installed ready for use, for a taxable purpose during an income year for which you

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

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were not a *small business entity or did not choose to use this Subdivision—its adjustable value at the start of the income year for which it was allocated to a *general small business pool;

increased by any amounts included in the second element of the asset's *cost from the time mentioned in paragraph (a) or (b) until the beginning of the income year for which you are making the adjustment.

last estimate is:

- (a) your original estimate of the proportion you use, or have *installed ready for use, a *depreciating asset for a *taxable purpose (see section 328-205); or
- (b) if you have made an adjustment under this section—the latest estimate taken into account under this section.

present year estimate is your reasonable estimate of the proportion you use the asset, or have it *installed ready for use, for a *taxable purpose during the present year.

reduction factor is the number worked out under subsection (4).

- (4) The **reduction factor** in the formula in subsection (3) is:
 - (a) for a *depreciating asset you started to use, or have *installed ready for use, for a *taxable purpose during an income year for which you were a *small business entity and chose to use this Subdivision:

$$\left[1 - \left(\frac{\text{rate}}{2} \right) \right] \times \left[1 - \text{rate} \right]^{n-1}$$

- (b) for an asset you started to use, or have *installed ready for use, for a taxable purpose during an income year for which you were not a *small business entity or did not choose to use this Subdivision:

$$\left[1 - \text{rate} \right]^n$$

where:

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

n is the number of income years (counting part of an income year as a whole year) before the present year for which you have deducted or can deduct an amount for the *depreciating asset under this Subdivision.

rate is the rate applicable to the pool to which the asset is allocated.

Note: The reduction factor for a depreciating asset in your general small business pool which you started to use, or have installed ready for use, for a taxable purpose during an income year for which you were not a small business entity or did not choose to use this Subdivision is:

- 0.7 for the income year after it is allocated to the pool; and
- 0.49 for the income year after that; and
- 0.343 for the income year after that.

The reduction factor for a depreciating asset in your general small business pool which you started to use, or have installed ready for use, for a taxable purpose during an income year for which you were a small business entity and chose to use this Subdivision is:

- 0.85 for the income year after it is allocated to the pool; and
- 0.595 for the income year after that; and
- 0.417 for the income year after that.

Exceptions

(5) However:

- (a) you do not need to make an estimate or an adjustment under this section for a *depreciating asset for an income year that is at least 3 income years after the income year in which the asset was allocated; and
- (b) you cannot make an adjustment for a depreciating asset if your reasonable estimate of the proportion you use a depreciating asset, or have it *installed ready for use, for a *taxable purpose changes in a later income year by the 10 percentage points mentioned in subsection (1) or less.

328-230 Estimate where deduction denied

This Subdivision applies to you as if you had estimated that you will not use, or have *installed ready for use, a *depreciating asset at all for a *taxable purpose during an income year if a provision of this Act outside this Division denies a deduction for the asset for that year.

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

328-235 Interaction with Divisions 85 and 86

- (1) Despite sections 85-10 and 86-60, if you are a *small business entity for an income year you can deduct amounts for *depreciating assets under this Subdivision.
- (2) However, you cannot deduct an amount for a *car under this Subdivision if, had you not been a *small business entity and chosen to use this Subdivision, sections 86-60 and 86-70 would have prevented you deducting an amount for it.

Special rules for certain motor vehicles

328-237 Special deduction for certain motor vehicles

- (1) This section applies to a *depreciating asset that is a *motor vehicle if:
 - (a) in an income year (the *start year*) you start to use the asset, or have it *installed ready for use, for a *taxable purpose; and
 - (b) you were a *small business entity for the start year and the income year in which you started to *hold the asset; and
 - (c) you chose to use this Subdivision for each of those years; and
 - (d) subsection 328-180(1) does not provide for your deduction for the depreciating asset for the start year.

Deduction for the start year

- (2) You deduct for the *depreciating asset for the start year the amount worked out under whichever of subsections (3) and (4) applies.
- (3) The amount of your deduction is the *taxable purpose proportion of the *adjustable value of the *depreciating asset at the end of the start year if that proportion of that value is \$5,000 or less.
- (4) If that proportion of that value is more than \$5,000, the amount of your deduction is the sum of:
 - (a) \$5,000; and
 - (b) 15% of the amount worked out using the formula:

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

$$\left(\begin{array}{l} \text{*Taxable} \\ \text{purpose} \\ \text{proportion} \end{array} \times \begin{array}{l} \text{*Adjustable value of} \\ \text{the *depreciating asset at} \\ \text{the end of the start year} \end{array} \right) - \$5,000$$

Special deduction denied if low pool value

- (5) Subsection (2) does not apply if section 328-210 sets your deduction for a *general small business pool for the start year.

Special rules about roll-overs

328-243 Roll-over relief

- (1A) There is roll-over relief under subsection 40-340(1) (as affected by subsection 40-340(2)) if:
- (a) *balancing adjustment events occur for *depreciating assets on a day (the **BAE day**) because an entity (the **transferor**) disposes of the assets in an income year to another entity (the **transferee**); and
 - (b) the disposal involves a *CGT event; and
 - (c) the conditions in item 1, 2 or 3 of the table in subsection 40-340(1) are satisfied; and
 - (d) deductions for the assets are calculated under this Subdivision; and
 - (e) the transferor and the transferee jointly choose the roll-over relief; and
 - (f) the condition in subsection (2) is met.
- (1) Roll-over relief can be chosen under subsection 40-340(3) if:
- (a) *balancing adjustment events occur for *depreciating assets on a day (the **BAE day**) because of subsection 40-295(2); and
 - (b) deductions for the assets are calculated under this Subdivision; and
 - (c) the entity or entities that had an interest in the assets just before the balancing adjustment events occurred (the **transferor**) and the entity or entities that have an interest in the assets just after the events occurred (the **transferee**) jointly choose the roll-over relief; and

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

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- (d) the condition in subsection (2) is met.
- (2) All of the *depreciating assets that, just before the *balancing adjustment events occurred, were:
 - (a) *held by the transferor; and
 - (b) allocated to the transferor's *general small business pool; must be held by the transferee just after those events occurred.

328-245 Consequences of roll-over

- (1) The transferor does not subtract anything for the *balancing adjustment events under:
 - (a) paragraph (a) of step 2 in the method statement in section 328-200; or
 - (b) subsection 328-210(2).
- (2) Subsection 328-215(4) does not apply to the *balancing adjustment events for the transferor.
- (3) A choice made by the transferor for a *depreciating asset under subsection 328-175(3) (about primary production assets) applies to the transferee as if it had been made by the transferee.
- (4) Sections 328-247 to 328-257 have effect.

328-247 Pool deductions

- (1) The amount that can be deducted for the transferor's *general small business pool for the income year (the **BAE year**) in which the *balancing adjustment events occurred under subsection 328-190(1) or section 328-210 for the BAE year is split equally between:
 - (a) the transferor and the transferee; or
 - (b) if there are 2 or more occurrences of balancing adjustment events for relevant entities for the BAE year and a roll-over is chosen for each occurrence—the entities concerned.

Example: John and Dave operate a dry cleaning business in partnership (the transferor). The transferor is a small business entity for the relevant income year and has chosen to use this Subdivision for that year. On the 90th day of an income year, Jonathan joins the partnership. The new partnership (the transferee) is a small business entity for the

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

income year and chooses to use this Subdivision for that year. Had there been no partnership change, a deduction of \$6,600 would have been available for the transferor's general small business pool. The transferor and transferee jointly choose the roll-over.

The deduction available to the transferor and the transferee for the pool under section 328-210 is \$3,300 each.

- (2) The transferor cannot deduct any amount for the transferor's *general small business pool for an income year after the BAE year.

328-250 Deductions for assets first used in BAE year

- (1) This section applies in working out the amount that the transferor or transferee can deduct for the BAE year under subsection 328-180(1) (assets costing less than \$6,500), subsection 328-190(2) (assets that will be pooled) or subsection 328-237(2) (certain motor vehicles) for a *depreciating asset that the transferor or transferee started to use, or have *installed ready for use, for a *taxable purpose during the BAE year.

Asset first used by transferor

- (2) If the asset was first used or *installed ready for use by the transferor, the amount that can be deducted under subsection 328-180(1), 328-190(2) or 328-237(2) for the asset for the BAE year is split equally between:
 - (a) the transferor and the transferee; or
 - (b) if there are 2 or more occurrences of *balancing adjustment events for relevant entities for the BAE year and a roll-over is chosen for each occurrence—the entities concerned.

Asset first used by transferee

- (3) If the asset was first used or *installed ready for use by the transferee:
 - (a) the transferor cannot deduct anything for the asset for the BAE year; and
 - (b) the amount that can be deducted under subsection 328-180(1), 328-190(2) or 328-237(2) for the asset for the BAE year is:

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

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- (i) deductible by the transferee; or
- (ii) if there are 2 or more occurrences of *balancing adjustment events for relevant entities for the BAE year and a roll-over is chosen for each occurrence—split equally between the entities concerned (except ones that did not use the asset or have it installed ready for use).

Example: To continue the example from section 328-247, the transferee buys an asset on the 150th day of the BAE year for \$800.

On the 250th day of the year, Evan joins the transferee partnership. The new transferee partnership is a small business entity for the BAE year, and chooses to use this Subdivision for that year, and a further roll-over is chosen.

The original transferor cannot deduct anything for the asset. The original transferee (now a transferor) and the new transferee can deduct \$400 each.

Special rule for assets costing less than \$6,500

- (4) Subsection (5) applies if:
 - (a) the transferor started to use, or have *installed ready for use, an asset of a kind mentioned in paragraph 328-180(1)(b) during the BAE year; and
 - (b) a *balancing adjustment event occurs for that asset before the BAE day.
- (5) The transferee cannot deduct anything for the asset for the BAE year, and subsection 328-215(4) does not apply to the transferee in relation to the asset.

328-253 Deductions for cost addition amounts

- (1) This section applies in working out the amount that the transferor or transferee can deduct for the BAE year under subsection 328-180(2) or 328-190(3) for expenditure incurred by the transferor or transferee during the BAE year that is included in the second element of the *cost of a depreciating asset.

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

Expenditure incurred by transferor

- (2) If the expenditure was incurred by the transferor, the amount that can be deducted under subsection 328-180(2) or 328-190(3) for the BAE year is split equally between:
 - (a) the transferor and the transferee; or
 - (b) if there are 2 or more occurrences of *balancing adjustment events for relevant entities for the BAE year and a roll-over is chosen for each occurrence—the entities concerned.

Expenditure incurred by transferee

- (3) If the expenditure was incurred by the transferee:
 - (a) the transferor cannot deduct anything for the expenditure for the BAE year; and
 - (b) the amount that can be deducted under subsection 328-180(2) or 328-190(3) for the expenditure for the BAE year is:
 - (i) deductible by the transferee; or
 - (ii) if there are 2 or more occurrences of *balancing adjustment events for relevant entities for the BAE year and a roll-over is chosen for each occurrence—split equally between the entities concerned.

Special rule for expenditure on assets costing less than \$6,500

- (4) Subsection (5) applies if:
 - (a) the transferor incurred the expenditure in relation to an asset of a kind mentioned in paragraph 328-180(1)(b); and
 - (b) a *balancing adjustment event occurs for that asset before the BAE day.
- (5) The transferee cannot deduct anything for the expenditure for the BAE year, and subsection 328-215(4) does not apply to the transferee in relation to the asset.

328-255 Closing pool balance etc. below zero

- (1) This section applies if:
 - (a) the *closing pool balance of the transferor's *general small business pool for the BAE year is less than zero; or

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

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- (b) the amount worked out under subsection 328-210(2) for the pool for the BAE year is less than zero; because a *balancing adjustment event occurred for an asset allocated to that pool during that year.
- (2) The amount included in assessable income under subsection 328-215(2) is split equally between:
 - (a) the transferor and transferee; or
 - (b) if there are 2 or more occurrences of *balancing adjustment events for relevant entities for the BAE year and a roll-over is chosen for each occurrence—the entities concerned.

328-257 Taxable use

- (1) This section applies to *depreciating assets (the *previously held assets*) that were *held by the transferor just before the *balancing adjustment events occurred.
- (2) Subsection 328-205(1) (about estimates of taxable use) does not apply to previously held assets in the hands of the transferee for the BAE year. Instead, the transferee uses for the BAE year:
 - (a) the estimate made by the transferor under that subsection for the asset; or
 - (b) if the transferor had made one or more estimates for the asset under subsection 328-225(1) that resulted in an adjustment under section 328-225 (about change in business use)—that estimate or the most recent of those estimates.
- (3) Section 328-225 applies to the transferee for each previously held asset for income years after the BAE year as if:
 - (a) the transferee had *held the asset during the period that the transferor held it; and
 - (b) estimates applicable to the transferor for the asset under that section were also applicable to the transferee.

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

Subdivision 328-E—Trading stock for small business entities

Guide to Subdivision 328-E

328-280 What this Subdivision is about

Small business entities can choose not to account for their trading stock in some circumstances. This Subdivision modifies the rules in Division 70 about trading stock for small business entities.

Table of sections

Operative provisions

- 328-285 Trading stock for small business entities
328-295 Value of trading stock on hand

Operative provisions

328-285 Trading stock for small business entities

You can choose not to account for changes in the *value of your *trading stock for an income year if:

- (a) you are a *small business entity for that year; and
- (b) the difference between the value of all your trading stock on hand at the start of that year and the value you reasonably estimate of all your trading stock on hand at the end of that year is not more than \$5,000.

Note 1: As a result, sections 70-35 and 70-45 (about comparing the value of each item of trading stock on hand at the start and end of an income year) will not apply to you for the income year.

Note 2: When making a reasonable estimate of the value of trading stock on hand:

- special valuation rules may be used, for example, obsolete stock, natural increase of livestock, horse breeding stock; and
- the estimated value disregards an amount equal to the amount of input tax credits (if any) to which you would be entitled for an item if the acquisition of the item had been solely for a creditable purpose: see subsection 70-45(1A).

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

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Note 3: If you choose to account for changes in the value of your trading stock for an income year, you will have to do a stocktake and account for the change in the value of all your trading stock: see Subdivision 70-C.

328-295 Value of trading stock on hand

- (1) If you make a choice under section 328-285 for an income year, the *value of all your *trading stock on hand at the start of the income year is:
- (a) the same amount as was taken into account under this Act at the end of the previous income year; or
 - (b) zero if no item of trading stock was taken into account under this Act at the end of the previous income year.

Note: The amount taken into account at the end of the previous income year is worked out under either section 70-45 or subsection (2) of this section.

- (2) If you make a choice under section 328-285 for an income year, this Act applies to you as if the *value of all your *trading stock on hand at the end of the year were equal to the value of all your trading stock on hand at the start of the year.

Note: If you do not make a choice under section 328-285, the value of trading stock on hand at the end of the year is worked out using section 70-45.

Example: Angela operates a riding school, and also sells riding gear. Her business is a small business entity for the 2008-09 income year and makes a choice under section 328-285 for that year.

At the start of the 2008-09 income year, the opening value of Angela's trading stock is \$30,000. Using her reliable inventory system, she estimates the closing value to be \$34,000.

The closing value for the 2008-09 income year, and the opening value for the 2009-10 income year, will be \$30,000.

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

Division 345—FHSAs

Table of Subdivisions

	Guide to Division 345
345-A	Treatment of FHSA providers
345-B	Treatment of FHSA holders
345-C	FHSA misuse tax

Guide to Division 345

345-1 What this Division is about

FHSAs (short for first home saver accounts) are accounts, life policies and interests in trusts that comply with requirements in the *First Home Saver Accounts Act 2008*.

This Division sets out the income tax treatment of the financial institutions that provide FHSAs (Subdivision 345-A) and of individuals that hold FHSAs (Subdivision 345-B).

Certain payments from FHSAs are subject to FHSA misuse tax (Subdivision 345-C).

Subdivision 345-A—Treatment of FHSA providers

Table of sections

345-5	FHSA provider that is trustee of FHSA trust—tax payable
345-10	FHSA provider that is trustee of FHSA trust—CGT to be primary code for calculating gains or losses
345-15	FHSA provider that is an ADI (other than RSA provider)—taxable income and standard component of taxable income
345-20	FHSA provider that is an ADI—FHSA component of taxable income
345-25	FHSA provider that is an ADI (other than an RSA provider)—amounts that cannot be deducted
345-30	Amounts of tax paid by FHSA providers that are ADIs

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

Section 345-5

345-5 FHSA provider that is trustee of FHSA trust—tax payable

- (1) The trustee of an *FHSA trust is liable to pay income tax for the *financial year on the taxable income of the trust.
- (2) The amount of the tax is the amount of income tax that would be payable by the trust under section 4-10 if the trust were an *Australian resident liable (in accordance with section 4-1) to pay income tax for the *financial year.
- (3) For the purposes of subsection (2):
 - (a) apply the special rules in this Subdivision in working out the taxable income of the trust; and
 - (b) apply the applicable rate of tax specified in section 30 of the *Income Tax Rates Act 1986* to the taxable income of the trust.

345-10 FHSA provider that is trustee of FHSA trust—CGT to be primary code for calculating gains or losses

- (1) The modifications in subsection (2) apply if a *CGT event happens involving a *CGT asset that was owned by an *FHSA trust.
- (2) These provisions do not apply to the *CGT event:
 - (a) sections 6-5 (about *ordinary income);
 - (b) section 8-1 (about amounts you can deduct);
 - (c) sections 15-15 and 25-40 (about profit-making undertakings or plans).

Exceptions

- (3) The provisions referred to in subsection (2) can apply to the *CGT event if:
 - (a) any *capital gain or *capital loss from the event is attributable to currency exchange rate fluctuations; or
 - (b) the *CGT asset is one of the following:
 - (i) debenture stock, a bond, *debenture, certificate of entitlement, bill of exchange, promissory note or other security;
 - (ii) a deposit with a bank, building society or other financial institution;

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

- (iii) a loan (secured or not);
 - (iv) some other contract under which an entity is liable to pay an amount (whether the liability is secured or not).
- (4) The provisions referred to in subsection (2) can also apply to the *CGT event if a *capital gain or *capital loss from the event is disregarded because of one of the provisions in this table:

Where gain or loss disregarded because of CGT provision

Item	Provision	Brief description
1	Paragraph 104-15(4)(a)	Title in a CGT asset does not pass when a hire purchase or similar agreement ends
2	Section 118-5	Cars, motor cycles and valour decorations
3	Section 118-10	Collectables and personal use assets
4	Section 118-13	Shares in a PDF
5	Section 118-25	Trading stock
6	Section 118-30	Film copyright
7	Section 118-35	R&D
8	Section 118-55	Foreign currency hedging gains and losses
9	Section 118-60	Certain gifts
10	Section 118-300	Insurance policies
11	Section 118-305	Superannuation

345-15 FHSA provider that is an ADI (other than RSA provider)—taxable income and standard component of taxable income

- (1) The taxable income of an *FHSA provider that is an *ADI (other than an *RSA provider) is split into an *FHSA component and a *standard component.

Note: The taxable income of an FHSA provider that is an ADI and an RSA provider is split into an RSA component, an FHSA component and a standard component (see section 295-555).

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

Section 345-20

- (2) If the *FHSA component exceeds the *FHSA provider's taxable income:
 - (a) the provider's taxable income is equal to the FHSA component; and
 - (b) this Act applies to the provider as if it had a *tax loss for the income year of an amount that would have been that loss if the FHSA component were not *ordinary income or *statutory income.
- (3) The **standard component** is the remaining part (if any) of the *FHSA provider's taxable income for the income year after subtracting the *FHSA component.

345-20 FHSA provider that is an ADI—FHSA component of taxable income

The **FHSA component** for an income year of an *FHSA provider that is an *ADI is the total earnings or other return for the year credited to *FHSAs provided by the FHSA provider, reduced by the total amount of fees (however described) paid from those FHSAs to the FHSA provider for providing them.

345-25 FHSA provider that is an ADI (other than an RSA provider)—amounts that cannot be deducted

An *FHSA provider that is an *ADI (other than an *RSA provider) cannot deduct anything for amounts credited to *FHSAs.

345-30 Amounts of tax paid by FHSA providers that are ADIs

An amount is not assessable income and is not *exempt income of an *FHSA provider if:

- (a) the amount is paid from an *FHSA to the FHSA provider to enable the provider to make a payment of a kind mentioned in paragraph 31(1)(h) of the *First Home Saver Accounts Act 2008*; and
- (b) the provider is an ADI.

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

Subdivision 345-B—Treatment of FHSA holders

Table of sections

345-50 Credits to and payments from FHSAs etc.

345-50 Credits to and payments from FHSAs etc.

- (1) An amount of earnings or other return credited to an *FHSA you hold is not your assessable income and is not your *exempt income.
- (2) A payment made from an *FHSA you hold is not your assessable income and is not your *exempt income.
- (3) A *Government FHSA contribution payable for you in accordance with the *First Home Saver Accounts Act 2008*, and paid in accordance with Part 4 of that Act, is not your assessable income and is not your *exempt income.
- (4) A *capital gain or *capital loss that you make from a *CGT event happening in relation to a right to, or any part of, an *FHSA that you hold is disregarded.

Subdivision 345-C—FHSA misuse tax

Table of sections

345-100 Liability for FHSA misuse tax
345-110 Due date for payment of FHSA misuse tax
345-115 General interest charge

345-100 Liability for FHSA misuse tax

Payments to acquire a home

- (1) A person is liable to pay tax imposed by the *Income Tax (First Home Saver Accounts Misuse Tax) Act 2008* in respect of a *FHSA home acquisition payment from an *FHSA held by the person if:
 - (a) the payment fails to satisfy the *FHSA payment conditions;
 - or

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

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- (b) the payment satisfies the FHSA payment conditions, but is an *FHSA ineligibility payment.

Note: The Commissioner may make an assessment of the amount of the tax under section 169 of the *Income Tax Assessment Act 1936*.

Payments for repaying a mortgage

- (2) A person is liable to pay tax imposed by the *Income Tax (First Home Saver Accounts Misuse Tax) Act 2008* in respect of an *FHSA mortgage payment from an *FHSA held by the person if:
 - (a) the payment fails to satisfy the *FHSA payment conditions;
or
 - (b) the payment satisfies the FHSA payment conditions, but is an *FHSA ineligibility payment.

Note: The Commissioner may make an assessment of the amount of the tax under section 169 of the *Income Tax Assessment Act 1936*.

345-110 Due date for payment of FHSA misuse tax

*FHSA misuse tax assessed for a person is due and payable 21 days after the Commissioner gives the person notice of the assessment.

345-115 General interest charge

If *FHSA misuse tax payable by a person remains unpaid after the time by which it is due and payable, the person is liable to pay the *general interest charge on the unpaid amount for each day in the period that:

- (a) starts at the beginning of the day on which the FHSA misuse tax was due to be paid; and
- (b) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the FHSA misuse tax;
 - (ii) general interest charge on any of the FHSA misuse tax.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

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

Division 355—Research and Development

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Guide to Division 355

355-1 What this Division is about

An R&D entity may be entitled to a tax offset for R&D activities. The tax offset may be a refundable tax offset if the R&D entity's aggregated turnover is less than \$20 million.

To be entitled to the tax offset, the R&D entity needs one or more notional deductions under this Division.

There are 2 main kinds of notional deductions. One is for expenditure on R&D activities. The other is for the decline in value of tangible depreciating assets used for R&D activities.

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

Section 355-5

Note: All of these notional deductions require the R&D entity to be registered for the R&D activities under Part III of the *Industry Research and Development Act 1986*.

Subdivision 355-A—Object

Table of sections

355-5 Object

355-5 Object

- (1) The object of this Division is to encourage industry to conduct research and development activities that might otherwise not be conducted because of an uncertain return from the activities, in cases where the knowledge gained is likely to benefit the wider Australian economy.
- (2) This object is to be achieved by providing a tax incentive for industry to conduct, in a scientific way, experimental activities for the purpose of generating new knowledge or information in either a general or applied form (including new knowledge in the form of new or improved materials, products, devices, processes or services).

Subdivision 355-B—Meaning of R&D activities and other terms

Table of sections

355-20 *R&D activities*
355-25 *Core R&D activities*
355-30 *Supporting R&D activities*
355-35 *R&D entities*

355-20 *R&D activities*

R&D activities are *core R&D activities or *supporting R&D activities.

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

355-25 Core R&D activities

- (1) **Core R&D activities** are experimental activities:
 - (a) whose outcome cannot be known or determined in advance on the basis of current knowledge, information or experience, but can only be determined by applying a systematic progression of work that:
 - (i) is based on principles of established science; and
 - (ii) proceeds from hypothesis to experiment, observation and evaluation, and leads to logical conclusions; and
 - (b) that are conducted for the purpose of generating new knowledge (including new knowledge in the form of new or improved materials, products, devices, processes or services).

- (2) However, none of the following activities are **core R&D activities**:
 - (a) market research, market testing or market development, or sales promotion (including consumer surveys);
 - (b) prospecting, exploring or drilling for minerals or *petroleum for the purposes of one or more of the following:
 - (i) discovering deposits;
 - (ii) determining more precisely the location of deposits;
 - (iii) determining the size or quality of deposits;
 - (c) management studies or efficiency surveys;
 - (d) research in social sciences, arts or humanities;
 - (e) commercial, legal and administrative aspects of patenting, licensing or other activities;
 - (f) activities associated with complying with statutory requirements or standards, including one or more of the following:
 - (i) maintaining national standards;
 - (ii) calibrating secondary standards;
 - (iii) routine testing and analysis of materials, components, products, processes, soils, atmospheres and other things;
 - (g) any activity related to the reproduction of a commercial product or process:
 - (i) by a physical examination of an existing system; or

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

Section 355-30

- (ii) from plans, blueprints, detailed specifications or publically available information;
- (h) developing, modifying or customising computer software for the dominant purpose of use by any of the following entities for their internal administration (including the internal administration of their business functions):
 - (i) the entity (the *developer*) for which the software is developed, modified or customised;
 - (ii) an entity *connected with the developer;
 - (iii) an *affiliate of the developer, or an entity of which the developer is an affiliate.

355-30 Supporting R&D activities

- (1) **Supporting R&D activities** are activities directly related to *core R&D activities.
- (2) However, if an activity:
 - (a) is an activity referred to in subsection 355-25(2); or
 - (b) produces goods or services; or
 - (c) is directly related to producing goods or services;the activity is a **supporting R&D activity** only if it is undertaken for the dominant purpose of supporting *core R&D activities.

355-35 R&D entities

- (1) Each of the following is an **R&D entity**:
 - (a) a body corporate incorporated under an *Australian law;
 - (b) a body corporate incorporated under a *foreign law that is an Australian resident.

Note: Each of the above paragraphs extends to a body corporate acting in its capacity as trustee of a public trading trust (see subsection 102T(9) of the *Income Tax Assessment Act 1936*).

- (2) A body corporate incorporated under a *foreign law that:
 - (a) is a resident of a foreign country for the purposes of an agreement in force between that country and Australia that:
 - (i) is a double tax agreement (as defined in Part X of the *Income Tax Assessment Act 1936*); and

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

- (ii) includes a definition of *permanent establishment*, and
 - (b) carries on business in Australia through a permanent establishment (within the meaning of that definition) of the body corporate in Australia;
is an **R&D entity** to the extent that it carries on business through that permanent establishment.
- (3) However, an *exempt entity cannot be an **R&D entity**.

Subdivision 355-C—Entitlement to tax offset

Table of sections

355-100	Entitlement to tax offset
355-105	Deductions under this Division are notional only
355-110	Notional deductions include prepaid expenditure

355-100 Entitlement to tax offset

If notional deductions are at least \$20,000

- (1) An *R&D entity is entitled to a *tax offset for an income year equal to the percentage, set out in the table, of the total of the amounts (if any) that the entity can deduct for the income year under any or all of the following provisions:
- (a) section 355-205 (R&D expenditure);
 - (b) section 355-305 (decline in value of R&D assets);
 - (c) section 355-315 (balancing adjustment for R&D assets);
 - (d) section 355-480 (earlier year associate R&D expenditure);
 - (e) section 355-520 (decline in value of R&D partnership assets);
 - (f) section 355-525 (balancing adjustment for R&D partnership assets);
 - (g) section 355-580 (CRC contributions).

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

Section 355-100

Rate of R&D tax offset		
Item	In this case:	The percentage is:
1	the *R&D entity's *aggregated turnover for the income year is less than \$20 million (and item 2 of this table does not apply)	45%
2	an *exempt entity, or combination of exempt entities, would control the *R&D entity in a way described in section 328-125 (connected entities) if: (a) references in section 328-125 to 40% were references to 50%; and (b) subsection 328-125(6) were ignored	40%
3	any other case	40%

Note: The tax offset will be a refundable tax offset if the percentage applicable to the entity is 45% (see section 67-30).

If notional deductions are less than \$20,000

- (2) However, if the total of those amounts is less than \$20,000, the *R&D entity is instead entitled to a *tax offset for the income year equal to that percentage of the total of the following kinds of expenditure (if any):

Expenditure not subject to \$20,000 threshold	
Item	Kind of expenditure
1	Expenditure: (a) that the *R&D entity can deduct under section 355-205 (R&D expenditure) for the income year; and (b) that was incurred to a research service provider (within the meaning of the <i>Industry Research and Development Act 1986</i>) that is not an *associate of the R&D entity or of the relevant *R&D partnership (as appropriate); and (c) that was for the provider to provide services, within a research field for which the provider is registered under Division 4 of Part III of that Act, applicable to one or more of the *R&D activities to which the deduction relates

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

Expenditure not subject to \$20,000 threshold

Item Kind of expenditure

2	Expenditure that the *R&D entity can deduct under section 355-580 (CRC contributions) for the income year
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355-105 Deductions under this Division are notional only

An amount (the *notional amount*) that an *R&D entity can deduct under this Division is disregarded except for the purposes of:

- (a) working out whether the R&D entity is entitled under section 355-100 to a *tax offset; and
- (b) a provision (of this Act or any other Act) that refers to an entitlement of the R&D entity under section 355-100 to a tax offset; and
- (c) a provision (of this Act or any other Act) that:
 - (i) prevents some or all of the notional amount from being deducted; or
 - (ii) changes the income year for which some or all of the notional amount can be deducted; and

Note: Examples are Divisions 26 and 27 of this Act, Subdivision H of Division 3 of Part III of the *Income Tax Assessment Act 1936* and Part IVA of that Act.

- (d) a provision (of this Act or any other Act) that includes an amount in assessable income wholly or partly because of the notional amount; and

Note: An example is Subdivision 20-A, which may include in assessable income a recoupment of a loss or outgoing if the entity can deduct an amount for the loss or outgoing.

- (e) a provision (of this Act or any other Act) that excludes expenditure from:
 - (i) the *cost base or *reduced cost base of a *CGT asset; or
 - (ii) an element of that cost base or reduced cost base.

Note: An example is section 110-45, which may exclude deductible expenditure from elements of the cost base of an asset.

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

355-110 Notional deductions include prepaid expenditure

For the purposes of this Division, if:

- (a) apart from Subdivision H (prepaid expenditure) of Division 3 of Part III of the *Income Tax Assessment Act 1936*, an *R&D entity can deduct an amount under section 355-205 or 355-480 for an income year (the *present year*) or an earlier income year; and
 - (b) that Subdivision applies to the calculation of that amount; and
 - (c) the entity can deduct an amount, as a result of that application of that Subdivision, for the present year;
- the entity is taken to be able to deduct under section 355-205 or 355-480 (as appropriate) the amount referred to in paragraph (c) for the present year.

Note: Section 355-205 is about deductions for R&D expenditure.
Section 355-480 is about deductions for earlier year associate R&D expenditure.

Subdivision 355-D—Notional deductions for R&D expenditure

Table of sections

355-200	What this Subdivision is about
355-205	When notional deductions for R&D expenditure arise
355-210	Conditions for R&D activities
355-215	R&D activities conducted by a permanent establishment for other parts of the body corporate
355-220	R&D activities conducted for a foreign entity
355-225	Expenditure that cannot be notionally deducted

355-200 What this Subdivision is about

An R&D entity can notionally deduct its expenditure on registered R&D activities for which certain conditions are met.

There are special conditions for R&D activities conducted for foreign residents.

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

355-205 When notional deductions for R&D expenditure arise

- (1) An *R&D entity can deduct for an income year (the *present year*) expenditure it incurs during that year to the extent that the expenditure:
 - (a) is incurred on one or more *R&D activities:
 - (i) for which the R&D entity is registered under section 27A of the *Industry Research and Development Act 1986* for an income year; and
 - (ii) that are activities to which section 355-210 (conditions for R&D activities) applies; and
 - (b) if the expenditure is incurred to the R&D entity's *associate—is paid to that associate during the present year.

Note 1: If the matters in subparagraphs (a)(i) and (ii) are not satisfied until a later income year, the R&D entity will need to wait until then before it can deduct the expenditure for the present year.

Note 2: The R&D activities will need to be conducted during the income year the R&D entity is registered for those activities (see sections 27A and 27J of the *Industry Research and Development Act 1986*).

Note 3: The entity may also be able to deduct expenditure incurred to an associate in an earlier income year (see section 355-480).

Note 4: Expenditure incurred in income years starting on or after 1 July 2011 may be deductible for activities registered for income years starting before 1 July 2011 (see section 355-200 of the *Income Tax (Transitional Provisions) Act 1997*).

- (2) This section has effect subject to section 355-225 (excluded expenditure), Subdivision 355-F (integrity rules) and subsection 355-580(3) (CRC contributions).

355-210 Conditions for R&D activities

- (1) An *R&D activity covered by one or more of the following paragraphs is an activity to which this section applies:
 - (a) the R&D activity is conducted for the *R&D entity solely within Australia or an external Territory;
 - (b) if the R&D entity is a body corporate carrying on business through a permanent establishment (as described in subsection 355-35(2))—the R&D activity is conducted:
 - (i) for the body corporate; but

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

Section 355-210

- (ii) not for the purposes of that permanent establishment; and the conditions in section 355-215 (activities conducted for a body corporate by its permanent establishment) are met for the R&D activity;
- (c) the R&D activity is conducted for one or more foreign residents who are each:
 - (i) incorporated under a *foreign law; and
 - (ii) a resident of a foreign country for the purposes of an agreement of a kind described in subsection 355-35(2); and the conditions in section 355-220 (activities conducted for a foreign entity) are met for the R&D activity;
- (d) the R&D activity is:
 - (i) conducted for the R&D entity solely outside Australia and the external Territories; and
 - (ii) covered by a finding in force under paragraph 28C(1)(a) of the *Industry Research and Development Act 1986*;
- (e) the R&D activity consists of several parts, with:
 - (i) some parts being conducted for the R&D entity solely within Australia or an external Territory; and
 - (ii) the other parts being conducted for the R&D entity outside Australia and the external Territories while covered by a finding in force under paragraph 28C(1)(a) of the *Industry Research and Development Act 1986*.

Note: An activity can be covered by a finding under paragraph 28C(1)(a) of the *Industry Research and Development Act 1986* if the activity cannot be conducted in Australia or the external Territories.

- (2) However, an *R&D activity is not an activity to which this section applies if the activity is conducted, to a significant extent, for one or more other entities not covered by any paragraph of subsection (1).

Note: An entity would not be covered by, for example, paragraph (1)(c) if the conditions in section 355-220 were not met for the R&D activity in relation to that entity.

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

355-215 R&D activities conducted by a permanent establishment for other parts of the body corporate

For the purposes of paragraph 355-210(1)(b), the conditions for an *R&D activity are as follows:

- (a) the R&D activity is conducted solely within Australia or an external Territory;
- (b) if the R&D activity is a *supporting R&D activity, each corresponding *core R&D activity must be:
 - (i) an activity conducted, or to be conducted, solely within Australia or an external Territory; and
 - (ii) an activity for which the *R&D entity is or has been registered under section 27A of the *Industry Research and Development Act 1986*, or could be registered for an income year if that core R&D activity were conducted during the income year;
- (c) there is written evidence that the R&D activity is conducted for the body corporate but not for the purposes of that permanent establishment.

Note: The body corporate is the R&D entity to the extent that it carries on business through that permanent establishment (see subsection 355-35(2)).

355-220 R&D activities conducted for a foreign entity

- (1) For the purposes of paragraph 355-210(1)(c), the conditions for an *R&D activity conducted for one or more foreign residents are as follows:
 - (a) the R&D activity is conducted solely within Australia or an external Territory;
 - (b) if the R&D activity is a *supporting R&D activity, each corresponding *core R&D activity must be:
 - (i) an activity conducted, or to be conducted, solely within Australia or an external Territory; and
 - (ii) an activity for which the *R&D entity is or has been registered under section 27A of the *Industry Research and Development Act 1986*, or could be registered for an income year if that core R&D activity were conducted during the income year;

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

Section 355-220

- (c) when the R&D activity is conducted:
 - (i) each foreign resident is *connected with the R&D entity; or
 - (ii) for each foreign resident—either the foreign resident is an *affiliate of the R&D entity or the R&D entity is an affiliate of the foreign resident;
- (d) the R&D activity is conducted:
 - (i) in accordance with a written agreement binding on only the R&D entity and each foreign resident; and
 - (ii) either directly by the R&D entity, or indirectly by another entity under an agreement binding on the R&D entity;
- (e) the R&D activity is not conducted in connection with an agreement covered by subsection (2).

Note: An example of conducting an R&D activity indirectly under a contract is conducting the R&D activity under a subcontract, or one of a chain of subcontracts, under the contract.

- (2) An agreement is covered by this subsection if:
 - (a) the agreement is binding on the R&D entity (the *first entity*) and an R&D entity that:
 - (i) is *connected with the first entity; or
 - (ii) has the first entity as an *affiliate, or is an affiliate of the first entity;while the *R&D activity is conducted; and
 - (b) the R&D activity is to be conducted under the agreement by the first entity or by an entity:
 - (i) who is not bound by the agreement; and
 - (ii) who is to conduct the R&D activity directly or indirectly under another agreement to which the first entity is, or will become, bound.

Note: One effect of this subsection is that, even if the R&D entity has an agreement with the foreign resident for conducting the R&D activity, the R&D entity cannot deduct expenditure incurred:

- (a) for conducting the R&D activity as a subcontractor under a subcontract with an affiliated R&D entity; or
- (b) if the R&D entity is a subcontractor to an affiliated R&D entity—for further subcontracting the conducting of the R&D activity.

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

355-225 Expenditure that cannot be notionally deducted

Expenditure on buildings, certain assets and interest

- (1) Sections 355-205 (deductions for R&D expenditure) and 355-480 (deductions for earlier year associate R&D expenditure) do not apply to the following expenditure:
- (a) expenditure incurred to acquire or construct:
 - (i) a building or a part of a building; or
 - (ii) an extension, alteration or improvement to a building;
 - (b) expenditure included in the *cost of a tangible *depreciating asset for the purposes of Division 40 (as that Division applies as described in section 355-310 or otherwise);
 - (c) expenditure incurred for interest (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936*) payable to an entity.

Note 1: Expenditure covered by paragraph (a) may be deductible under Division 43 (capital works).

Note 2: The decline in value of an asset covered by paragraph (b) may be notionally deductible under section 355-305.

Note 3: Expenditure covered by paragraph (c) may be deductible under section 8-1.

Expenditure on core technology

- (2) Sections 355-205 (deductions for R&D expenditure) and 355-480 (deductions for earlier year associate R&D expenditure) do not apply to expenditure incurred in acquiring, or in acquiring the right to use, technology wholly or partly for the purposes of one or more *R&D activities if:
- (a) a purpose of the R&D activities was or is:
 - (i) to obtain new knowledge based on that technology; or
 - (ii) to create new or improved materials, products, devices, processes, techniques or services to be based on that technology; or
 - (b) the R&D activities were or are an extension, continuation, development or completion of the activities that produced that technology.

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

Subdivision 355-E—Notional deductions for decline in value of depreciating assets used for R&D activities

Table of sections

355-300	What this Subdivision is about
355-305	When notional deductions for decline in value arise
355-310	Notional application of Division 40
355-315	Balancing adjustments—assets only used for R&D activities

355-300 What this Subdivision is about

An R&D entity can notionally deduct the decline in value of a tangible depreciating asset used for R&D activities.

If a balancing adjustment event later happens for the asset, the R&D entity may be able to notionally deduct a further amount. Alternatively, an amount may be included in the R&D entity's assessable income.

355-305 When notional deductions for decline in value arise

- (1) If:
- (a) an *R&D entity is registered under section 27A of the *Industry Research and Development Act 1986* for an income year (the **present year**) for one or more *R&D activities that are activities to which section 355-210 (conditions for R&D activities) applies; and
 - (b) while a tangible *depreciating asset is *held by the R&D entity during the present year, the asset is used for the purpose of conducting one or more of those R&D activities; and
 - (c) the R&D entity could deduct an amount under section 40-25 for the asset for the present year if Division 40 applied with the changes described in section 355-310; and
 - (d) the R&D entity cannot deduct an amount for the asset for:
 - (i) an earlier income year under Subdivision 328-D (capital allowances for small business entities); or

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

(ii) an earlier income year under Division 40 (as that Division applies apart from this Division), in a case where section 40-440 (low-value pools) applied; the R&D entity can deduct the amount referred to in paragraph (c) for the present year.

(2) This section has effect subject to subsection 355-580(4) (CRC contributions).

355-310 Notional application of Division 40

(1) In addition to its application apart from this section, Division 40 also applies with the changes set out in this section for the purposes of:

- (a) paragraph 355-225(1)(b) (excluded expenditure); and
- (b) paragraph 355-305(1)(c); and
- (c) section 355-315 (balancing adjustments).

(2) Firstly, substitute the following for references to a *taxable purpose in Subdivisions 40-A to 40-D (other than for the purposes of sections 40-100, 40-105 and 40-110):

Replacing references to a taxable purpose

Item	If this application of Division 40 is for the purposes of:	Substitute a reference to:
1	paragraph 355-225(1)(b) or 355-305(1)(c)	the purpose of conducting one or more of the *R&D activities covered by paragraph 355-305(1)(b)
2	section 355-315	the purpose of conducting one or more of the *R&D activities to which the R&D deductions (within the meaning of that section) relate

Note: Sections 40-100, 40-105 and 40-110 are about working out an asset's effective life. Those sections already refer to the use of the asset for R&D activities.

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

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- (3) Secondly, assume that Division 40 does not apply to a building, nor to an extension, alteration or improvement to a building, (the **building works**) for which the *R&D entity:
- (a) can deduct amounts under Division 43 (capital works); or
 - (b) could deduct amounts under Division 43:
 - (i) apart from expenditure being incurred, or the building works being started, before a particular day; or
 - (ii) had the R&D entity used the building works for a purpose relevant to those building works under section 43-140 (using an area in a deductible way).
- (4) Finally, assume that the following provisions had not been enacted:
- (a) subsection 40-25(7) (meaning of taxable purpose);
 - (b) subsection 40-45(2) (assets to which Division 40 does not apply);
 - (c) section 40-425 (low-value pools);
 - (d) Subdivision 328-D (capital allowances for small business entities).

Note: Subsection (3) and paragraph (4)(b) mean that deductions under section 355-305 may be available for capital works other than building works.

355-315 Balancing adjustments—assets only used for R&D activities

- (1) This section applies to an *R&D entity if:
- (a) a *balancing adjustment event happens in an income year (the **event year**) for an asset *held by the R&D entity; and
 - (b) the R&D entity cannot deduct an amount under section 40-25, as that section applies apart from:
 - (i) this Division; and
 - (ii) former section 73BC of the *Income Tax Assessment Act 1936*;for the asset for an income year; and
 - (c) the R&D entity is 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; and

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

- (d) the entity is registered under section 27A of the *Industry Research and Development Act 1986* for one or more *R&D activities for the event year; and
- (e) if Division 40 applied with the changes described in section 355-310:
 - (i) the entity could deduct for the event year an amount under subsection 40-285(2) for the asset and the balancing adjustment event; or
 - (ii) an amount would be included in the entity's assessable income for the event year under subsection 40-285(1) for the asset and the balancing adjustment event.

Note 1: This section applies in a modified way if the entity also has deductions for the asset under former section 73BA or 73BH of the *Income Tax Assessment Act 1936* (see section 355-320 of the *Income Tax (Transitional Provisions) Act 1997*).

Note 2: Section 40-292 applies if the entity can deduct an amount under section 40-25, as that section applies apart from this Division and former section 73BC of the *Income Tax Assessment Act 1936*.

Notional deduction

- (2) If the *R&D entity could deduct for the event year an amount under subsection 40-285(2) for the asset and the event if Division 40 applied as described in paragraph (1)(e), the R&D entity can deduct that amount for the event year.

Amount to be included in assessable income

- (3) If an amount (the **section 40-285 amount**) would be included in the *R&D entity's assessable income for the event year under subsection 40-285(1) for the asset and the event if Division 40 applied as described in paragraph (1)(e), the sum of that amount and the following amount is included in the R&D entity's assessable income for the event year:

$$\text{Adjusted section 40-285 amount} \times \frac{1}{3}$$

where:

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

Section 355-400

adjusted section 40-285 amount means so much of the section 40-285 amount as does not exceed the total decline in value.

total decline in value means the asset's *cost, less its *adjustable value, worked out under Division 40 as it applies as described in paragraph (1)(e).

Subdivision 355-F—Integrity Rules

Table of sections

355-400	Expenditure incurred while not at arm's length
355-405	Expenditure not at risk
355-410	Disposal of R&D results
355-415	Reducing deductions to reflect mark-ups within groups

355-400 Expenditure incurred while not at arm's length

If:

- (a) an *R&D entity incurs expenditure to another entity on all or part of an *R&D activity; and
- (b) either:
 - (i) when the R&D entity incurs the expenditure, the R&D entity and the other entity do not deal with each other at *arm's length; or
 - (ii) the other entity is the R&D entity's *associate; and
- (c) the expenditure exceeds the *market value of the relevant R&D activity or part (as appropriate);

for the purposes of this Division, the R&D entity is treated as if the amount of expenditure it incurred on the relevant R&D activity or part (as appropriate) were equal to that market value.

Note 1: For the purposes of a deduction under section 355-305 or 355-520 for an asset's decline in value, the arms' length rules in Division 40 apply as part of the notional application of that Division under that section.

Note 2: In the application of Division 13 of Part III of the *Income Tax Assessment Act 1936* (about international transfer-pricing arrangements), this section is disregarded (see subsection 136AB(2) of that Act).

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

355-405 Expenditure not at risk

- (1) An *R&D entity cannot deduct expenditure under section 355-205 or 355-480 if:
- (a) when it incurs the expenditure, the R&D entity or its *associate had received, or could reasonably be expected to receive, consideration:
 - (i) as a direct or indirect result of the expenditure being incurred; and
 - (ii) regardless of the results of the activities on which the expenditure is incurred; and
 - (b) that consideration is equal to or greater than the expenditure.

Note: Section 355-205 is about deductions for R&D expenditure.
Section 355-480 is about deductions for earlier year associate R&D expenditure.

- (2) If:
- (a) when an *R&D entity incurs expenditure, the R&D entity or its *associate had received, or could reasonably be expected to receive, consideration:
 - (i) as a direct or indirect result of the expenditure being incurred; and
 - (ii) regardless of the results of the activities on which the expenditure is incurred; and
 - (b) that consideration is less than the expenditure;
- the R&D entity cannot deduct under section 355-205 or 355-480 so much of the expenditure as is equal to the consideration.
- (3) For the purposes of paragraphs (1)(a) and (2)(a), have regard to:
- (a) anything that happened or existed before or at the time the expenditure is incurred; and
 - (b) anything that is likely to happen or exist after that time.
- (4) This section does not apply to expenditure incurred on *R&D activities covered by paragraph 355-210(1)(b) or (c).

Note: Those paragraphs cover R&D activities conducted for foreign residents.

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

355-410 Disposal of R&D results

- (1) This section applies to an *R&D entity if:
- (a) the R&D entity is entitled under section 355-100 to a *tax offset because it can:
 - (i) deduct under section 355-205 or 355-480 expenditure incurred on *R&D activities; or
 - (ii) deduct under section 355-305 or 355-520 an amount for an asset (the **R&D asset**) used for the purpose of conducting one or more R&D activities; and
 - (b) the R&D entity receives or becomes entitled to receive one or more of the following amounts (the **results amounts**) in an income year (the **results year**):
 - (i) an amount for the results of any of the R&D activities;
 - (ii) an amount from granting access to, or the right to use, any of those results;
 - (iii) an amount attributable to the R&D entity having incurred the expenditure, including an amount it is entitled to receive regardless of the results of the R&D activities;
 - (iv) an amount attributable to the R&D asset being used for the purpose mentioned in subparagraph (a)(ii), including an amount the R&D entity is entitled to receive regardless of the results of the R&D activities;
 - (v) an amount from *disposing of a *CGT asset, or from granting a right to occupy or use a CGT asset, where the disposal or grant resulted in another person acquiring a right to access or use any of those results.

Note: This section also applies with changes to the partners of an R&D partnership (see section 355-535).

- (2) For each results amount, the following amount is included in the *R&D entity's assessable income for the results year:
- (a) if the results amount is only a results amount because of subparagraph (1)(b)(v), and the asset referred to in that subparagraph is a *depreciating asset—an amount equal to the extent (if any) that the results amount exceeds the asset's *cost just before the disposal or grant;

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

- (b) if the results amount is only a results amount because of subparagraph (1)(b)(v), and the asset referred to in that subparagraph is not a depreciating asset—an amount equal to the extent (if any) that the results amount exceeds the asset's *cost base just before the disposal or grant;
 - (c) otherwise—the results amount.
- (3) For the purposes of paragraph (2)(a), assume that subsection 40-45(2) did not, except in the case of buildings and extensions, alterations and improvements to buildings, prevent Division 40 from applying to certain capital works.

355-415 Reducing deductions to reflect mark-ups within groups

- (1) This section applies to an *R&D entity if:
- (a) the R&D entity can deduct an amount under section 355-205 or 355-480 for an income year for one or more *R&D activities; and
 - (b) one or more other entities (the *grouped entities*) incurred expenditure during the income year, or an earlier income year, on one or more of those *R&D activities; and
 - (c) when each grouped entity incurred the expenditure:
 - (i) the grouped entity was *connected with the R&D entity; or
 - (ii) the grouped entity was an *affiliate of the R&D entity or the R&D entity was an affiliate of the grouped entity.

Note: Section 355-205 is about deductions for R&D expenditure.
Section 355-480 is about deductions for earlier year associate R&D expenditure.

Reducing deductions by group mark-ups

- (2) The amount the *R&D entity can deduct, apart from this section, under section 355-205 or 355-480 for the income year is reduced by the amount (the *reduction amount*) worked out as follows:

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

Method statement

- Step 1. For each grouped entity, work out the sum of the amounts derived during the income year, or an earlier income year, by the grouped entity for goods or services relating to one or more of the *R&D activities while:
- (a) the grouped entity was *connected with the *R&D entity; or
 - (b) the grouped entity was an *affiliate of the R&D entity or the R&D entity was an affiliate of the grouped entity.
- Step 2. From the sum of those amounts, subtract the actual cost to each grouped entity of providing the goods or services that correspond to those amounts.

If R&D entity has deductions for both R&D expenditure and earlier year associate R&D expenditure

- (3) However, if the *R&D entity can deduct amounts under both sections 355-205 and 355-480 for the income year, those amounts are reduced as follows:
- (a) apply the reduction amount to reduce the amount otherwise deductible under section 355-205 (but not below zero); and
 - (b) then apply any remainder of the reduction amount to reduce the amount otherwise deductible under section 355-480 (but not below zero).

Disregard mark-ups already taken into account

- (4) For the purposes of step 1 of the method statement in subsection (2), disregard any of the amounts from that step that have already been taken into account under this section for the *R&D entity and the *R&D activities for an earlier income year.

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

Subdivision 355-G—Clawback of R&D recoupments

Table of sections

355-430	What this Subdivision is about
355-435	When extra income tax is payable
355-440	Entity receives government recoupment
355-445	Recoupment could relate to R&D activities
355-450	Amount on which extra income tax is payable

355-430 What this Subdivision is about

An entity must pay extra income tax on its recoupments from government of expenditure on R&D activities for which it has obtained tax offsets under this Division.

355-435 When extra income tax is payable

An entity must pay extra income tax on a *recoupment if the conditions in sections 355-440 and 355-445 are met for the recoupment.

Note 1: Section 355-450 sets out how much of the recoupment is subject to extra income tax.

Note 2: A recoupment includes a grant (see subsection 20-25(1)).

355-440 Entity receives government recoupment

The condition in this section is met if the entity receives or becomes entitled to receive the *recoupment from:

- (a) an *Australian government agency; or
 - (b) an STB (within the meaning of Division 1AB of Part III of the *Income Tax Assessment Act 1936*);
- otherwise than under the *CRC program.

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

355-445 Recoupment could relate to R&D activities

The condition in this section is met if:

- (a) the *recoupment is received, or the entitlement to receive the recoupment arises, during an income year (the *trigger year*); and
- (b) either:
 - (i) the recoupment is of expenditure incurred on or in relation to certain activities; or
 - (ii) the recoupment requires expenditure (the *project expenditure*) to have been incurred, or to be incurred, on certain activities.

Note: Paragraph (b) includes expenditure incurred in purchasing a tangible depreciating asset to be used when conducting R&D activities.

355-450 Amount on which extra income tax is payable

Amount on which extra income tax is payable

- (1) The extra income tax is payable for the trigger year on an amount (the *R&D expenditure*) equal to the sum of:
 - (a) so much of the expenditure referred to in section 355-445 that is deducted under this Division; and
 - (b) for each asset (if any) for which expenditure referred to in section 355-445 is included in the asset's *cost—each amount (if any) equal to the asset's decline in value that is deducted under this Division;

in working out *tax offsets under section 355-100 obtained by the entity (the *recipient*), or an entity mentioned in subsection (4), for one or more income years.

Note 1: Section 12B or 31 of the *Income Tax Rates Act 1986* sets the rate at which the entity must pay extra income tax on this amount.

Note 2: Paragraphs (a) and (b) of this subsection refer to amounts notionally deducted under this Division (see section 355-105).

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

Amount is reduced by any repayments of the recoupment

- (2) For the purposes of subsection (1), reduce the expenditure referred to in subparagraph 355-445(b)(i) by any repayments of the *recoupment during an income year.

Cap on extra income tax if recoupment relates to a project

- (3) Despite subsection (1), if the *recoupment is covered by subparagraph 355-445(b)(ii), the amount of extra income tax payable for the trigger year on the recoupment cannot exceed the following amount:

$$\text{Net amount of the recoupment} \times \frac{\text{R\&D expenditure}}{\text{Project expenditure}}$$

where:

net amount of the recoupment means the total amount of the *recoupment, less any repayments of the recoupment during an income year.

Related entities

- (4) The other entities for the purposes of subsection (1) are as follows:
- (a) an entity *connected with the recipient;
 - (b) an *affiliate of the recipient or an entity of which the recipient is an affiliate.

Subdivision 355-H—Feedstock adjustments

Table of sections

355-460	What this Subdivision is about
355-465	Feedstock adjustment to assessable income
355-470	<i>Feedstock revenue</i>
355-475	Application to connected entities and affiliates

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

355-460 What this Subdivision is about

An amount is included in an R&D entity's assessable income if it can deduct under this Division expenditure on goods, materials or energy used during R&D activities to produce:

- (a) marketable products; or
- (b) products applied to the R&D entity's own use.

355-465 Feedstock adjustment to assessable income

- (1) This section applies to an *R&D entity for an income year (the *present year*) if:
- (a) it incurs expenditure in one or more income years in acquiring or producing goods, or materials, (the *feedstock inputs*) transformed or processed during *R&D activities in producing one or more tangible products (the *feedstock outputs*); and
 - (b) it obtains under section 355-100 *tax offsets for one or more income years for deductions under this Division:
 - (i) for the expenditure; or
 - (ii) for expenditure it incurs on any energy input directly into the transformation or processing; or
 - (iii) for the decline in value of assets used in acquiring or producing the feedstock inputs; and
 - (c) during the present year, a feedstock output, or a transformed feedstock output, (the *marketable product*) is:
 - (i) *supplied by the R&D entity to another entity; or
 - (ii) applied by the R&D entity to the R&D entity's own use, other than use for the purpose of transforming that product for supply.

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

- (2) The *R&D entity's assessable income for the present year includes an amount equal to $\frac{1}{3}$ of the lesser of:
- (a) the *feedstock revenue for the feedstock output; and
 - (b) so much of the total of the amounts deducted as described in paragraph (1)(b) that is reasonably attributable to the production of the feedstock output.

Note: This subsection applies separately for each of the feedstock outputs.

- (3) Subsection (2) does not apply to the feedstock output if:
- (a) it becomes, or is transformed into, a feedstock input; or
 - (b) that subsection already applies to the feedstock output because of the application of paragraph (1)(c) to:
 - (i) an earlier time during the present year; or
 - (ii) an earlier income year.

355-470 Feedstock revenue

The *feedstock revenue*, for the feedstock output, is worked out as follows:

$$\text{*Market value of the marketable product} \times \frac{\text{Cost of producing the feedstock output}}{\text{Cost of producing the marketable product}}$$

where:

market value of the marketable product means the marketable product's *market value at the time it is:

- (a) *supplied by the *R&D entity to the other entity; or
- (b) first applied by the R&D entity to the R&D entity's own use, other than use for the purpose of transforming that product for supply.

355-475 Application to connected entities and affiliates

This Subdivision applies to a *supply or use of the marketable product by:

- (a) an entity *connected with the *R&D entity; or

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

- (b) an *affiliate of the R&D entity or an entity of which the R&D entity is an affiliate;
as if it were by the R&D entity.

Subdivision 355-I—Application to earlier income year R&D expenditure incurred to associates

Table of sections

355-480 Notional deductions for expenditure incurred to associate in earlier income years

355-480 Notional deductions for expenditure incurred to associate in earlier income years

Notional deductions for earlier year associate expenditure

- (1) An *R&D entity can deduct for an income year (the *present year*) expenditure it incurred to its *associate during an earlier income year to the extent that:
- (a) the expenditure was incurred on one or more *R&D activities:
 - (i) for which the R&D entity is registered under section 27A of the *Industry Research and Development Act 1986* for an income year; and
 - (ii) that are activities to which section 355-210 (conditions for R&D activities) applies; and
 - (b) the expenditure is paid to that associate during the present year; and
 - (c) subsection (2) applies to the expenditure.

Note 1: This section applies in a modified way to R&D partnership expenditure (see sections 355-510 and 355-515).

Note 2: Expenditure paid in income years starting on or after 1 July 2011 may be deductible for activities registered for income years starting before 1 July 2011 (see section 355-200 of the *Income Tax (Transitional Provisions) Act 1997*).

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

Expenditure cannot have been otherwise deducted etc.

- (2) This subsection applies to the expenditure if:
- (a) the *R&D entity can deduct the expenditure, or is entitled to a *tax offset for the expenditure, under any other Division of this Act for an earlier income year; and
 - (b) by the time of lodging its *income tax return for the most recent income year before the present year, the R&D entity had neither:
 - (i) deducted the expenditure; nor
 - (ii) obtained a tax offset for the expenditure;as described in paragraph (a).

- (3) The entitlement to the deduction, or *tax offset, described in paragraph (2)(a) ceases to the extent that subsection (2) applies to the expenditure.

Example: If, by the time mentioned in paragraph (2)(b), an R&D entity chose to deduct only a third of the expenditure it could have deducted under another Division, then the remaining 2 thirds of that expenditure:

- (a) can be deducted under this section; but
- (b) can no longer be deducted under the other Division.

Notional deduction is subject to integrity rules etc.

- (4) This section has effect subject to section 355-225 (excluded expenditure), Subdivision 355-F (integrity rules) and subsection 355-580(3) (CRC contributions).

Subdivision 355-J—Application to R&D partnerships

Table of sections

355-500	What this Subdivision is about
355-505	Meaning of <i>R&D partnership</i> and <i>partner's proportion</i>
355-510	R&D partnership expenditure on R&D activities
355-515	R&D activities conducted by or for an R&D partnership
355-520	When notional deductions arise for decline in value of depreciating assets of R&D partnerships
355-525	Balancing adjustments for R&D partnership assets only used for R&D activities
355-530	Implications for partner's aggregated turnover

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

Section 355-500

- 355-535 Disposal of R&D results—assets of R&D partnerships
- 355-540 Application of recoupment rules
- 355-545 Relevance for net income, and losses, of the R&D partnership

355-500 What this Subdivision is about

This Subdivision modifies the rules in this Division for partners of R&D partnerships.

In particular, the rules about deducting R&D expenditure are modified to allow a partner to deduct the partner's proportion of the R&D partnership's expenditure on R&D activities.

A partner of an R&D partnership may also be able to deduct under this Subdivision the decline in value of partnership assets used for R&D activities.

355-505 Meaning of *R&D partnership* and *partner's proportion*

- (1) A partnership is an ***R&D partnership*** at a particular time if, at that time, each of the partners is an *R&D entity.
- (2) For an amount attributable to an *R&D partnership for an income year, each partner of the R&D partnership is taken to bear or be entitled to (as appropriate) this proportion (the ***partner's proportion***) of the amount:
 - (a) the proportion the partners agreed the partner should bear or be entitled to (as appropriate); or
 - (b) if there is no such agreement—the proportion of the partner's interest in the *net income or *partnership loss of the R&D partnership for the income year.

355-510 R&D partnership expenditure on R&D activities

If an *R&D partnership incurs expenditure on one or more R&D activities during an income year, this Division applies in relation to each *R&D entity that is a partner of the R&D partnership at some time during the income year as if:

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

- (a) the partner incurred the partner's proportion of that expenditure when the R&D partnership incurred that expenditure; and
- (b) neither the R&D partnership, nor any other partner of the R&D partnership, incurred expenditure during the income year on the R&D activities; and
- (c) such other changes were made to this Division as are appropriate having regard to that partner's proportion of amounts attributable to the R&D partnership.

- Note: This section and section 355-515 may result in:
- (a) the partner being able to deduct the partner's proportion of the partnership expenditure under section 355-205 (R&D expenditure) or 355-480 (earlier year associate R&D expenditure) for the R&D activities; and
 - (b) the partner being affected by the integrity rules in Subdivisions 355-F, 355-G and 355-H.

355-515 R&D activities conducted by or for an R&D partnership

If one or more *R&D activities are conducted by or for an *R&D partnership during an income year, this Division applies in relation to each *R&D entity that is a partner of the R&D partnership at some time during the income year as if:

- (a) the R&D activities were conducted by or for the partner in a corresponding way to the way the R&D activities were conducted by or for the R&D partnership; and
- (b) the partner had relationships with other entities in relation to the R&D activities that corresponded to the relationships the R&D partnership had with those other entities in relation to the R&D activities; and
- (c) a thing done by, or in relation to, the R&D partnership in relation to the R&D activities were a thing done by, or in relation to, the partner; and
- (d) the R&D activities were neither:
 - (i) conducted by or for the R&D partnership; nor
 - (ii) conducted by or for any other partner of the R&D partnership; and

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

Section 355-520

- (e) such other changes were made to this Division as are appropriate having regard to that partner's proportion of amounts attributable to the R&D partnership.

Note 1: For the purposes of this Division, entities that are associates or affiliates of, or connected with, the R&D partnership are taken to be associates or affiliates of, or connected with, the partner (see paragraph (b)).

Note 2: For the purposes of this Division, payments and agreements made by the R&D partnership for the R&D activities are taken to be made by the partner (see paragraph (c)).

355-520 When notional deductions arise for decline in value of depreciating assets of R&D partnerships

When notional deductions arise

(1) If:

- (a) an *R&D entity is a partner of an *R&D partnership at some time during an income year (the *present year*); and
(b) the partner is registered under section 27A of the *Industry Research and Development Act 1986* for the present year for one or more *R&D activities that are activities to which section 355-210 (conditions for R&D activities) applies; and

Note: Section 355-210 applies with changes for this paragraph (see section 355-515).

- (c) while a tangible *depreciating asset is *held by the R&D partnership during the present year, the asset is used for the purpose of conducting one or more of those R&D activities; and
(d) the R&D partnership could deduct an amount under section 40-25 for the asset for the present year if Division 40 applied with the changes described in section 355-310; and

Note: Section 355-310 applies with changes for this paragraph (see subsection (2) of this section).

- (e) the R&D partnership cannot deduct an amount for the asset for:
(i) an earlier income year under Subdivision 328-D (capital allowances for small business entities); or

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

(ii) an earlier income year under Division 40 (as that Division applies apart from this Division), in a case where section 40-440 (low-value pools) applied; the partner can deduct the partner's proportion of the amount referred to in paragraph (d) for the present year.

Changed application of Division 40 for this Subdivision

(2) For the purposes of this Subdivision, section 355-310 applies as if the following changes were made:

Changes to be made		
Item	For a reference in section 355-310 to...	substitute a reference to...
1	paragraph 355-305(1)(c)	paragraph 355-520(1)(d)
2	section 355-315	section 355-525
3	paragraph 355-305(1)(b)	paragraph 355-520(1)(c)
4	*R&D entity	*R&D partnership

Disregard certain assets held because of CRC contributions

(3) This section has effect subject to subsection 355-580(4) (CRC contributions).

355-525 Balancing adjustments for R&D partnership assets only used for R&D activities

- (1) This section applies to an *R&D entity (the *partner*) if:
- (a) a *balancing adjustment event happens in an income year (the *event year*) for an asset *held by an *R&D partnership; and
 - (b) the R&D partnership cannot deduct an amount under section 40-25, as that section applies apart from:
 - (i) this Division; and
 - (ii) former section 73BC of the *Income Tax Assessment Act 1936*; for the asset for an income year; and
 - (c) the partner is 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; and

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

Section 355-525

- (d) the partner is registered under section 27A of the *Industry Research and Development Act 1986* for one or more *R&D activities for the event year; and
- (e) if Division 40 applied with the changes described in section 355-310 (as affected by subsection 355-520(2)):
 - (i) the R&D partnership could deduct for the event year an amount under subsection 40-285(2) for the asset and the balancing adjustment event; or
 - (ii) an amount would be included in the R&D partnership's assessable income for the event year under subsection 40-285(1) for the asset and the balancing adjustment event.

Note 1: This section applies in a modified way if the partner has deductions for the asset under former section 73BA or 73BH of the *Income Tax Assessment Act 1936* (see section 355-325 of the *Income Tax (Transitional Provisions) Act 1997*).

Note 2: Section 40-293 applies if the R&D partnership can deduct an amount under section 40-25, as that section applies apart from this Division and former section 73BC of the *Income Tax Assessment Act 1936*.

Notional deduction

- (2) If the *R&D partnership could deduct for the event year an amount under subsection 40-285(2) for the asset and the event if Division 40 applied as described in paragraph (1)(e), the partner can deduct the partner's proportion of that amount for the event year.

Amount to be included in assessable income

- (3) If an amount (the **section 40-285 amount**) would be included in the *R&D partnership's assessable income for the event year under subsection 40-285(1) for the asset and the event if Division 40 applied as described in paragraph (1)(e), the partner's proportion of the sum of:
 - (a) that amount; and
 - (b) the following amount;is included in the partner's assessable income for the event year:

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

Adjusted section 40-285 amount $\times \frac{1}{3}$

where:

adjusted section 40-285 amount means so much of the section 40-285 amount as does not exceed the total decline in value.

total decline in value means the asset's *cost, less its *adjustable value, worked out under Division 40 as it applies as described in paragraph (1)(e).

355-530 Implications for partner's aggregated turnover

For the purposes of sections 40-292 (balancing adjustments for decline in value) and 355-100 (tax offsets for R&D), if:

- (a) an *R&D entity is a partner of an *R&D partnership at some time during an income year; and
- (b) the partner's *aggregated turnover for the income year does not include the R&D partnership's *annual turnover for the income year;

the partner's aggregated turnover for the income year includes the *partner's proportion of the R&D partnership's annual turnover for the income year.

355-535 Disposal of R&D results for R&D partnerships

In addition to its application apart from this section, section 355-410 (disposal of R&D results) also applies to each partner of an *R&D partnership with such changes as are appropriate having regard to:

- (a) amounts (the **results amounts**) of a kind set out in subparagraphs 355-410(1)(b)(i) to (v) that the R&D partnership receives or becomes entitled to receive in an income year; and
- (b) the principle that any amount to be included in the partner's assessable income for the income year for a results amount should be the partner's proportion of the amount arising under subsection 355-410(2) for the results amount.

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

Section 355-540

Note: The ordinary application of section 355-410 will apply to any of the partner's deductions under this Division that do not relate to the R&D partnership.

355-540 Application of recoupment rules

(1) If:

- (a) an *R&D partnership incurs expenditure (the *partnership expenditure*) on *R&D activities; and
- (b) an *R&D entity (the *partner*) is entitled under section 355-100 to a *tax offset because it can, under section 355-205 or 355-480, deduct some or all of that expenditure; and
- (c) the R&D partnership receives an amount as a *recoupment of any or all of the partnership expenditure;

the partner is taken, for the purposes of Subdivisions 20-A and 355-G:

- (d) to have incurred the partner's proportion of the partnership expenditure when the R&D partnership incurred that expenditure; and
- (e) to have received the partner's proportion of the recoupment when the R&D partnership received the recoupment.

(2) If:

- (a) an *R&D entity (the *partner*) is entitled under section 355-100 to a *tax offset because it can, under section 355-520, deduct an amount for an income year for an asset; and
- (b) the applicable *R&D partnership receives an amount as a *recoupment of any or all of the R&D partnership's expenditure included in the *cost of the asset for the purposes of the application of Division 40 as described in paragraph 355-520(1)(d);

the partner is taken, for the purposes of Subdivisions 20-A and 355-G:

- (c) to have incurred the partner's proportion of that expenditure when the R&D partnership incurred that expenditure; and
- (d) to have received the partner's proportion of the recoupment when the R&D partnership received the recoupment.

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

355-545 Relevance for net income, and losses, of the R&D partnership

For an *R&D entity that is a partner of an *R&D partnership, none of the following:

- (a) any expenditure the R&D entity is taken to have incurred because of this Subdivision;
- (b) any amount the R&D entity can deduct under this Subdivision;
- (c) any *recoupment the R&D entity is taken to have received because of this Subdivision;

are to be taken into account in determining the *net income of the R&D partnership, or any *partnership loss of the R&D partnership, for an income year.

Subdivision 355-K—Application to Cooperative Research Centres

Table of sections

355-580 When notional deductions for CRC contributions arise

355-580 When notional deductions for CRC contributions arise

Monetary contributions are deductible

- (1) An *R&D entity can deduct for an income year expenditure it incurs during that year to the extent that:
 - (a) the expenditure is in the form of monetary contributions under the *CRC program; and
 - (b) the contributions have been or will be spent under the CRC program on one or more *R&D activities for which the R&D entity is registered under section 27A of the *Industry Research and Development Act 1986* for an income year.

Note 1: The R&D activities will need to be conducted during the income year the R&D entity is registered for those activities (see sections 27A and 27J of the *Industry Research and Development Act 1986*).

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

Section 355-580

Note 2: Expenditure incurred in income years starting on or after 1 July 2011 may be deductible for activities registered for income years starting before 1 July 2011 (see section 355-200 of the *Income Tax (Transitional Provisions) Act 1997*).

- (2) Subsection (1) does not apply to expenditure to the extent that it is incurred out of Commonwealth funding.

No other deductions arise for monetary contributions etc.

- (3) Neither:
- (a) a contribution an *R&D entity can deduct under subsection (1); nor
 - (b) expenditure incurred under the *CRC program, to the extent that the expenditure is incurred out of:
 - (i) a contribution an R&D entity can deduct under subsection (1); or
 - (ii) Commonwealth funding;can be deducted by any R&D entity under any other provision of this Division for any income year.
- (4) If an asset's *cost includes expenditure incurred under the *CRC program out of:
- (a) a contribution an *R&D entity can deduct under subsection (1); or
 - (b) Commonwealth funding;
- an amount equal to the asset's decline in value cannot be deducted under this Division by any R&D entity for any income year.

Subdivision 355-W—Other matters

Table of sections

355-700	Objecting to assessment of refundable tax offset
355-705	Effect of findings by Innovation Australia
355-710	Amendment of assessments
355-715	Implications for other deductions and tax offsets

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

355-700 Objecting to assessment of refundable tax offset

- (1) An *R&D entity may object under subsection 175A(1) of the *Income Tax Assessment Act 1936* against an assessment made in relation to the R&D entity to the extent that the assessment relates to the amount of a *tax offset under section 355-100 that is subject to the refundable tax offset rules.

Note: See section 67-30 for when a tax offset under section 355-100 is subject to the refundable tax offset rules.

- (2) This section does not limit subsection 175A(1) of that Act, and has effect despite subsection 175A(2) of that Act.

Note: Subsection 175A(2) of that Act prevents objections if the taxpayer has no taxable income, or if there is no tax payable on the taxpayer's taxable income.

355-705 Effect of findings by Innovation Australia

Findings about registration or core technology

- (1) If:
- (a) a certificate given to the Commissioner under the *Industry Research and Development Act 1986* sets out:
 - (i) a finding under section 27B of that Act about an *R&D entity's application for registration under section 27A of that Act for an income year; or
 - (ii) a finding under section 27J of that Act about an R&D entity's registration under section 27A of that Act for an income year; or
 - (iii) a finding under section 28E of that Act about an R&D entity and one or more *R&D activities conducted or to be conducted during one or more income years; and
 - (b) the finding was made within 4 years after the end of the income year or the last of the income years (as appropriate);
- the finding binds the Commissioner for the purposes of assessments of the R&D entity for the income year or years (as appropriate).

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

Section 355-710

Note: Section 28E of the *Industry Research and Development Act 1986* deals with findings that technology is core technology for particular R&D activities. Expenditure incurred in acquiring such technology is not deductible under this Division (see subsection 355-225(2)).

Advance findings about activities yet to be completed

(2) If:

- (a) an activity is being conducted, or is yet to be conducted, in an income year; and
- (b) an *R&D entity applies in the income year for a finding under section 28A of the *Industry Research and Development Act 1986* about the activity; and
- (c) Innovation Australia makes the finding and gives the Commissioner a certificate under that Act setting out the finding;

the finding binds the Commissioner for the purposes of assessments of the R&D entity for the income year and the next 2 income years.

Advance findings about completed activities

(3) However, if:

- (a) an activity is completed during an income year; and
- (b) an *R&D entity applies in the income year for a finding under section 28A of the *Industry Research and Development Act 1986* about the activity; and
- (c) Innovation Australia makes the finding and gives the Commissioner a certificate under that Act setting out the finding;

the finding binds the Commissioner for the purposes of assessments of the R&D entity for the income year.

355-710 Amendment of assessments

Dealing with findings of Innovation Australia

(1) If:

- (a) a certificate given to the Commissioner under the *Industry Research and Development Act 1986* sets out:

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

- (i) a finding under section 27B of that Act about an *R&D entity's application for registration under section 27A of that Act for an income year; or
 - (ii) a finding under section 27J of that Act about an R&D entity's registration under section 27A of that Act for an income year; or
 - (iii) a finding under section 28A or 28C of that Act made on application by an R&D entity during an income year; or
 - (iv) a finding under section 28E of that Act about an R&D entity and one or more R&D activities conducted or to be conducted during one or more income years; and
- (b) the finding was made within 4 years after the end of the income year or the last of the income years (as appropriate); despite section 170 of the *Income Tax Assessment Act 1936*, the Commissioner may amend the R&D entity's assessment for an income year affected by the finding at any time for the purposes of giving effect to the finding.
- (2) However, the Commissioner may only do so within 2 years after the Commissioner is given the certificate if giving effect to the finding would increase the R&D entity's liability.

Dealing with key decisions of Innovation Australia and others

- (3) If:
- (a) an internal review decision (the **key decision**) under subsection 30D(2) of the *Industry Research and Development Act 1986* relates to an *R&D entity; or
 - (b) a decision (also the **key decision**) under the *Administrative Appeals Tribunal Act 1975*:
 - (i) varies a decision covered by paragraph (a); or
 - (ii) sets aside a decision covered by paragraph (a), whether or not that key decision also includes a decision made in substitution for the decision covered by paragraph (a); or
 - (c) a decision (also the **key decision**) of a court is about:
 - (i) a decision under Part III of the *Industry Research and Development Act 1986* relating to an R&D entity; or

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

(ii) a decision covered by paragraph (b);
despite section 170 of the *Income Tax Assessment Act 1936*, the Commissioner may amend the R&D entity's assessment for an income year affected by the key decision at any time for the purposes of giving effect to that decision.

355-715 Implications for other deductions and tax offsets

- (1) If an *R&D entity is entitled under section 355-100 to a *tax offset for an income year for expenditure it can deduct under section 355-205, 355-480 or 355-580, that expenditure:
- (a) cannot be taken into account by any entity in working out a deduction under any other Division of this Act for any income year; and
 - (b) cannot be taken into account by any entity in working out a tax offset under any other Division of this Act for any income year.

Note: Section 355-205 is about R&D expenditure, section 355-480 is about earlier year associate R&D expenditure, and section 355-580 is about CRC contributions.

- (2) If an *R&D entity is entitled under section 355-100 to a *tax offset for an income year for a deduction under section 355-305, 355-315, 355-520 or 355-525 of an amount equal to the decline in value of an asset, that decline in value:
- (a) cannot be taken into account by any entity in working out a deduction under any other Division of this Act (other than section 40-292 or 40-293) for any income year; and
 - (b) cannot be taken into account by any entity in working out a tax offset under any other Division of this Act for any income year;

to the extent that the decline in value is attributable to the use of the asset for the purpose of conducting one or more of the *R&D activities to which the deduction relates.

Note 1: A deduction may be available under section 40-25 to the extent that the asset's decline in value is attributable to another purpose. If so, that deduction under section 40-25 will not take into account the asset's decline in value to the extent that it is attributable to the R&D activities (see also subsection 40-25(2)).

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

- Note 2: Section 355-305 is about the decline in value of R&D assets, section 355-315 is about balancing adjustments for R&D assets, section 355-520 is about the decline in value of R&D partnership assets, and section 355-525 is about balancing adjustments for R&D partnership assets.
- Note 3: Sections 40-292 and 40-293 deal with balancing adjustments when deductions have been available for the asset's decline in value both under this Division and section 40-25.

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

Division 376—Films generally (tax offsets for Australian production expenditure)

Table of Subdivisions

- 376-A Guide to Division 376
- 376-B Tax offsets for Australian expenditure in making a film
- 376-C Production expenditure and qualifying Australian production expenditure
- 376-D Certificates for films and other matters

Subdivision 376-A—Guide to Division 376

376-1 What this Division is about

Companies may be entitled to 1 of 3 refundable tax offsets in relation to Australian expenditure incurred in making films. The offsets are designed to support and develop the Australian screen media industry by providing concessional tax treatment for Australian expenditure.

Table of sections

- 376-2 Key features of the tax offsets for Australian production expenditure on films
- 376-5 Structure of this Division

376-2 Key features of the tax offsets for Australian production expenditure on films

- (1) The 3 tax offsets are:
- (a) a refundable tax offset for Australian expenditure in making an Australian film (the producer offset); and
 - (b) a refundable tax offset for Australian expenditure in making any film (the location offset); and
 - (c) a refundable tax offset for Australian expenditure on post, digital and visual effects production for any film (the PDV offset).

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

- (2) A company is only entitled to one of these offsets in relation to a film.
- (3) The amount of the offset is determined as a percentage of certain Australian expenditure incurred by a company in producing the film:
 - (a) the amount of the producer offset is 40% of the company's qualifying Australian production expenditure on the film if the film is a feature film, and 20% of such expenditure if the film is not a feature film; and
 - (b) the amount of the location offset is 16.5% of the company's qualifying Australian production expenditure on the film; and
 - (c) the amount of the PDV offset is 30% of the company's qualifying Australian production expenditure on the film that relates to post, digital and visual effects production for the film.
- (4) One of the requirements for entitlement to these offsets is that a company must be issued with a certificate for the film. The certificate will state the amount of Australian expenditure on which the offset will be determined.
- (5) The offset is claimed by a company in its income tax return.

376-5 Structure of this Division

- (1) Subdivision 376-B tells you about the different tax offsets available for films, who can get each offset and what conditions must be met to get each offset. It also tells you how to work out the amount of each offset.
- (2) Subdivision 376-C explains what is meant by:
 - (a) production expenditure on a film; and
 - (b) qualifying Australian production expenditure on a film.It also contains some rules for quantifying expenditure.
- (3) Subdivision 376-D deals with a number of administrative matters:
 - (a) applying for a certificate for a film; and
 - (b) the issue and revocation of a certificate for a film; and

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

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Division 376 Films generally (tax offsets for Australian production expenditure)

Section 376-5

- (c) the making of rules by the Arts Minister (including rules for the establishment of the Film Certification Advisory Board) and the film authority; and
- (d) review of decisions of the Arts Minister and the film authority; and
- (e) amendment of assessments following the revocation of a certificate for a film.

Subdivision 376-B—Tax offsets for Australian expenditure in making a film

Table of sections

Refundable tax offset for Australian expenditure in making a film (location offset)

- 376-10 Film production company entitled to refundable tax offset for Australian expenditure in making a film (location offset)
- 376-15 Amount of the location offset
- 376-20 Minister must issue certificate for a film for the location offset
- 376-30 Minister to determine a company's qualifying Australian production expenditure for the location offset

Refundable tax offset for post, digital and visual effects production for a film (PDV offset)

- 376-35 Film production company entitled to refundable tax offset for post, digital and visual effects production for a film (PDV offset)
- 376-40 Amount of the PDV offset
- 376-45 Minister must issue certificate for a film for the PDV offset
- 376-50 Minister to determine a company's qualifying Australian production expenditure for the PDV offset

Refundable tax offset for Australian expenditure in making an Australian film (producer offset)

- 376-55 Film production company entitled to refundable tax offset for Australian expenditure in making an Australian film (producer offset)
- 376-60 Amount of the producer offset
- 376-65 Film authority must issue certificate for an Australian film for the producer offset
- 376-70 Determination of content of film
- 376-75 Film authority to determine a company's qualifying Australian production expenditure for the producer offset

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

Refundable tax offset for Australian expenditure in making a film (location offset)

376-10 Film production company entitled to refundable tax offset for Australian expenditure in making a film (location offset)

- (1) A company is entitled to a *tax offset under this section (the **location offset**) for an income year in respect of a *film if:
 - (b) the company's *qualifying Australian production expenditure on the film ceased being incurred in the income year; and
 - (c) the Arts Minister has issued a certificate to the company for the film under section 376-20 (certificate for the location offset); and
 - (d) the company claims the offset in its *income tax return for the income year; and
 - (e) the company:
 - (i) is an Australian resident; or
 - (ii) is a foreign resident but does have a *permanent establishment in Australia and does have an *ABN; when the company lodges the income tax return and when the tax offset is due to be credited to the company.

The claim referred to in paragraph (d) is irrevocable.

Note: The location offset is a refundable tax offset: see section 67-23.

- (2) The company is not entitled to the location offset if:
 - (a) the company or someone else claims a deduction in relation to a unit of industrial property that relates to copyright in the *film under former Division 10B of Part III of the *Income Tax Assessment Act 1936*; or
 - (b) a final certificate for the film has been issued at any time under former Division 10BA of Part III of the *Income Tax Assessment Act 1936* (whether or not the certificate is still in force); or
 - (c) a certificate for the film has been issued at any time under section 376-45 (certificate for the PDV offset) (whether or not the certificate is still in force); or

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

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- (d) a certificate for the film has been issued at any time under section 376-65 (certificate for the producer offset) (whether or not the certificate is still in force).

376-15 Amount of the location offset

The amount of the location offset is 16.5% of the total of the company's *qualifying Australian production expenditure on the *film (as determined by the *Arts Minister under section 376-30).

376-20 Minister must issue certificate for a film for the location offset

- (1) The *Arts Minister must issue a certificate to a company for a *film in relation to the location offset if the Minister is satisfied that the conditions in subsections (2), (3) and (5) are met.

Type of film

- (2) The conditions in this subsection are that:
 - (a) the *film was produced for:
 - (i) exhibition to the public in cinemas or by way of television broadcasting (including broadcasting by way of the delivery of a television program by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*); or
 - (ii) distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); and
 - (b) the film is:
 - (i) a *feature film or a film of a like nature; or
 - (ii) a mini-series of television drama; or
 - (iii) a television series that is not covered by subparagraph (i) or (ii); and
 - (c) the film is not, or is not to a substantial extent:
 - (i) if the film is covered by subparagraph (b)(i) or (ii)—a documentary; or
 - (ii) a film for exhibition as an advertising program or a commercial; or

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

- (iii) a film for exhibition as a discussion program, a quiz program, a panel program, a variety program or a program of a like nature; or
- (iv) a film of a public event; or
- (v) if the film is covered by subparagraph (b)(i) or (ii)—a film forming part of a drama program series that is, or is intended to be, of a continuing nature; or
- (vi) a training film; or
- (vii) a computer game (within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995*).

Television series

- (3) The conditions in this subsection are that:
- (a) if the *film is a television series that is not covered by subparagraph (2)(b)(i) or (ii), it is made up of 2 or more episodes that:
 - (i) are produced wholly or principally for exhibition to the public on television under a single title; and
 - (ii) contain a common theme or themes; and
 - (iii) contain dramatic elements that form a narrative structure; and
 - (iv) are produced wholly or principally for exhibition together, for a national market or national markets; and
- Note: A documentary can be a television series.
- (b) if the film is a television series that is not covered by subparagraph (2)(b)(i) or (ii):
 - (i) for a television series that is predominantly a digital animation or other animation—the *making of the television series (other than a pilot episode, if any, or activities mentioned in paragraph 376-125(3)(a)) takes place within a period of not longer than 36 months; or
 - (ii) otherwise—all principal photography for the television series (other than a pilot episode, if any) takes place within a period of not longer than 12 months; and

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

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- (c) if the film is a television series that is not covered by subparagraph (2)(b)(i) or (ii)—the amount worked out for the film under subsection (6) is at least \$1 million.
- (4) To avoid doubt, and without limiting subparagraph (3)(a)(iii), a *film satisfies the requirement in that subparagraph if:
 - (a) the sole or dominant purpose of the film is to depict actual events, people or situations; and
 - (b) the film depicts those events, people or situations in a dramatic or entertaining way, with a heavy emphasis on dramatic impact or entertainment value.

Conditions relating to expenditure thresholds

- (5) The conditions in this subsection are that:
 - (a) the total of the company's *qualifying Australian production expenditure on the *film (as determined by the *Arts Minister under section 376-30) is at least \$15 million; and
 - (c) the company either carried out, or made the arrangements for the carrying out of, all the activities in Australia that were necessary for the making of the film.

Note: The operation of paragraph (c) is affected by paragraph 376-180(1)(d) (which deals with the situation where one company takes over the making of a film from another company).

- (6) For the purposes of paragraph (3)(c), the amount for a *film is worked out by using the formula:

$$\frac{\text{Total QAPE}}{\text{Duration of film in hours}}$$

where:

duration of film in hours means the total length of the *film, measured in hours.

total QAPE means the total of the company's *qualifying Australian production expenditure on the *film (as determined by the *Arts Minister under section 376-30).

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

376-30 Minister to determine a company's qualifying Australian production expenditure for the location offset

- (1) If a company applies to the *Arts Minister for the issue of a certificate to the company for a *film under section 376-20 (certificate for the location offset), the Arts Minister must, as soon as practicable after receiving the application, determine in writing the total of the company's *qualifying Australian production expenditure on the film for the purposes of the location offset.
- (2) In making a determination under subsection (1), the *Arts Minister must have regard to the matters in Subdivision 376-C.
- (3) The *Arts Minister must give the company written notice of the determination.
- (4) A determination made under subsection (1) is not a legislative instrument.

Refundable tax offset for post, digital and visual effects production for a film (PDV offset)

376-35 Film production company entitled to refundable tax offset for post, digital and visual effects production for a film (PDV offset)

- (1) A company is entitled to a *tax offset under this section (the *PDV offset*) for an income year in respect of a *film if:
 - (a) the company's *qualifying Australian production expenditure on the film, to the extent that it relates to *post, digital and visual effects production for the film, ceased being incurred in the income year; and
 - (b) the *Arts Minister has issued a certificate to the company for the post, digital and visual effects production for the film under section 376-45 (certificate for the PDV offset); and
 - (c) the company claims the offset in its *income tax return for the income year; and
 - (d) the company:
 - (i) is an Australian resident; or

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

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- (ii) is a foreign resident but does have a *permanent establishment in Australia and does have an *ABN; when the company lodges the income tax return and when the tax offset is due to be credited to the company.

The claim referred to in paragraph (c) is irrevocable.

Note: The PDV offset is a refundable tax offset: see section 67-23.

(2) **Post, digital and visual effects production** for a *film means:

- (a) the creation of audio or visual elements (other than principal photography, pick ups or the creation of physical elements such as sets, props or costumes) for the film; and
- (b) the manipulation of audio or visual elements (other than pick ups or physical elements such as sets, props or costumes) for the film; and
- (c) activities that are necessarily related to the activities mentioned in paragraph (a) or (b).

Note: 3D animation, digital compositing and music composition and recording are examples of post, digital and visual effects production.

(3) The company is not entitled to the PDV offset if:

- (a) the company or someone else claims a deduction in relation to a unit of industrial property that relates to copyright in the *film under former Division 10B of Part III of the *Income Tax Assessment Act 1936*; or
- (b) a final certificate for the film has been issued at any time under former Division 10BA of Part III of the *Income Tax Assessment Act 1936* (whether or not the certificate is still in force); or
- (c) a certificate for the film has been issued at any time under section 376-20 (certificate for the location offset) (whether or not the certificate is still in force); or
- (d) a certificate for the film has been issued at any time under section 376-65 (certificate for the producer offset) (whether or not the certificate is still in force).

376-40 Amount of the PDV offset

The amount of the PDV offset is 30% of the total of the company's *qualifying Australian production expenditure (as determined by

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

the *Arts Minister under section 376-50) on a *film, to the extent that it relates to *post, digital and visual effects production for the film.

376-45 Minister must issue certificate for a film for the PDV offset

- (1) The *Arts Minister must issue a certificate to a company for the *post, digital and visual effects production for a *film in relation to the PDV offset if the Minister is satisfied that the conditions in subsections (2), (3) and (5) are met.

Type of film

- (2) The conditions in this subsection are that:
- (a) the *film was produced for:
 - (i) exhibition to the public in cinemas or by way of television broadcasting (including broadcasting by way of the delivery of a television program by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*); or
 - (ii) distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); and
 - (b) the film is:
 - (i) a *feature film or a film of a like nature; or
 - (ii) a mini-series of television drama; or
 - (iii) a television series that is not covered by subparagraph (i) or (ii); and
 - (c) the film is not, or is not to a substantial extent:
 - (i) if the film is covered by subparagraph (b)(i) or (ii)—a documentary; or
 - (ii) a film for exhibition as an advertising program or a commercial; or
 - (iii) a film for exhibition as a discussion program, a quiz program, a panel program, a variety program or a program of a like nature; or
 - (iv) a film of a public event; or

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

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- (v) if the film is covered by subparagraph (b)(i) or (ii)—a film forming part of a drama program series that is, or is intended to be, of a continuing nature; or
- (vi) a training film; or
- (vii) a computer game (within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995*).

Television series

- (3) The condition in this subsection is that, if the *film is a television series that is not covered by subparagraph (2)(b)(i) or (ii), it is made up of 2 or more episodes that:
- (a) are produced wholly or principally for exhibition to the public on television under a single title; and
 - (b) contain a common theme or themes; and
 - (c) contain dramatic elements that form a narrative structure; and
 - (d) are produced wholly or principally for exhibition together, for a national market or national markets.

Note: A documentary can be a television series.

- (4) To avoid doubt, and without limiting paragraph (3)(c), a *film satisfies the requirement in that paragraph if:
- (a) the sole or dominant purpose of the film is to depict actual events, people or situations; and
 - (b) the film depicts those events, people or situations in a dramatic or entertaining way, with a heavy emphasis on dramatic impact or entertainment value.

Conditions relating to expenditure thresholds

- (5) The conditions of this subsection are that:
- (a) the total of the company's *qualifying Australian production expenditure on the *film (as determined by the *Arts Minister under section 376-50), to the extent that it relates to *post, digital and visual effects production for the film, is at least \$500,000; and
 - (b) the company either carried out, or made the arrangements for the carrying out of, all the activities in Australia that were

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

necessary for the post, digital and visual effects production for the film.

Note: The operation of paragraph (b) is affected by paragraph 376-180(1)(d) (which deals with the situation where one company takes over the making of a film from another company).

376-50 Minister to determine a company's qualifying Australian production expenditure for the PDV offset

- (1) If a company applies to the *Arts Minister for the issue of a certificate to the company for the *post, digital and visual effects production for a *film under section 376-45 (certificate for the PDV offset), the Arts Minister must, as soon as practicable after receiving the application, determine in writing the total of the company's *qualifying Australian production expenditure, to the extent that it relates to post, digital and visual effects production for the film, for the purposes of the PDV offset.
- (2) In making a determination under subsection (1), the *Arts Minister must have regard to the matters in Subdivision 376-C.
- (3) The *Arts Minister must give the company written notice of the determination.
- (4) A determination made under subsection (1) is not a legislative instrument.

Refundable tax offset for Australian expenditure in making an Australian film (producer offset)

376-55 Film production company entitled to refundable tax offset for Australian expenditure in making an Australian film (producer offset)

- (1) A company is entitled to a *tax offset under this section (the *producer offset*) for an income year in respect of a *film if:
 - (a) the film was *completed in the income year; and
 - (b) the *film authority has issued a certificate to the company under section 376-65 (certificate for the producer offset) for the film; and

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

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- (c) the company claims the offset in its *income tax return for the income year; and
- (d) the company:
 - (i) is an Australian resident; or
 - (ii) is a foreign resident but does have a *permanent establishment in Australia and does have an *ABN; when the company lodges the income tax return and when the tax offset is due to be credited to the company.

The claim referred to in paragraph (c) is irrevocable.

Note: The producer offset is a refundable tax offset: see section 67-23.

(2) A *film is **completed**:

- (a) for a film that is not a series or a season of a series—when it is first in a state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public; or
- (b) for a series—at the earlier of:
 - (i) the time when the episode in which the 65th commercial hour is reached is first in a state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public; and
 - (ii) the time when the series is first in such a state; and
- (c) for a season of a series—at the earlier of:
 - (i) the time when the episode in which the 65th commercial hour is reached is first in a state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public; and
 - (ii) the time when the season is first in such a state.

(3) **Film authority** means Screen Australia.

(4) The company is not entitled to the producer offset if:

- (a) the company or someone else claims a deduction in relation to a unit of industrial property that relates to copyright in the *film under former Division 10B of Part III of the *Income Tax Assessment Act 1936*; or
- (b) a final certificate for the film has been issued at any time under former Division 10BA of Part III of the *Income Tax*

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

- Assessment Act 1936* (whether or not the certificate is still in force); or
- (c) a certificate for the film has been issued at any time under section 376-20 (certificate for the location offset) (whether or not the certificate is still in force); or
 - (d) a certificate for the film has been issued at any time under section 376-45 (certificate for the PDV offset) (whether or not the certificate is still in force); or
 - (f) production assistance (other than *development assistance) for the film has been received by the company or anyone else before 1 July 2007 from any of the following bodies:
 - (i) the Film Finance Corporation Australia Limited;
 - (ii) Film Australia Limited;
 - (iii) the Australian Film Commission;
 - (iv) the Australian Film, Television and Radio School; or
 - (g) the *film authority's Producer Equity Program has provided financial assistance to the company or anyone else for the making of the film.
- (5) **Development assistance** for a *film means financial assistance provided to assist with meeting the development costs for the film, and includes assistance to the extent to which it is provided in relation to any of the following:
- (a) location surveys and other activities undertaken to assess locations for possible use in the film;
 - (b) storyboarding for the film;
 - (c) scriptwriting for the film;
 - (d) research for the film;
 - (e) casting actors for the film;
 - (f) developing a budget for the film;
 - (g) developing a shooting schedule for the film.

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

376-60 Amount of the producer offset

The amount of the producer offset is:

- (a) if the *film is a *feature film—40%; or
- (b) if the film is not a feature film—20%;

of the total of the company's *qualifying Australian production expenditure on the film (as determined by the *film authority under section 376-75).

376-65 Film authority must issue certificate for an Australian film for the producer offset

- (1) The *film authority must issue a certificate to a company for a *film in relation to the producer offset if the film authority is satisfied that:
 - (a) the company either carried out, or made the arrangements for the carrying out of, all the activities that were necessary for the *making of the film; and
 - (b) the conditions in subsections (2) to (6) are met.

Note: The operation of paragraph (a) is affected by paragraph 376-180(1)(d) (which deals with the situation where one company takes over the making of a film from another company).

Type of film

- (2) The conditions in this subsection are that:
 - (a) the *film:
 - (i) has a significant Australian content (see section 376-70); or
 - (ii) has been made under an *arrangement entered into between the Commonwealth or an authority of the Commonwealth and a foreign country or an authority of the foreign country; and
 - (b) the film was produced for:
 - (i) exhibition to the public in cinemas or by way of television broadcasting (including broadcasting by way of the delivery of a television program by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*); or

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

- (ii) distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); and
- (c) the film is:
 - (i) a *feature film; or
 - (ii) a single episode program; or
 - (iii) a series; or
 - (iv) a season of a series; or
 - (v) a short form animated film that is not covered by subparagraph (i), (ii), (iii) or (iv); and
- (d) the film is not, or is not to a substantial extent:
 - (i) a film for exhibition as an advertising program or a commercial; or
 - (ii) a film for exhibition as a discussion program, a quiz program, a panel program, a variety program or a program of a like nature; or
 - (iii) a film of a public event (other than a documentary); or
 - (iv) a training film; or
 - (v) a computer game (within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995*); or
 - (vi) a news or current affairs program; or
 - (vii) a reality program (other than a documentary).

Single episode programs

- (3) The conditions in this subsection are that, if the *film is a single episode program, it:
 - (a) is of a like nature to a *feature film; and
 - (b) is produced for:
 - (i) exhibition to the public by way of television broadcasting (including broadcasting by way of the delivery of a television program by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*); or
 - (ii) distribution to the public as a video recording (whether on video tapes, digital video disks or otherwise); and

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

Section 376-65

- (c) if the program is a documentary—is of at least one half of a commercial hour in duration; and
- (d) if the program is not a documentary—is of at least one commercial hour in duration.

Short form animated film

- (4) The conditions in this subsection are that, if the *film is a short form animated film, it:
 - (a) is a program comprising one or more episodes which are produced wholly or principally for exhibition together, for a national market or national markets under a single title; and
 - (b) is predominantly made using cell, stop motion, digital or other animation; and
 - (c) contains a common theme or themes; and
 - (d) is of at least one quarter of a commercial hour in duration.

Series and seasons of series

- (5) The conditions in this subsection are that:
 - (a) if the application for the certificate is for a *film that is a series and not for a film that is a season of that series:
 - (i) the series is made up of at least 2 episodes; and
 - (ii) each episode of the series is at least one half of a commercial hour in duration, except where the film is predominantly made using cell, stop motion, digital or other animation, in which case each episode is at least one quarter of a commercial hour in duration; and
 - (iii) the series has a new creative concept (see section 376-70); and
 - (b) if the application for the certificate is for a film that is a season of a series:
 - (i) the season is made up of at least 2 episodes; and
 - (ii) each episode of the series is at least one half of a commercial hour in duration, except where the film is predominantly made using cell, stop motion, digital or other animation, in which case each episode is at least one quarter of a commercial hour in duration; and

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

- (iii) the series has a new creative concept (see section 376-70).

Expenditure thresholds

- (6) The conditions in this subsection are as set out in the table.

Expenditure thresholds			
Item	For this type of film ...	The total of the company's qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...	and the amount for the film worked out under subsection (7) is at least ...
1	A *feature film	\$500,000	not applicable
2	A single episode program other than a documentary	\$500,000	not applicable
3	A single episode program that is a documentary	\$500,000	\$250,000
4	A short form animated film that is not a *feature film, a single episode program, a series or a season of a series	\$250,000	\$1,000,000
5	A *film where the application for the certificate is for a series and not for a season of that series, and the series is not a documentary	\$1 million	\$500,000

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

Chapter 3 Specialist liability rules

Part 3-45 Rules for particular industries and occupations

Division 376 Films generally (tax offsets for Australian production expenditure)

Section 376-65

Expenditure thresholds

Item	For this type of film ...	The total of the company's qualifying Australian production expenditure on the film (as determined by the film authority under section 376-75) is at least ...	and the amount for the film worked out under subsection (7) is at least ...
6	A *film where the application for the certificate is for a series and not for a season of that series, and the series is a documentary	\$500,000	\$250,000
7	A *film where the application for the certificate is for a season of a series, and the series is not a documentary	\$1 million	\$500,000
8	A *film where the application for the certificate is for a season of a series, and the series is a documentary	\$500,000	\$250,000

(7) The amount worked out for a *film under this subsection is the amount worked out using the formula:

$$\frac{\text{Total QAPE}}{\text{Duration of film in hours}}$$

where:

duration of film in hours means the total length of the *film, measured in hours.

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

total QAPE means the total of the company's *qualifying Australian production expenditure on the *film (as determined by the *film authority under section 376-75).

376-70 Determination of content of film

- (1) In determining for the purposes of section 376-65 (certificate for the producer offset) whether a *film has a significant Australian content, the *film authority must have regard to the following:
 - (a) the subject matter of the film;
 - (b) the place where the film was made;
 - (c) the nationalities and places of residence of the persons who took part in the *making of the film;
 - (d) the details of the *production expenditure incurred in respect of the film;
 - (e) any other matters that the film authority considers to be relevant.

- (2) In determining for the purposes of section 376-65 (certificate for the producer offset) whether a *film that is a series has a new creative concept, the *film authority must have regard to the following:
 - (a) the title of the series;
 - (b) whether the series has substantially different characters, settings, production locations and individuals involved in the *making of the series than any other series;
 - (c) any other matters that the film authority considers to be relevant.

376-75 Film authority to determine a company's qualifying Australian production expenditure for the producer offset

- (1) If a company applies to the *film authority for the issue of a certificate to the company for a *film under section 376-65 (certificate for the producer offset), the film authority must, as soon as practicable after receiving the application, determine in writing the total of the company's *qualifying Australian production expenditure on the film for the purposes of the producer offset.

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

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Part 3-45 Rules for particular industries and occupations

Division 376 Films generally (tax offsets for Australian production expenditure)

Section 376-75

- (2) In making a determination under subsection (1), the *film authority must have regard to the matters in Subdivision 376-C.
- (3) The *film authority must give the company written notice of the determination.
- (4) A determination made under subsection (1) is not a legislative instrument.

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

Subdivision 376-C—Production expenditure and qualifying Australian production expenditure

Table of sections

Production expenditure—common rules

- 376-125 Production expenditure—general test
- 376-130 Production expenditure—special qualifying Australian production expenditure
- 376-135 Production expenditure—specific exclusions

Production expenditure—special rules for the location offset

- 376-140 Production expenditure—special rules for the location offset

Qualifying Australian production expenditure—common rules

- 376-145 Qualifying Australian production expenditure—general test
- 376-150 Qualifying Australian production expenditure—specific inclusions
- 376-155 Qualifying Australian production expenditure—specific exclusions
- 376-160 Qualifying Australian production expenditure—treatment of services embodied in goods

Qualifying Australian production expenditure—special rules for the location offset and the PDV offset

- 376-165 Qualifying Australian production expenditure—special rules for the location offset and the PDV offset

Qualifying Australian production expenditure—special rules for the producer offset

- 376-170 Qualifying Australian production expenditure—special rules for the producer offset

Expenditure generally—common rules

- 376-175 Expenditure to be worked out on an arm's length basis
- 376-180 Expenditure incurred by prior production companies
- 376-185 Expenditure to be worked out excluding GST

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

Production expenditure—common rules

376-125 Production expenditure—general test

- (1) A company's **production expenditure** on a *film is expenditure that the company incurs to the extent to which it:
 - (a) is incurred in, or in relation to, the *making of the film; or
 - (b) is reasonably attributable to:
 - (i) the use of equipment or other facilities for; or
 - (ii) activities undertaken in;
the making of the film.
- (2) The **making** of a *film means the doing of the things necessary for the production of the first copy of the film.
- (3) The **making** of a *film includes:
 - (a) pre-production activities in relation to the film; and
 - (b) post-production activities in relation to the film; and
 - (c) any other activities undertaken to bring the film up to the state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public.
- (4) The **making** of a *film does not include:
 - (a) developing the proposal for the *making of the film; or
 - (b) arranging or obtaining finance for the film; or
 - (c) distributing the film (other than the activities listed in paragraphs (a) to (e) of item 7 of the table in subsection 376-170(2)); or
 - (d) promoting the film.
- (5) Without limiting subsection (1), a company's **production expenditure** on a *film:
 - (a) may be expenditure that is incurred in the income year for which the *tax offset is sought or in an earlier income year; and
 - (b) may be expenditure of either a capital or a revenue nature; and

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

(c) may be expenditure that gives rise to a deduction.

Paragraph (c) has effect subject to item 10 of the table in section 376-135 (which deals with capital allowances).

(6) If:

(a) a company:

(i) *holds a *depreciating asset; and

(ii) uses the asset, while held, in the *making of a *film; and

(b) deductions in relation to the asset are available under Division 40 (which deals with capital allowances);

the **production expenditure** of the company on the film includes an amount equal to the decline in the value of the asset to the extent to which that decline is reasonably attributable to the use of the asset in the making of the film (the **film proportion**). The decline in value of the asset is to be worked out using Division 40.

Note: Under item 10 of the table in section 376-135, expenditure that sets or increases the cost of the asset does not count as production expenditure.

(7) If a *balancing adjustment event occurs for the asset before the film is *completed:

(a) if the asset's *termination value is more than its *adjustable value just before the event occurred—the **production expenditure** of the company on the film is reduced by the film proportion of the difference; or

(b) if the asset's termination value is less than its adjustable value just before the event occurred—the **production expenditure** of the company on the film includes the film proportion of the difference.

376-130 Production expenditure—special qualifying Australian production expenditure

Expenditure of a company is also **production expenditure** of the company on a *film if it is *qualifying Australian production expenditure of the company on the film under section 376-150 or 376-165.

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

Chapter 3 Specialist liability rules

Part 3-45 Rules for particular industries and occupations

Division 376 Films generally (tax offsets for Australian production expenditure)

Section 376-135

Note: This means that the special qualifying Australian production expenditure in sections 376-150 and 376-165 is taken into account both in working out the total amount of the company's qualifying Australian production expenditure and in working out the total amount of all the company's production expenditure on the film.

376-135 Production expenditure—specific exclusions

Despite sections 376-125 and 376-130, the following expenditure of a company is not *production expenditure* of the company on a *film, except to the extent, if any, as mentioned in column 3 of the table:

Expenditure that does not count as production expenditure on a film		
Item	This kind of expenditure by the company is not production expenditure ...	except to the extent to which the expenditure is ...
1	<i>Financing expenditure</i> expenditure incurred by way of, or in relation to, the financing of the *film (including returns payable on amounts invested in the film and expenditure in relation to raising and servicing finance for the film)	*qualifying Australian production expenditure under item 6 of the table in subsection 376-150(1) and paragraph (a) of item 5 of the table in subsection 376-170(2)
2	<i>Development expenditure</i> *development expenditure on the *film	*qualifying Australian production expenditure under item 1 of the table in subsection 376-150(1)
3	<i>Copyright acquisition expenditure</i> expenditure incurred in acquiring copyright, or a licence in relation to copyright, in a pre-existing work for use in the *film	*qualifying Australian production expenditure under item 2 of the table in subsection 376-150(1)

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

Expenditure that does not count as production expenditure on a film		
Item	This kind of expenditure by the company is not production expenditure ...	except to the extent to which the expenditure is ...
4	<p><i>General business overheads</i></p> <p>expenditure incurred to meet the general business overheads of the company that:</p> <p>(a) are not incurred in, or in relation to, the *making of the *film; and</p> <p>(b) are not reasonably attributable to:</p> <p style="padding-left: 20px;">(i) the use of equipment or other facilities for; or</p> <p style="padding-left: 20px;">(ii) activities undertaken in; the making of the film</p>	<p>*qualifying Australian production expenditure under item 1 of the table in subsection 376-165(1) or item 1 of the table in subsection 376-170(2)</p>
5	<p><i>Publicity and promotion expenditure</i></p> <p>expenditure incurred in publicising or otherwise promoting the *film (including press expenses, still photography, videotapes, public relations and other similar expenses)</p>	<p>*qualifying Australian production expenditure under item 3 or 4 of the table in subsection 376-150(1) or item 6 of the table in subsection 376-170(2)</p>
6	<p><i>Deferments</i></p> <p>amounts that are payable only out of the receipts, earnings or profits from the *film</p>	
7	<p><i>Profit participation</i></p> <p>amounts that:</p> <p>(a) depend on the receipts, earnings or profits from the *film; or</p> <p>(b) are otherwise dependent on the commercial performance of the film</p>	

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

Chapter 3 Specialist liability rules

Part 3-45 Rules for particular industries and occupations

Division 376 Films generally (tax offsets for Australian production expenditure)

Section 376-140

Expenditure that does not count as production expenditure on a film

Item	This kind of expenditure by the company is not production expenditure ...	except to the extent to which the expenditure is ...
8	<i>Residuals</i> amounts payable in satisfaction of the residual rights of a person who is a member of the cast	paid out by the company before the *film is *completed
9	<i>Advances</i> amounts paid by way of advance on a payment to which item 6, 7 or 8 applies to the extent to which it may become repayable by the person to whom it is paid	
10	<i>Acquisition of depreciating asset</i> expenditure to the extent to which it sets, or increases, the *cost of a *depreciating asset This item has effect subject to subsections 376-125(6) and (7).	*qualifying Australian production expenditure under item 2 of the table in subsection 376-150(1)
11	<i>Regulations</i> expenditure specified in regulations	

Production expenditure—special rules for the location offset

376-140 Production expenditure—special rules for the location offset

Despite sections 376-125 and 376-130, the expenditure of a company is not **production expenditure** of the company on a *film in relation to the location offset if:

- (a) the film is a television series that is not a *feature film or a mini-series of television drama; and
- (b) the expenditure is reasonably attributable to the production of a pilot episode to the television series; and

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

- (c) the expenditure, apart from this subsection, would be production expenditure that was not *qualifying Australian production expenditure.

Qualifying Australian production expenditure—common rules

376-145 Qualifying Australian production expenditure—general test

A company's *qualifying Australian production expenditure* on a *film is the company's *production expenditure on the film to the extent to which it is incurred for, or is reasonably attributable to:

- (a) goods and services provided in Australia; or
- (b) the use of land located in Australia; or
- (c) the use of goods that are located in Australia at the time they are used in the *making of the film.

376-150 Qualifying Australian production expenditure—specific inclusions

- (1) The following expenditure of a company is also *qualifying Australian production expenditure* of the company on a *film:

Special Australian expenditure

Item	Type of expenditure
-------------	----------------------------

1	<i>Australian development expenditure</i> *development expenditure on the *film to the extent to which it is incurred for, or is reasonably attributable to: <ul style="list-style-type: none">(a) goods and services provided in Australia; or(b) the use of land located in Australia; or(c) the use of goods that are located in Australia at the time they are used in the *making of the film [see subsection (2)]
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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 3 Specialist liability rules

Part 3-45 Rules for particular industries and occupations

Division 376 Films generally (tax offsets for Australian production expenditure)

Section 376-150

Special Australian expenditure

Item Type of expenditure

2	<i>Expenditure incurred in acquiring Australian copyright</i> expenditure incurred to acquire copyright, or a licence in relation to copyright, in a pre-existing work for use in the *film if the copyright is held by an individual or a company that is an Australian resident
3	<i>Expenditure incurred in producing Australian copyrighted promotional material</i> expenditure incurred in producing material for use in publicising or otherwise promoting the *film if the copyright in the material is held by an individual or a company that is an Australian resident
4	<i>Expenditure incurred in producing additional content</i> expenditure incurred in producing audio or visual content for the *film otherwise than for use in the first copy of the film, to the extent that the expenditure is incurred in Australia prior to the *completion of the film
5	<i>Regulations</i> expenditure prescribed by the regulations
6	<i>Certain financing expenditure</i> expenditure incurred in Australia prior to the end of the income year in which *completion of the *film occurs in respect of any of the following: (a) insurance related to making the film; (b) fees for audit services and legal services provided in Australia in relation to raising and servicing the financing of the film which are incurred by the company that makes, or is responsible for making, the film; (c) fees for incorporation and liquidation of the company that makes or is responsible for making the film.

- (2) Legal costs are covered by item 1 of the table in subsection (1) only if they relate to:
- (a) writers' contracts; or
 - (b) chain of title and other copyright issues.

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

376-155 Qualifying Australian production expenditure—specific exclusions

Despite sections 376-145, 376-150, 376-165 and 376-170, the following expenditure of a company is not *qualifying Australian production expenditure* of a company on a *film:

- (a) expenditure that is incurred when:
 - (i) the company is a foreign resident; and
 - (ii) the company does not have both a *permanent establishment in Australia and an *ABN;
- (b) expenditure in relation to:
 - (i) remuneration and other benefits provided to an individual for the individual's services in relation to the *making of the film; or
 - (ii) travel and other costs associated with the services an individual provides in relation to the making of the film;if the individual:
 - (iii) is not a member of the cast; and
 - (iv) enters Australia to work on the film for less than 2 consecutive calendar weeks;
- (c) expenditure prescribed by the regulations.

376-160 Qualifying Australian production expenditure—treatment of services embodied in goods

If:

- (a) a company incurs expenditure for the provision of what is essentially a service; and
- (b) the results of the service are provided to the company by being embodied in goods that are delivered to the company; and
- (c) the service that is embodied in the goods was predominantly performed outside Australia;

the service is not provided to the company in Australia merely because the goods are delivered to the company in Australia.

Note: Paragraph (b)—a document, for example, might set out legal or other professional advice or a computer disk might contain a program that has been made or data that has been compiled.

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

Qualifying Australian production expenditure—special rules for the location offset and the PDV offset

376-165 Qualifying Australian production expenditure—special rules for the location offset and the PDV offset

- (1) For the purposes of the location offset and the PDV offset, the following expenditure of a company is also *qualifying Australian production expenditure* of the company on a *film:

Special Australian expenditure—location offset and PDV offset

Item Type of expenditure

1	<p><i>Australian business overheads</i></p> <p>general business overheads of the company that:</p> <p>(a) are not incurred in, or in relation to, the *making of the *film; and</p> <p>(b) are not reasonably attributable to:</p> <p> (i) the use of equipment or other facilities for; or</p> <p> (ii) activities undertaken in;</p> <p> the making of the film;</p> <p>to the extent to which they:</p> <p>(c) are incurred for, or are reasonably attributable to:</p> <p> (i) goods and services provided in Australia; or</p> <p> (ii) the use of land located in Australia; or</p> <p> (iii) the use of goods that are located in Australia at the time they are used in the making of the film; and</p> <p>(d) represent a reasonable apportionment of those overheads between the making of the film and the other activities undertaken by the company</p> <p>This item has effect subject to subsection (2).</p>
2	<p><i>Travel to Australia</i></p> <p>expenditure of the company in relation to an individual's travel to Australia to undertake activities in Australia in relation to the *making of the *film, if the remuneration paid to the individual for those activities is *qualifying Australian production expenditure of the company</p>
3	<p><i>Expenditure incurred in freighting goods to Australia</i></p> <p>expenditure incurred in freighting goods to Australia, to the extent that the goods will be used in the *making of the *film</p>

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

- (2) General business overheads of the company are covered by item 1 of the table in subsection (1) only to the extent to which they do not exceed the lesser of:
 - (a) 2% of the total of all the company's *production expenditure on the *film; and
 - (b) \$500,000.

Qualifying Australian production expenditure—special rules for the producer offset

376-170 Qualifying Australian production expenditure—special rules for the producer offset

Expenditure that is qualifying Australian production expenditure

- (1) For the purposes of subsections 376-65(6) and (7), expenditure on a *film incurred in a foreign country is ***qualifying Australian production expenditure*** of a company on the film if:
 - (a) the expenditure is incurred by the company claiming the offset, or by another entity that is involved in the *making of the film; and
 - (b) the expenditure would be qualifying Australian production expenditure if it had been incurred for, or reasonably attributable to:
 - (i) goods and services provided in Australia; or
 - (ii) the use of land located in Australia; or
 - (iii) the use of goods that are located in Australia at the time they are used in the *making of the film; and
 - (c) the film is made under an *arrangement entered into between the Commonwealth or an authority of the Commonwealth and the foreign country or an authority of the foreign country.

Note: This means that such expenditure is taken into account for the purposes of determining whether to issue a certificate for the producer offset to the company under section 376-65. It is not taken into account in working out the amount of the producer offset to which the company is entitled.

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

Chapter 3 Specialist liability rules

Part 3-45 Rules for particular industries and occupations

Division 376 Films generally (tax offsets for Australian production expenditure)

Section 376-170

- (2) For the purposes of the producer offset, the following expenditure of a company is also *qualifying Australian production expenditure* of the company on a *film:

Special Australian expenditure—producer offset

Item Type of expenditure

- | | |
|---|--|
| 1 | <i>Australian business overheads</i>
general business overheads of the company that:
(a) are not incurred in, or in relation to, the *making of the *film; and
(b) are not reasonably attributable to:
(i) the use of equipment or other facilities for; or
(ii) activities undertaken in;
the making of the film;
to the extent to which they:
(c) are incurred for, or are reasonably attributable to:
(i) goods and services provided in Australia; or
(ii) the use of land located in Australia; or
(iii) the use of goods that are located in Australia at the time they
are used in the making of the film; and
(d) represent a reasonable apportionment of those overheads between the
making of the film and the other activities undertaken by the company
This item has effect subject to subsection (3). |
| 2 | <i>Travel to Australia and other countries</i>
expenditure of the company in relation to an individual's travel:
(a) to Australia, to undertake activities in relation to the *making of the
*film; and
(b) to or within any other country, to undertake activities in relation to the
making of the film, if the remuneration paid to the individual for those
activities would be *qualifying Australian production expenditure of
the company under item 4 of this table. |
| 3 | <i>Expenditure incurred in freighting goods within and between countries</i>
expenditure incurred in freighting goods within and between countries, to
the extent that the goods will be used in the *making of the *film. |
-

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

Special Australian expenditure—producer offset

Item Type of expenditure

- 4 *Expenditure incurred in other countries*
expenditure incurred outside Australia:
(a) for the remuneration of an Australian resident, or the purchase of goods or services from companies or *permanent establishments that have an *ABN; and
(b) during the period in which principal photography for the film takes place outside Australia
if the subject matter of the film reasonably requires the location in which the expenditure is incurred to be used for principal photography.
-
- 5 *Other expenditure*
expenditure incurred in Australia in respect of any of the following:
(a) obtaining an independent opinion of the amount of a film's *qualifying Australian production expenditure required for use in relation to the financing of the film;
(b) offset carbon emissions created during the making of the film.
-
- 6 *Expenditure incurred in producing Australian copyright promotional material*
expenditure incurred in Australia in the income year of the *completion of the *film or an earlier year in respect of any of the following:
(a) producing material for publicising or otherwise promoting the film where the copyright in the material is held or partially held by a company that is an Australian resident;
(b) unit publicist fees.
-
- 7 *Expenditure incurred in delivering or distributing the film*
expenditure incurred by the applicant company in delivering or distributing the film prior to the end of the income year in which the *film is complete to the extent to which it is incurred for, or reasonably attributable to, any of the following:
(a) acquiring Australian classification certificates;
(b) sound mix mastering licenses;
(c) re-versioning the film in Australia;
(d) freight services provided by a company in Australia for delivery of contracted deliverables in relation to the film;
(e) storing the film in a film vault in Australia.
-

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

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- (3) General business overheads of the company are covered by item 1 of the table in subsection (2) only to the extent to which they do not exceed the lesser of:
- (a) 5% of the total of all the company's *total film expenditure on the *film; and
 - (b) \$500,000.

Expenditure that is not qualifying Australian production expenditure

- (4) For the purposes of the producer offset, the following expenditure of a company is not **qualifying Australian production expenditure** of a company on a *film:
- (a) expenditure on the film that is paid for with *development assistance received from any of the following bodies:
 - (ii) Film Australia Limited;
 - (iii) the Australian Film Commission;
 - (iv) the Australian Film, Television and Radio School;
 - (v) Screen Australia;unless the amount or value of the assistance has been repaid;
 - (b) subject to subsection (4A), the following expenditure:
 - (i) *development expenditure on the film;
 - (ii) remuneration provided to the principal director, producers and principal cast associated with the film; to the extent that such expenditure comprises greater than 20% of the company's *total film expenditure on the film;
 - (c) for a series or a season of a series—expenditure on an episode beyond the episode in which the 65th commercial hour of the series is reached.
- (4A) Paragraph (4)(b) does not apply to a *film that is a documentary.
- (5) In applying paragraph (4)(c), episodes completed before 1 July 2011 count towards the limit in that paragraph.
- (6) **Total film expenditure** on a film means:
- (a) expenditure covered by sections 376-125, 376-130, 376-150 and 376-170; and

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

- (b) expenditure mentioned in column 2 of the table in section 376-135, to the extent that it is not covered by paragraph (a).

Expenditure generally—common rules

376-175 Expenditure to be worked out on an arm's length basis

For the purposes of this Division, if any 2 or more parties to:

- (a) an *arrangement under which a company incurs expenditure in relation to a *film; or
- (b) any act or transaction directly or indirectly connected with expenditure that a company incurs in relation to a film;

do not deal with each other at *arm's length in relation to the arrangement, or in relation to the act or transaction, the expenditure is taken to be only so much (if any) of the expenditure as would have been incurred if they had been dealing with each other at arm's length in relation to the arrangement, or in relation to the act or transaction.

376-180 Expenditure incurred by prior production companies

- (1) For the purposes of this Division, if a company (the *incoming company*) takes over the *making of a *film from another company (the *outgoing company*):
 - (a) expenditure incurred in relation to the film by the outgoing company is taken to have been incurred in relation to the film by the incoming company; and
 - (b) for the purposes of determining the extent to which that expenditure is *qualifying Australian production expenditure of the incoming company, the incoming company is taken:
 - (i) to have been an Australian resident at any time when the outgoing company was an Australian resident; and
 - (ii) to have had a *permanent establishment in Australia at any time when the outgoing company had a permanent establishment in Australia; and
 - (iii) to have had an *ABN at any time when the outgoing company had an ABN; and

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

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- (c) expenditure that the incoming company incurs in order to be able to take over the making of the film is to be disregarded for the purposes of this Division; and
 - (d) any activities carried out, and arrangements made, by the outgoing company in relation to the film are taken, for the purposes of paragraphs 376-20(5)(c), 376-45(5)(b) and 376-65(1)(a), to have been carried out or made by the incoming company in relation to the film.
- (2) For the purposes of subsection (1):
- (a) expenditure incurred on the *film by the outgoing company includes expenditure that the outgoing company is itself taken to have incurred on the film because of the operation of subsection (1); and
 - (b) the outgoing company is taken:
 - (i) to have been an Australian resident at any time when the outgoing company is taken to have been an Australian resident because of the operation of subsection (1); and
 - (ii) to have had a *permanent establishment in Australia at any time when the outgoing company is taken to have had a permanent establishment in Australia because of the operation of subsection (1); and
 - (iii) to have had an *ABN at any time when the outgoing company is taken to have had an ABN because of the operation of subsection (1); and
 - (c) activities carried out by the outgoing company in relation to the film include activities that the outgoing company is taken to have carried out in relation to the film because of the operation of subsection (1); and
 - (d) arrangements made by the outgoing company for the carrying out of activities in relation to the film include arrangements that the outgoing company is taken to have made because of the operation of subsection (1).

Example: If Uncle Carty Ltd starts out making a film and then Mr Grouble Ltd takes over the making of the film, Mr Grouble Ltd is taken to have incurred the expenditure that Uncle Carty Ltd incurred on the film. If Lousie Ltd subsequently takes over the making of the film from Mr Grouble Ltd, Lousie Ltd is taken to have incurred the expenditure that Mr Grouble Ltd incurred on the film (including the expenditure of Uncle Carty Ltd that is attributed to Mr Grouble Ltd).

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

376-185 Expenditure to be worked out excluding GST

In determining an amount of expenditure for the purpose of this Division, the expenditure is taken to exclude *GST.

Subdivision 376-D—Certificates for films and other matters

Table of sections

376-230	Production company may apply for certificate
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376-240	Issue of certificate
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376-255	Review of decisions by the Administrative Appeals Tribunal
376-260	Minister may make rules about the location offset and the PDV offset
376-265	Film authority may make rules about the producer offset
376-270	Amendment of assessments
376-275	Review in relation to certain production levels

376-230 Production company may apply for certificate

- (1) A company may apply to the *Arts Minister for the issue of a certificate to the company for a *film under section 376-20 (certificate for the location offset) when all of the company's *qualifying Australian production expenditure for the film has been incurred.

Application for PDV offset certificate

- (2) Once all of a company's *qualifying Australian production expenditure on a *film, to the extent that it relates to *post, digital and visual effects production for the film, has been incurred, the company may apply to the *Arts Minister for the issue of a certificate to the company for the film under section 376-45 (certificate for the PDV offset).

Application for producer offset certificate

- (3) Once a *film is *completed, a company may apply to the *film authority for the issue of a certificate to the company for the film under section 376-65 (certificate for the producer offset).

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

Section 376-235

Form of application

- (4) An application under subsection (1) or (2) must be made in accordance with the rules determined by the *Arts Minister under section 376-260 so far as they relate to the requirements for applications.
- (5) An application under subsection (3) must be made in accordance with the rules determined by the *film authority under section 376-265 so far as they relate to the requirements for applications.

376-235 Notice of refusal to issue certificate

- (1) If the *Arts Minister decides not to issue a certificate under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset) for a *film, the Minister must give the applicant written notice of the decision (including reasons for the decision).
- (2) If the *film authority decides not to issue a certificate under section 376-65 (certificate for the producer offset) for a *film, the authority must give the applicant written notice of the decision (including reasons for the decision).

376-240 Issue of certificate

- (1) A certificate issued to a company under section 376-20 (certificate for the location offset), 376-45 (certificate for the PDV offset) or 376-65 (certificate for the producer offset) must:
 - (a) be in writing; and
 - (b) specify the company's *ABN; and
 - (c) specify the date of issue of the certificate; and
 - (d) if the certificate is issued under section 376-20—specify the total of the company's *qualifying Australian production expenditure on the *film, as determined by the *Arts Minister under section 376-30; and
 - (e) if the certificate is issued under section 376-45—specify the total of the company's qualifying Australian production expenditure on the film, to the extent that it relates to *post,

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

digital and visual effects production for the film, as determined by the Arts Minister under section 376-50; and

- (f) if the certificate is issued under section 376-65—specify the total of the company's qualifying Australian production expenditure on the film, as determined by the *film authority under section 376-75.
- (2) If the certificate is issued under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset), the *Arts Minister must give the Commissioner notice of the issue of a certificate for a *film within 30 days after issuing the certificate.
- (3) The notice under subsection (2) must specify:
- (a) the company's name; and
 - (b) the company's address; and
 - (c) the total of the company's *qualifying Australian production expenditure on the *film, as determined by the *Arts Minister under section 376-30 or 376-50, as the case may be; and
 - (d) other matters agreed to between the Arts Minister and the Commissioner.

The notice must be accompanied by a copy of the certificate.

- (4) If the certificate is issued under section 376-65 (certificate for the producer offset), the *film authority must give the Commissioner notice of the issue of a certificate for a *film within 30 days after issuing the certificate.
- (5) The notice under subsection (4) must specify:
- (a) the company's name; and
 - (b) the company's address; and
 - (c) the total of the company's *qualifying Australian production expenditure on the *film, as determined by the *film authority under section 376-75; and
 - (d) other matters agreed to between the film authority and the Commissioner.

The notice must be accompanied by a copy of the certificate.

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

376-245 Revocation of certificate

- (1) The *Arts Minister may revoke a certificate issued to a company for a *film under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset) if:
 - (a) the Minister is satisfied that the issue of the certificate was obtained by fraud or serious misrepresentation; or
 - (b) the company does not provide a copy of the film to the Minister within 30 days of when the film is *completed.
- (2) If the *Arts Minister revokes a certificate under subsection (1), the Minister must give the company to whom the certificate was issued written notice of the revocation (including reasons for the decision to revoke the certificate).
- (3) The *film authority may revoke a certificate issued to a company for a *film under section 376-65 (certificate for the producer offset) if the authority is satisfied that the issue of the certificate was obtained by fraud or serious misrepresentation.
- (4) If the *film authority revokes a certificate under subsection (3), the authority must give the company to whom the certificate was issued written notice of the revocation (including reasons for the decision to revoke the certificate).
- (5) If a certificate is revoked under subsection (1) or (3), it is taken, for the purposes of this Division, never to have been issued.

Note: This means that if an assessment of a company's income tax is issued on the basis that the company is entitled to a tax offset for a film and the certificate for the film is then revoked, the assessment will be amended to take account of the fact that the company was never entitled to the tax offset: see section 376-270.
- (6) Subsection (5) does not apply for the purposes of:
 - (a) the operation of this section or section 376-250; or
 - (b) a review by a court or the *AAT of the decision to revoke the certificate.

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

376-250 Notice of decision or determination

- (1) This section applies to a notice of a decision given under section 376-235 (refusal to issue a certificate) or 376-245 (revocation of a certificate), and to a notice of a determination given under section 376-30 (determination of qualifying Australian production expenditure for location offset), 376-50 (determination of qualifying Australian production expenditure for PDV offset) or 376-75 (determination of qualifying Australian production expenditure for producer offset).
- (2) The notice of the decision or determination is to include the statements set out in subsections (3) and (4).
- (3) There must be a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the *AAT, by (or on behalf of) any entity whose interests are affected by the decision or determination, for review of the decision or determination.
- (4) There must also be a statement to the effect that a request may be made under section 28 of the *Administrative Appeals Tribunal Act 1975* by (or on behalf of) such an entity for a statement:
 - (a) setting out the findings on material questions of fact; and
 - (b) referring to the evidence or other material on which those findings were based; and
 - (c) giving the reasons for the decision or determination;except where subsection 28(4) of that Act applies.
- (5) If the *Arts Minister or the *film authority fails to comply with subsection (3) or (4), that failure does not affect the validity of the decision or determination.

376-255 Review of decisions by the Administrative Appeals Tribunal

Applications may be made to the *AAT for review of:

- (a) a decision made by the *Arts Minister to refuse an application for a certificate under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset); or

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

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- (b) a decision made by the Arts Minister under section 376-245 to revoke a certificate; or
- (c) a decision made by the *film authority to refuse an application for a certificate under section 376-65 (certificate for the producer offset); or
- (d) a decision made by the film authority under section 376-245 to revoke a certificate; or
- (e) a determination by the Arts Minister in relation to the total of a company's *qualifying Australian production expenditure under section 376-30 or 376-50; or
- (f) a determination by the film authority in relation to the total of a company's *qualifying Australian production expenditure under section 376-75.

376-260 Minister may make rules about the location offset and the PDV offset

Rules establishing the Film Certification Advisory Board

- (1) The *Arts Minister may, by legislative instrument, make rules:
 - (a) establishing a Film Certification Advisory Board to:
 - (i) consider applications under subsection 376-230(1) (application for a certificate for the location offset) or (2) (application for a certificate for the PDV offset) and advise the Minister on whether to issue certificates under section 376-20 (certificate for the location offset) or 376-45 (certificate for the PDV offset); and
 - (ii) perform such other functions in relation to the operation of this Division as are specified in the rules; and
 - (b) specifying the membership of the Board and the terms and conditions of appointment to the Board; and
 - (c) specifying procedures to be followed by the Board in performing its functions.

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

Rules providing for provisional certificates in relation to location offset and the PDV offset

- (2) The *Arts Minister may, by legislative instrument, make rules providing for the issue of provisional certificates in relation to the location offset or the PDV offset.

Rules about applications for certificates in relation to the location offset and the PDV offset

- (3) The *Arts Minister may, by legislative instrument, make rules specifying how applications for certificates (including provisional certificates) in relation to the location offset or the PDV offset are to be made, including:
- (a) the form in which applications are to be made; and
 - (b) the information to be provided in applications; and
 - (c) methods for verifying such information; and
 - (d) procedures for providing, at the Minister's request, additional information in support of an application.
- (4) Rules under paragraph (3)(c) can include rules requiring reports by auditors or independent line producers.

376-265 Film authority may make rules about the producer offset

Rules providing for provisional certificates in relation to the producer offset

- (1) The *film authority may, by legislative instrument, make rules providing for the issue of provisional certificates in relation to the producer offset.

Rules about applications for certificates in relation to the producer offset

- (2) The *film authority may, by legislative instrument, make rules specifying how applications for certificates (including provisional certificates) in relation to the producer offset are to be made, including:
- (a) the form in which applications are to be made; and

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

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Part 3-45 Rules for particular industries and occupations

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- (b) the information to be provided in applications; and
 - (c) methods for verifying such information; and
 - (d) procedures for providing, at the authority's request, additional information in support of an application.
- (3) Rules under paragraph (2)(c) can include rules requiring reports by auditors or independent line producers.

376-270 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this Division for an income year if:

- (a) a certificate issued to a company for a *film is revoked under section 376-245 after the time the company lodged its *income tax return for an income year; and
- (b) the amendment is made at any time during the period of 4 years starting immediately after the revocation of the certificate.

Note: Section 170 of that Act specifies the periods within which assessments may be amended.

376-275 Review in relation to certain production levels

The Minister must, before the end of 12 months after the commencement of this Division, initiate a review of the effect of this Division in relation to levels of production by the Australian independent production sector compared to levels of production by Australian television broadcasters.

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

Division 380—National Rental Affordability Scheme

Table of Subdivisions

- Guide to Division 380
- 380-A National Rental Affordability Scheme Tax Offset
- 380-B Payments made in relation to the National Rental Affordability Scheme etc.

Guide to Division 380

380-1 What this Division is about

This Division provides a tax offset to certain entities as a result of certificates issued under the *National Rental Affordability Scheme Act 2008*.

It also ensures that payments made, and non-cash benefits provided, by a State or Territory governmental body in relation to the National Rental Affordability Scheme are not assessable income and not exempt income.

Subdivision 380-A—National Rental Affordability Scheme Tax Offset

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- 380-5 Claims by individuals, corporate tax entities and superannuation funds

NRAS certificates issued to NRAS approved participants

- 380-10 Members of NRAS consortiums—individuals, corporate tax entities and superannuation funds
- 380-11 Elections by NRAS approved participants
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- 380-13 Elections by NRAS approved participants—special rule for partnerships and trustees

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

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380-14 Members of NRAS consortiums—partnerships and trustees

NRAS certificates issued to partnerships and trustees

380-15 Entities to whom NRAS rent flows indirectly

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380-18 Elections by NRAS approved participants that are partnerships or trustees—
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380-20 Trustee of a trust that does not have net income for an income year

380-25 When NRAS rent flows indirectly to or through an entity

380-30 Share of NRAS rent

Miscellaneous

380-32 Amended certificates

**NRAS certificates issued to individuals, corporate tax entities
and superannuation funds**

**380-5 Claims by individuals, corporate tax entities and
superannuation funds**

Entitlement

- (1) An entity is entitled to a *tax offset for an income year if:
 - (a) the *Housing Secretary issues an *NRAS certificate in relation to an *NRAS year to the entity (other than in the entity's capacity (if any) as the *NRAS approved participant of an *NRAS consortium); and
 - (b) the income year begins in the NRAS year; and
 - (c) the entity is an individual, a *corporate tax entity or a *superannuation fund.

Amount

- (2) The amount of the entity's *tax offset is the amount stated in the *NRAS certificate.

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

NRAS certificates issued to NRAS approved participants

380-10 Members of NRAS consortiums—individuals, corporate tax entities and superannuation funds

Entitlement

- (1) A *member of an *NRAS consortium is entitled to a *tax offset for an income year if:
- (a) the *Housing Secretary issues an *NRAS certificate in relation to an *NRAS year to the *NRAS approved participant of the NRAS consortium; and
 - (b) the income year commences in the NRAS year; and
 - (c) the member is an individual, a *corporate tax entity or a *superannuation fund.

Amount

- (2) The amount of the *tax offset is the total of the amounts worked out using the following formula for each *NRAS dwelling:
- (a) covered by the *NRAS certificate; and
 - (b) from which the *member *derives *NRAS rent during the *NRAS year:

$$\text{Amount stated in the *NRAS certificate for the *NRAS dwelling} \times \frac{\text{*NRAS rent *derived by the *member from the *NRAS dwelling during the *NRAS year}}{\text{Total *NRAS rent *derived from the *NRAS dwelling during the *NRAS year}}$$

- (3) Treat the references in subsection (2) to the *NRAS year as being references to a period that occurs during the NRAS year, if the *NRAS certificate is apportioned for the period.

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

380-11 Elections by NRAS approved participants

Scope

- (1) This section and sections 380-12 and 380-13 apply if:
 - (a) a *member (the *electing member*) of an *NRAS consortium would, apart from subsection 380-12(3), be entitled to a *tax offset under section 380-10 for an income year because of:
 - (i) an *NRAS certificate in relation to an *NRAS year; and
 - (ii) an *NRAS dwelling covered by the NRAS certificate; and
 - (b) the electing member was the *NRAS approved participant of the NRAS consortium at any time during the NRAS year; and
 - (c) the electing member elects to have this section apply to the NRAS certificate and NRAS dwelling for the income year.

Requirements for an election

- (2) The election must be made:
 - (a) in the *approved form; and
 - (b) within 30 days after the day the *Housing Secretary issues the *NRAS certificate.
- (3) The Commissioner may require a copy or copies of the election to be given, within the 30 day period mentioned in paragraph (2)(b):
 - (a) to the Commissioner; or
 - (b) to each *member of the *NRAS consortium who may be entitled to a *tax offset under section 380-12 as a result of the election; or
 - (c) both to the Commissioner and to each such member.
- (4) The election may not be revoked.

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

380-12 Elections by NRAS approved participants—tax offsets

Entitlement to tax offset

- (1) A *member of the *NRAS consortium (other than the electing member) is entitled to a *tax offset for the income year if the member is an individual, a *corporate tax entity or a *superannuation fund.

Amount of tax offset

- (2) The amount of the *tax offset is the amount worked out using the following formula:

$$\begin{array}{l} \text{Amount of the *tax offset} \\ \text{to which the electing member} \\ \text{would be entitled under section 380-10} \\ \text{because of the *NRAS certificate} \\ \text{and the *NRAS dwelling,} \\ \text{if the election were disregarded} \end{array} \times \frac{\text{Member's rent}}{\text{Total rent}}$$

where:

member's rent means:

- (a) if *NRAS rent was payable for the *NRAS dwelling in relation to the whole of the *NRAS year—the rent *derived by the *member from the NRAS dwelling during the NRAS year; or
- (b) if NRAS rent was payable for the NRAS dwelling in relation to only part of the NRAS year—the rent derived by the member from the NRAS dwelling during that part of the NRAS year.

total rent means:

- (a) if *NRAS rent was payable for the *NRAS dwelling in relation to the whole of the *NRAS year—the rent *derived from the NRAS dwelling during the NRAS year; or
- (b) if NRAS rent was payable for the NRAS dwelling in relation to only part of the NRAS year—the rent derived from the NRAS dwelling during that part of the NRAS year.

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

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- (3) The *tax offset to which the electing member would otherwise be entitled under section 380-10 for the income year because of the *NRAS certificate and the *NRAS dwelling is reduced by the same amount.
- (4) Treat the references in subsection (2) to the *NRAS year as being references to a period that occurs during the NRAS year, if the *NRAS certificate is apportioned for the period.

Amount of tax offset—rent that passes through NRAS approved participant

- (5) For the purposes of the references in the definitions in subsection (2) to rent *derived from the *NRAS dwelling during the *NRAS year, disregard *NRAS rent derived by a *member of the *NRAS consortium from the NRAS dwelling during a period in the NRAS year, to the extent that another member derives rent from the NRAS dwelling during the period because:
 - (a) the first member is the *NRAS approved participant of the NRAS consortium throughout the period; and
 - (b) the first member, in accordance with the contractual *arrangements that established the NRAS consortium, passes the NRAS rent on to the other member.

Note: There may be more than one NRAS approved participant during an NRAS year. The electing member may be the NRAS approved participant for only part of the NRAS year.

- (6) For the purposes of paragraph (5)(b), treat any *NRAS rent retained by the first *member under the *arrangements as management fees or commission as having been passed on to the other member.

380-13 Elections by NRAS approved participants—special rule for partnerships and trustees

For the purposes of sections 380-14 to 380-30 (which apply if a partnership or the trustee of a trust derives NRAS rent), for each *NRAS dwelling:

- (a) from which the electing member *derived *NRAS rent during the *NRAS year; and

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

- (b) that is covered by the *NRAS certificate; and
- (c) from which a partnership, or the trustee of a trust, that is a *member of the *NRAS consortium derived rent during the NRAS year;

treat the following proportion of the NRAS rent as being NRAS rent derived during the NRAS year by the member mentioned in paragraph (c):

$$\frac{\text{Member's rent}}{\text{Total rent}}$$

where:

member's rent has the same meaning as in subsection 380-12(2).

total rent has the same meaning as in subsection 380-12(2).

380-14 Members of NRAS consortiums—partnerships and trustees

- (1) This section applies if:
 - (a) the *Housing Secretary issues an *NRAS certificate in relation to an *NRAS year to the *NRAS approved participant of an *NRAS consortium; and
 - (b) the NRAS certificate covers one or more *NRAS dwellings; and
 - (c) a *member of the NRAS consortium, other than the NRAS approved participant, *derives *NRAS rent during the NRAS year from any of those NRAS dwellings; and
 - (d) the member is a partnership or a trustee of a trust.
- (2) For the purposes of sections 380-15 to 380-20, assume that:
 - (a) the *member has been issued with an *NRAS certificate in relation to the *NRAS year; and
 - (b) the NRAS certificate covers each *NRAS dwelling:
 - (i) covered by the NRAS certificate mentioned in paragraph (1)(b) of this section; and
 - (ii) from which the member *derives *NRAS rent during the NRAS year; and

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

- (c) the amount stated in the NRAS certificate for each of those NRAS dwellings is the amount worked out using the formula in subsection 380-10(2) in relation to the NRAS dwelling for the NRAS year for the member.

NRAS certificates issued to partnerships and trustees

380-15 Entities to whom NRAS rent flows indirectly

- (1) An entity is entitled to a *tax offset for an income year (the *offset year*) if:
 - (a) the *Housing Secretary issues an *NRAS certificate in relation to an *NRAS year to a partnership or a trustee of a trust; and
 - (b) *NRAS rent *derived:
 - (i) from any of the *NRAS dwellings covered by the NRAS certificate; and
 - (ii) during the NRAS year;
 - *flows indirectly to the entity in any income year; and
 - (c) the offset year of the partnership or trustee begins in the NRAS year; and
 - (d) the entity is:
 - (i) an individual; or
 - (ii) a *corporate tax entity when the NRAS rent flows indirectly to it; or
 - (iii) the trustee of a trust that is liable to be assessed on a share of, or all or a part of, the trust's *net income under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* for the offset year; or
 - (iv) the trustee of an *FHSA; or
 - (v) a *superannuation fund, an *approved deposit fund or a *pooled superannuation trust.

Note: The entities covered by this section are the ultimate recipients of the NRAS rent because the NRAS rent does not flow indirectly through them to other entities.

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

- (2) The amount of the *tax offset is the sum of the amounts worked out using the following formula for each *NRAS dwelling from which there is *NRAS rent covered by paragraph (1)(b):

$$\text{Amount stated in the *NRAS certificate} \times \frac{\text{The entity's *share of the *NRAS rent for the *NRAS dwelling *derived during the *NRAS year}}{\text{Total *NRAS rent *derived during the *NRAS year from *NRAS dwellings covered by the *NRAS certificate}}$$

- (3) Treat the references in subsection (2) to the *NRAS year as being references to a period that occurs during the NRAS year, if the *NRAS certificate is apportioned for the period.

380-16 Elections by NRAS approved participants that are partnerships or trustees

Scope

- (1) This section and sections 380-17 and 380-18 apply if:
- (a) an entity (the **indirect entity**) is entitled to a *tax offset under section 380-15 or 380-20 for an income year because *NRAS rent *derived:
 - (i) from any of the *NRAS dwellings covered by an *NRAS certificate issued by the *Housing Secretary in relation to an *NRAS year to a *member (the **electing member**) of an *NRAS consortium; and
 - (ii) during the NRAS year;*flows indirectly to the indirect entity in any income year (or would otherwise flow indirectly to the indirect entity, as mentioned in paragraph 380-20(1)(d)); and
 - (b) the electing member was the *NRAS approved participant of the NRAS consortium at any time during the NRAS year; and
 - (c) the electing member elects to have this section apply to the NRAS certificate and NRAS dwelling for the income year.

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

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Requirements for an election

- (2) The election must be made:
 - (a) in the *approved form; and
 - (b) within 30 days after the day the *Housing Secretary issues the *NRAS certificate.
- (3) The Commissioner may require a copy or copies of the election to be given, within the 30 day period mentioned in paragraph (2)(b):
 - (a) to the Commissioner; or
 - (b) to each *member of the *NRAS consortium who may be entitled to a *tax offset under section 380-17 as a result of the election; or
 - (c) both to the Commissioner and to each such member.
- (4) The election may not be revoked.

380-17 Elections by NRAS approved participants that are partnerships or trustees—tax offsets

Entitlement to tax offset

- (1) A *member of the *NRAS consortium (other than the electing member) is entitled to a *tax offset for the income year if the member is an individual, a *corporate tax entity or a *superannuation fund.

Amount of tax offset

- (2) The amount of the *tax offset is the amount worked out using the following formula:

$$\text{Total tax offsets} \times \frac{\text{Member's rent}}{\text{Total rent}}$$

where:

member's rent means:

- (a) if *NRAS rent was payable for the *NRAS dwelling in relation to the whole of the *NRAS year—the rent *derived

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

by the *member from the NRAS dwelling during the NRAS year; or

- (b) if NRAS rent was payable for the NRAS dwelling in relation to only part of the NRAS year—the rent derived by the member from the NRAS dwelling during that part of the NRAS year.

total rent means:

- (a) if *NRAS rent was payable for the *NRAS dwelling in relation to the whole of the *NRAS year—the rent *derived from the NRAS dwelling during the NRAS year; or
- (b) if NRAS rent was payable for the NRAS dwelling in relation to only part of the NRAS year—the rent derived from the NRAS dwelling during that part of the NRAS year.

total tax offsets means the total of the *tax offsets to which entities would be entitled under section 380-15 or 380-20 because of *NRAS rent *derived:

- (a) from any of the *NRAS dwellings covered by the *NRAS certificate; and
- (b) during the *NRAS year;

that *flows indirectly to them from the electing member (or would otherwise flow indirectly to them from the electing member, as mentioned in paragraph 380-20(1)(d)).

- (3) The *tax offset to which the indirect entity would otherwise be entitled under section 380-15 for the income year because of the *NRAS certificate and the *NRAS dwelling is reduced by the amount worked out using the following formula:

$$\text{Amount worked out under subsection (2)} \times \frac{\text{Amount of the *tax offset to which the indirect entity would otherwise be entitled under section 380-15}}{\text{Total tax offsets}}$$

where:

total tax offsets has the same meaning as in subsection (2).

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

Section 380-18

- (4) Treat the references in subsection (2) to the *NRAS year as being references to a period that occurs during the NRAS year, if the *NRAS certificate is apportioned for the period.

Amount of tax offset—rent that passes through NRAS approved participant

- (5) For the purposes of the references in the definitions in subsection (2) to rent *derived from the *NRAS dwelling during the *NRAS year, disregard *NRAS rent derived by a *member of the *NRAS consortium from the NRAS dwelling during a period in the NRAS year, to the extent that another member derives rent from the NRAS dwelling during the period because:
- (a) the first member is the *NRAS approved participant of the NRAS consortium throughout the period; and
 - (b) the first member, in accordance with the contractual *arrangements that established the NRAS consortium, passes the NRAS rent on to the other member.

Note: There may be more than one NRAS approved participant during an NRAS year. The electing member may be the NRAS approved participant for only part of the NRAS year.

- (6) For the purposes of paragraph (5)(b), treat any *NRAS rent retained by the first *member under the *arrangements as management fees or commission as having been passed on to the other member.

380-18 Elections by NRAS approved participants that are partnerships or trustees—special rule for partnerships and trustees

For the purposes of sections 380-15 and 380-20 to 380-30 (which apply if a partnership or the trustee of a trust derives NRAS rent), for each *NRAS dwelling:

- (a) from which the electing member *derived *NRAS rent during the *NRAS year; and
- (b) that is covered by the *NRAS certificate; and
- (c) from which a partnership or trust that is a *member of the *NRAS consortium derived rent during the NRAS year;

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

treat the following proportion of the NRAS rent as being NRAS rent derived during the NRAS year by the member mentioned in paragraph (c):

$$\frac{\text{Member's rent}}{\text{Total rent}}$$

where:

member's rent has the same meaning as in subsection 380-14B(2).

total rent has the same meaning as in subsection 380-14B(2).

380-20 Trustee of a trust that does not have net income for an income year

- (1) An entity is entitled to a *tax offset for an income year (the *offset year*) if:
 - (a) the *Housing Secretary issues an *NRAS certificate in relation to an *NRAS year to a partnership or a trustee of a trust; and
 - (b) the entity is a trustee of a trust; and
 - (c) the trust mentioned in paragraph (b) does not have a *net income for an income year; and
 - (d) *NRAS rent *derived during the NRAS year from an *NRAS dwelling covered by the NRAS certificate would otherwise *flow indirectly to the entity in the income year mentioned in paragraph (c) as if:
 - (i) the trust did have a net income for the income year; and
 - (ii) for the purposes of paragraph 380-25(4)(b), the entity has a share amount, being the net income referred to in subparagraph (i) of this paragraph; and
 - (iii) the entity's *share of the NRAS rent under section 380-30 was a positive amount; and
 - (e) the offset year of the partnership or trustee begins in the NRAS year.
- (2) The amount of the *tax offset is the amount worked out in accordance with subsection 380-15(2), as if the reference in the

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

Section 380-25

formula to the *NRAS certificate were a reference to the NRAS certificate mentioned in paragraph (1)(a) of this section.

- (3) For the purposes of working out the entity's *share of *NRAS rent for an *NRAS dwelling, assume subparagraphs (1)(d)(i), (ii) and (iii) of this section apply.
- (4) If the trustee of a trust is entitled to a *tax offset under this section:
 - (a) a beneficiary of the trust; or
 - (b) a subsequent entity to whom *NRAS rent for an *NRAS dwelling mentioned in paragraph (1)(d) *flows indirectly; is not entitled to a tax offset under this Subdivision in relation to the NRAS rent *derived during the *NRAS year from for the NRAS dwelling.

380-25 When NRAS rent flows indirectly to or through an entity

- (1) This section sets out the circumstances in which *NRAS rent:
 - (a) **flows indirectly** to an entity (subsection (2), (3) or (4)); or
 - (b) **flows indirectly** through an entity (subsection (5)).

Partners

- (2) *NRAS rent **flows indirectly** to a partner in a partnership in an income year if, and only if:
 - (a) during that income year, the NRAS rent is *derived by the partnership, or *flows indirectly to the partnership as a beneficiary because of a previous application of subsection (3); and
 - (b) the partner has an individual interest:
 - (i) in the partnership's *net income for that income year that is covered by paragraph 92(1)(a) or (b) of the *Income Tax Assessment Act 1936*; or
 - (ii) in a *partnership loss of the partnership for that income year that is covered by paragraph 92(2)(a) or (b) of that Act;
(whether or not that individual interest becomes assessable income in the hands of the partner); and

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

- (c) the partner's *share of the NRAS rent under section 380-30 is a positive amount (whether or not the partner actually receives any of that share).

Beneficiaries

- (3) *NRAS rent **flows indirectly** to a beneficiary of a trust in an income year if, and only if:
- (a) during that income year, the NRAS rent is *derived by the trustee of the trust, or *flows indirectly to the trustee as a partner or beneficiary because of a previous application of subsection (2) or this subsection; and
 - (b) the beneficiary has this amount for that income year (the **share amount**):
 - (i) a share of the trust's *net income for that income year that is covered by paragraph 97(1)(a) of the *Income Tax Assessment Act 1936*; or
 - (ii) an individual interest in the trust's net income for that income year that is covered by section 98A or 100 of that Act;(whether or not the share amount becomes assessable income in the hands of the beneficiary); and
 - (c) the beneficiary's *share of the NRAS rent under section 380-30 is a positive amount (whether or not the beneficiary actually receives any of that share).

Trustees

- (4) *NRAS rent **flows indirectly** to the trustee of a trust in an income year if, and only if:
- (a) during that income year, the NRAS rent is *derived by the trustee, or *flows indirectly to the trustee as a partner or beneficiary because of a previous application of subsection (2) or (3); and
 - (b) the trustee is liable or, but for another provision in this Act, would be liable, to be assessed in respect of an amount (the **share amount**) that is:

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

Section 380-30

- (i) a share of the trust's *net income for that income year under section 98 of the *Income Tax Assessment Act 1936*; or
- (ii) all or a part of the trust's net income for that income year under section 99 or 99A of that Act;
(whether or not the share amount becomes assessable income in the hands of the trustee); and
- (c) the trustee's *share of the NRAS rent under section 380-30 is a positive amount (whether or not the trustee actually receives any of that share).

Note: A trustee to whom NRAS rent flows indirectly under this subsection is entitled to a tax offset under section 380-15 and the NRAS rent does not flow indirectly through the trustee to another entity.

- (5) *NRAS rent *flows indirectly* through an entity (the *first entity*) to another entity if, and only if:
 - (a) the other entity is the focal entity in an item of the table in section 380-30 in relation to the NRAS rent; and
 - (b) that focal entity's *share of the NRAS rent is based on the first entity's share of the NRAS rent as an intermediary entity in that or another item of the table.

380-30 Share of NRAS rent

Object of section

- (1) The object of this section is to ensure that:
 - (a) *NRAS rent derived by a partnership or the trustee of a trust is allocated notionally amongst entities who *derive benefits from that NRAS rent; and
 - (b) that allocation corresponds with the way in which those benefits were derived.
- (2) An entity's *share* of *NRAS rent is an amount notionally allocated to the entity as its share of the NRAS rent, whether or not the entity actually receives any of that NRAS rent.
- (3) That amount is equal to the entity's *share* of the *NRAS rent as the focal entity in column 3 of an item of the table.

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

Note: An entity's share of the NRAS rent is based on the share of the NRAS rent of each preceding intermediary entity through which the NRAS rent flows, starting from the intermediary entity to whom the NRAS rent is paid.

This means that in some cases (see items 2 and 4 of the table), more than one item of the table will need to be applied to work out the share of the NRAS rent of an ultimate recipient of the NRAS rent.

<i>Share of NRAS rent</i>			
Item	Column 1	Column 2	Column 3
	For this intermediary entity and this focal entity:	The intermediary entity's share of the NRAS rent is:	The focal entity's share of the NRAS rent is:
1	a partnership is the <i>intermediary entity</i> and a partner in that partnership is the <i>focal entity</i> if: (a) *NRAS rent is *derived by the partnership; and (b) the partner has, in respect of the partnership, an individual interest mentioned in subsection 380-25(2)	the NRAS rent	so much of the NRAS rent as is taken into account in working out the amount of that individual interest

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

Chapter 3 Specialist liability rules

Part 3-45 Rules for particular industries and occupations

Division 380 National Rental Affordability Scheme

Section 380-30

Share of NRAS rent

Item	Column 1 For this intermediary entity and this focal entity:	Column 2 The intermediary entity's share of the NRAS rent is:	Column 3 The focal entity's share of the NRAS rent is:
2	a partnership is the <i>intermediary entity</i> and a partner in that partnership is the <i>focal entity</i> if: (a) *NRAS rent *flows indirectly to the partnership as a beneficiary of a trust; and (b) the partner has, in respect of the partnership, an individual interest mentioned in subsection 380-25(2)	the amount worked out under column 3 of item 3 or 4 of this table where the partnership, as a beneficiary, is the focal entity in that item	so much of the amount worked out under column 2 of this item as is attributable to the partner, having regard to the partnership agreement and any other relevant circumstances
3	the trustee of a trust is the <i>intermediary entity</i> and the trustee or a beneficiary of the trust is the <i>focal entity</i> if: (a) *NRAS rent is *derived by the trustee; and (b) the trustee or beneficiary has, in respect of the trust, a share amount mentioned in subsection 380-25(3) or (4)	(a) if the trust has a positive amount of *net income for that year—the NRAS rent; or (b) otherwise—nil	so much of the amount worked out under column 2 of this item as is taken into account in working out that share amount

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

Share of NRAS rent

Item	Column 1 For this intermediary entity and this focal entity:	Column 2 The intermediary entity's share of the NRAS rent is:	Column 3 The focal entity's share of the NRAS rent is:
4	the trustee of a trust is the <i>intermediary entity</i> and the trustee or a beneficiary of the trust is the <i>focal entity</i> if: (a) *NRAS rent *flows indirectly to the trustee as a partner in a partnership or as a beneficiary of another trust; and (b) the trustee or beneficiary has, in respect of the trust, a share amount mentioned in subsection 380-25(3) or (4)	the amount worked out under column 3 of: (a) item 1 or 2 of this table where the trustee, as a partner, is the focal entity in that item; or (b) item 3 or a previous application of this item where the trustee, as a beneficiary, is the focal entity in that item	so much of the amount worked out under column 2 of this item as is attributable to the focal entity in this item, having regard to the trust deed and any other relevant circumstances

Note: In item 3 or 4 of the table, the trustee of a trust can be both the intermediary entity and the focal entity in the same item.

Miscellaneous

380-32 Amended certificates

A reference in this Subdivision to an *NRAS certificate in relation to an *NRAS year is to be treated as a reference to an amended NRAS certificate in relation to the NRAS year, if the *Housing Secretary issues such an amended certificate.

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

Subdivision 380-B—Payments made in relation to the National Rental Affordability Scheme etc.

Table of sections

380-35	Payments made and non-cash benefits provided in relation to the National Rental Affordability Scheme
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380-35 Payments made and non-cash benefits provided in relation to the National Rental Affordability Scheme

A payment made to you, or a *non-cash benefit provided to you, (whether directly or indirectly, such as through an *NRAS consortium of which you are a *member) by:

- (a) a Department of a State or Territory; or
- (b) a body (whether incorporated or not) established for a public purpose by or under a law of a State or Territory;

in relation to your participation in the *National Rental Affordability Scheme is not assessable income and is not *exempt income.

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

Division 385—Primary production

Table of Subdivisions

	Guide to Division 385
385-E	Primary producer can elect to spread or defer tax on profit from forced disposal or death of live stock
385-F	Insurance for loss of live stock or trees
385-G	Double wool clips
385-H	Rules that apply to all elections made under Subdivisions 385-E, 385-F and 385-G
385-J	Refundable tax offset for conservation tillage

Guide to Division 385

385-1 What this Division is about

This Division contains rules that are specific to primary producers.

Table of sections

385-5	Where to find some other rules relevant to primary producers
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385-5 Where to find some other rules relevant to primary producers

Rules relevant to primary producers		
Item	For rules about this topic:	See:
1	The rules about assessable income arising from disposals of trading stock apply to live stock, because live stock is trading stock.	Subdivision 70-D

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

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Rules relevant to primary producers		
Item	For rules about this topic:	See:
2	The rules about assessable income arising from disposals of trading stock apply to: (a) standing or growing crops; and (b) crop-stools; and (c) trees planted and tended for sale.	Subdivision 70-D
3	There are some capital allowances for primary producers and some other land-holders.	Subdivisions 40-F and 40-G
4	Long-term averaging of some primary producers' tax liability (by tax offsets and extra income tax)	Division 392

Subdivision 385-E—Primary producer can elect to spread or defer tax on profit from forced disposal or death of live stock

Guide to Subdivision 385-E

385-90 What this Subdivision is about

You can elect to exclude from your assessable income the profit on a forced disposal or death of live stock that you held as assets of a primary production business you carry on in Australia.

The excluded profit is then brought into your assessable income over a 5 year period in one of 2 ways.

Table of sections

385-95 Basic principles for elections under this Subdivision

Operative provisions

385-100 Cases where you can make an election

385-105 Election to spread tax profit over 5 years

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

- 385-110 Alternative election to defer tax profit and reduce cost of replacement live stock
- 385-115 Your assessable income includes an amount for replacement live stock you breed
- 385-120 Purchase price of replacement live stock is reduced
- 385-125 Alternative election because of bovine tuberculosis has effect over 10 years not 5

385-95 Basic principles for elections under this Subdivision

(1) You can elect:

- to spread the profit on the disposal or death over the income year of the disposal or death and the next 4 income years (*election to spread*); or
- to defer including the profit in your assessable income, if you will use the proceeds of the disposal or death mainly to replace the live stock (*election to defer*).

(2) If you make an election to defer, the profit is “used” over the next 5 income years:

- by reducing the amount for which you are taken to have bought replacement stock (as a result, your tax profit on the disposal of the replacement stock is increased); and
- by including in your assessable income amounts for replacement stock that you breed.

Any unused part of the profit is included in your assessable income for the fifth income year.

Operative provisions

385-100 Cases where you can make an election

(1) You can make an election if:

- (a) you dispose of *live stock, or they die, because:
 - (i) land is compulsorily acquired or resumed under an Act;or

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

Section 385-100

- (ii) a State or Territory leases land for a cattle tick eradication campaign; or
 - (iii) pasture or fodder is destroyed by fire, drought or flood and you will use the *proceeds of the disposal or death mainly to buy replacement stock or to maintain breeding stock for the purpose of replacing the live stock; or
 - (iv) they are compulsorily destroyed under an *Australian law for the control of a *disease or they die of such a *disease; or
 - (v) you receive an official notification under an *Australian law dealing with contamination of property; and
- (b) you held the live stock as assets of a *primary production business you carry on in Australia; and
- (c) apart from this Subdivision, your assessable income for any income year would include the *proceeds of the disposal or death.
- (2) The *proceeds of the disposal or death* are:
- (a) if you dispose of the *live stock or their carcasses in the ordinary course of *business—the total of:
 - (i) any amount you receive as payment for the live stock or carcasses; and
 - (ii) any compensation you receive for the death or destruction, or a reduction in *market value, of the live stock or their carcasses from an *Australian government agency; or
 - (b) if you dispose of the *live stock or their carcasses outside the ordinary course of *business—the total of:
 - (i) the market value of the live stock or their carcasses, at the time of disposal; and
 - (ii) any compensation you receive for the death or destruction, or a reduction in market value, of the live stock or their carcasses from an *Australian government agency; or
 - (c) if the *live stock die, and you do not dispose of their carcasses to someone else—any compensation you receive for their death or destruction from an *Australian government agency.

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

385-105 Election to spread tax profit over 5 years

- (1) You can elect:
- (a) to include in your assessable income for the *disposal year the *proceeds of the disposal or death, reduced by the *tax profit on the disposal or death; and
 - (b) to include 20% of the tax profit on the disposal or death in your assessable income for the disposal year; and
 - (c) to include 20% of the tax profit on the disposal or death in your assessable income for each of the next 4 income years.

For rules about the making and effect of an election, see Subdivision 385-H.

- (2) The **disposal year** is the income year in which you dispose of the *live stock, or they die, as mentioned in subsection 385-100(1).
- (3) The **tax profit on the disposal or death** is any amount remaining after subtracting from the *proceeds of the disposal or death the sum of:
- (a) the amount paid or payable for the purchase of as many of the *live stock as you purchased during the income year; and
 - (b) the *value of the rest of the live stock as *trading stock on hand at the start of the income year.

385-110 Alternative election to defer tax profit and reduce cost of replacement live stock

- (1) Alternatively, you can elect:
- (a) to include in your assessable income for the *disposal year the *proceeds of the disposal or death, reduced by the *tax profit on the disposal or death; and
 - (b) to reduce the cost of replacement *live stock you buy in the disposal year (or any of the next 5 income years) by amounts totalling not more than the tax profit on the disposal or death; and
 - (c) to include in your assessable income for the last of the 5 income years following the disposal year any *unused tax profit on the disposal or death on the last day of that year.

Note: If the election is made because of bovine tuberculosis, it has effect over 10 income years instead of 5: see section 385-125.

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

Section 385-115

For rules about the making and effect of an election, see Subdivision 385-H

- (2) However, you can only make this election if you will use the *proceeds of the disposal or death mainly to buy replacement *live stock, or to maintain breeding stock for the purpose of replacing the live stock that were disposed of or died.
- (3) The ***unused tax profit on the disposal or death*** is the *tax profit on the disposal or death less the total of:
 - (a) the amounts included in your assessable income under section 385-115 for replacement animals you breed; and
 - (b) the amounts by which the amount paid or payable for the purchase of replacement animals is reduced under section 385-120.

385-115 Your assessable income includes an amount for replacement live stock you breed

If you make the election in section 385-110, then for the *disposal year and each of the next 5 income years, your assessable income includes any amount you choose for each replacement animal you breed during that income year. (However, you can choose not to include an amount.)

385-120 Purchase price of replacement live stock is reduced

- (1) If you make the election in section 385-110, then the amount paid or payable for the purchase of each replacement animal you buy in the *disposal year, or in the next 5 income years, is treated as if it were reduced by the *reduction amount.

Meaning of reduction amount

- (2) The ***reduction amount*** is:
 - so much of the *tax profit on the disposal or death as is attributable to live stock of the species you are replacing;divided by:
 - the number of animals of that species that you disposed of or that died.

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

- (3) However, if:
- (a) you purchase a replacement animal of a different species from the *live stock it replaces; and
 - (b) you pay substantially more for it than you could have paid for a replacement animal of the same species;
- the **reduction amount** for the animal is any reasonable amount at least equal to the amount worked out under subsection (2).

Exception to avoid reducing unused tax profit to less than nil

- (4) However, if applying subsection (1) to a particular purchase would reduce the *unused tax profit on the disposal or death to less than nil, instead reduce the amount paid or payable for the purchase of each replacement animal in that purchase by:
- the *unused tax profit on the disposal or death; divided by:
 - the number of animals in the purchase.

385-125 Alternative election because of bovine tuberculosis has effect over 10 years not 5

If you can make an election under this Subdivision because:

- (a) *live stock are compulsorily destroyed under an *Australian law for the control of bovine tuberculosis; or
- (b) *live stock die of that *disease;

sections 385-110 to 385-120 apply as if they referred to 10 income years instead of 5 years.

Subdivision 385-F—Insurance for loss of live stock or trees

Table of sections

385-130 Insurance for loss of live stock or trees

385-130 Insurance for loss of live stock or trees

If your assessable income for an income year would otherwise include an insurance recovery for a loss of *live stock, or for a loss

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

Section 385-135

by fire of trees, that you hold as assets of a *primary production business you carry on in Australia, you can elect:

- (a) to include only 20% of the insurance recovery in your assessable income for that income year; and
- (b) to include 20% of the insurance recovery in your assessable income for each of the next 4 income years.

For rules about the making and effect of an election, see Subdivision 385-H.

Subdivision 385-G—Double wool clips

Table of sections

385-135 Election to defer including profit on second wool clip

385-135 Election to defer including profit on second wool clip

- (1) If your assessable income for an income year would otherwise include the *proceeds of the sale of 2 wool clips because fire, drought or flood causes you to shear your sheep earlier than normal, you can elect to include in your assessable income for the *next* income year the *profit on the sale of the earlier than normal wool clip.

For rules about the making and effect of an election, see Subdivision 385-H.

- (2) However, at the time the wool was shorn, the sheep must have been assets of a *primary production business you carried on in Australia. Also, the fire, drought or flood must have been in an area of Australia where you carried on that business at that time.
- (3) The *proceeds of the sale of 2 wool clips* are:
 - (a) the proceeds of the sale of the earlier than normal wool clip; and
 - (b) an amount covered by one or more of the following:
 - (i) proceeds of the sale of another wool clip in the income year;
 - (ii) proceeds of the sale of wool shorn in the previous income year that you hold at the start of the income year and that you took into account at cost in working out the *value of your *trading stock under Division 60 at the end of the previous income year;

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

- (iii) an amount for wool shorn in the previous income year that is included in your assessable income of the income year because of a previous election under this section.
- (4) The *profit on the sale of the earlier than normal wool clip* is the proceeds of the sale of the wool clip that would otherwise be included in your assessable income for the income year, less the expenses you incur in the income year that are directly attributable to the earlier shearing and sale.

Subdivision 385-H—Rules that apply to all elections made under Subdivisions 385-E, 385-F and 385-G

Table of sections

385-145	Partnerships and trusts
385-150	Time for making election
385-155	Amounts are assessable income from carrying on the primary production business
385-160	Effect of certain events on election
385-163	Disentitling events
385-165	New partnership can elect to be treated as same entity as old partnership
385-170	New partnership can elect to take advantage of election made by former owner of the business

385-145 Partnerships and trusts

If a partnership or trustee carries on a *primary production business, only the partnership or trustee can make an election under Subdivision 385-E, 385-F or 385-G.

385-150 Time for making election

You can only make an election under Subdivision 385-E, 385-F or 385-G before you lodge your *income tax return for the last income year for which your assessable income would (apart from the election) include any of:

- (a) the *proceeds of the disposal or death of *live stock; or
- (b) the insurance recovery for the loss of *live stock or trees; or
- (c) the *proceeds of the sale of the 2 wool clips.

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

The Commissioner may allow you further time to make the election.

385-155 Amounts are assessable income from carrying on the primary production business

The following are taken to be assessable income from carrying on a *primary production business in Australia:

- (a) an amount included in your assessable income because of an election under Subdivision 385-E, 385-F or 385-G; or
- (b) an amount included in your assessable income because of section 385-160 (Effect of certain events on election).

385-160 Effect of certain events on election

- (1) You cannot make an election under Subdivision 385-E, 385-F or 385-G after a *disentitling event happens.
- (2) If a *disentitling event happens *after* you make an election under Subdivision 385-E, 385-F or 385-G, your assessable income for the income year in which the event happens includes:
 - (a) the *proceeds of the disposal or death of *live stock; or
 - (b) the insurance recovery for the loss of *live stock or trees; or
 - (c) the *proceeds of the sale of 2 wool clips;reduced by each amount that, because of the election, is included in your assessable income for that or an earlier income year.
- (3) However, if a *disentitling event happens *after* you make an election under section 385-110 (Alternative election to defer tax profit and reduce cost of replacement live stock), your assessable income for the income year in which the event happens includes any *unused tax profit on the disposal or death on the last day of that income year.

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

385-163 Disentitling events

- (1) A **disentitling event** happens when:
 - (a) you die; or
 - (b) you become bankrupt, insolvent, commence to be wound up, apply to take the benefit of a law for the relief of bankrupt or insolvent debtors, compound with creditors, or make an assignment of any property for the benefit of creditors; or
 - (c) you leave Australia permanently, or it appears to the Commissioner that you are about to do so; or
 - (d) you cease to carry on the *primary production business to which the election relates.

- (2) In the case of a partnership, a **disentitling event** happens when:
 - (a) a partner in the partnership becomes bankrupt, insolvent, commences to be wound up, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors, or makes an assignment of any property for the benefit of creditors; or
 - (b) a partner leaves Australia permanently, or it appears to the Commissioner that a partner is about to do so; or
 - (c) the partnership ceases to carry on the *primary production business to which the election relates; or
 - (d) there is a variation in the constitution of the partnership or the interests of the partners.

- (3) In the case of a trust, a **disentitling event** happens when:
 - (b) an order for the administration of the trust estate is made under a law relating to bankruptcy; or
 - (c) a beneficiary becomes bankrupt, insolvent, commences to be wound up, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors, or makes an assignment of any property for the benefit of creditors; or
 - (d) the trustee or a beneficiary leaves Australia permanently, or it appears to the Commissioner that the trustee or a beneficiary is about to do so; or
 - (e) the trustee ceases to carry on the *primary production business to which the election relates.

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

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- (4) However, in the case of a trust, a *disentitling event* does not happen if:
 - (a) either:
 - (i) the disentitling event is covered by paragraph 3(c); or
 - (ii) the disentitling event is covered by paragraph 3(d) and a beneficiary leaves Australia permanently, or it appears to the Commissioner that a beneficiary is about to do so; and
 - (b) the Commissioner makes a determination under subsection (5).
- (5) The Commissioner may make a determination for the purpose of subsection (4) if it is fair and reasonable to do so having regard to:
 - (a) the nature of the *disentitling event to which subsection (3) applies; and
 - (b) any relevant circumstances relating to the beneficiary mentioned in paragraph (3)(c) or (d); and
 - (c) any other relevant circumstances relating to the trust; and
 - (d) any other matters the Commissioner considers relevant.
- (6) A determination made under subsection (5) must be made in writing.
- (7) The Commissioner must give the trustee of the trust a copy of the determination.

385-165 New partnership can elect to be treated as same entity as old partnership

- (1) Under Subdivision 385-E, 385-F or 385-G a new partnership can elect to be treated as a continuation of an old partnership that would otherwise cease to exist if:
 - (a) it immediately takes over the relevant *primary production business of the old partnership; and
 - (b) partners, together entitled to at least 25% of the income of the new partnership, were also partners in the old partnership.

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

- (2) The new partnership must make this election before it lodges its *income tax return for the income year in which it takes over the *business.

385-170 New partnership can elect to take advantage of election made by former owner of the business

- (1) If an entity (except a partnership):
- (a) has made an election under Subdivision 385-E, 385-F or 385-G; and
 - (b) transfers the relevant *primary production business to a partnership; and
 - (c) is entitled to at least 25% of the income of that partnership; the partnership may elect to apply the Subdivision under which the entity made the election to all future events as if it were that entity.
- (2) The partnership must make this election before it lodges its *income tax return for the income year in which the *business is transferred to it.

Subdivision 385-J—Refundable tax offset for conservation tillage

385-175 Refundable tax offset for conservation tillage

- (1) You are entitled to a *tax offset under this section (the *conservation tillage offset*) for an income year in respect of a *depreciating asset if:
- (a) the asset is an *eligible no-till seeder; and
 - (b) the income year is:
 - (i) the 2012-13 income year; or
 - (ii) the 2013-14 income year; or
 - (iii) the 2014-15 income year; and
 - (c) at a particular time during the income year, you:
 - (i) start to use the asset to carry on a *primary production business (without previously having the asset *installed ready for use); or

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

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- (ii) have the asset installed ready for use to carry on a primary production business; and
- (d) at the time mentioned in paragraph (c), you *hold the asset; and
- (e) the time mentioned in paragraph (c) is not:
 - (i) before 1 July 2012; or
 - (ii) after 30 June 2015; and
- (f) the *Agriculture Secretary has issued a Research Participation Certificate to you under section 385-190 for the income year; and
- (g) you claim the offset in your *income tax return for the income year.

Note: The conservation tillage offset is a refundable tax offset: see section 67-23.

- (2) You are not entitled to the conservation tillage offset if the *depreciating asset has, at any time before the time mentioned in paragraph (1)(c), been used, or *installed ready for use, by:
 - (a) you; or
 - (b) any other entity.

385-180 Amount of the conservation tillage offset

The amount of the conservation tillage offset is 15% of the *cost of the *depreciating asset.

385-185 Application for Research Participation Certificate

Application

- (1) An entity may apply to the *Agriculture Secretary for the issue of a Research Participation Certificate to the entity for an income year under section 385-190.

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

Form of application

- (2) The application must:
 - (a) be in writing; and
 - (b) be in a form approved, in writing, by the *Agriculture Secretary.

385-190 Issue of Research Participation Certificate

- (1) The *Agriculture Secretary must issue a written certificate to an entity for an income year if:
 - (a) the entity has made an application under section 385-185 in relation to the income year; and
 - (b) the Agriculture Secretary is satisfied that the entity has, at any time during the income year, completed a conservation tillage survey; and
 - (c) the time mentioned in paragraph (b) is not:
 - (i) before 1 July 2012; or
 - (ii) after 30 June 2015.
- (2) A certificate under this section is to be known as a ***Research Participation Certificate***.
- (3) For the purposes of this section, a ***conservation tillage survey*** is a survey:
 - (a) conducted by the *Agriculture Secretary; and
 - (b) that relates to:
 - (i) farming practices; and
 - (ii) climate change.
- (4) For the purposes of this section, an entity ***completes*** a conservation tillage survey if the entity:
 - (a) fills up and supplies, in accordance with the instructions set out in the relevant survey form, the information specified in the survey form; and
 - (b) gives the filled-up survey form to a person specified in the instructions.

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

385-195 Notice of refusal to issue Research Participation Certificate

If:

- (a) an entity makes an application under section 385-185 for the issue of a Research Participation Certificate to the entity for an income year; and
- (b) the *Agriculture Secretary decides not to issue a Research Participation Certificate under section 385-190 to the applicant for the income year;

the Agriculture Secretary must give the applicant written notice of the decision (including reasons for the decision).

385-200 Revocation of Research Participation Certificate

- (1) The *Agriculture Secretary may revoke a Research Participation Certificate issued to an entity under section 385-190 if the Agriculture Secretary is satisfied that the issue of the certificate was obtained by fraud or serious misrepresentation.
- (2) If the *Agriculture Secretary revokes a Research Participation Certificate under subsection (1), the Agriculture Secretary must give the entity to whom the certificate was issued written notice of the revocation (including reasons for the decision to revoke the certificate).
- (3) If a certificate is revoked under subsection (1), it is taken, for the purposes of this Subdivision, never to have been issued.

Note: This means that if an assessment of an entity's income tax is issued on the basis that the entity is entitled to a conservation tillage offset and the Research Participation Certificate is then revoked, the assessment will be amended to take account of the fact that the entity was never entitled to conservation tillage offset: see section 385-220.

- (4) Subsection (3) does not apply for the purposes of:
 - (a) the operation of this section or section 385-210; or
 - (b) a review by a court or the *AAT of the decision to revoke the Research Participation Certificate.

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

385-205 Notification relating to Research Participation Certificate

- (1) The *Agriculture Secretary must:
 - (a) give the Commissioner written notice of the issue of a Research Participation Certificate to an entity; and
 - (b) do so within 30 days after issuing the certificate.
- (2) The *Agriculture Secretary must:
 - (a) give the Commissioner written notice of the revocation of a Research Participation Certificate issued to an entity; and
 - (b) do so within 30 days after revoking the certificate.
- (3) A notice under subsection (1) or (2) must specify:
 - (a) the income year to which the Research Participation Certificate relates; and
 - (b) the date of issue of the Research Participation Certificate; and
 - (c) the name of the entity; and
 - (d) if the entity has an *ABN—the ABN; and
 - (e) such other matters (if any) as the *Agriculture Secretary considers should be reported to the Commissioner.
- (4) A notice under subsection (1) or (2) must be accompanied by a copy of the Research Participation Certificate concerned.

385-210 Notice of decision or determination

- (1) This section applies to a notice of a decision given under section 385-195 (refusal to issue a Research Participation Certificate) or 385-200 (revocation of a Research Participation Certificate).
- (2) The notice of the decision or determination is to include the statements set out in subsections (3) and (4).
- (3) There must be a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the *AAT, by (or on behalf of) any entity whose interests are affected by the decision or determination, for review of the decision or determination.

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

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- (4) There must also be a statement to the effect that a request may be made under section 28 of the *Administrative Appeals Tribunal Act 1975* by (or on behalf of) such an entity for a statement:
- (a) setting out the findings on material questions of fact; and
 - (b) referring to the evidence or other material on which those findings were based; and
 - (c) giving the reasons for the decision or determination;
- except where subsection 28(4) of that Act applies.
- (5) If the *Agriculture Secretary fails to comply with subsection (3) or (4), that failure does not affect the validity of the decision or determination.

385-215 Review of decisions by the Administrative Appeals Tribunal

Applications may be made to the *AAT for review of:

- (a) a decision made by the *Agriculture Secretary to refuse an application for a Research Participation Certificate under section 385-190; or
- (b) a decision made by the Agriculture Secretary under section 385-200 to revoke a Research Participation Certificate.

385-220 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this Subdivision for an income year if:

- (a) a Research Participation Certificate issued to an entity for an income year is revoked under section 385-200 after the time the entity lodged its *income tax return for the income year; and
- (b) the amendment is made at any time during the period of 4 years starting immediately after the revocation of the Research Participation Certificate.

Note: Section 170 of that Act specifies the periods within which assessments may be amended.

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

385-225 Evidentiary certificate

- (1) If requested to do so by the Commissioner, the *Agriculture Secretary may, by writing, certify that a specified asset is an *eligible no-till seeder.
- (2) In any proceedings arising out of this Subdivision, a certificate under subsection (1) is prima facie evidence of the matter certified.
- (3) A document purporting to be a certificate under subsection (1) must, unless the contrary is established, be taken to be such a certificate and to have been properly given.

385-230 Delegation by Agriculture Secretary

The *Agriculture Secretary may, by writing, delegate any or all of his or her functions and powers under this Subdivision to an SES employee, or acting SES employee, in the *Agriculture Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

385-235 Eligible no-till seeder

An *eligible no-till seeder* is a no-till seeder (comprising the tool, or the combination of cart and tool) that is:

- (a) a tine machine fitted with minimum tillage points designed to achieve minimum soil disturbance and less than full cut-out; or
- (b) a disc opener with single, double or triple disc blades designed to achieve minimum soil disturbance and less than full cut-out; or
- (c) a disc/tine hybrid machine fitted with:
 - (i) single, double or triple disc blades designed to achieve minimum soil disturbance and less than full cut-out; and
 - (ii) minimum tillage points designed to achieve minimum soil disturbance and less than full cut-out; or

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

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- (d) a disc/blade hybrid machine fitted with:
 - (i) single, double or triple disc blades designed to achieve minimum soil disturbance and less than full cut-out; and
 - (ii) blades designed to achieve minimum soil disturbance and less than full cut-out.

For the purposes of paragraph (a) and subparagraph (c)(ii), each of the following points are taken to be minimum tillage points designed to achieve minimum soil disturbance and less than full cut-out:

- (e) narrow points;
- (f) knife points;
- (g) inverted “T” points.

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

Division 392—Long-term averaging of primary producers' tax liability

Table of Subdivisions

- Guide to Division 392
- 392-A Is your income tax affected by averaging?
- 392-B What kind of averaging adjustment must you make?
- 392-C How big is your averaging adjustment?
- 392-D Effect of permanent reduction of your basic taxable income

Guide to Division 392

392-1 What this Division is about

If you are a primary producer for 2 or more years in a row, this Division evens out your income tax liability from year to year. (It does so by reducing the effect that fluctuations in your taxable income have on the marginal rates of tax that apply to you from year to year.)

Table of sections

- 392-5 Overview of averaging process

392-5 Overview of averaging process

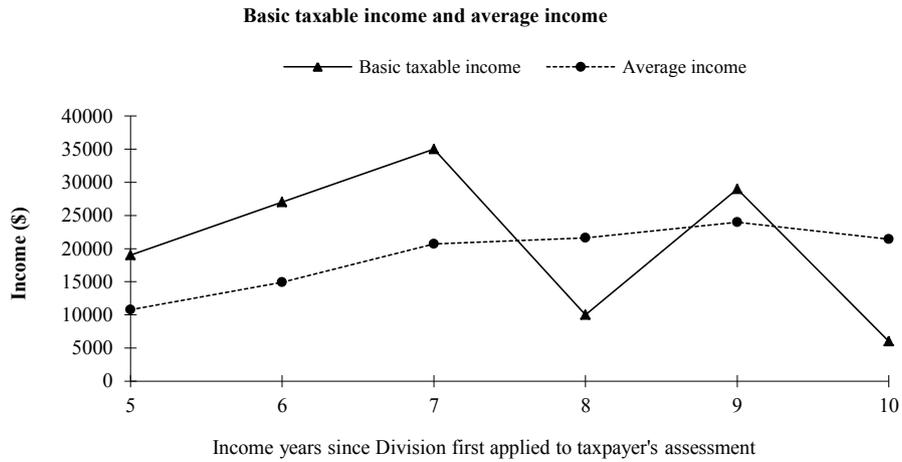
How averaging adjustments work

- (1) This Division reduces or increases your income tax liability to bring it closer to what it would have been if worked out using a special rate of income tax. That rate (the comparison rate) is based on the income tax that you would pay for the current year on the average of your taxable income for up to the last 5 income years.

Example: The graph shows how averaging taxable income reduces the effect of variations in taxable income (giving a fairly steady comparison rate from year to year).

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

Section 392-5



Tax offset as averaging adjustment

- (2) You may be entitled to a tax offset if the income tax you would pay on your basic taxable income for the current year at the comparison rate is *less* than the income tax you would pay on that income (apart from this Division and certain other provisions).

See the examples of years 5, 6, 7 and 9 in the graph in subsection (4).

Extra income tax as averaging adjustment

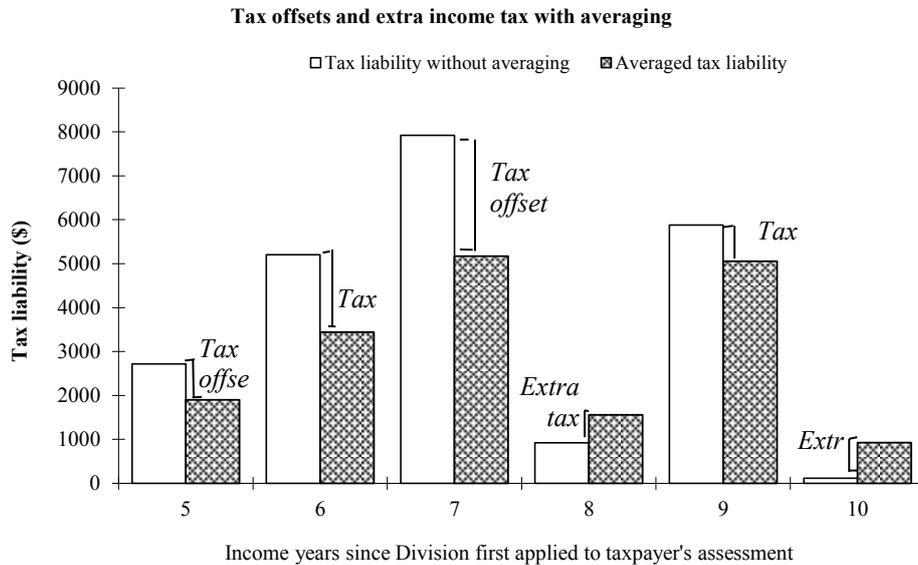
- (3) You may be liable to extra income tax on some or all of your basic taxable income for the current year if the income tax you would pay on your basic taxable income for the current year at the comparison rate is *more* than the income tax on that income (apart from this Division and certain other provisions).

See the examples of years 8 and 10 in the graph in subsection (4).

Example of the effect of averaging

- (4) The graph shows an example of the effect of averaging, using the same income figures as the graph in the example in subsection (1).

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



Note: The example assumes that all the basic taxable income was from a primary production business.

Effect of non-primary production income on averaging adjustment

- (5) Your income from sources other than your primary production business may affect the adjustment of your income tax. If more than \$5,000 of your basic taxable income is attributable to those sources, your averaging adjustment will be reduced to reflect the proportion of your basic taxable income attributable to primary production. (There are special shading-out arrangements if your taxable income from other sources is between \$5,000 and \$10,000.)

No adjustment in certain cases

- (6) Your income tax will not be adjusted under this Division in certain cases. In particular, you can choose not to have your income tax adjusted under this Division for the rest of your life.

Subdivision 392-A—Is your income tax affected by averaging?

Table of sections

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

Chapter 3 Specialist liability rules

Part 3-45 Rules for particular industries and occupations

Division 392 Long-term averaging of primary producers' tax liability

Section 392-10

- 392-10 Individuals who carry on a primary production business
- 392-15 Meaning of *basic taxable income*
- 392-20 Trust beneficiaries taken to be carrying on primary production business
- 392-22 Trustee may choose that a beneficiary is a chosen beneficiary of the trust
- 392-25 Choosing not to have your income tax averaged

392-10 Individuals who carry on a primary production business

- (1) This Division applies to your assessment for the *current year if:
- (a) you are an individual; and
 - (b) you have carried on a *primary production business in Australia for 2 or more income years in a row (the last of which is the current year); and
 - (c) for at least one of those income years your *basic taxable income is less than or equal to your basic taxable income for the next of those income years.

Note 1: It follows that this Division does *not* apply if your basic taxable income has decreased every income year since you started carrying on a primary production business.

Note 2: In working out whether this Division applies to your assessment for an income year, you may need to take account of income years before the 1998-99 income year: see section 392-1 of the *Income Tax (Transitional Provisions) Act 1997*.

Continued application of this Division after you stop carrying on a primary production business

- (2) This Division also applies to your assessment for the *current year if:
- (a) this Division applied to your assessment for an earlier income year during which you carried on a *primary production business in Australia; and
 - (b) you do not carry on that business during the current year; and
 - (c) at least one of the following conditions is met for each income year (including the current year) after the income year in which you stopped carrying on that business:
 - (i) your assessable income for the income year included assessable income that was *derived from, or resulted from, your having carried on that business;

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

- (ii) you carried on a *primary production business in Australia during the income year.

Note: In working out whether this Division applies to your assessment for an income year, you may need to take account of income years before the 1998-99 income year. See section 392-1 of the *Income Tax (Transitional Provisions) Act 1997*.

392-15 Meaning of *basic taxable income*

- (1) Work out your *basic taxable income* for an income year as follows:

Method statement

Step 1. Work out what would have been your taxable income for the income year if your assessable income for the income year:

- (a) had *not* included any amount under section 82-65, 82-70 or 302-145 of the *Income Tax Assessment Act 1997* (certain superannuation benefits and employment termination payments); and

Note: This means that certain deductions will also be excluded.

- (b) had *not* included any *net capital gain for the income year.

Step 2. Subtract from the Step 1 amount any *above-average special professional income included in your taxable income for the income year under Division 405.

- (2) However, your *basic taxable income* for an income year is nil if:
- (a) you do not have a taxable income for the income year; or
- (b) the amount worked out under subsection (1) for the income year is *less* than nil.

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

392-20 Trust beneficiaries taken to be carrying on primary production business

- (1) You are taken to carry on a *primary production business carried on by a trust during an income year if you satisfy the requirements in subsection (2), (3) or (4).

Primary production business carried on by a trust with beneficiary presently entitled to income of the trust

- (2) You satisfy the requirements in this subsection if:
- (a) you are a beneficiary of the trust referred to in subsection (1); and
 - (b) you are presently entitled to a share of the income of the trust for the income year; and
 - (c) if you are presently entitled to less than \$1,040 of the income of the trust for the income year—the Commissioner is satisfied that your interest in the trust was not acquired or granted wholly or primarily to enable your income tax to be adjusted under this Division.

Primary production business carried on by a fixed trust with no income of the trust

- (3) You satisfy the requirements in this subsection if:
- (a) you are a beneficiary of the trust referred to in subsection (1); and
 - (b) at all times during the income year, the manner or extent to which each beneficiary of the trust can benefit from the trust is not capable of being significantly affected by the exercise, or non-exercise, of a power; and
 - (c) the trust does not have any income of the trust for the income year to which a beneficiary of the trust could be presently entitled; and
 - (d) if the trust had income of the trust for the income year, you would have been presently entitled to a share of the income of the trust.

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

Primary production business carried on by a non-fixed trust with no income of the trust

- (4) You satisfy the requirements in this subsection if you do not satisfy the requirements in subsection (3) and you are a chosen beneficiary of the trust referred to in subsection (1) for the purposes of section 392-22 for the income year.

Corporate unit trusts and public trading trusts

- (5) You are not taken to carry on a *primary production business carried on by the trustee of:
- (a) a corporate unit trust (as defined in section 102J of the *Income Tax Assessment Act 1936*, which deals with corporate unit trusts); or
 - (b) a public trading trust (as defined in section 102R of the *Income Tax Assessment Act 1936*, which deals with public trading trusts).

392-22 Trustee may choose that a beneficiary is a chosen beneficiary of the trust

- (1) The trustee of a trust may choose that a beneficiary of the trust is a chosen beneficiary of the trust for an income year if the trust does not have income of the trust for the income year to which a beneficiary of the trust could be presently entitled.
- (2) The maximum number of choices that the trustee may make in respect of the trust for an income year is the higher of:
- (a) the number of individuals that were taken to be carrying on a *primary production business carried on by the trust under subsection 392-20(1) in the income year immediately before the current income year; and
 - (b) 12.
- (3) A choice made under subsection (1) must be:
- (a) in writing; and
 - (b) signed by the trustee and the person chosen.

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

Chapter 3 Specialist liability rules

Part 3-45 Rules for particular industries and occupations

Division 392 Long-term averaging of primary producers' tax liability

Section 392-25

- (4) The trustee can make the choice no later than the time it lodges the trust's *income tax return for the income year to which the choice relates. However, the Commissioner can allow the trustee to make a choice at a later time.
- (5) A choice cannot be revoked or varied.

392-25 Choosing not to have your income tax averaged

- (1) You can choose that this Division (except this section) not apply to your assessment for an income year. If you make this choice, this Division (except this section) does not apply to your assessment for the income year *or any later income year*.
- (2) You must make your choice in writing and give it to the Commissioner by the time you lodge your *income tax return for the income year to which your choice relates. However, the Commissioner may allow you to give the choice later.
- (3) Your choice cannot be revoked after it is given to the Commissioner.

Subdivision 392-B—What kind of averaging adjustment must you make?

Guide to Subdivision 392-B

392-30 What this Subdivision is about

This Subdivision explains how to work out whether you are entitled to a tax offset for the current year or whether you must pay extra income tax for the current year.

Table of sections

Tax offset or extra income tax

392-35 Will you get a tax offset or have to pay extra income tax?

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

How to work out the comparison rate

- 392-40 Identify income years for averaging your basic taxable income
- 392-45 Work out your average income for those years
- 392-50 Work out the income tax on your average income at basic rates
- 392-55 Work out the comparison rate

Tax offset or extra income tax

392-35 Will you get a tax offset or have to pay extra income tax?

- (1) Compare:
- (a) the amount (the *income tax you would pay at the comparison rate*) worked out using the formula:

$$\frac{\text{*Basic taxable income for *current year}}{\text{*Basic taxable income for *current year}} \times \text{*Comparison rate}$$

- (b) the amount of income tax that you would pay on your *basic taxable income for the *current year at *basic rates.

Note: You must disregard some provisions of this Act in working out amounts of income tax for the purposes of this subsection: see subsection (5).

Tax offset

- (2) You are entitled to a *tax offset equal to the *averaging adjustment worked out under Subdivision 392-C if the income tax you would pay at the comparison rate is *less* than the amount of income tax you would pay at *basic rates.

Extra income tax

- (3) You must pay extra income tax on the *averaging component of your *basic taxable income if the income tax you would pay at the comparison rate is *more* than the amount of income tax you would pay at *basic rates.

Note 1: Section 12A of the *Income Tax Rates Act 1986* sets the rate at which you must pay extra income tax on the averaging component of your basic taxable income.

Note 2: It does so in such a way that, generally, the extra income tax you must pay equals the averaging adjustment worked out under Subdivision 392-C.

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

Meaning of basic rates

- (4) The **basic rates** at which you would pay income tax are:
- (a) if you are a resident taxpayer as defined in the *Income Tax Rates Act 1986*—the rates of income tax in paragraph (1)(b) of Part I of Schedule 7 to that Act, taking into account the way it would apply with any changes to your tax-free threshold under section 20 of that Act; or
 - (b) if you are a non-resident taxpayer as defined in the *Income Tax Rates Act 1986*—the rates of income tax in paragraph 1(b) of Part II of Schedule 7 to that Act.

Disregard certain provisions in working out amounts

- (5) Work out the amount of income tax mentioned in paragraph (1)(b) as if:
- (a) the following provisions did not apply:
 - (i) this Division;
 - (ii) section 94 (Partner not having control and disposal of share in partnership income) of the *Income Tax Assessment Act 1936*;
 - (iii) Division 6AA (Income of certain children) of Part III of the *Income Tax Assessment Act 1936*;
 - (iv) Part VIIB (Medicare levy) of the *Income Tax Assessment Act 1936*; and
 - (b) you were not entitled to any rebate or credit under the *Income Tax Assessment Act 1936* or to any *tax offset under this Act.

No adjustment

- (6) This Division does not affect your income tax for the *current year if the income tax you would pay at the *comparison rate equals the amount of income tax you would pay at *basic rates.

Note: The 2 amounts will be equal if:

- your basic taxable income and your average income are both below the tax-free threshold; or
- your average income equals your basic taxable income for the current year.

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

How to work out the comparison rate

392-40 Identify income years for averaging your basic taxable income

The income years over which you must average your *basic taxable income are:

- (a) if this Division has applied to your assessment for at least 4 income years in a row (including the *current year)—the current year and the 4 previous income years; or
- (b) if this Division has applied to your assessment for less than 4 income years in a row (including the *current year)—those income years and the last income year before them.

Note: You may need to average your basic taxable income for one or more income years before the 1998-99 income year. See section 392-1 of the *Income Tax (Transitional Provisions) Act 1997*.

392-45 Work out your average income for those years

- (1) Work out your *average income* in this way:

Method statement

- Step 1. Add up your *basic taxable income for each of the income years over which you must average your basic taxable income.
- Step 2. Divide the sum by the number of those income years.
- Step 3. Round the result down to the nearest whole dollar if the result is not already a number of whole dollars.

- (2) Your *basic assessable income* for an income year is your assessable income for the income year, less:
- (a) any amount included in your assessable income section 82-65, 82-70 or 302-145 of the *Income Tax Assessment Act 1997* (certain employment termination payments and superannuation benefits); and
 - (b) any *net capital gain included in your assessable income under Division 102 of the *Income Tax Assessment Act 1997*.

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

Section 392-50

392-50 Work out the income tax on your average income at basic rates

Work out the amount of income tax that you would pay on your *average income for the *current year at *basic rates.

392-55 Work out the comparison rate

Work out the *comparison rate* using the formula:

$$\frac{\text{Income tax on *average income, as worked out under section 392-50}}{\text{*Average income}}$$

Subdivision 392-C—How big is your averaging adjustment?

Guide to Subdivision 392-C

392-60 What this Subdivision is about

This Subdivision explains how to work out the amount of the averaging adjustment of your income tax for the current year (whether it is a tax offset or is used by the *Income Tax Rates Act 1986* to set the rate at which you must pay extra income tax).

Table of sections

392-65 What your averaging adjustment reflects

Your gross averaging amount

392-70 Working out your gross averaging amount

Your averaging adjustment

392-75 Working out your averaging adjustment

How to work out your averaging component

392-80 Work out your taxable primary production income

392-85 Work out your taxable non-primary production income

392-90 Work out your averaging component

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

392-65 What your averaging adjustment reflects

- (1) Your averaging adjustment is a proportion of your gross averaging amount, taking account of:
 - (a) your taxable primary production income (the part of your basic taxable income from your primary production business); and
 - (b) your taxable non-primary production income (the part of your basic taxable income from other sources).

Your averaging component is the means of taking into account the different parts of your basic taxable income in working out your averaging adjustment.

- (2) If your taxable non-primary production income is less than or equal to \$5,000, your averaging component equals the whole of your basic taxable income. (In other words, your averaging component includes all of your taxable primary production income and all of your taxable non-primary production income.)
- (3) If your taxable non-primary production income is between \$5,000 and \$10,000, a shading-out system applies so that your averaging component includes some of your taxable non-primary production income as well as all of your taxable primary production income.
- (4) If your taxable non-primary production income is \$10,000 or more, your averaging component equals your taxable primary production income. Your averaging component does not include any of your taxable non-primary production income.
- (5) The following diagram shows examples of these relationships.

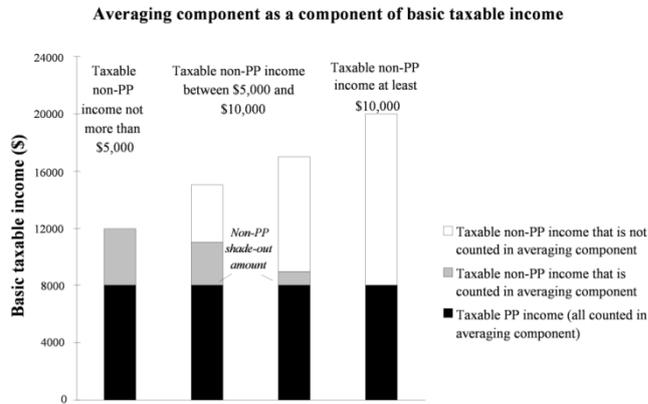
*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 3 Specialist liability rules

Part 3-45 Rules for particular industries and occupations

Division 392 Long-term averaging of primary producers' tax liability

Section 392-70



The second and third columns show that as taxable non-primary production income increases above \$5,000 (up to a maximum of \$10,000), less of it is counted in the averaging component.

Your gross averaging amount

392-70 Working out your gross averaging amount

Your *gross averaging amount* is the amount of the difference between the following amounts worked out under section 392-35:

- (a) the income tax you would pay at the comparison rate;
- (b) the amount of income tax that you would pay on your *basic taxable income for the *current year at *basic rates.

Your averaging adjustment

392-75 Working out your averaging adjustment

Work out your *averaging adjustment* for the *current year using the formula:

$$\text{*Gross averaging amount} \times \frac{\text{*Averaging component}}{\text{*Basic taxable income}}$$

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

How to work out your averaging component

392-80 Work out your taxable primary production income

- (1) Work out your **taxable primary production income** for the *current year in this way:

Method statement

- Step 1. Compare your *assessable primary production income for the *current year with your *primary production deductions for the current year.
- Step 2. If your assessable primary production income is larger than your primary production deductions, your **taxable primary production income** is the difference between them.
- Step 3. If your primary production deductions are larger than (or equal to) your assessable primary production income, your **taxable primary production income** is nil.

Assessable primary production income

- (2) Your **assessable primary production income** for the *current year is the amount of your *basic assessable income for the current year that was *derived from, or resulted from, your carrying on a *primary production business.

Primary production deductions

- (3) Your **primary production deductions** for the *current year are:
- (a) all amounts you can deduct that relate exclusively to your *assessable primary production income for the current year; and
 - (b) so much of any other amounts you can deduct (other than *apportionable deductions) to the extent that they reasonably relate to your assessable primary production income for the current year.

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

392-85 Work out your taxable non-primary production income

- (1) Work out your **taxable non-primary production income** for the *current year in this way:

Method statement

- Step 1. Compare your *assessable non-primary production income for the *current year with your *non-primary production deductions for the current year.
- Step 2. If your assessable non-primary production income is larger than your non-primary production deductions, your **taxable non-primary production income** is the difference between them.
- Step 3. If your non-primary production deductions are larger than (or equal to) your assessable non-primary production income, your **taxable non-primary production income** is nil.

Assessable non-primary production income

- (2) Your **assessable non-primary production income** for the *current year is the difference between:
- (a) your *basic assessable income for the current year; and
 - (b) your *assessable primary production income for the current year.

Non-primary production deductions

- (3) Your **non-primary production deductions** for the *current year are the difference between:
- (a) the sum of your deductions for the current year; and
 - (b) your *primary production deductions for the current year.

392-90 Work out your averaging component

- (1) Work out your **averaging component** for the *current year using the following table, taking into account:

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

- (a) your *taxable primary production income for the current year; and
 (b) your *taxable non-primary production income for the current year.

Averaging component			
Item	If *taxable non-primary production income:	The averaging component equals:	
		for *taxable primary production income > 0	for *taxable primary production income = 0
1	is nil	*Basic taxable income	Nil
2	is more than nil but does not exceed \$5,000	*Basic taxable income	*Basic taxable income
3	exceeds \$5,000 but does not exceed \$10,000	*Taxable primary production income plus *non-primary production shade-out amount	*Non-primary production shade-out amount
4	is \$10,000 or more	*Taxable primary production income	Nil

Note: Subsections (2) and (3) explain how to work out your non-primary production shade-out amount if your taxable non-primary production income is between \$5,000 and \$10,000.

Non-primary production shade-out amount if your taxable primary production income is more than nil

- (2) If your *taxable primary production income is more than nil, your **non-primary production shade-out amount** is the amount worked out using the formula:

$$\$10,000 - \text{Taxable non-PP income}$$

Non-primary production shade-out amount if your taxable primary production income is nil

- (3) If your *taxable primary production income is nil, your **non-primary production shade-out amount** is the amount worked out using the formula:

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

Section 392-95

$$\$10,000 - \text{Taxable non-PP income} - \left(\text{PP deductions} - \text{Assessable PP income} \right)$$

However, if that amount is less than nil, your *non-primary production shade-out amount* is nil.

(4) In this section:

Assessable PP income means your *assessable primary production income for the *current year.

PP deductions means your *primary production deductions for the *current year.

Taxable non-PP income your *taxable non-primary production income for the *current year.

Subdivision 392-D—Effect of permanent reduction of your basic taxable income

Table of sections

392-95 You are treated as if you had not carried on business before

392-95 You are treated as if you had not carried on business before

Choosing to discontinue and restart averaging

(1) You can choose that this Division not affect your income tax liability for an income year (the *reduction year*) if you show the Commissioner that, because of retirement from your occupation or from any other cause, your *basic taxable income for the reduction year is permanently reduced during that year to less than two thirds of your *average income for that year.

(1A) You must make the choice by notifying the Commissioner in writing by the day you lodge your *income tax return for the reduction year. However, the Commissioner can allow you to make it later.

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

- (1B) If you make a choice under subsection (1), this Division applies to assessments for later income years as if you had never carried on a *primary production business before the reduction year.

Working out the extent of the permanent reduction

- (2) In working out the extent of the permanent reduction, you must work out your *average income for the reduction year on the basis that your *basic assessable income for an income year taken into account in working out your average income did *not* include any assessable income from sources from which you do not usually receive assessable income.
- (3) In working out the extent of the permanent reduction, disregard a reduction in *basic taxable income to the extent that it results from a change of assets from which assessable income was *derived into assets from which you derive income that is not assessable income.

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

Division 393—Farm management deposits

Table of Subdivisions

Guide to Division 393

- 393-A Tax consequences of farm management deposits
- 393-B Meaning of farm management deposit and owner
- 393-C Special rules relating to financial claims scheme for account-holders with insolvent ADIs

Guide to Division 393

393-1 What this Division is about

You can deduct a farm management deposit you make, if:

- (a) you are an individual carrying on a primary production business (including a primary production business you carry on as a partner in a partnership or as a beneficiary of a trust); and
- (b) you hold the deposit for at least 12 months; and
- (c) you meet some other tests.

The amount of the deposit withdrawn is included in your assessable income in the income year in which it is repaid. Special rules apply if the deposit is repaid in exceptional circumstances or in the event of an applicable natural disaster.

Farm management deposits allow you to carry over income from years of good cash flow and to draw down on that income in years when you need the cash. This enables you to defer the income tax on your taxable primary production income from the income year in which you make the deposit until the income year in which the deposit is repaid.

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

Note: An FMD provider must, every calendar month, give certain information to the Agriculture Secretary about farm management deposits: see section 398-5 in Schedule 1 to the *Taxation Administration Act 1953*.

Subdivision 393-A—Tax consequences of farm management deposits

Table of sections

393-5	Deduction for making farm management deposit
393-10	Assessability on repayment of deposit
393-15	Transactions to which the deduction, assessment and 12 month rules have modified application

393-5 Deduction for making farm management deposit

Entitlement to deduction

- (1) You can deduct the amount of a *farm management deposit for an income year if:
- (a) you are the *owner of the deposit; and
 - (b) the deposit is made at a time during the year when you are an individual carrying on a *primary production business in Australia; and
 - (c) if during the year, at a time after the deposit was made, you stopped carrying on a primary production business in Australia—you started carrying on such a business again within 120 days (whether or not during the year); and
 - (d) your *taxable non-primary production income for the year is not more than \$65,000; and
 - (e) you do not die or become bankrupt during the year.

Note 1: This section does not apply if a deposit is reinvested, the term of a deposit is extended, or a deposit is transferred at the depositor's request: see section 393-15.

Note 2: This Division applies to certain partners and beneficiaries as if they were individuals who carried on a primary production business: see subsections 393-25(2), (3), (4), (5) and (6).

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

Section 393-10

Sum of deductions not to exceed taxable primary production income

- (2) The sum of the deductions that you would otherwise be entitled to under this section for *farm management deposits made in the income year must *not* exceed your *taxable primary production income for the income year.

Amounts to be deducted in order of deposits

- (3) If you are entitled to deduct amounts in respect of 2 or more deposits, deduct the amounts in the order in which the deposits were made (until you reach the limit imposed by subsection (2)).

393-10 Assessability on repayment of deposit

Amount assessable

- (1) Your assessable income for an income year includes the amount worked out using the following formula, if:
- (a) you are the *owner of a *farm management deposit; and
 - (b) the deposit is repaid in full or in part in the year; and
 - (c) the amount worked out using the formula is greater than nil:

*Unrecouped FMD deduction in respect of the deposit just before the repayment	—	Amount (if any) of the deposit that remains just after the repayment
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Note 1: This subsection does not apply if the deposit is reinvested, the term of the deposit is extended, or the deposit is transferred at the depositor's request: see section 393-15.

Note 2: In a case where not all of the deposit is deductible under section 393-5, repayment of the non-deductible amount can take place without the amount being assessable. Once that amount is repaid, the remainder is assessable when it is repaid, so that the deduction is recouped.

Example: Matt makes a farm management deposit of \$120,000 on 1 April 2011. His taxable primary production income for the 2010—11 income year is \$50,000; therefore, the deposit is only partly deductible in the year because it exceeds his taxable primary production income. Matt makes the following withdrawals from the deposit: \$45,000 on 1 May 2013, \$40,000 on 1 March 2014 and \$35,000 on 1 September 2015.

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

The unrecouped FMD deduction immediately before the first repayment of \$45,000 is \$50,000. No amount is included in his assessable income for the 2012-2013 income year because the difference between the unrecouped FMD deduction (\$50,000) and the amount of the deposit remaining after the repayment (\$75,000) is less than nil.

The unrecouped FMD deduction immediately before the second repayment of \$40,000 is \$50,000. \$15,000 is included in Matt's assessable income for the 2013-2014 income year because the difference between the unrecouped FMD deduction (\$50,000) and the amount of the deposit remaining after the second repayment (\$35,000) is \$15,000, which is greater than nil.

The unrecouped FMD deduction immediately before the third repayment of \$35,000 is \$35,000; that is, \$50,000 less \$15,000. \$35,000 is included in Matt's assessable income for the 2015-2016 income year; that is, the difference between the unrecouped FMD deduction (\$35,000) and the amount of the deposit remaining after the third repayment (\$0).

Unrecouped FMD deduction

- (2) The **unrecouped FMD deduction** in respect of a *farm management deposit at a particular time is:
- (a) if no part of the deposit has been repaid before that time—the amount of the deduction under section 393-5 for making the deposit; or
 - (b) if one or more parts of the deposit have been repaid before that time—the unrecouped FMD deduction in respect of the deposit just before the most recent such repayment, reduced by any amount included in the *owner's assessable income under this section as a result of that repayment.

Example: Mia makes a deposit of \$3,000, all of which is deductible. The deposit's unrecouped FMD deduction just before a first repayment of \$1,000 is the amount of the deduction (that is, \$3,000—see paragraph (2)(a)). The deposit's unrecouped FMD deduction just before a second repayment is \$2,000 (that is, according to paragraph (2)(b), the unrecouped FMD deduction immediately before the first repayment (\$3,000) reduced by the \$1,000 included in Mia's assessable income as a result of the first repayment).

Note 1: If the deposit was originally an income equalisation deposit, see section 393-10 of the *Income Tax (Transitional Provisions) Act 1997*.

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

Section 393-10

Note 2: Section 393-55 affects the unrecouped FMD deduction of a new deposit linked to an old deposit affected by Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959*.

Application of Division to transfer, reinvestment or other dealing

- (3) This Division applies to a transfer, reinvestment or other dealing with a *farm management deposit as if it were a repayment of the deposit, if:
- (a) you are the depositor; and
 - (b) the transfer, reinvestment or other dealing is on your behalf or at your request.

Note: Section 393-15 modifies the application of the deduction, assessment and 12 month rules to certain transfers, reinvestments and other dealings.

Deemed repayment because of death, bankruptcy etc.

- (4) This section applies as if a *farm management deposit had been repaid when it became repayable, rather than when it is actually repaid, if the deposit became repayable because of the requirement contained in the relevant agreement as set out in item 11 of the table in section 393-35 (death, bankruptcy etc.).

Note 1: This means that the amount of the deposit is included in your assessable income for the income year when the death, bankruptcy etc. occurs, rather than for any later year in which the deposit might be repaid.

Note 2: This also means that, under subsection 45-120(5) in Schedule 1 to the *Taxation Administration Act 1953* (about Pay as you go (PAYG) instalments), the amount of the deposit is included in your instalment income for the period in which the death, bankruptcy etc. occurs.

However, under section 12-140 in that Schedule, an amount may also be required to be withheld from the actual payment if you do not quote your tax file number or ABN to the relevant FMD provider.

Note 3: Section 393-60 of this Act may limit the operation of subsection (4) if the farm management deposit is with an ADI that becomes a declared ADI under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959*.

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

393-15 Transactions to which the deduction, assessment and 12 month rules have modified application

- (1) The provisions mentioned in subsection (2) do not apply in relation to the following transactions:
- (a) the immediate reinvestment of a *farm management deposit as a farm management deposit with the same *FMD provider;
 - (b) the extension of the term of a farm management deposit (even if other terms such as those relating to interest payable are also varied);
 - (c) the transfer of a farm management deposit in accordance with a requirement of the relevant agreement as set out in item 13 of the table in section 393-35 (which allows for transfers of deposits at the request of the depositor).

Note: This means that these transactions:

- (a) will not result in assessable income for the owner; and
- (b) will not give rise to a deduction; and
- (c) will not, if the transaction occurs within 12 months after the end of the day the deposit is made, result in the deposit losing its status as a farm management deposit.

- (2) The provisions are:
- (a) section 393-5 (about deductions for making a farm management deposit); and
 - (b) subsection 393-10(1) (about assessability of the repayment of a farm management deposit); and
 - (c) subsections 393-40(1) and (2) (about repayment of a farm management deposit within the first 12 months); and
 - (d) subsections 393-40(3), (3A) and (4) (about repayment of a farm management deposit in exceptional circumstances or in the event of an applicable natural disaster).
- (3) For the purposes of working out the *unrecouped FMD deduction for a deposit that is subject to a transaction mentioned in subsection (1), the transaction does not cause the deposit to be a different deposit.

Note: This ensures that the unrecouped FMD deduction (which affects how much income tax is assessed in the event of a repayment) equals the deduction for the original deposit, less any amount included in your assessable income because of a previous repayment of the deposit.

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

Subdivision 393-B—Meaning of farm management deposit and owner

Table of sections

393-20	Farm management deposits
393-25	Owners of farm management deposits
393-27	Trustee may choose that a beneficiary is a chosen beneficiary of the trust
393-28	Application of Division to beneficiary no longer under legal disability
393-30	Effect of contravening requirements
393-35	Requirements of agreement for a farm management deposit
393-40	Repayment of deposit within first 12 months
393-45	Partly repaid farm management deposits

393-20 Farm management deposits

Meaning of farm management deposit

- (1) A deposit with an *FMD provider is a *farm management deposit* if:
- (a) the depositor applies to make the deposit in accordance with subsection (2); and
 - (b) the deposit is made under an agreement between the FMD provider and the depositor that:
 - (i) describes the deposit as a farm management deposit; and
 - (ii) at all times while the deposit is with the FMD provider, contains requirements to the effect set out in the table in section 393-35.

The agreement may also contain additional requirements that are not inconsistent with those set out in that table.

Depositor to provide information in application form

- (2) For the purposes of paragraph (1)(a), the depositor must apply to the *FMD provider to make the deposit by completing and signing a form that:
- (a) permits the depositor to state the *owner's *tax file number in the form; and

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

- (b) requires the depositor to provide any other information required by regulations for the purposes of this paragraph; and
- (c) contains any statements, required by regulations for the purposes of this paragraph, that are to be read by the depositor when completing the form.

Note 1: A depositor who makes a false or misleading statement in such a form commits an offence against section 8K or 8N of the *Taxation Administration Act 1953*.

Note 2: If the owner does not quote his or her tax file number or ABN to the FMD provider, the Pay as you go (PAYG) withholding required under section 12-140 in Schedule 1 to the *Taxation Administration Act 1953* from a repayment of the deposit is at the highest marginal tax rate.

Note 3: Division 4A of Part VA of the *Income Tax Assessment Act 1936* sets out rules for quoting tax file numbers in connection with farm management deposits.

Meaning of FMD provider

- (3) In this Act:

FMD provider means an entity that:

- (a) is an *ADI; or
- (b) carries on in Australia the *business of banking, so long as the Commonwealth, a State or a Territory guarantees the repayment of any deposit taken in the course of that business; or
- (c) carries on in Australia a business that consists of or includes taking money on deposit, so long as the Commonwealth, a State or a Territory guarantees the repayment of any deposit taken in the course of that business.

393-25 Owners of farm management deposits

Meaning of owner

- (1) The **owner** of a *farm management deposit is:
- (a) if paragraph (b) does not apply—the individual who made or is making the deposit; or

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

Section 393-25

- (b) in the case of a deposit made or being made by the trustee of a trust on behalf of a beneficiary who is an individual—the beneficiary.

Primary production business carried on by a partnership

- (2) This Division applies to you as if you were an individual who is carrying on a *primary production business that is actually carried on by a partnership, if you are an individual who is a partner in the partnership.

Primary production business carried on by a trust

- (3) This Division, and section 97A of the *Income Tax Assessment Act 1936* (about beneficiaries who are owners of farm management deposits), apply to you as if you were an individual who is carrying on a *primary production business that is actually carried on by a trust, if you satisfy the requirements in subsection (4), (5) or (6).

Primary production business carried on by a trust with beneficiary presently entitled to income of the trust

- (4) You satisfy the requirements in this subsection if:
 - (a) you are an individual and a beneficiary of the trust referred to in subsection (3); and
 - (b) you are presently entitled to a share of the income of the trust for the income year.

Primary production business carried on by a fixed trust with no income of the trust

- (5) You satisfy the requirements in this subsection if:
 - (a) you are an individual and a beneficiary of the trust referred to in subsection (3); and
 - (b) at all times during the income year, the manner or extent to which each beneficiary of the trust can benefit from the trust is not capable of being significantly affected by the exercise, or non-exercise, of a power; and

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

- (c) the trust does not have any income of the trust for the income year to which a beneficiary of the trust could be presently entitled; and
- (d) if the trust had income of the trust for the income year, you would have been presently entitled to a share of the income of the trust.

Primary production business carried on by a non-fixed trust with no income of the trust

- (6) You satisfy the requirements in this subsection if you do not satisfy the requirements in subsection (5) and you are an individual and a chosen beneficiary of the trust referred to in subsection (3) for the purposes of section 393-27 for the income year.

393-27 Trustee may choose that a beneficiary is a chosen beneficiary of the trust

- (1) The trustee of a trust may choose that a beneficiary of the trust is a chosen beneficiary of the trust for an income year if the trust does not have any income of the trust for the income year to which a beneficiary of the trust could be presently entitled.
- (2) The maximum number of choices that the trustee may make in respect of the trust for an income year is the higher of:
 - (a) the number of individuals to which subsection 393-25(3) applied in the income year immediately before the current income year; and
 - (b) 12.
- (3) A choice made under subsection (1) must be:
 - (a) in writing; and
 - (b) signed by the trustee and the person chosen.
- (4) The trustee can make the choice no later than the time it lodges the trust's *income tax return for the income year to which the choice relates. However, the Commissioner can allow the trustee to make a choice at a later time.
- (5) A choice cannot be revoked or varied.

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

393-28 Application of Division to beneficiary no longer under legal disability

If:

- (a) a *farm management deposit was made by a trustee on behalf of a beneficiary of a trust; and
- (b) the beneficiary was under a legal disability when the deposit was made; and
- (c) the beneficiary is no longer under a legal disability;

then this Division, and Division 4A of Part VA of the *Income Tax Assessment Act 1936*, apply as if the beneficiary had made the deposit.

Note: Division 4A of Part VA of the *Income Tax Assessment Act 1936* is about quotation of tax file numbers in connection with farm management deposits.

393-30 Effect of contravening requirements

- (1) A deposit is not a *farm management deposit* if, when the deposit was accepted, a requirement contained in the relevant agreement as set out in items 1 to 6 of the table in section 393-35 was contravened.
- (2) A deposit is not, and is taken never to have been, a *farm management deposit* if a requirement contained in the relevant agreement as set out in items 7 to 9 of the table in section 393-35 is contravened at any time in relation to the deposit.
- (3) So much of a deposit as causes a requirement contained in the relevant agreement as set out in item 10 of the table in section 393-35 to be contravened is not a *farm management deposit*.

393-35 Requirements of agreement for a farm management deposit

An agreement mentioned in paragraph 393-20(1)(b) must contain requirements to the effect of those set out in the following table:

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

Requirements of agreement for a farm management deposit

Item Requirement

- | | |
|-------|--|
| 1 | The *owner must be an individual who is carrying on a *primary production business in Australia when the deposit is made.

Note: This Division applies to certain partners and beneficiaries as if they were individuals who carried on a primary production business: see subsections 393-25(2), (3), (4), (5) and (6). |
| <hr/> | |
| 2 | The deposit:
(a) must not be made by 2 or more individuals jointly; and
(b) must not be made on behalf of 2 or more individuals. |
| <hr/> | |
| 3 | The deposit must not be made by a trustee on behalf of a beneficiary unless the beneficiary is:
(a) under a legal disability; and
(b) presently entitled to a share of the income of the trust. |
| <hr/> | |
| 4 | The deposit must be \$1,000 or more when it is made, unless the deposit is:
(a) the immediate reinvestment of a *farm management deposit as a farm management deposit with the same *FMD provider; or
(b) the extension of the term of a farm management deposit (even if other terms such as those relating to interest payable are also varied). |
| <hr/> | |
| 6 | Rights of the depositor in respect of the deposit must not be transferable to another entity. |
| <hr/> | |
| 7 | The deposit must not be the subject of a charge or other encumbrance to secure any amount. |
| <hr/> | |
| 8 | Amounts that would otherwise accrue as interest or other earnings on the deposit must not reduce liabilities of the depositor to pay interest to the *FMD provider in respect of loans or other debts of the depositor. |
| <hr/> | |
| 9 | Interest or other earnings on the deposit must not be invested as a *farm management deposit with the *FMD provider without having first been paid to the depositor. |
| <hr/> | |
| 10 | The deposit must not be more than \$400,000, and the sum of the balances from time to time of the deposit and all other *farm management deposits of the *owner with *FMD providers must not be more than \$400,000. |
| <hr/> | |
| 11 | The deposit must be repaid if:
(a) the *owner dies or becomes bankrupt; or
(b) the owner ceases to carry on a *primary production business in Australia and does not start carrying on such a business again within 120 days. |
-

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

Section 393-40

Requirements of agreement for a farm management deposit

Item Requirement

- | | |
|----|--|
| 12 | The amount of any repayment of the deposit must be \$1,000 or more, except if the entire amount of the deposit is repaid. |
| 13 | The *FMD provider must transfer the deposit by electronic means to another FMD provider that agrees to accept the deposit as a *farm management deposit, if the first FMD provider is:
(a) requested in writing by the depositor to do so; and
(b) given any information or other assistance from the depositor necessary for the purpose. |
| 14 | The *FMD provider must not deduct from the deposit (whether at the time it is made, while it is with the FMD provider or at the time of its repayment) any administration fee or other amount required by the FMD provider to be paid in respect of the deposit or otherwise. |
-

393-40 Repayment of deposit within first 12 months

Partial repayment within first 12 months

- (1) Any part of a deposit repaid within 12 months after the end of the day the deposit is made is not, and is taken never to have been, part of a **farm management deposit**.

Note 1: A repayment covered by subsection (3), (3A) or (5) is disregarded in applying this subsection. The normal rules in sections 393-5 (about deductions for making a farm management deposit) and 393-10 (about assessability of the repayment of a farm management deposit) apply instead.

Note 2: This subsection does not apply if a deposit is reinvested, the term of a deposit is extended, or a deposit is transferred at the depositor's request: see section 393-15.

Deposit not to be reduced to less than \$1,000 within first 12 months

- (2) A deposit is not, and is taken never to have been, a **farm management deposit** if the amount of the deposit is reduced to less than \$1,000 because of one or more repayments within 12 months after the end of the day the deposit is made.

Note 1: A repayment covered by subsection (3), (3A) or (5) is disregarded in applying this subsection.

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

Note 2: This subsection does not apply if a deposit is reinvested, the term of a deposit is extended, or a deposit is transferred at the depositor's request: see section 393-15.

Repayment in exceptional circumstances

- (3) Subsections (1) and (2) do not apply to a repayment of the whole or a part of a *farm management deposit if all of the following circumstances are satisfied:
- (a) the repayment is made in the income year following the income year in which the deposit is made with the *FMD provider;
 - (b) at the time of the repayment, the *owner of the deposit is eligible for the issue of an exceptional circumstances certificate (within the meaning of subsection 8A(2) of the *Farm Household Support Act 1992*) that relates to a *primary production business of that owner;
 - (c) by the end of 3 months after the end of the income year in which the repayment is made, such an exceptional circumstances certificate is issued in respect of that owner;
 - (d) a declaration of exceptional circumstances (as referred to in paragraph 8(c) of the *Rural Adjustment Act 1992*) was not in force in relation to that primary production business when the deposit was made.

Repayment in the event of an applicable natural disaster

- (3A) Subsections (1) and (2) do not apply to a repayment of the whole or a part of a *farm management deposit if:
- (a) natural disaster relief and recovery arrangements made by or on behalf of the Commonwealth apply, in a way specified in regulations made for the purposes of this subsection, to a *primary production business of the *owner of the deposit; and
 - (b) all of the other circumstances specified in those regulations are satisfied.

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

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Any later deposit not a farm management deposit

- (4) If subsection (3) or (3A) applies to an *owner and a repayment, any later deposit that is made by, or on behalf of, the owner in the income year in which the repayment is made is not, and is taken never to have been, a **farm management deposit**.

Repayment in the case of death, bankruptcy or ceasing to carry on a primary production business

- (5) Subsections (1) and (2) do not apply to a repayment of a *farm management deposit because of the requirement contained in the relevant agreement as set out in item 11 of the table in section 393-35 (death, bankruptcy etc.).

Certain transactions do not affect the day the deposit was made

- (6) Subsections (1) to (4) apply as if a *farm management deposit that:
- (a) is made as a result of a transaction mentioned in subsection 393-15(1) (about reinvesting a deposit, extending the term of a deposit and transferring a deposit at the depositor's request); or
 - (b) is affected by such a transaction;
- were made on the day on which the original deposit was made.

Example: A farm management deposit is made on 1 July 2010 for a term of 6 months, but is extended in December 2010 for another 6 months. For the purposes of subsections (1) to (4), the day the extended deposit was made remains as 1 July 2010.

Note: Section 393-40 of the *Income Tax (Transitional Provisions) Act 1997* provides for a special rule for deposits transferred under the repealed *Loan (Income Equalization Deposits) Act 1976*.

393-45 Partly repaid farm management deposits

A reference to a **farm management deposit** is a reference to so much of the deposit as has not been repaid.

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

Subdivision 393-C—Special rules relating to financial claims scheme for account-holders with insolvent ADIs

Guide to Subdivision 393-C

393-50 What this Subdivision is about

A deposit (the *new deposit*) arising from:

- (a) an entitlement under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* relating to a farm management deposit (the *old deposit*); or
- (b) a distribution from liquidation of an ADI that is attributable to a farm management deposit (also the *old deposit*);

is treated as a transfer of the old deposit and does not give rise to new assessable income or deductions.

Table of sections

Operative provisions

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| 393-60 | Repayment if owner of farm management deposit with insolvent ADI dies, is bankrupt or ceases to be a primary producer |

Operative provisions

393-55 Farm management deposits arising from farm management deposits with ADIs subject to financial claims scheme

Application

- (1) This section applies if an entitlement arises under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* in connection with an account

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

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containing a *farm management deposit (the *old deposit*) with an *ADI (the *old ADI*) and either:

- (a) an amount (the *new deposit*) is deposited into either of the following to meet, in whole or part, so much of the entitlement as relates to the old deposit:
 - (i) an existing account for a farm management deposit;
 - (ii) an account established under section 16AH of that Act for the purposes of meeting (in whole or part) the entitlement; or
- (b) an amount (also the *new deposit*) is deposited by a liquidator of the old ADI into either of the following as so much of a distribution from the liquidation of the old ADI as relates to the old deposit:
 - (i) an existing account for a farm management deposit;
 - (ii) an account established under section 16AR of that Act for the payment of the distribution.

Note: If an amount is deposited in connection with an account with the old ADI containing 2 or more old deposits, the amount is to be apportioned between each old deposit, so that so much of the amount as is attributable to a particular old deposit is regarded as a distinct new deposit relating to that old deposit.

New deposit is a farm management deposit

- (2) This Division (except this section) applies to the new deposit as if the new deposit were a transfer of the old deposit in accordance with a requirement contained in the relevant agreement for the old deposit as set out in item 13 of the table in section 393-35 (which allows for transfers of deposits at the request of the depositor). To avoid doubt, this Division applies in that way as if the amount transferred were the amount of the new deposit, even if that is more or less than the amount of the old deposit.

Note 1: The effects of this include the following:

- (a) section 393-5 (about deductions for making a farm management deposit) does not apply in relation to the making of the new deposit (see paragraphs 393-15(1)(c) and (2)(a));
- (b) subsection 393-10(1) (about assessability of the repayment of a farm management deposit) can only apply to the extent of any difference between the amount transferred and the amount of the old deposit (see paragraphs 393-15(1)(c) and (2)(b));

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

- (c) subsections 393-40(1), (2) and (4) (about repayment of a farm management deposit within the first 12 months) can only apply to the extent of any difference between the amount transferred and the amount of the old deposit (see paragraphs 393-15(1)(c) and (2)(c) and (d));
- (d) the day the old deposit was made, for the purposes of subsections 393-40(1) and (2) (about repayment of a farm management deposit within the first 12 months) and (3), (3A) and (4) (about repayment in exceptional circumstances or in the event of an applicable natural disaster), is maintained for the new deposit (see subsection 393-40(6)).

Note 2: Also, the unrecouped FMD deduction in respect of the new deposit is the same as the unrecouped FMD deduction in respect of the old deposit (see subsection 393-15(3)), unless subsection (6) or (7) of this section applies because the new deposit is less than the old deposit.

- (3) In determining whether either of the following is a *farm management deposit, disregard a requirement contained in an agreement as set out in item 4 of the table in section 393-35 (requiring the deposit to be \$1,000 or more):
 - (a) the new deposit;
 - (b) a deposit made later directly by the transfer of the new deposit in accordance with a requirement of the relevant agreement for the new deposit as mentioned in item 13 of that table.

Unrecouped FMD deduction for new deposit less than old deposit

- (6) Despite subsection (2) and subsection 393-15(3), if the new deposit is less than the old deposit at the time (the **declaration time**) the old ADI became a declared ADI under the *Banking Act 1959*, the **unrecouped FMD deduction** in respect of the new deposit is the amount worked out using the following formula:

$$\begin{array}{l} \text{Unrecouped FMD deduction} \\ \text{in respect of old deposit} \\ \text{just before declaration time} \end{array} \times \frac{\text{New deposit}}{\text{Old deposit just before declaration time}}$$

Note: The new deposit could be less than the old deposit if the entitlement is paid in instalments (each of which will be a separate new deposit).

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

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- (7) However, if the amount worked out under subsection (6) is more than the difference (if any) between:
- (a) the *unrecouped FMD deduction in respect of the old deposit just before the declaration time; and
 - (b) the total of the amounts worked out under all previous applications of subsection (6) in relation to that old deposit;
- the ***unrecouped FMD deduction*** in respect of the new deposit is equal to the difference (if any).

Note: This ensures that when new deposits linked to the old deposit are repaid, the total amount included in assessable income will not exceed the unrecouped FMD deduction in respect of the old deposit.

Relationship with other provisions

- (8) This section has effect despite Division 253 (about tax treatment of entitlements under the financial claims scheme for insolvent ADIs).

393-60 Repayment if owner of farm management deposit with insolvent ADI dies, is bankrupt or ceases to be a primary producer

Subsection 393-10(4) does not apply in relation to so much of a *farm management deposit with an *ADI as is equal to the sum of the amounts described in subparagraphs (d)(i) and (ii) of this section if:

- (a) you are the *owner of the deposit; and
- (b) the deposit becomes repayable during an income year because of the requirement contained in the relevant agreement as set out in item 11 of the table in section 393-35 (death, bankruptcy etc.); and
- (c) during the income year, the ADI becomes a declared ADI under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959*; and
- (d) at the end of the income year, you have either or both of the following:
 - (i) an unmet entitlement under that Division connected with the account for the farm management deposit;

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

- (ii) an unmet claim against the ADI, or an unpaid debt owed to you by the ADI, in the winding up of the ADI connected with the account for the deposit.

Note: Subsection 393-10(4) makes the repayment of a farm management deposit assessable in the income year when the death, bankruptcy etc. occurs, rather than in any later year in which it might be repaid.

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

Division 394—Forestry managed investment schemes

Guide to Division 394

394-1 What this Division is about

This Division sets out rules about deductions for contributions to forestry managed investment schemes. It also sets out the tax treatment of proceeds from the sale of interests in such schemes, and of proceeds from harvesting trees under such schemes.

Table of sections

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394-15	Forestry managed investment schemes and related concepts
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394-30	CGT event in relation to forestry interest in forestry managed investment scheme—subsequent participant
394-35	70% DFE rule
394-40	Payments under forestry managed investment scheme
394-45	Direct forestry expenditure

394-5 Object of this Division

The object of this Division is to encourage the expansion of commercial plantation forestry in Australia through the establishment and tending of new plantations for felling. This is achieved by:

- (a) permitting investors to deduct amounts paid under a forestry scheme in the year of payment, if certain conditions are met (for example, that it is reasonable to expect that the manager of the scheme will spend at least 70% of investors' contributions, on a market value basis, on activities that establish, tend, fell and harvest trees); and
- (b) allowing secondary market trading of interests in such schemes, while minimising tax arbitrage and providing tax certainty for investors.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

394-10 Deduction for amounts paid under forestry managed investment schemes

- (1) You can deduct an amount if:
 - (a) you hold a *forestry interest in a *forestry managed investment scheme; and
 - (b) you pay the amount under the scheme; and
 - (c) the scheme satisfies the *70% DFE rule (see section 394-35) on 30 June in the income year in which a *participant in the scheme first pays an amount under the scheme; and
 - (d) you do not have day to day control over the operation of the scheme (whether or not you have the right to be consulted or give directions); and
 - (e) at least one of these conditions is satisfied:
 - (i) there is more than one participant in the scheme;
 - (ii) the *forestry manager of the scheme, or an *associate of the forestry manager, manages, arranges or promotes similar schemes; and
 - (f) the condition in subsection (4) is satisfied.
- (2) You deduct the amount for the income year in which you pay it.
- (3) For the purposes of this Division, do *not* treat an amount as being paid under a *forestry managed investment scheme if:
 - (a) you pay the amount in connection with a *CGT event in relation to a *forestry interest in the scheme; and
 - (b) as a result of the CGT event:
 - (i) another *participant in the scheme no longer holds the forestry interest; and
 - (ii) you start to hold the forestry interest.
- (4) For the purposes of paragraph (1)(f), the condition in this subsection is satisfied unless:
 - (a) 18 months have elapsed since the end of the income year in which an amount is first paid under the *forestry managed investment scheme by a *participant in the scheme; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the trees intended to be established in accordance with the scheme have not all been established before the end of those 18 months.
- (5) You cannot deduct an amount under subsection (1) if:
 - (a) you hold the *forestry interest mentioned in paragraph (1)(a) as an *initial participant; and
 - (b) a *CGT event happens in relation to the forestry interest within 4 years after the end of the income year in which you first pay an amount under the scheme.If you have already deducted it, your assessment may be amended to disallow the deduction.
- (5A) Paragraph (5)(b) does not apply to a *CGT event if:
 - (a) the CGT event happens because of circumstances outside your control; and
Example: The forestry interest is compulsorily acquired.
 - (b) when you acquired the *forestry interest, you could not reasonably have foreseen the CGT event happening.
- (6) Despite section 170 of the *Income Tax Assessment Act 1936*, the Commissioner may amend your assessment at any time within 2 years after the *CGT event, for the purpose of giving effect to subsection (5).
- (7) Sections 82KZMD and 82KZMF of the *Income Tax Assessment Act 1936* do not affect the timing of a deduction under this section.

394-15 Forestry managed investment schemes and related concepts

- (1) A *scheme is a **forestry managed investment scheme** if the purpose of the scheme is for establishing and tending trees for felling in Australia.
- (2) The entity that manages, arranges or promotes a *forestry managed investment scheme is the **forestry manager** of the scheme.
- (3) A **forestry interest** in a *forestry managed investment scheme is a right to benefits produced by the scheme (whether the right is actual, prospective or contingent and whether it is enforceable or not).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) An entity that holds a *forestry interest in a *forestry managed investment scheme (other than the *forestry manager of the scheme) is a *participant* in the scheme.
- (5) A *participant in a *forestry managed investment scheme holds a *forestry interest in the scheme as an *initial participant* if:
 - (a) the participant obtains the forestry interest from the *forestry manager of the scheme; and
 - (b) the payment by the participant to obtain the forestry interest results in the establishment of trees.

394-20 Payments on behalf of participant in forestry managed investment scheme

For the purposes of this Division, treat a payment to the *forestry manager of a *forestry managed investment on behalf of a *participant in the scheme as a payment by the participant to the forestry manager.

394-25 CGT event in relation to forestry interest in forestry managed investment scheme—initial participant

- (1) This section applies if:
 - (a) you hold a *forestry interest in a *forestry managed investment scheme as an *initial participant in the scheme; and
 - (b) at least one of these conditions is satisfied:
 - (i) you can deduct or have deducted an amount for an income year under section 394-10 in relation to the forestry interest;
 - (ii) the condition in subparagraph (i) would be satisfied if subsection 394-10(5) were disregarded; and
 - (c) a *CGT event happens in relation to the forestry interest, other than a CGT event that happens in respect of thinning.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) Your assessable income for the income year in which the *CGT event happens includes:
 - (a) if, as a result of the CGT event, you no longer hold the *forestry interest—the *market value of the forestry interest (worked out as at the time of the event); or
 - (b) otherwise—the decrease (if any) in the market value of the forestry interest as a result of the CGT event.
- (3) Any amount that you actually receive because of the *CGT event is not included in your assessable income (nor is it *exempt income).

394-30 CGT event in relation to forestry interest in forestry managed investment scheme—subsequent participant

- (1) This section applies if:
 - (a) you hold a *forestry interest in a *forestry managed investment scheme otherwise than as an *initial participant in the scheme; and
 - (b) at least one of these conditions is satisfied:
 - (i) you can deduct or have deducted an amount for an income year under section 394-10 in relation to the forestry interest;
 - (ii) you could deduct an amount for an income year under section 394-10 if you had paid the amount under the scheme in that year; and
 - (c) a *CGT event happens in relation to the forestry interest, other than a CGT event that happens in respect of thinning.
- (2) Your assessable income for the income year in which the *CGT event happens includes the lesser of the following:
 - (a) the *market value of the forestry interest (worked out as at the time of the event);
 - (b) the amount (if any) by which the *total forestry scheme deductions in relation to the forestry interest exceeds the *incidental forestry scheme receipts in relation to the forestry interest.
- (3) The *total forestry scheme deductions* in relation to the *forestry interest is the total of each amount that you can deduct or have

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

deducted under section 394-10 for each income year in relation to the forestry interest.

- (4) The *incidental forestry scheme receipts* in relation to the *forestry interest is the total of each amount that you have received under the scheme in each income year in relation to the forestry interest for a reason otherwise than because of the *CGT event.
- (5) However, if you still hold the forestry interest despite the *CGT event, work out the amount included in your assessable income under subsection (2) using this formula (instead of using the amount worked out under subsection (2)):

$$\text{Amount worked out under subsection (2)} \times \frac{\text{Decrease (if any) in the *market value of the *forestry interest as a result of the CGT event}}{\text{*Market value of the *forestry interest just before the CGT event}}$$

- (6) If this section has operated previously in relation to the *forestry interest, disregard an amount for the purposes of subsections (3) and (4) to the extent that it has already been reflected in your assessable income under that previous operation in relation to the forestry interest.
- (7) These provisions do not apply to the *CGT event:
- (a) section 6-5 (about *ordinary income);
 - (b) any other provision that includes an amount in assessable income, other than the following:
 - (i) a provision in Part 3-1 or 3-3;
 - (ii) subsection (2) of this section;
 - (c) section 8-1 (about amounts you can deduct);
 - (d) any other provision that allows you to deduct an amount from your assessable income;
 - (e) section 118-20.
- (8) However, the provisions referred to in subsection (7) can apply to the *CGT event if a *capital gain or *capital loss from the event is disregarded because of section 118-25.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (9) Just before the *CGT event, increase the *cost base and *reduced cost base of the *forestry interest by the amount included in your assessable income under subsection (2).

394-35 70% DFE rule

- (1) A *forestry managed investment scheme satisfies the **70% DFE rule** on 30 June in an income year if it is reasonable to expect on that 30 June that the amount of DFE under the scheme (see subsection (2)) is no less than 70% of the amount of the payments under the scheme (see subsection (3)).
- (2) The amount of DFE under the scheme is the amount of the net present value (on that 30 June) of all *direct forestry expenditure under the scheme that the *forestry manager of the scheme has paid or will pay under the scheme.
- (3) The amount of payments under the scheme is the amount of the net present value (on that 30 June) of all amounts that all current and future *participants in the scheme have paid or will pay under the scheme.
- (4) In working out the net present value of an amount paid before that 30 June:
- (a) unless paragraph (b) applies—treat the amount as having been paid on that 30 June; or
 - (b) if the amount was paid in an income year ending before that 30 June—treat the amount as having been paid on the 30 June in that income year.
- (5) In working out the net present value of an amount expected to be paid after that 30 June, treat the amount as having been paid on 1 January in the income year in which it is expected to be paid.
- (6) Reduce an amount worked out under subsection (2) or (3) to the extent (if any) to which that amount can reasonably be expected to be recouped.
- (7) In working out the net present value of an amount for the purposes of this section, use the yield on Australian Government Treasury

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Bonds with the maturity closest to 10 years (as published by the Reserve Bank of Australia).

- (8) For the purposes of subsection (2), if:
- (a) the *forestry manager of the scheme has paid or will pay an amount under the scheme in a transaction; and
 - (b) the forestry manager and at least one other party to the transaction did not or will not deal at *arm's length in relation to the transaction; and
 - (c) the amount is or will be more or less than the *market value of what it is for;
- treat the amount as that market value.

394-40 Payments under forestry managed investment scheme

For the purposes of this Division, do *not* treat the following payments as payments under a *forestry managed investment scheme by a *participant in the scheme:

- (a) payments for *borrowing money;
- (b) payments of interest and payments in the nature of interest;
- (c) payments of stamp duty;
- (d) payments of *GST;
- (e) payments that relate to one or more of the matters mentioned in paragraphs 394-45(4)(a), (b) or (c).

394-45 Direct forestry expenditure

- (1) ***Direct forestry expenditure*** under a *forestry managed investment scheme means:
- (a) an amount paid under the scheme that is attributable to establishing, tending, felling and harvesting trees; and
 - (b) notional amounts reflecting the *market value of goods, services or the use of land, provided by the *forestry manager of the scheme, for establishing, tending, felling and harvesting trees.

Example 1: Notional amounts reflecting the value of the use of land owned by the forestry manager that is provided for establishing, tending, felling and harvesting trees.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Example 2: Notional amounts reflecting the value of tree felling services provided by the forestry manager.

- (2) Treat *direct forestry expenditure covered by paragraph (1)(b) as paid annually for each income year of the *forestry manager of the scheme based on the *market value of the goods, services, or the use of the land. Treat the day on which it is paid as:
- (a) unless paragraph (b) or (c) applies—1 January in the income year; or
 - (b) if the first time an amount is paid under the scheme is later than the first day of the income year—the last day of the income year; or
 - (c) if the scheme comes to an end on a day before the end of the income year—that day.

Exclusions—general

- (3) However, **direct forestry expenditure** under the scheme does not include amounts paid under the scheme to the extent that they relate to any of the following:
- (a) marketing of the scheme;
Example: Advertising, sales, sponsorship and entertainment.
 - (b) insurance, contingency funds or provisions (other than provisions for employee entitlements);
 - (c) financing;
 - (d) lobbying;
 - (e) general business overheads (but not overheads directly related to forestry);
 - (f) subscriptions to industry bodies;
 - (g) commissions for financial planners or financial advisers;
 - (h) compliance with requirements related to the structure and operations of the *forestry manager of the scheme;
Example: Product design and preparation of product disclosure statements.
 - (i) supervision and auditing of contracts, other than direct supervision of direct forestry activities (such as establishing trees for felling);
 - (j) legal fees relating to any matter mentioned in this subsection.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Exclusions—expenditure after harvest etc.

- (4) Also, **direct forestry expenditure** under the scheme does not include amounts paid under the scheme to the extent that they relate to any of the following:
- (a) transportation and handling of felled trees that happens after the earliest of the following:
 - (i) sale of the trees;
 - (ii) arrival of the trees at the mill door;
 - (iii) arrival of the trees at the port;
 - (iv) arrival of the trees at the place of processing (other than where processing happens in-field);
 - (b) processing;
 - (c) stockpiling (other than in-field stockpiling);
 - (d) marketing and sale of forestry produce.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 402—Environment protection expenditure

Table of Subdivisions

Guide to Division 402
402-W Urban water tax offset

Guide to Division 402

402-1 What this Division is about

This Division provides for certain tax measures in relation to environment protection.

Subdivision 402-W—Urban water tax offset

Guide to Subdivision 402-W

402-750 What this Subdivision is about

A company may get a refundable tax offset under the National Urban Water and Desalination Plan for a project that the Water Minister certifies as being eligible for the tax offset.

The amount of the urban water tax offset is specified in the certificate.

The urban water tax offset is only available for the income years 2009-10 to 2012-13.

Note: This Subdivision will be repealed on 1 July 2014: see Part 2 of Schedule 4 to the *Tax Laws Amendment (2009 Measures No. 2) Act 2009*.

Table of sections

402-755	Entitlement to urban water tax offset
402-760	Certificates
402-765	Amount of urban water tax offset
402-770	Revoking certificates

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

402-775 AAT review
402-780 Guidelines

402-755 Entitlement to urban water tax offset

- (1) A company is entitled to a *tax offset for a project for an income year if the *Water Minister certifies under section 402-760 that the project is eligible for the tax offset for the year.
- (2) The amount of the *tax offset is the amount specified in the certificate.

Note: The tax offset is subject to the refundable tax offset rules: see section 67-23.

402-760 Certificates

Issuing certificates

- (1) The *Water Minister may certify, in writing, to a company that a project is eligible for the urban water tax offset for an income year, if:
 - (a) the eligible up-front capital costs of the project (within the meaning given by the guidelines made under section 402-780) are:
 - (i) in the case of a stormwater harvesting project—\$4 million or more; or
 - (ii) in any other case—\$30 million or more; and
 - (b) the other requirements specified in those guidelines are met.
- (2) The *Water Minister may only issue certificates for the following income years:
 - (a) the 2009-10 income year;
 - (b) the 2010-11 income year;
 - (c) the 2011-12 income year;
 - (d) the 2012-13 income year.
- (3) In deciding whether to issue a certificate, the *Water Minister must comply with the guidelines made under section 402-780.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 402-765

- (4) If the *Water Minister issues a certificate under this section, he or she must, within 30 days, give a copy to the Commissioner.

Refusal to issue certificates

- (5) If the *Water Minister refuses to issue a certificate to a company under this section, he or she must, within 30 days, give written notice of the refusal to the company.
- (6) The notice must explain that the company may apply to the *AAT for review of the *Water Minister's refusal to issue a certificate to the company (see section 402-775).

402-765 Amount of urban water tax offset

- (1) A certificate issued under section 402-760 must specify the amount of the *tax offset.
- (2) In specifying an amount, the *Water Minister must comply with the guidelines made under section 402-780.
- (3) The total of the amounts specified in certificates issued to a company for a stormwater harvesting project for one or more income years:
- (a) must not exceed 50% of the eligible up-front capital costs of the project (within the meaning given by the guidelines made under section 402-780); and
 - (b) must not exceed \$20 million.
- (4) The total of the amounts specified in certificates issued to a company for a project (other than a stormwater harvesting project) for one or more income years:
- (a) must not exceed 10% of the eligible up-front capital costs of the project (within the meaning given by the guidelines made under section 402-780); and
 - (b) must not exceed \$100 million.
- (5) A certificate issued to a company under section 402-760 must explain that the company may apply to the *AAT for review of the amount specified in the certificate (see section 402-775).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

402-770 Revoking certificates

Revoking certificates

- (1) The *Water Minister may revoke a certificate issued to a company under section 402-760.
- (2) However, the *Water Minister may only do so in the circumstances provided for in the guidelines made under section 402-780.
- (3) If the *Water Minister revokes the certificate, he or she must, within 30 days, give to the company and to the Commissioner:
 - (a) written notice of the revocation; and
 - (b) written reasons for the decision to revoke the certificate.
- (4) The notice given to the company must explain that the company may apply to the *AAT for review of the *Water Minister's revocation of the certificate (see section 402-775).

Revoked certificates taken never to have been issued

- (5) If the *Water Minister revokes a certificate under this section, the certificate is taken, for the purposes of this Subdivision, never to have been issued.
- (6) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purpose of giving effect to this Subdivision for an income year if:
 - (a) a certificate issued to a company is revoked under this section after the time the company lodged its *income tax return for the income year; and
 - (b) the amendment is made at any time during the period of 4 years starting immediately after the revocation of the certificate.

Note: Section 170 of the *Income Tax Assessment Act 1936* specifies the usual period within which assessments may be amended.

Certificates cannot be varied

- (7) A certificate issued under section 402-760 cannot be varied.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

402-775 AAT review

A company may apply to the *AAT for review of a decision of the *Water Minister under this Subdivision:

- (a) to refuse to issue a certificate to the company; or
- (b) to specify a particular amount in a certificate issued to the company; or
- (c) to revoke a certificate issued to the company.

402-780 Guidelines

- (1) The *Water Minister must, by legislative instrument, make guidelines about issuing and revoking certificates under this Subdivision.
- (2) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, the guidelines may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time if:
 - (a) the instrument or other writing is issued by the *Water Minister or by the *Water Department; and
 - (b) the instrument or other writing, as in force or existing from time to time, is publicly available.
- (3) A legislative instrument made under subsection (1) does not take effect before the end of the period in which it could be disallowed in either House of the Parliament.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 405—Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons

Table of Subdivisions

	Guide to Division 405
405-A	Above-average special professional income
405-B	Assessable professional income
405-C	Taxable professional income and average taxable professional income

Guide to Division 405

405-1 What this Division is about

Significant fluctuations can occur in the professional incomes of authors, inventors, performing artists, production associates and sportspersons.

To lessen the impact of these fluctuations on your marginal tax rates, special tax rates apply if your professional income is above your average.

This Division explains how the scheme works and sets out the rules for working out your above-average special professional income.

Table of sections

405-5	Special rate of income tax on your above-average special professional income
405-10	Overview of the Division

405-5 Special rate of income tax on your above-average special professional income

- (1) If you have above-average special professional income, the *Income Tax Rates Act 1986* generally sets a special rate so that the amount of income tax you pay on the top ⁴/₅ of your above-average special

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 3 Specialist liability rules

Part 3-45 Rules for particular industries and occupations

Division 405 Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons

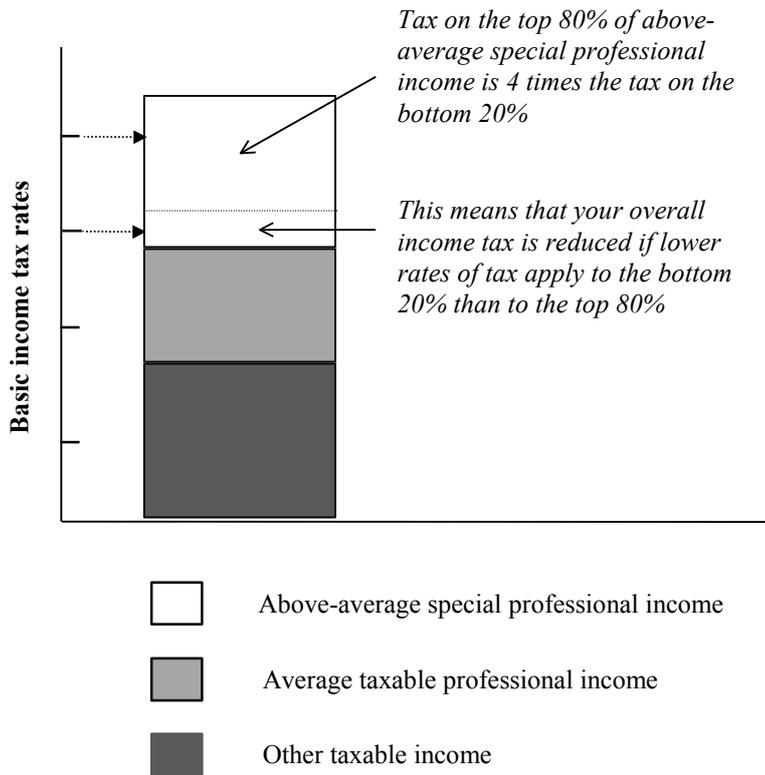
Section 405-10

professional income is effectively 4 times what you would pay on the bottom 1/5 of that income at basic rates.

Note : Your overall income tax will be less only if 2 marginal rates of income tax would apply to your above-average special professional income if it were treated as the top slice of your taxable income.

(2) The following diagram illustrates how the special rate works.

Income tax treatment of above-average special professional income



*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

405-10 Overview of the Division

For which income years do you have above-average special professional income?

- (1) The first income year for which you have above-average special professional income is the first income year (professional year 1):
 - (a) for which your taxable professional income is more than \$2,500; and
 - (b) during all or part of which you are an Australian resident.
- (2) After professional year 1, you have above-average special professional income for any income year for all or part of which you are an Australian resident.

Note: You need not have been an Australian resident for every income year since professional year 1.

What is above-average special professional income?

- (3) Your above-average special professional income for the current year is the amount (if any) by which your taxable professional income *exceeds* your average taxable professional income.

See Subdivision 405-A.

What is taxable professional income?

- (4) Your taxable professional income depends on your assessable professional income.
- (5) Your assessable professional income is assessable income from your work as an author, inventor, performing artist, production associate or sportsperson.

See section 405-45.

See Subdivision 405-B.

How do you work out your average taxable professional income?

- (6) Generally, your average taxable professional income for the current year is the average of your taxable professional income for the last 4 income years.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 3 Specialist liability rules

Part 3-45 Rules for particular industries and occupations

Division 405 Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons

Section 405-15

See section 405-50.

- (7) However, special phasing-in arrangements apply to work out your average taxable professional income for an income year that is less than 4 income years after professional year 1.

These arrangements favour people who were Australian residents for at least part of the income year *before* professional year 1.

See section 405-50.

Subdivision 405-A—Above-average special professional income

Table of sections

405-15 When do you have above-average special professional income?

405-15 When do you have above-average special professional income?

- (1) Your taxable income for the *current year includes *above-average special professional income* if and only if:
- (a) you are an individual; and
 - (b) you have been an Australian resident for all or part of the current year; and
 - (c) your *taxable professional income for the current year exceeds your *average taxable professional income for the current year; and
 - (d) either:
 - (i) your *taxable professional income for the current year is more than \$2,500; or
 - (ii) your *taxable professional income for an earlier income year was more than \$2,500 and you were an Australian resident for all or part of that income year.

How much above-average special professional income do you have?

- (2) The amount of *above-average special professional income in your taxable income for the *current year is the difference between:
- (a) your *taxable professional income for the current year; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) your *average taxable professional income for the current year.

Subdivision 405-B—Assessable professional income

Table of sections

405-20	What you count as <i>assessable professional income</i>
405-25	Meaning of <i>special professional, performing artist, production associate, sportsperson</i> and <i>sporting competition</i>
405-30	What you <i>cannot</i> count as assessable professional income
405-35	Limits on counting amounts as assessable professional income
405-40	Joint author or inventor treated as sole author or inventor

405-20 What you count as *assessable professional income*

- (1) Work out your ***assessable professional income*** for an income year by adding up all your assessable income for the income year that you count under this Subdivision.

Note 1: Section 405-30 may stop you counting an amount.

Note 2: Subsection 405-35(1) stops you counting an amount more than once, even if it is described in more than one subsection of this section.

Note 3: Subsection 405-35(2) may affect the amount you count.

Assessable income from professional services

- (2) You count any assessable income that you *derive as a reward for providing services relating to your activities as a *special professional.

Assessable income from prizes

- (3) You also count any assessable income that you *derive as a prize for your activities as a *special professional.

Assessable income from promotions and commentary

- (4) You also count any assessable income that you *derive, because you are or were a *special professional, for:

- (a) endorsing or promoting goods or services; or
- (b) appearing or participating in an advertisement; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 3 Specialist liability rules

Part 3-45 Rules for particular industries and occupations

Division 405 Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons

Section 405-20

- (c) appearing or participating in an interview; or
- (d) providing services as a commentator; or
- (e) providing similar services.

Assessable income from assigning copyright or granting a licence

- (5) You also count any assessable income that you *derive:
 - (a) as consideration for:
 - (i) assigning all or part of the copyright in a literary, dramatic, musical or artistic work of which you are the author; or
 - (ii) granting an interest in the copyright in such a work by granting a licence; or
 - (b) as an advance on account of royalties relating to such a copyright.

Assessable income from assigning or granting patent rights

- (6) You also count any assessable income that you *derive:
 - (a) as consideration for:
 - (i) assigning all or part of the patent for an invention that you invented; or
 - (ii) granting an interest in the patent for such an invention by granting a licence; or
 - (iii) assigning the right to apply for a patent for such an invention; or
 - (b) as an advance on account of royalties relating to such a patent.

Other assessable income from works or inventions

- (7) You also count any assessable income that you *derive (as *royalties or otherwise):
 - (a) for a literary, dramatic, musical or artistic work of which you are the author; or
 - (b) in relation to copyright in such a work; or
 - (c) for an invention that you invented; or
 - (d) in relation to a patent for such an invention.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

405-25 Meaning of *special professional, performing artist, production associate, sportsperson and sporting competition*

Special professional

- (1) You are a ***special professional*** if you are:
- (a) the author of a literary, dramatic, musical or artistic work; or
- Note: The expression “author” is a technical term from copyright law. In general, the “author” of a musical work is its composer and the “author” of an artistic work is the artist, sculptor or photographer who created it.
- (b) the inventor of an invention; or
 - (c) a *performing artist; or
 - (d) a *production associate; or
 - (e) a *sportsperson.

Performing artist

- (2) You are a ***performing artist*** if you exercise intellectual, artistic, musical, physical or other personal skills in the presence of an audience by performing or presenting:
- (a) music; or
 - (b) a play; or
 - (c) dance; or
 - (d) an entertainment; or
 - (e) an address; or
 - (f) a display; or
 - (g) a promotional activity; or
 - (h) an exhibition; or
 - (i) any similar activity.
- (3) You are also a ***performing artist*** if you perform or appear in or on a *film, tape, disc or television or radio broadcast.

Production associate

- (4) You are a ***production associate*** if you provide *artistic support for:
- (a) an activity described in subsection (2); or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 3 Specialist liability rules

Part 3-45 Rules for particular industries and occupations

Division 405 Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons

Section 405-25

- (b) the activity of making a *film, tape, disc or television or radio broadcast.
- (5) You provide **artistic support** for an activity if:
 - (a) you provide services relating to the activity as:
 - (i) an art director; or
 - (ii) a choreographer; or
 - (iii) a costume designer; or
 - (iv) a director; or
 - (v) a director of photography; or
 - (vi) a film editor; or
 - (vii) a lighting designer; or
 - (viii) a musical director; or
 - (ix) a producer; or
 - (x) a production designer; or
 - (xi) a set designer; or
 - (b) you provide similar services relating to the activity.

Sportsperson

- (6) You are a **sportsperson** if you compete in a *sporting competition.
- (7) A **sporting competition** is a sporting activity to the extent that:
 - (a) human beings are the only competitors in it, or it is one in which human beings:
 - (i) compete by riding animals or exercising other skills in relation to animals; or
 - (ii) compete by driving, piloting or crewing *motor vehicles, boats, aircraft or other forms of transport; or
 - (iii) compete with natural obstacles or natural forces, or by overcoming them; and
 - (b) participation in it by human competitors involves primarily their exercising physical prowess, physical strength or physical stamina.
- (8) However, the participation:
 - (a) of a navigator in the activity of car rallying; or
 - (b) of a coxswain in the activity of rowing; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(c) of a competitor in a similar role in some other activity;
need not involve primarily exercising physical prowess, physical strength or physical stamina for the activity to be a *sporting competition*.

405-30 What you *cannot* count as assessable professional income

Assessable income from continuous service as author or inventor

- (1) You cannot count as *assessable professional income any assessable income you *derive for meeting your obligations under a *scheme to provide services to another person by engaging in activities as the author of a literary, dramatic, musical or artistic work, or as the inventor of an invention, unless:
- (a) the scheme was entered into solely to require you to provide services by:
 - (i) making one or more specified literary, dramatic, musical or artistic works; or
 - (ii) inventing one or more specified inventions; and
 - (b) you have not been providing services, and may not reasonably be expected to provide services, to that person or his or her *associates under successive *schemes that result in substantial continuity of your providing services.

Assessable income from certain activities

- (2) You cannot count as *assessable professional income any assessable income that you *derive for:
- (a) coaching or training *sportspersons; or
 - (b) umpiring or refereeing a *sporting competition; or
 - (c) administering a *sporting competition; or
 - (d) being a member of the pit crew in motor sport; or
 - (e) being a theatrical or sports entrepreneur; or
 - (f) owning or training animals.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 3 Specialist liability rules

Part 3-45 Rules for particular industries and occupations

Division 405 Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons

Section 405-35

Payments at end of employment, and capital gains

- (3) You cannot count as *assessable professional income:
- (a) a *superannuation lump sum or an *employment termination payment; or
 - (b) an *unused annual leave payment or an *unused long service leave payment; or
 - (c) a *net capital gain.

This section prevails over section 405-20

- (4) You cannot count particular assessable income as *assessable professional income if this section says you cannot, even if section 405-20 says you count it.

405-35 Limits on counting amounts as assessable professional income

No double-counting

- (1) You cannot count the same amount as *assessable professional income more than once, even if it is described in more than one subsection of section 405-20.

Amounts that are partly assessable professional income

- (2) If:
- (a) you *derive assessable income under or as a result of a *scheme; and
 - (b) the assessable income consists of a part that is counted as *assessable professional income and another part that cannot be; and
 - (c) one component is unreasonably large and the other component is unreasonably small, for reasons that are directly or indirectly related to one another;
- you must work out your *assessable professional income as if the unreasonably large component were reduced by a reasonable amount and the unreasonably small component were increased by the same amount.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) Subsection (2) affects your *assessable professional income:
- (a) whether you *derived the assessable income directly or indirectly under or as a result of the *scheme; and
 - (b) whether or not a reason mentioned in paragraph (2)(c) is the only reason why a component is unreasonably large or small.

405-40 Joint author or inventor treated as sole author or inventor

- (1) If you are a joint author of a literary, dramatic, musical or artistic work, work out your *assessable professional income as if you were the author of that work.

Note: This section means that you are treated as a special professional, even if you have never been the sole author of a work.

- (2) If you are a joint inventor of an invention, work out your *assessable professional income as if you were the inventor of that invention.

Note: This section means that you are treated as a special professional, even if you have never been the sole inventor of an invention.

Subdivision 405-C—Taxable professional income and average taxable professional income

Table of sections

405-45	Working out your taxable professional income
405-50	Working out your average taxable professional income

405-45 Working out your taxable professional income

Your *taxable professional income* for an income year is the amount (if any) by which your *assessable professional income for that year exceeds the amount of your deductions for that year worked out as follows:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 3 Specialist liability rules

Part 3-45 Rules for particular industries and occupations

Division 405 Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons

Section 405-50

Method statement

Step 1. Add up any amounts you can deduct for that year (except *apportionable deductions), so far as they reasonably relate to your *assessable professional income for the year.

Step 2. Work out the amount using the formula:

$$\text{*Apportionable deductions} \times \frac{\left(\begin{array}{c} \text{*Assessable} \\ \text{professional income} \end{array} - \text{Sum from Step 1} \right)}{\text{Taxable income} + \text{*Apportionable deductions}}$$

Note: The result may be greater than the apportionable deductions. Also, it may be negative.

Step 3. Add the sum from Step 1 to the result from Step 2. If the result is more than nil, it is the amount of your deductions to be subtracted from your *assessable professional income.

405-50 Working out your average taxable professional income

It is generally a 4-year average

- (1) Work out your **average taxable professional income** for the *current year by:
 - (a) adding up your *taxable professional income for each of the last 4 income years before the current year; and
 - (b) dividing the total by 4.

Phasing-in arrangements for new professionals

- (2) However, if the *current year is less than 4 income years after *professional year 1, work out your **average taxable professional income** using the table in subsection (5).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) **Professional year 1** is the first income year:
- (a) during which you were an Australian resident (for all or part of the income year); and
 - (b) for which your *taxable professional income was more than \$2,500.
- (4) **Professional year 2, professional year 3 and professional year 4** are respectively the next 3 income years after *professional year 1.
- (5) The table is as follows:

Average taxable professional income during phase-in period			
Item	Current year	Average taxable professional income if you were an Australian resident for all or part of the income year immediately before professional year 1	Average taxable professional income if you were a foreign resident for any of the income year immediately before professional year 1
1	Professional year 1	Nil	Your *taxable professional income for *professional year 1
2	Professional year 2	1/3 of your *taxable professional income for *professional year 1	Your *taxable professional income for *professional year 1
3	Professional year 3	1/4 of the sum of your *taxable professional income for each of *professional years 1 and 2	1/2 of the sum of your *taxable professional income for each of *professional years 1 and 2
4	Professional year 4	1/4 of the sum of your *taxable professional income for each of *professional years 1, 2 and 3	1/3 of the sum of your *taxable professional income for each of *professional years 1, 2 and 3
Note:		If you were a foreign resident for any part of the income year immediately before professional year 1, the effect of item 1 of the table is that your taxable income for professional year 1 will not include above-average special professional income.	

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 410—Copyright and resale royalty collecting societies

Table of Subdivisions

Guide to Division 410

410-A Notice of payments

Guide to Division 410

410-1 What this Division is about

This Division sets out rules that apply whenever:

- (a) a copyright collecting society to which section 51-43 applies makes a payment to a member of the society; or
- (b) the resale royalty collecting society pays a resale royalty.

Subdivision 410-A—Notice of payments

Table of sections

410-5 Copyright collecting society must give notice to member of society

410-50 Resale royalty collecting society must give notice to holder of resale royalty right

410-5 Copyright collecting society must give notice to member of society

- (1) A *copyright collecting society must give a *member of the society notice of any payment it makes to the member, if section 51-43 applies to the society.
- (2) The society must give the notice at the time of the payment.
- (3) The notice must be in the *approved form.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: Under section 288-75 in Schedule 1 to the *Taxation Administration Act 1953* a society is liable to an administrative penalty for failing to give a notice required under this section.

410-50 Resale royalty collecting society must give notice to holder of resale royalty right

- (1) The *resale royalty collecting society must give an entity notice of any payment it makes to the entity under section 26 of the *Resale Royalty Right for Visual Artists Act 2009*, if section 51-45 of this Act applies to the society.
- (2) The society must give the notice at the time of the payment.
- (3) The notice must be in the *approved form.

Note: Under section 288-75 in Schedule 1 to the *Taxation Administration Act 1953* the society is liable to an administrative penalty for failing to give a notice required under this section.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Part 3-50—Climate change

Division 420—Registered emissions units

Table of Subdivisions

	Guide to Division 420
420-A	Registered emissions units
420-B	Acquiring registered emissions units
420-C	Disposing of registered emissions units etc.
420-D	Accounting for registered emissions units you hold at the start or end of the income year
420-E	Exclusivity of Division

Guide to Division 420

420-1 What this Division is about

This Division deals with amounts you can deduct, and amounts included in your assessable income, because of these situations:

- you acquire a registered emissions unit;
- you hold a registered emissions unit at the start or the end of the income year;
- you dispose of a registered emissions unit.

Table of sections

420-5	The 4 key features of tax accounting for registered emissions units
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420-5 The 4 key features of tax accounting for registered emissions units

The purpose of income tax accounting for registered emissions units is to produce the same tax treatment, irrespective of your purpose in acquiring or holding the registered emissions units.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

There are 4 key features:

- (1) You bring your gross expenditure and gross proceeds to account, not your net profits and losses on disposal of a registered emissions unit.
- (2) The gross expenditure is deductible.
- (3) The gross proceeds are assessable income.
- (4) You must bring to account any difference between the value of your registered emissions units held at the start and at the end of the income year. This is done in such a way that:
 - (a) any increase in value is included in assessable income; and
 - (b) any decrease in value is a deduction.

Subdivision 420-A—Registered emissions units

Table of sections

420-10	Meaning of <i>registered emissions unit</i>
420-12	Meaning of <i>hold</i> a registered emissions unit

420-10 Meaning of *registered emissions unit*

A *registered emissions unit* is:

- (a) a *carbon unit; or
- (b) a *Kyoto unit; or
- (c) a *prescribed international unit; or
- (d) an *Australian carbon credit unit;

for which there is an entry in a Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*).

420-12 Meaning of *hold* a registered emissions unit

- (1) You *hold* a *registered emissions unit if you are the entity in whose Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) there is an entry for the unit.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 420-15

- (2) However, if the entity (the *nominee entity*) in whose Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) there is an entry for a *registered emissions unit holds the unit as nominee for another entity:
- (a) the other entity is taken to **hold** the unit; and
 - (b) the nominee entity is taken not to hold the unit.

Subdivision 420-B—Acquiring registered emissions units

Table of sections

420-15	What you can deduct
420-20	Non-arm's length transactions and transactions with associates
420-21	Incoming international transfers of emissions units
420-22	Becoming taxable in Australia on the proceeds of sale of registered emissions units

420-15 What you can deduct

- (1) You can deduct expenditure to the extent that you incur it in becoming the *holder of a *registered emissions unit.

Note: A carbon unit is an example of a registered emissions unit. You can become the holder of a carbon unit as a result of the unit being issued to you under the *Clean Energy Act 2011* or as a result of your acquisition of the unit from another entity.

Timing

- (2) You deduct the expenditure in the income year in which you start to *hold the *registered emissions unit.

Free carbon units

- (3) You cannot deduct under this section expenditure you incur in becoming the *holder of a *carbon unit issued to you in accordance with:
- (a) the Jobs and Competitiveness Program (within the meaning of the *Clean Energy Act 2011*); or
 - (b) Part 8 (coal-fired electricity generation) of that Act.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Australian carbon credit units

- (4) You cannot deduct under this section expenditure you incur in becoming the *holder of an *Australian carbon credit unit issued to you in accordance with the *Carbon Credits (Carbon Farming Initiative) Act 2011* unless you incur the expenditure in preparing or lodging:
- (a) an application for a certificate of entitlement (within the meaning of that Act); or
 - (b) an offsets report (within the meaning of that Act).

No deduction if sale proceeds would not be assessable

- (5) You cannot deduct under this section expenditure you incur in becoming the *holder of a *registered emissions unit if, assuming that you had sold the unit to someone else immediately after you started to *hold the unit, the proceeds of the sale would not have been included in your assessable income under section 420-25.

Note: Under the *International Tax Agreements Act 1953*, for some foreign residents, the proceeds of the sale of a registered emissions unit are not assessable income in Australia.

420-20 Non-arm's length transactions and transactions with associates

- (1) If:
- (a) an entity becomes the *holder of a *registered emissions unit; and
 - (b) either:
 - (i) the entity and the previous holder of the unit did not deal with each other at arm's length; or
 - (ii) the previous holder is the entity's *associate; and
 - (c) the entity did not pay or give consideration equal to the *market value of the unit for becoming the holder of the unit;
- the entity is treated as if:
- (d) the entity had incurred expenditure in becoming the holder of the unit; and
 - (e) the amount of the expenditure were equal to that market value.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) This section does not apply if a *registered emissions unit *held by an individual just before the individual's death:
- (a) devolves to the individual's *legal personal representative; or
 - (b) *passes to a beneficiary in the individual's estate.
- (3) This section does not apply to:
- (a) the issue of a *carbon unit under the *Clean Energy Act 2011*;
or
 - (b) the issue of an *Australian carbon credit unit under the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Note: In the application of Division 13 of Part III of the *Income Tax Assessment Act 1936* (about international transfer-pricing arrangements), this section is disregarded—see subsection 136AB(2) of the *Income Tax Assessment Act 1936*.

420-21 Incoming international transfers of emissions units

Unit held as trading stock or as a revenue asset

- (1) If:
- (a) any of the following conditions is satisfied:
 - (i) a *carbon unit is transferred from your foreign account (within the meaning of the *Clean Energy Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*);
 - (ii) a carbon unit is transferred from your nominee's foreign account (within the meaning of the *Clean Energy Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*);
 - (iii) an *international emissions unit is transferred from your foreign account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) to your Registry account (within the meaning of that Act) or

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- your nominee's Registry account (within the meaning of that Act);
- (iv) an international emissions unit is transferred from your nominee's foreign account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) to your Registry account (within the meaning of that Act) or your nominee's Registry account (within the meaning of that Act);
 - (v) an *Australian carbon credit unit is transferred from your foreign account (within the meaning of the *Carbon Credits (Carbon Farming Initiative) Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*);
 - (vi) an Australian carbon credit unit is transferred from your nominee's foreign account (within the meaning of the *Carbon Credits (Carbon Farming Initiative) Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*); and
- (b) as a result of the transfer, you start to *hold the unit as a *registered emissions unit; and
 - (c) just before the transfer, the unit was your *trading stock or *revenue asset;
- you are treated as if:
- (d) just before the transfer, you had sold the unit to someone else for its *cost; and
 - (e) you had, immediately after the sale, bought it back as a registered emissions unit for the same amount.

Example: An Australian resident company carries on a business of trading in emissions units. The units are trading stock. The company owns 10,000 emission reduction units (a type of international emissions unit) that are registered in New Zealand. 5,000 of those emission reduction units are transferred from the company's New Zealand registry account to the company's Australian registry account.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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The company is treated as having sold each unit to someone else at its cost just before it became a registered emissions unit. As the unit was previously held as trading stock, the unit ceases to be trading stock (section 70-12). The cost of the unit just before it became a registered emissions unit is included in the company's assessable income.

The company is also treated as having bought 5,000 registered emissions units for the same amount. The company is entitled to a deduction for that amount (section 420-15).

Unit held otherwise than as trading stock or as a revenue asset

(2) If:

(a) any of the following conditions is satisfied:

- (i) a *carbon unit is transferred from your foreign account (within the meaning of the *Clean Energy Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*);
- (ii) a carbon unit is transferred from your nominee's foreign account (within the meaning of the *Clean Energy Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*);
- (iii) an *international emissions unit is transferred from your foreign account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) to your Registry account (within the meaning of that Act) or your nominee's Registry account (within the meaning of that Act);
- (iv) an international emissions unit is transferred from your nominee's foreign account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) to your Registry account (within the meaning of that Act) or your nominee's Registry account (within the meaning of that Act);

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (v) an *Australian carbon credit unit is transferred from your foreign account (within the meaning of the *Carbon Credits (Carbon Farming Initiative) Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*);
 - (vi) an Australian carbon credit unit is transferred from your nominee's foreign account (within the meaning of the *Carbon Credits (Carbon Farming Initiative) Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*); and
 - (b) as a result of the transfer, you start to *hold the unit as a *registered emissions unit; and
 - (c) just before the transfer, the unit was neither your *trading stock nor your *revenue asset;
- you are treated as if:
- (d) just before the transfer, you had sold the unit to someone else for its *market value just before the transfer; and
 - (e) you had, immediately after the sale, bought it back as a registered emissions unit for the same amount.

420-22 Becoming taxable in Australia on the proceeds of sale of registered emissions units

If:

- (a) you start to *hold a *registered emissions unit at a particular time; and
- (b) assuming that you had sold the unit to someone else immediately after you started to hold the unit, the proceeds of the sale would not have been included in your assessable income under section 420-25; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) you hold the unit until a later time (the *taxable status commencement time*), where the following conditions are satisfied:
- (i) assuming that you had sold the unit to someone else immediately before the taxable status commencement time, the proceeds of the sale would not have been included in your assessable income under section 420-25;
 - (ii) assuming that you had sold the unit to someone else at the taxable status commencement time, the proceeds of the sale would have been included in your assessable income under section 420-25;

you are treated as if:

- (d) immediately after the taxable status commencement time, you had bought the unit from someone else for its *market value; and
- (e) you had started to hold the unit immediately after the taxable status commencement time instead of at the time mentioned in paragraph (a).

Note: Under the *International Tax Agreements Act 1953*, for some foreign residents, the proceeds of the sale of a registered emissions unit are not assessable income in Australia.

Subdivision 420-C—Disposing of registered emissions units etc.

Table of sections

420-25	Assessable income on disposal of registered emissions units
420-30	Non-arm's length transactions and transactions with associates
420-35	Outgoing international transfers of emissions units
420-40	Disposal of registered emissions units for a purpose other than gaining assessable income
420-41	Ceasing to be taxable in Australia on the proceeds of sale of registered emissions units
420-42	Deduction for expenses incurred in ceasing to hold a registered emissions unit
420-43	Deduction for charge imposed on the surrender of an eligible international emissions unit

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

420-25 Assessable income on disposal of registered emissions units

- (1) Your assessable income includes an amount that you are entitled to receive because you cease to *hold a *registered emissions unit.

Timing

- (2) The amount is included in your assessable income for the income year in which you cease to *hold the unit.

Source

- (3) An amount included in your assessable income under subsection (1) is taken, for the purposes of the *income tax laws, to have a source in Australia.

420-30 Non-arm's length transactions and transactions with associates

If:

- (a) an entity (the **transferor**) ceases to *hold a *registered emissions unit; and
- (b) the cessation is because of the transfer of the unit to:
- (i) a Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*); or
- (ii) a foreign account (within the meaning of that Act); kept by another entity (the **transferee**); and
- (c) either:
- (i) the transferor and the transferee did not deal with each other at arm's length; or
- (ii) the transferee is the transferor's *associate; and
- (d) the transferee did not pay or give consideration equal to the *market value of the unit for the transfer of the unit;

the transferor is treated as if the transferor were entitled to receive an amount equal to that market value because the transferor ceased to be the holder of the unit.

Note: In the application of Division 13 of Part III of the *Income Tax Assessment Act 1936* (about international transfer-pricing)

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 420-35

arrangements), this section is disregarded—see subsection 136AB(2) of the *Income Tax Assessment Act 1936*.

420-35 Outgoing international transfers of emissions units

If:

- (a) you stop *holding a *registered emissions unit; and
- (b) you do so as a result of the transfer of the unit to:
 - (i) if the unit is a *carbon unit—your foreign account (within the meaning of the *Clean Energy Act 2011*) or your nominee’s foreign account (within the meaning of that Act); or
 - (ii) if the unit is an *international emissions unit—your foreign account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee’s foreign account (within the meaning of that Act); or
 - (iii) if the unit is an *Australian carbon credit unit—your foreign account (within the meaning of the *Carbon Credits (Carbon Farming Initiative) Act 2011*) or your nominee’s foreign account (within the meaning of that Act);

you are treated as if:

- (c) just before the transfer, you had sold the unit to someone else for its *market value just before the transfer; and
- (d) you had, immediately after the sale, bought it back for the same amount.

Example: An Australian resident company carries on a business of trading in emission units. The company owns 10,000 emission reduction units (a type of international emissions unit) that are registered in Australia. 5,000 of those units are transferred from the company’s Australian registry account to the company’s New Zealand registry account.

The company is treated as having sold each unit to someone else at its market value just before it stopped being a registered emissions unit. As the unit was a registered emissions unit, the market value is included in the company’s assessable income (section 420-25).

The company is also treated as having bought 5,000 emission reduction units for the same amount. As those units are trading stock, the company may be able to deduct that amount under section 8-1.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

420-40 Disposal of registered emissions units for a purpose other than gaining assessable income

- (1) If:
- (a) an entity (the *first entity*) incurs expenditure in:
 - (i) becoming the *holder of a *registered emissions unit; or
 - (ii) ceasing to hold a registered emissions unit; and
 - (b) the first entity has deducted or can deduct the expenditure under section 420-15 or 420-42; and
 - (c) the first entity ceases to hold the unit in a particular income year; and
 - (d) the cessation is neither:
 - (i) in gaining or producing the first entity's assessable income; nor
 - (ii) in carrying on a *business for the purpose of gaining or producing the first entity's assessable income; and
 - (e) section 420-30 (non-arm's length transactions and transactions with associates) did not apply to the first entity ceasing to hold the unit;

the first entity's assessable income for that income year includes an amount equal to the amount the first entity has deducted or can deduct.

Death

- (2) If:
- (a) the first entity is an individual; and
 - (b) the cessation is because of the first entity's death; and
 - (c) the *registered emissions unit devolves to the first entity's *legal personal representative;
- then:
- (d) the first entity's legal personal representative is treated as having bought the unit for the amount included in the first entity's assessable income under subsection (1); and
 - (e) if the unit *passes to a beneficiary in the first entity's estate:
 - (i) the first entity's legal personal representative is treated as having disposed of the unit for the amount included

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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in the first entity's assessable income under subsection (1); and

- (ii) the beneficiary is treated as having bought the unit for the amount included in the first entity's assessable income under subsection (1).

(3) If:

- (a) the first entity is an individual; and
- (b) the cessation is because of the first entity's death; and
- (c) the *registered emissions unit *passes to a beneficiary in the first entity's estate without devolving to the first entity's *legal personal representative;

the beneficiary is treated as having bought the unit for the amount included in the first entity's assessable income under subsection (1).

Transfer—treatment of acquirer

(4) If:

- (a) the cessation is because of the transfer of the unit to another entity; and
- (b) neither subsection (2) nor (3) applies;

the other entity is treated as having bought the unit for the amount included in the first entity's assessable income under subsection (1).

(5) If subsection (4) applies to the transfer of the unit to another entity:

- (a) the first entity must inform the other entity that, as a result of subsection (4) applying, the other entity is treated as having bought the unit for a particular amount; and
- (b) the first entity must do so:
 - (i) at, or as soon as practicable after, the time of the transfer; or
 - (ii) by a later time allowed by the Commissioner.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Source

- (6) An amount included in the first entity's assessable income under subsection (1) is taken, for the purposes of the *income tax laws, to have a source in Australia.

420-41 Ceasing to be taxable in Australia on the proceeds of sale of registered emissions units

If:

- (a) you start to *hold a *registered emissions unit; and
- (b) assuming that you had sold the unit to someone else immediately after you started to hold the unit, the proceeds of sale would have been included in your assessable income under section 420-25; and
- (c) you hold the unit until a later time (the ***taxable status cessation time***), where the following conditions are satisfied:
 - (i) assuming that you had sold the unit to someone else immediately before the taxable status cessation time, the proceeds of the sale would have been included in your assessable income under section 420-25;
 - (ii) assuming that you had sold the unit to someone else at the taxable status cessation time, the proceeds of sale would not have been included in your assessable income under section 420-25;

you are treated as if:

- (d) just before the taxable status cessation time, you had sold the unit to someone else for its *market value; and
- (e) you had, at the taxable status cessation time, bought it back for the same amount.

Note: Under the *International Tax Agreements Act 1953*, for some foreign residents, the proceeds of the sale of a registered emissions unit are not assessable income in Australia.

420-42 Deduction for expenses incurred in ceasing to hold a registered emissions unit

- (1) You can deduct expenditure to the extent that you incur it in ceasing to *hold a *registered emissions unit.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 420-43

Timing

- (2) You deduct the expenditure in the income year in which you cease to *hold the *registered emissions unit.

420-43 Deduction for charge imposed on the surrender of an eligible international emissions unit

- (1) You can deduct an amount of charge imposed by the *Clean Energy (International Unit Surrender Charge) Act 2011* on the surrender by you of an eligible international emissions unit (within the meaning of the *Australian National Registry of Emissions Units Act 2011*).

Timing

- (2) You deduct the amount in the income year in which you pay the amount.

Subdivision 420-D—Accounting for registered emissions units you hold at the start or end of the income year

Table of sections

420-45	You include the value of your registered emissions units in working out your assessable income and deductions
420-50	Value of registered emissions units at start of income year
420-51	Valuation methods
420-52	FIFO cost method of working out the value of units
420-53	Actual cost method of working out the value of units
420-54	Market value method of working out the value of units
420-55	Valuation method for first income year at the end of which you held registered emissions units
420-57	Valuation method for later income years at the end of which you held registered emissions units
420-58	Value of registered emissions units at end of income year—certain free carbon units
420-60	Cost of registered emissions units

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

420-45 You include the value of your registered emissions units in working out your assessable income and deductions

- (1) You compare:
- (a) the *value of all *registered emissions units you *held at the start of the income year; and
 - (b) the value of all registered emissions units you held at the end of the income year.

Increase in value is included in assessable income

- (2) Your assessable income includes any excess of the *value at the end of the income year over the value at the start of the income year.

Decrease in value is a deduction

- (3) On the other hand, you can deduct any excess of the *value at the start of the income year over the value at the end of the income year.

Source

- (4) An amount included in your assessable income under subsection (2) is taken, for the purposes of the *income tax laws, to have a source in Australia.

Disregard value of unit if sale proceeds would not be assessable

- (5) For the purposes of this Subdivision, disregard the *value of a *registered emissions unit you *held at the end of the income year if, assuming that you had sold the unit to someone else immediately after you started to hold the unit, the proceeds of the sale would not have been included in your assessable income under section 420-25.

Note: Under the *International Tax Agreements Act 1953*, for some foreign residents, the proceeds of the sale of a registered emissions unit are not assessable income in Australia.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 420-50

420-50 Value of registered emissions units at start of income year

- (1) The *value* of a *registered emissions unit you *held at the start of an income year is the same amount at which it was taken into account under this Subdivision at the end of the last income year.
- (2) The *value* of the unit is a nil amount if the unit was not taken into account under this Subdivision at the end of the last income year.

420-51 Valuation methods

- (1) The *value* of a *registered emissions unit you *held at the end of an income year is worked out using one of the following methods:
 - (a) the *FIFO cost method;
 - (b) the *actual cost method;
 - (c) the *market value method.Sections 420-55 and 420-57 tell you which method applies.
- (2) This section has effect subject to section 420-58 (certain free carbon units).

420-52 FIFO cost method of working out the value of units

The *FIFO cost method* for working out the *value of the *registered emissions units you *held at the end of an income year means that the value of the units is the *cost of the registered emissions units, and, for the purposes of the application of this Subdivision to you for the income year:

- (a) if any of the registered emissions units are:
 - (i) *carbon units that have a *vintage year that is the same as, or earlier than, the financial year to which the income year relates; or
 - (ii) eligible international emissions units (within the meaning of the *Australian National Registry of Emissions Units Act 2011*); or
 - (iii) *Australian carbon credit units;you must account for those units on a first-in first-out basis; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) if:
- (i) any of the registered emissions units are carbon units that have the same vintage year; and
 - (ii) that vintage year is later than the financial year to which the income year relates;
- you must account for those units on a first-in first-out basis; and
- (c) if any of the registered emissions units are *Kyoto units that are not eligible international emissions units (within the meaning of the *Australian National Registry of Emissions Units Act 2011*)—you must account for those units on a first-in first-out basis.

420-53 Actual cost method of working out the value of units

The *actual cost method* for working out the value of the *registered emissions units you *held at the end of the income year means that the value of the units is the *cost of the units, and, for the purposes of the application of this Subdivision to you for the income year, you must not account for any of those units on a first-in first-out basis.

420-54 Market value method of working out the value of units

The *market value method* for working out the value of the *registered emissions units you *held at the end of the income year means that the value of the units is the *market value of the units at the end of the income year.

420-55 Valuation method for first income year at the end of which you held registered emissions units

Scope

- (1) This section applies if:
- (a) you *held one or more *registered emissions units at the end of an income year; and
 - (b) the income year is the first income year at the end of which you held one or more registered emissions units.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 420-57

Choice of method

- (2) You may choose one of the following methods:
- (a) the *FIFO cost method;
 - (b) the *actual cost method;
 - (c) the *market value method;
- for working out the **value** of the *registered emissions units you *held at the end of the income year.

FIFO cost method applies if no choice made

- (3) If you do not make a choice under subsection (2) for the income year, the **value** of the *registered emissions units you *held at the end of the income year is worked out using the *FIFO cost method.

Time for making choice

- (4) You must make a choice under subsection (2) before you lodge your *income tax return for the income year for which you make the choice.

No revocation of choice

- (5) A choice made under subsection (2) cannot be revoked.

Certain free carbon units

- (6) This section has effect subject to section 420-58 (certain free carbon units).

420-57 Valuation method for later income years at the end of which you held registered emissions units

Scope

- (1) This section applies if:
- (a) you *held one or more *registered emissions units at the end of an income year (the **current income year**); and
 - (b) the current income year is not the first income year at the end of which you held one or more registered emissions units.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Choice of method

- (2) You may choose one of the following methods:
- (a) the *FIFO cost method;
 - (b) the *actual cost method;
 - (c) the *market value method;
- for working out the **value** of the *registered emissions units you *held at the end of the current income year.

Previous method applies if no choice made

- (3) If you do not make a choice under subsection (2) for the current income year, the **value** of the *registered emissions units you *held at the end of the current income year is worked out using the method that applied to the most recent income year at the end of which you held one or more registered emissions units.

Limitation on choice—before 2015-16 income year

- (4) If the current income year is before the 2015-16 income year, you must not make a choice under subsection (2) for the current income year if you have previously made a choice under that subsection for an earlier income year.

Limitation on choice—2015-16 income year or a later income year

- (5) If the current income year is:
- (a) the 2015-16 income year; or
 - (b) a later income year;
- you must not make a choice under subsection (2) for the current income year unless:
- (c) the same method applied for each of the 4 most recent income years at the end of which you *held one or more *registered emissions units; and
 - (d) the method mentioned in paragraph (c) is different from the method to which your choice for the current income year relates.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 420-58

Limitation on choice—change from FIFO cost method to actual cost method

- (6) You must not choose under subsection (2) the *actual cost method for the current income year if the *FIFO cost method applied for the most recent income year at the end of which you *held one or more *registered emissions units.

Time for making choice

- (7) You must make a choice under subsection (2) before you lodge your *income tax return for the income year for which you make the choice.

No revocation of choice

- (8) A choice made under subsection (2) cannot be revoked.

Certain free carbon units

- (9) This section has effect subject to section 420-58 (certain free carbon units).

**420-58 Value of registered emissions units at end of income year—
certain free carbon units**

Scope

- (1) This section applies to a *carbon unit with a particular *vintage year if:
- (a) it was issued to you in accordance with the Jobs and Competitiveness Program (within the meaning of the *Clean Energy Act 2011*); and
 - (b) you *held it throughout the period:
 - (i) beginning when it was issued to you; and
 - (ii) ending at the end of an income year that ended before 1 February in the financial year next following the vintage year.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Value

- (2) The **value** of the unit you *held at the end of an income year that ended during that period is a nil amount.
- (3) For the purposes of:
 - (a) subsection 420-57(3); and
 - (b) paragraph 420-57(5)(c);the method that applied to a previous income year mentioned in that subsection or paragraph, as the case may be, is the method that would have applied if this section had not been enacted.

420-60 Cost of registered emissions units

Free carbon units

- (1) If a *carbon unit was issued to you free of charge under the *Clean Energy Act 2011*, the **cost** of the unit is its *market value immediately after you began to *hold the unit.
- (2) Subsection (1) does not affect the operation of section 420-58.

Australian carbon credit units

- (3) If an *Australian carbon credit unit was issued to you under the *Carbon Credits (Carbon Farming Initiative) Act 2011*, the **cost** of the unit is its *market value immediately after you began to *hold the unit.

Other registered emissions units

- (4) If a *registered emissions unit (other than an *Australian carbon credit unit) was not issued to you free of charge under the *Clean Energy Act 2011*, the **cost** of the unit is the total of the expenditure that you:
 - (a) incurred in becoming the *holder of the unit; and
 - (b) can deduct under section 420-15.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 420-E—Exclusivity of Division

Table of sections

420-65	Exclusivity of deductions etc.
420-70	Exclusivity of assessable income etc.

420-65 Exclusivity of deductions etc.

Expenditure incurred in becoming the holder of a registered emissions unit

- (1) You cannot deduct under any provision of this Act outside this Division any expenditure to the extent that you incur it in becoming the *holder of a *registered emissions unit.
- (2) To the extent you incur expenditure in becoming the *holder of a *registered emissions unit, the expenditure is not to be taken into account in working out:
 - (a) an amount you can deduct; or
 - (b) an amount included in your assessable income;under any provision of this Act outside this Division.

Free carbon units

- (3) Subsections (1) and (2) do not affect the application of a provision of this Act outside this Division to expenditure you incur in becoming the *holder of a *carbon unit issued to you in accordance with:
 - (a) the Jobs and Competitiveness Program (within the meaning of the *Clean Energy Act 2011*); or
 - (b) Part 8 (coal-fired electricity generation) of that Act.

Australian carbon credit units

- (4) Subsections (1) and (2) do not affect the application of a provision of this Act outside this Division to expenditure you incur in becoming the *holder of an *Australian carbon credit unit issued to you in accordance with the *Carbon Credits (Carbon Farming Initiative) Act 2011* if you do not incur the expenditure in preparing or lodging:

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) an application for a certificate of entitlement (within the meaning of that Act); or
 - (b) an offsets report (within the meaning of that Act).
- (5) Subsections (1) and (2) do not affect the operation of Division 30 (deductions for gifts and contributions).

Note: If you make a gift or contribution, Division 30 applies in the normal way to determine whether you can deduct the amount of the gift or contribution.

Expenditure incurred in ceasing to hold a registered emissions unit

- (6) You cannot deduct under any provision of this Act outside this Division any expenditure to the extent that you incur it in ceasing to *hold a *registered emissions unit.

420-70 Exclusivity of assessable income etc.

- (1) An amount that you are entitled to receive because you ceased to *hold a *registered emissions unit is not to be:
- (a) included in your assessable income; or
 - (b) taken into account in working out your assessable income; or
 - (c) taken into account in working out an amount you can deduct; under any provision of this Act outside this Division.
- (2) Subsection (1) does not affect the operation of Division 6 so far as that Division provides for the significance of residence or source for the assessability of ordinary and statutory income.

Note: An amount included in your assessable income under this Division may be ordinary or statutory income for the purposes of Division 6.

Free carbon units

- (3) An amount is not to be included in your assessable income under any provision of this Act outside this Division because a *carbon unit was issued to you in accordance with:
- (a) the Jobs and Competitiveness Program (within the meaning of the *Clean Energy Act 2011*); or
 - (b) Part 8 (coal-fired electricity generation) of that Act.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Chapter 3 Specialist liability rules

Part 3-50 Climate change

Division 420 Registered emissions units

Section 420-70

Note 1: A capital gain or capital loss you make from a registered emissions unit is disregarded (subsection 118-15(1)).

Note 2: A capital gain or capital loss you make from a right to receive a free carbon unit is disregarded (subsection 118-15(2)).

Australian carbon credit units

- (4) An amount is not to be included in your assessable income under any provision of this Act outside this Division because an *Australian carbon credit unit was issued to you in accordance with the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Note 1: A capital gain or capital loss you make from a registered emissions unit is disregarded (subsection 118-15(1)).

Note 2: A capital gain or capital loss you make from a right to receive an Australian carbon credit unit is disregarded (subsection 118-15(3)).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.
