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Volume 1: sections 1-1 to 36-55
Volume 2: sections 40-1 to 67-30
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Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *Income Tax Assessment Act 1997* that shows the text of the law as amended and in force on 1 October 2019 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

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If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

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For more information about any editorial changes made in this compilation, see the endnotes.

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If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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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.

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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

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315-15 Demutualisations to which this Division applies
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Rules for demutualising health insurer

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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.

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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 (Prudential Supervision) Act 2015*) 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:

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

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(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

(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 (Prudential Supervision) Act 2015* 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 (Prudential Supervision) Act 2015*) is approved under subsection 20(5) of that Act; and

(c) consistently with the conversion scheme mentioned in paragraph 20(2)(a) 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:

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

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(a) the CGT event happened under a demutualisation to which this Division applies; and
(b) the entity is the demutualising health insurer.

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

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

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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

(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

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

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(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.

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 (Prudential Supervision) Act 2015*) 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).

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

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Subdivision 315-C—Lost policy holders trust

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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:

(a) the conversion scheme mentioned in paragraph 20(2)(a) of the *Private Health Insurance (Prudential Supervision) Act 2015* 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 (Prudential Supervision) Act 2015*) 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.

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

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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.

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.

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

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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.

(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

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

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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.

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.

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

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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):

$$\frac{\$400 \text{ million}}{800 \text{ million}} \times 50 = \$25$$

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

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

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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.

Subdivision 315-F—Non-CGT consequences of demutualisation

Table of sections

315-310 General taxation consequences of issue of demutualisation assets etc.

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

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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 (Prudential Supervision) Act 2015*) 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.

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Division 316—Demutualisation of friendly society health or life insurers

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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

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316-5 Application of this Division

316-5 Application of this Division

This Division applies in relation to a demutualisation of a *friendly society if:

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

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(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 (Prudential Supervision) Act 2015*; or
  (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.

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316-65 Valuation factor for sections 316-60, 316-105 and 316-165
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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

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:

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

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(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
(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

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

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(b) the *cost base and *reduced cost base for the interest were the amount worked out using the formula:

$$\text{*Capital proceeds from the *CGT event} \times \text{Valuation factor worked out under section 316-65}$$

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:

$$\$50 - \left(\$50 \times 0.9\right)$$

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:

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

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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 (Prudential Supervision) Act 2015*.

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 (Prudential Supervision) Act 2015*, carried on by either or both of the *friendly society and its health/life insurance subsidiaries (if any), taking account of any 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:

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

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(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 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

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

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(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.

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.

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

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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

(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.

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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

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

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(b) the asset is issued to an entity covered by section 316-115.

(2) The formula is:

$$\text{Value of the } {}^{*}\text{CGT asset when it was issued} \times \text{Valuation factor worked out under section 316-65}$$

Time of acquisition

(3) The entity is taken to have *acquired the *CGT asset at the time it is issued.

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.

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

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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
    (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:

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

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(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.

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316-155 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
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
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316-180 Subdivision 126-E does not apply

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

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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:

(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.

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

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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.

(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:

$$\text{*Capital proceeds from the *CGT event} \times \text{Valuation factor worked out under section 316-65}$$

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

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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:

$$\$50 - \left(\$50 \times 0.9\right)$$

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.

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

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

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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.

Note: Subdivision 126-E is about an entitlement to shares after demutualisation and scrip for scrip roll-over.

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

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Subdivision 316-E—Special CGT rules for legal personal representatives and beneficiaries

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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.

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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.

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

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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:

*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 an interest affected by demutualisation; or

(ii) the conversion, cancellation, extinguishment or redemption of an interest affected by demutualisation.

(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.

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

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(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.

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.

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

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(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.

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Part 3-35—Insurance business

Division 320—Life insurance companies

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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.

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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 class, which consists of taxable income that relates to complying superannuation business, 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;
- assets that relate to immediate annuity and other exempt business.

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

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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 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.

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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
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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 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 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 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 asset pool under subsection 320-180(1) or (3), to a complying superannuation asset pool under section 320-185 or from a complying superannuation 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.

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(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.

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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:

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

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(a) amounts of *ordinary income and *statutory income accrued before 1 July 1988 that were derived from assets that have become *complying superannuation assets;

(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 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

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

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*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.

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:

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

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(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.

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 assets

(1) If a *CGT event happens in respect of a *CGT asset that is a *complying superannuation 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.

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

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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 assets
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
320-75 Deduction for ordinary investment policies
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 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
320-110 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 assets or segregated exempt assets
320-125 Capital losses from complying superannuation assets

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

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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 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 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 assets in the income year;

less:

(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.

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*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

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 life insurance policies or *exempt life insurance policies) that provide for *participating benefits or *discretionary benefits.

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.

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

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(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;

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

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

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(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 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 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

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

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(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.

320-87 Deduction for assets transferred from or to complying superannuation 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 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 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 asset pool under subsection 320-180(1) or 320-195(2) or (3); or

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

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(b) to a complying superannuation 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) or section 320-240, the company can deduct the amount (if any) that it can deduct because of section 320-255.

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).

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

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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.

(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).

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

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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 assets or segregated exempt assets

(1) This section applies to assets (***ordinary assets***) of a *life insurance company other than:

(a) *complying superannuation 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.

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 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 assets can be used only to reduce *capital gains from complying superannuation assets.

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

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(2) If some or all of a *capital loss from a *complying superannuation 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 assets exceed the company's capital losses (if any) from complying superannuation assets.

(3) If the company has 2 or more unapplied *net capital losses from *complying superannuation 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 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 class;
- the ordinary class.

320-131 Overview of Subdivision

Working out the income tax

(1) In any income year, a life insurance company can have:

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

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(a) a taxable income of the complying superannuation class and/or a taxable income of the ordinary class; or

(b) a tax loss of the complying superannuation 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;

(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.

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

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Taxable income and tax loss of life insurance companies

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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 class or the *ordinary class.

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

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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.

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

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320-135 Taxable income and tax loss of each of the 2 classes

(1) Subject to the other provisions in this Subdivision:

(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 class

(1) A *life insurance company's taxable income of the ***complying superannuation 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

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

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(c) *tax losses of the company that are of the *complying superannuation 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).

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 assets in relation to the period during which those assets were complying superannuation 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 asset pool under subsection 320-185(3);

(c) if an asset (other than money) is transferred by the company from a complying superannuation 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.

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

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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;

(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 covered by subsection (3A) 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 covered by subsection (3A) 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:

$$\text{Total amount credited to the *RSA during the income year} \times \frac{\text{Number of days in the part of the income year in which the *annuity covered by subsection (3A) was paid}}{\text{Number of days in the income year in which the RSA existed}}$$

(3A) An *annuity is covered by this subsection if it is a *superannuation income stream that is in the *retirement phase.

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 assets in relation to the period

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

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during which those assets were complying superannuation 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).

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 class

Working out a tax loss of the complying superannuation class

(1) A *life insurance company's *tax loss of the ***complying superannuation 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 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 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 class

(2) A *life insurance company's *tax loss of the ***complying superannuation class*** can be deducted under this Act only from:

(a) *net exempt income of the company that is attributable to *exempt income *derived:

(i) from the company's *complying superannuation assets; and

(ii) in relation to the period during which those assets were complying superannuation 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 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 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 assets; and

(ii) in relation to the period during which those assets were complying superannuation 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 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

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

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section 36-55. But its tax loss of the complying superannuation 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 class of its taxable income and tax loss are unaffected by that Subdivision.

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.

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

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(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.

Subdivision 320-F—Complying superannuation 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 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 asset pool
320-175 Valuations of complying superannuation assets and complying superannuation liabilities for each valuation time
320-180 Consequences of a valuation under section 320-175
320-185 Transfer of assets to complying superannuation asset pool otherwise than as a result of a valuation under section 320-175
320-190 Complying superannuation liabilities
320-195 Transfer of assets and payment of amounts from a complying superannuation asset pool otherwise than as a result of a valuation under section 320-175
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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Operative provisions

320-170 Establishment of complying superannuation 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 liabilities out of those assets.

(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 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 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 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 liabilities.

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

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(6) The assets from time to time segregated are together to be known as the ***complying superannuation asset pool*** and each asset from time to time included among those assets is to be known as a ***complying superannuation asset***.

(7) In this Subdivision:

(a) a reference to the transfer of an asset to, or from, the *complying superannuation 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

(ii) includes a reference to the transfer of money to, or from, the complying superannuation asset pool, as the case may be; and

(b) if an asset transferred to or from the complying superannuation 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 assets and complying superannuation liabilities for each valuation time

(1) A *life insurance company that has established a *complying superannuation 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 assets as at the valuation time;

(b) the company's *complying superannuation 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 *complying superannuation asset pool was established;

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

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(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*.

320-180 Consequences of a valuation under section 320-175

Transfer from the complying superannuation asset pool

(1) If the total *transfer value of the company's *complying superannuation assets as at a *valuation time exceeds the sum of:

(a) the company's *complying superannuation 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 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 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*.

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

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Transfer to the complying superannuation asset pool

(3) If the total *transfer value of the company's *complying superannuation assets as at a *valuation time is less than the sum of:

(a) the company's *complying superannuation 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 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 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 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 assets as at that time is less than the sum of:

(a) the company's *complying superannuation 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 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 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 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 year for the purchase of *complying superannuation life insurance policies.

(4) Except as provided by this section and subsections 320-180(3) and 320-250(1A), a *life insurance company cannot transfer an asset to a *complying superannuation asset pool.

320-190 Complying superannuation liabilities

(1) The amount of the *complying superannuation 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 life insurance policies; and

(b) the liabilities under which are to be discharged out of the company's *complying superannuation assets.

(2) The amount of the ***complying superannuation 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

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

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(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 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);

the company can transfer from a *complying superannuation 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 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 assets; or

(b) imposes any fees or charges in respect of *complying superannuation 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 asset pool; or

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

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(c) determines, at a time other than a *valuation time, that the total *transfer value of the company's complying superannuation assets as at that time exceeds the sum of:

(i) the company's *complying superannuation 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 asset pool, assets having a total transfer value equal to the fees, charges or excess, as the case may be.

(4) If:

(a) any liabilities arise for the discharge of which a *life insurance company's *complying superannuation asset pool is established; or

(b) any expenses are incurred by a life insurance company directly in respect of *complying superannuation assets in relation to a period during which the assets are complying superannuation assets; or

(c) any liabilities to pay *PAYG instalments, or income tax, that are attributable to the company's *complying superannuation assets;

the life insurance company must pay, from the complying superannuation 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 asset pool

(1) This section applies if:

(a) an asset (other than money) is transferred from a *complying superannuation asset pool under subsection 320-180(1) or 320-195(2) or (3); or

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

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(b) an asset (other than money) is transferred to a complying superannuation 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:

(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

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

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(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 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.

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

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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.

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

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(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.

(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.

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

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(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*.

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*.

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

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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.

(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.

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

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(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.

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:

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

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(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.

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 *RP superannuation income stream benefits of 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 *RP superannuation income stream benefits of 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

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

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(ii) is a *superannuation income stream that is in the *retirement phase; or

(iii) satisfies whichever of the conditions in subsection (3) are applicable; or

(ea) that provides for an *annuity that:

(i) is *not* an *immediate annuity; and

(ii) is a superannuation income stream that is in the retirement phase; 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.

(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 *Income Tax Assessment Act 1936*) 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).

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Annuity conditions		
Item	**Column 1** **The condition in column 2 applies in the following circumstances ...**	**Column 2** **The condition is that ...**
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 (***commutation payments***) 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.

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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: (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 *RP superannuation income stream benefits of 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:

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

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(a) the part provides solely for the discharge of liabilities that are attributable to the liabilities (contingent or not) in respect of *superannuation income stream benefits that are currently *RP superannuation income stream benefits of *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

(1A) If:

(a) a *life insurance policy issued by a *life insurance company becomes a policy referred to in subsection 320-190(1); and

(b) immediately before the policy became a policy referred to in subsection 320-190(1), the policy was an *exempt life insurance policy;

the company can transfer from its *segregated exempt assets, to a *complying superannuation asset pool, assets of any kind whose total *transfer value does not exceed the company's liabilities in respect of the policy.

(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.

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

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(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.

(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(1A), (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.

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

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(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.

(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

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

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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

(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:

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

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(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.

(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

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

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(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 (Transfer and Restructure) Act 1999*.

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

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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 (Transfer and 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 *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.

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

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320-315 Complying superannuation asset pool and segregated exempt assets

(1) Assets that were *complying superannuation assets of the originating company just before the transfer took place and that are transferred to the recipient company become complying superannuation 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 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 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.

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

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(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.

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

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

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(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 originating company's assessable income under that section for that year if the transfer had not taken place.

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

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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.

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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.

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

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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:

(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;

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

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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.

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.

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

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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:

(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

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

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(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.

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.

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

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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

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

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

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(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 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.

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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

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

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(b) FAI General Insurance Company Limited; or
(c) FAI Reinsurances Pty Limited; or
(d) FAI Traders Insurance Company Pty Limited; or
(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.

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

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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.

Table of sections

Operative provisions

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*.

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

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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 section 62ZZF, 62ZZFA, 62ZZG or 62ZZGA 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.

Note 2: Sections 62ZZF, 62ZZFA, 62ZZG and 62ZZGA of the *Insurance Act 1973* entitle 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.

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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
328-F Small business income tax offset
328-G Restructures of small businesses

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).

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

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In usual circumstances, these changes will simplify the working out of your taxable income, and so reduce your compliance costs.

You may be entitled to a tax offset for any small business income included in your assessable income, if you are an individual (Subdivision 328-F).

Table of sections

328-10 Concessions available to small business entities

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
1A	Immediate deductibility for small business start-up expenses	Subsection 40-880(2A) of this Act
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
6A	Small business income tax offset	Subdivision 328-F of this Act

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

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Item	Concession	Provision
6B	Restructures of small businesses	Subdivision 328-G of this Act
7	Deducting certain prepaid business expenses immediately	Sections 82KZM and 82KZMD of the *Income Tax Assessment Act 1936*
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 *Fringe Benefits Tax Assessment Act 1986*
12	PAYG instalments based on GDP-adjusted notional tax	Section 45-130 in Schedule 1 to the *Taxation Administration Act 1953*

Note 1: The CGT concessions mentioned in items 1, 2, 3 and 4 of the table apply only if you are a CGT small business entity (see section 152-10).

Note 2: The small business income tax offset mentioned in item 6A of the table applies only if you are a small business entity as defined for the purposes of Subdivision 328-F (see section 328-357).

(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*).

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

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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

Operative provisions

328-110 Meaning of ***small business entity***
328-115 Meaning of ***aggregated turnover***
328-120 Meaning of ***annual turnover***

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

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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 $10 million;

(ii) your aggregated turnover for the current year is likely to be less than $10 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.

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.

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

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Exception: aggregated turnover for 2 previous income years was $10 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 $10 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 $10 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 consumption (without entering them for that purpose) in respect of a calendar month: see section 69 of that Act.

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

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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.

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(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.

Note 1: See Subdivision 106-B if a CGT asset of yours is vested in a trustee in bankruptcy or a liquidator.

Note 2: See Subdivision 106-C if you are absolutely entitled to a CGT asset as against the trustee of a trust.

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

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Note 3: See Subdivision 106-D if you provided security over an asset to another 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—own, or have the right to acquire the ownership of, interests in the other entity that carry between them the right 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—own, or have the right to acquire the 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

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

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(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.

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;

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

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(e) a company (other than one covered by paragraph (a)) all the shares in which are 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.

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, or the company and a director of that company, would be in a similar position.

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

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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%.

There is a deduction for assets whose cost is less than $1,000 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.

*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.

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

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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.

(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.

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

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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.

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: second-hand assets used in residential property

(9A) You cannot deduct amounts for a *depreciating asset under this Subdivision to the extent that section 40-27 prevents you from deducting amounts under subsection 40-25(1) for the asset.

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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.

Note 3: Subsections 328-180(2) and (3) of the *Income Tax (Transitional Provisions) Act 1997* affect the operation of this subsection in relation to income years ending on or after 12 May 2015.

328-180 Assets costing less than $1,000

(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 installed ready for use, for a taxable purpose is less than $1,000.

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

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Note: This threshold may be $20,000, $25,000 or $30,000 for assets you first acquire between 12 May 2015 and 30 June 2020: see subsection 328-180(4) of the *Income Tax (Transitional Provisions) Act 1997*.

(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 $1,000; and

Note: This threshold is $20,000, $25,000 or $30,000 for costs included between 12 May 2015 and 30 June 2020: see subsection 328-180(5) of the *Income Tax (Transitional Provisions) Act 1997*.

(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 $1,000 or more is included in the second element of the asset's *cost; or

Note: This threshold is $20,000, $25,000 or $30,000 for costs included between 12 May 2015 and 30 June 2020: see subsection 328-180(5) of the *Income Tax (Transitional Provisions) Act 1997*.

(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.

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

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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.

(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.

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

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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.

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:

*Opening pool balance × 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.

(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

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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.

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

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

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*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:

(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

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(c) your deductions under subsection 328-190(2) 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.

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.

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

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(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).

(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

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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% 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 $1,000 but more than zero.

Note 1: See section 328-215 for the result when the amount is less than zero.

Note 2: This threshold is $20,000, $25,000 or $30,000 for income years ending on or after 12 May 2015 and on or before 30 June 2020: see subsection 328-180(6) of the *Income Tax (Transitional Provisions) Act 1997*.

(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.

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(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 2014-15 income year and chooses to use this Subdivision for that year. The business has an opening pool balance of $8,500 for its general small business pool for that year.

During that year, Amanda acquired a new computer for $2,000. The taxable purpose proportion of its adjustable value is:

$2,000 x 80% business use estimate = $1,600

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:

$8,500 + $1,600 - $9,600 = $500

Because the result is less than $1,000, Amanda can deduct the $500 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

(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 $1,000), you

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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.

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.

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

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(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 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

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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:

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.

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

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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.

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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 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, 3 or 8 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

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

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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

(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

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

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(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 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 $1,000) or subsection 328-190(2) (assets that will be pooled) 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.

Note: Instead of $1,000, the threshold in subsection 328-180(1) may be $20,000, $25,000 or $30,000 for assets first acquired between 12 May 2015 and 30 June 2020: see subsection 328-180(4) of the *Income Tax (Transitional Provisions) Act 1997*.

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) or 328-190(2) for the asset for the BAE year is split equally between:

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

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(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) or 328-190(2) for the asset 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 (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 $1,000

(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.

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

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Note: Instead of $1,000, the threshold in subsection 328-180(1) may be $20,000, $25,000 or $30,000 for assets first acquired between 12 May 2015 and 30 June 2020: see subsection 328-180(4) of the *Income Tax (Transitional Provisions) Act 1997*.

(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.

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

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

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and a roll-over is chosen for each occurrence—split equally between the entities concerned.

Special rule for expenditure on assets costing less than $1,000

(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.

Note: Instead of $1,000, the threshold in subsection 328-180(1) may be $20,000, $25,000 or $30,000 for assets first acquired between 12 May 2015 and 30 June 2020: see subsection 328-180(4) of the *Income Tax (Transitional Provisions) Act 1997*.

(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

(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.

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

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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.

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.

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

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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:

(a) special valuation rules may be used, for example, obsolete stock, natural increase of live stock, horse breeding stock; and

(b) 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).

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:

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

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(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.

Subdivision 328-F—Small business income tax offset

Guide to Subdivision 328-F

328-350 What this Subdivision is about

You may be entitled to a tax offset if you are an individual:

(a) who is a small business entity; or

(b) whose assessable income includes a share of the net small business income of an unincorporated small business entity; or

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

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(c) whose assessable income includes an amount because you are a partner in a partnership, or a beneficiary in a trust, that is a small business entity.

In working out whether you are or another entity is a small business entity, a special $5 million turnover threshold applies (see section 328-357).

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Operative provisions

328-355 Entitlement to the small business income tax offset

You are entitled to a *tax offset for an income year if you are an individual:

(a) who is a *small business entity for the income year; or

(b) whose assessable income for the income year includes an amount that is a share of the *net small business income, for the income year, of a small business entity that is not a *corporate tax entity; or

(c) whose assessable income for the income year includes an amount that:

(i) would not have been so included if you had not been a partner in a partnership, or a beneficiary in a trust, that is a small business entity for the income year; and

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

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(ii) is not included in the partnership's or trust's assessable income for an income year; and

(iii) would have formed part of the partnership's or trust's net small business income for an income year if the amount were included in the partnership's or trust's assessable income for an income year.

Note: This section does not apply to an individual in his or her capacity as the trustee of a trust (see subsection 960-100(4)).

328-357 Special meaning of *small business entity* for the purposes of this Subdivision—$5 million turnover threshold

For the purposes of this Subdivision, in working out whether you are a *small business entity for an income year, assume that each reference in section 328-110 to $10 million were a reference to $5 million.

328-360 Amount of your tax offset

(1) The amount of your *tax offset is equal to 8% of the following:

$$\frac{\text{Your total net small business income for the income year}}{\text{Your taxable income for the income year}} \times \text{Your basic income tax liability for the income year}$$

where:

your total net small business income for the income year means so much of the sum of the following as does not exceed your taxable income for the income year:

(a) your *net small business income for the income year, if you are a *small business entity for the income year;

(b) an amount referred to in paragraph 328-355(b) or (c) that is included in your assessable income for the income year, reduced (but not below zero) by your deductions to the extent that they are attributable to that amount and covered by section 328-370.

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

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Note: If you are under 18 years old, your total net small business income will probably be worked out under section 328-375.

(2) However, the amount of your *tax offset is $1,000 if the amount worked out under subsection (1) exceeds $1,000.

Note: Your tax offset is capped at $1,000 regardless of the number of small business entities that cause you to be entitled to the tax offset for the income year.

328-365 *Net small business income*

(1) A *small business entity's ***net small business income*** for an income year is the result of:

(a) working out the entity's assessable income for the income year to the extent that it relates to the entity carrying on a *business, but disregarding:

(i) any *net capital gain; and

(ii) any *personal services income not produced from conducting a *personal services business; and

(b) subtracting the entity's deductions to the extent that they are attributable to that assessable income and covered by section 328-370.

(2) However, the entity's ***net small business income*** for the income year is zero if that result is less than zero.

328-370 Relevant attributable deductions

For the purposes of this Subdivision, this section covers all attributable deductions other than any under:

(a) section 25-5 (about tax-related expenses); or

(b) Division 30 (about gifts or contributions); or

(c) Subdivision 290-C (about personal superannuation contributions).

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

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328-375 Modification if you are under 18 years old

(1) Despite subsection 328-360(1), your total net small business income for the income year is worked out under this section if you are a prescribed person (within the meaning of section 102AC of the *Income Tax Assessment Act 1936*) for the income year.

(2) ***Your total net small business income for the income year*** is the result of:

(a) working out your business income (within the meaning of subsection 102AE(5) of that Act) for the income year to the extent that it relates to you carrying on:

(i) a *business as a *small business entity for the income year; or

(ii) a business as a partner in a partnership, if the partnership is a small business entity for the income year; and

(b) subtracting your deductions, and each partnership's deductions, to the extent that they are attributable to that business income and covered by section 328-370.

(3) However, ***your total net small business income for the income year*** is:

(a) zero if that result is less than zero; or

(b) equal to your taxable income for the income year if that result exceeds that taxable income.

Subdivision 328-G—Restructures of small businesses

Guide to Subdivision 328-G

328-420 What this Subdivision is about

There are tax-neutral consequences for a small business entity that restructures the ownership of the assets of the business, without changing the ultimate economic ownership of the assets.

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

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Object of this Subdivision

328-425 Object of this Subdivision

The object of this Subdivision is to facilitate flexibility for owners of small business entities to restructure their businesses, and the way their business assets are held, while disregarding tax gains and losses that would otherwise arise.

Requirements for a roll-over under this Subdivision

328-430 When a roll-over is available

(1) A roll-over under this Subdivision is available in relation to an asset that, under a transaction, an entity (the ***transferor***) transfers to one or more other entities (***transferees***) if:

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

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(a) the transaction is, or is a part of, a genuine restructure of an ongoing *business; and

(b) each party to the transfer is an entity to which any one or more of the following applies:

(i) it is a *small business entity for the income year during which the transfer occurred;

(ii) it has an *affiliate that is a small business entity for that income year;

(iii) it is *connected with an entity that is a small business entity for that income year;

(iv) it is a partner in a partnership that is a small business entity for that income year; and

(c) the transaction does not have the effect of materially changing:

(i) which individual has, or which individuals have, the ultimate economic ownership of the asset; and

(ii) if there is more than one such individual—each such individual's share of that ultimate economic ownership; and

(d) the asset is a *CGT asset (other than a *depreciating asset) that is, at the time the transfer takes effect:

(i) if subparagraph (b)(i) applies—an *active asset; or

(ii) if subparagraph (b)(ii) or (iii) applies—an active asset in relation to which subsection 152-10(1A) is satisfied in that income year; or

(iii) if subparagraph (b)(iv) applies—an active asset and an interest in an asset of the partnership referred to in that subparagraph; and

(e) the transferor and each transferee meet the residency requirement in section 328-445 for an entity; and

(f) the transferor and each transferee choose to apply a roll-over under this Subdivision in relation to the assets transferred under the transaction.

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

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Note: The roll-over of a depreciating asset transferred in the restructuring of a small business is addressed in item 8 of the table in subsection 40-340(1).

(2) However, a roll-over under this Subdivision is not available if the transferor, or any transferee, is either an *exempt entity or a *complying superannuation entity.

328-435 Genuine restructures—safe harbour rule

For the purposes of paragraph 328-430(1)(a) (but without limiting that paragraph), a transaction is, or is a part of, a genuine restructure of an ongoing *business if, in the 3 year period after the transaction takes effect:

(a) there is no change in ultimate economic ownership of any of the significant assets of the business (other than *trading stock) that were transferred under the transaction; and

(b) those significant assets continue to be *active assets; and

(c) there is no significant or material use of those significant assets for private purposes.

328-440 Ultimate economic ownership—discretionary trusts

For the purposes of paragraph 328-430(1)(c), a transaction does not have the effect of changing the ultimate economic ownership of an asset, or any individual's share of that ultimate economic ownership, if:

(a) either or both of the following applies:

(i) just before the transaction took effect, the asset was included in the property of a *non-fixed trust that was a *family trust;

(ii) just after the transaction takes effect, the asset is included in the property of a non-fixed trust that is a family trust; and

(b) every individual who, just before the transfer took effect, had the ultimate economic ownership of the asset was a member of the family group (within the meaning of Schedule 2F to

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

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the *Income Tax Assessment Act 1936*) relating to the trust or trusts referred to in paragraph (a); and

(c) every individual who, just after the transfer takes effect, has the ultimate economic ownership of the asset is a member of that family group.

328-445 Residency requirement

For the purposes of paragraph 328-430(1)(e), the residency requirement for an entity is that:

(a) if the entity is an individual or a company—the entity is an Australian resident; or

(b) if the entity is a trust—it is a *resident trust for CGT purposes; or

(c) if the entity is a partnership (other than a *corporate limited partnership)—at least one of the partners is an Australian resident; or

(d) if the entity is a corporate limited partnership—it is, under section 94T of the *Income Tax Assessment Act 1936*, a resident for the purposes of the *income tax law.

Consequences of a roll-over under this Subdivision

328-450 Small business transfers not to affect income tax positions

(1) Except as provided by this Subdivision, a transfer of an asset has no direct consequences under the *income tax law if:

(a) the transfer occurs under a transaction in relation to which section 328-430 applies; and

(b) a roll-over under this Subdivision is available under that section in relation to the asset.

Example: If the transfer were a transfer of the asset from a company to a shareholder, it would not be treated as a payment of a dividend under Division 7A of Part III of the *Income Tax Assessment Act 1936*.

(2) To avoid doubt, this section does not affect the application of the *income tax law in relation to:

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

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(a) anything that happens in relation to the asset that does not directly relate to the transfer; or
(b) the ownership of the asset at any time.

328-455 Effect of small business restructures on transferred cost of assets

(1) The *income tax law applies to an entity in relation to the transfer of an asset by the entity, or to the entity, as if the transfer takes place for the asset's *roll-over cost if:
(a) the transfer occurs under a transaction in relation to which section 328-430 applies; and
(b) a roll-over under this Subdivision is available under that section in relation to the asset.

(2) The asset's ***roll-over cost*** is whichever of the following amounts is applicable in relation to the transfer:
(a) in relation to the application of subsection (1) to the asset as a *CGT asset (other than *trading stock, a *revenue asset or a *depreciating asset)—the transferor's *cost base for the asset just before the transfer takes effect;
(b) in relation to the application of subsection (1) to the asset as trading stock—the amount equal to:
(i) the *cost of the item for the transferor; or
(ii) if the transferor held the item as trading stock at the start of the income year—the *value of the item for the transferor then;
(c) in relation to the application of subsection (1) to the asset as a revenue asset—the amount that would give rise to the transferor not making a profit or a loss on the transfer.

328-460 Effect of small business restructures on acquisition times of pre-CGT assets

For the purposes of applying subsection 328-455(1) to the asset as a *CGT asset (other than a *revenue asset) that is a *pre-CGT asset,

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

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a transferee is taken to have *acquired the asset before 20 September 1985.

328-465 New membership interests as consideration for transfer of assets

(1) If:

(a) section 328-455 applies in relation to the transfer of an asset under a transaction; and

(b) the transaction provides for *membership interests to be issued; and

(c) the membership interests constitute all or part of the consideration provided for the transfer of assets (***transferred assets***) under the transaction;

then:

(d) the first element of the membership interests' *cost base is the sum of:

(i) the *roll-over costs of the transferred assets that are neither *depreciating assets nor *pre-CGT assets; and

(ii) the *adjustable values of the transferred assets that are depreciating assets;

(less any liabilities that a transferee of any of the transferred assets undertakes to discharge in respect of the transferred assets) divided by the number of membership interests; and

(e) the first element of the membership interests' *reduced cost base is worked out similarly.

(2) However, if the *membership interests constituted only a part of the total consideration provided for the transfer of the transferred assets, reduce accordingly the amounts worked out under paragraphs (1)(d) and (e).

328-470 Membership interests affected by transfers of assets

If:

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

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(a) section 328-455 applies in relation to the transfer of an asset under a transaction; and

(b) an entity holds, either directly or indirectly:

(i) a *membership interest in the transferor or a transferee; or

(ii) a membership interest that was issued as provided for by the transaction;

disregard a *capital loss from a *CGT event that arises in relation to the membership interest after the transaction takes effect, except to the extent that the entity can demonstrate that the loss is attributable to a matter other than the transaction.

328-475 Small business restructures involving assets already subject to small business roll-over

If:

(a) section 328-455 applies in relation to the transfer of an asset (the ***transferred asset***) of the transferor's business to one or more transferees; and

(b) the transferor has previously chosen a small business roll-over under Subdivision 152-E for a *CGT event that happened in relation to a *CGT asset for which the transferred asset is a replacement asset (within the meaning of sections 104-185, 104-190, 104-197 and 104-198);

sections 104-185, 104-190, 104-197 and 104-198 apply to each transferee (to the extent of the transferee's interest in the asset) as if the transferee, and not the transferor, made that choice.

Note: Sections 104-185, 104-190, 104-197 and 104-198 provide for capital gains to arise under CGT events J2, J5 and J6, after the choice of a small business roll-over under Subdivision 152-E has deferred the making of a capital gain.

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

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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.

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

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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.

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

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355-20 *R&D activities*
355-25 *Core R&D activities*
355-30 *Supporting R&D activities*
355-35 *R&D entities*

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

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355-20 *R&D activities*

R&D activities are *core R&D activities or *supporting R&D activities.

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;

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

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(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
(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.

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

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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

(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 between $20,000 and $100 million

(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);

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

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(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).

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)	43.5%
2	at any time during the income year 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	38.5%
3	any other case	38.5%

Note: The tax offset will be a refundable tax offset if the percentage applicable to the entity is 43.5% (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):

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

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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 *Industry Research and Development Act 1986*) 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
2	Expenditure that the *R&D entity can deduct under section 355-580 (CRC contributions) for the income year

If notional deductions exceed $100 million

(3) Despite subsection (1), if the total of those amounts exceeds $100 million, the *R&D entity is instead entitled to a *tax offset for the income year equal to the sum of:

(a) that percentage of $100 million; and

(b) the product of the excess and the *corporate tax rate.

Note: The R&D entity may be able to reduce related amounts that would otherwise be:

(a) included in its assessable income because of a balancing, or feedstock, adjustment; or

(b) payable as extra income tax because of an R&D recoupment;

(see section 355-720).

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

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

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(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.

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;

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

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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.

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

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

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(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;

(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

(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:

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

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(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

(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; and

(ii) the other parts being conducted for the R&D entity outside Australia 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.

(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.

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;

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

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(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; 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;

(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; 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) when the R&D activity is conducted:

(i) each foreign resident is *connected with the R&D entity; or

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

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(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.

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

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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

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

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(b) the R&D activities were or are an extension, continuation, development or completion of the activities that produced that technology.

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

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

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(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

(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)

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

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Replacing references to a taxable purpose		
Item	**If this application of Division 40 is for the purposes of:**	**Substitute a reference to:**
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.

(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:

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

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(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

(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.

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

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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:

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

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

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(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: For the purposes of a deduction under section 355-305 or 355-520 for an asset's decline in value, the arm's length rules in Division 40 apply as part of the notional application of that Division under that section.

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;

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

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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.

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;

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

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(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;

(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:

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

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(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:

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:

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

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(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.

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)).

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

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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.

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;

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

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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).

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.

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

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Subdivision 355-H—Feedstock adjustments

Table of sections

355-460 What this Subdivision is about
355-465 Feedstock adjustment to assessable income
355-470 *Feedstock revenue*
355-475 Application to connected entities and affiliates

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

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

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(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.

(2) The *R&D entity's assessable income for the present year includes an amount equal to 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

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

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(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

(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

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

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(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*).

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).

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

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Subdivision 355-J—Application to R&D partnerships

Table of sections

355-500 What this Subdivision is about
355-505 Meaning of *R&D partnership* and *partner's proportion*
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
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

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

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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:

(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:

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

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(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

(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

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

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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

(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

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

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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

(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*).

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

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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:

$$\text{Adjusted section 40-285 amount} \times \frac{1}{3}$$

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).

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

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Amount to be included in assessable income may be reduced if notional deductions exceeded $100 million

(4) For the purposes of subsection (3), the partner may choose to reduce the adjusted section 40-285 amount in that subsection if:
  (a) subsection 355-100(3) applied to the partner for an earlier income year or the event year (the ***excess year***); and
  (b) the partner's deductions for the excess year included deductions covered by paragraph (1)(c) of this section for the asset.

(5) Subsection 355-720(3) applies to the partner as if a reduction under subsection (2) of that section for the present year included a reduction under subsection (4) of this section for the event year.

(6) The way the partner prepares its income tax returns is sufficient evidence of the making of a choice under subsection (4).

(7) A choice under subsection (4) is irrevocable.

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

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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.

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

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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.

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

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

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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*).

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:

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(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

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355-705 Effect of findings by Innovation and Science Australia
355-710 Amendment of assessments
355-715 Implications for other deductions and tax offsets
355-720 Certain related amounts may be reduced if notional deductions exceeded $100 million
355-750 Review of rate when notional deductions exceed $100 million

355-705 Effect of findings by Innovation and Science 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);

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the finding binds the Commissioner for the purposes of assessments of the R&D entity for the income year or years (as appropriate).

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 and Science 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 and Science 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.

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

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355-710 Amendment of assessments

Dealing with findings of Innovation and Science Australia

(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 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 and Science 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

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(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
  (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:

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(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)).

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.

355-720 Certain related amounts may be reduced if notional deductions exceeded $100 million

(1) The object of this section is to prevent the portion of a *tax offset worked out using the *corporate tax rate being clawed back in later income years.

Note: This applies when the R&D entity's notional deductions exceed $100 million (see subsection 355-100(3)).

(2) For the purposes of working out a matter referred to in column 1 of an item of this table for an income year (the ***present year***), the *R&D entity may choose to reduce the amount referred to in column 3 of that item if:

(a) subsection 355-100(3) applied to the R&D entity for an earlier income year or the present year (the ***excess year***); and

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(b) the R&D entity's deductions for the excess year included deductions covered by a provision referred to in column 2 of that item.

Reducing extra income tax or amounts included in assessable income

Item	Column 1 **For the purposes of working out this matter:**	Column 2 **If its excess year deductions included those covered by:**	Column 3 **This can be reduced:**
1	any amount to include in the *R&D entity's assessable income for the present year because of a *balancing adjustment event happening for an asset it *held	(a) paragraph 40-292(1)(b); or (b) paragraph 355-315(1)(c); for the asset	its adjusted section 40-285 amount (see subsection 40-292(5) or 355-315(3)) for the present year, the asset and the *balancing adjustment event
2	any amount of extra income tax payable by the *R&D entity under section 355-435 for the present year	subsection 355-450(1)	those excess year deductions
3	any amount to include in the *R&D entity's assessable income for the present year under section 355-465	paragraph 355-465(1)(b)	those excess year deductions

Note 1: Item 2 is about R&D recoupments and item 3 is about feedstock adjustments.

Note 2: Reducing the amount in column 3 will reduce the amount in column 1.

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(3) The *R&D entity's circumstances may allow it to choose multiple reductions under subsection (2) for the present year. The total of any reductions cannot be more than the amount of its excess under subsection 355-100(3) for the excess year.

(4) The way an *R&D entity prepares its income tax returns is sufficient evidence of the making of a choice under this section.

(5) A choice under this section is irrevocable.

355-750 Review of rate when notional deductions exceed $100 million

(1) The Minister must cause a review of the operation of subsection 355-100(3) (about the rate of tax offset when notional deductions exceed $100 million) to be undertaken as soon as possible after the fifth anniversary of the commencement of that subsection.

(2) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of receiving it.

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Division 360—Early stage investors in innovation companies

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Subdivision 360-A—Tax incentives for early stage investors in innovation companies

Guide to Subdivision 360-A

360-5 What this Subdivision is about

You may be entitled to a tax offset if you are, or a trust or partnership of which you are a member is, issued with certain kinds of equity interests in a small Australian company with high-growth potential that is engaging in innovative activities.

A modified CGT treatment may also apply to those equity interests.

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360-15 Entitlement to the tax offset
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360-25 Amount of the tax offset—general case
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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Operative provisions

360-10 Object of this Subdivision

The object of this Subdivision is to encourage new investment in small Australian innovation companies with high-growth potential by providing qualifying investors with a tax offset and a modified CGT treatment.

360-15 Entitlement to the tax offset

General case

(1) You are entitled to a *tax offset for an income year if:

(a) you are none of the following:

(i) a trust or a partnership;

(ii) a *widely held company or a *100% subsidiary of a widely held company; and

(b) at a particular time during the income year, a company issues you with *equity interests that are *shares in the company; and

(c) subsection 360-40(1) (about early stage innovation companies) applies to the company immediately after that time; and

(d) neither you nor the company is an *affiliate of each other at that time; and

(e) the issue of those shares is not an *acquisition of *ESS interests under an *employee share scheme; and

(f) immediately after that time, you do not hold more than 30% of the equity interests in the company or in an entity *connected with the company.

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Members of trusts or partnerships

(2) A *member of a trust or partnership at the end of an income year is entitled to a *tax offset for the income year if the trust or partnership would be entitled to a tax offset, under subsection (1), for the income year if the trust or partnership were an individual.

Trustees

(3) A trustee of a trust is entitled to a *tax offset for an income year if:
   (a) the trustee would be entitled to a tax offset, under subsection (1), for the income year if the trustee were an individual; and
   (b) the trustee is liable to be assessed or has been assessed, and is liable to pay *tax, 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 income year.

360-20 Limited entitlement for certain kinds of investors

(1) You do not satisfy paragraph 360-15(1)(b) if:
   (a) for each offer resulting in *equity interests that are *shares in the company being issued to you during the income year, none of subsections 708(8), (10) or (11) of the *Corporations Act 2001* removed the need for a disclosure document; and
   (b) a total of more than $50,000 was paid for the issue to you of the shares resulting from all of those offers.

(2) For the purposes of this section, assume that Chapter 6D of the *Corporations Act 2001* applies to those offers.

360-25 Amount of the tax offset—general case

(1) If subsection 360-15(1) applies, the amount of the *tax offset is 20% of the total amount paid for the *shares to which paragraph 360-15(1)(b) applies.

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Note: If subsection 360-15(1) applies for shares issued to you at several times during the income year, then this subsection uses the total amount paid for all of those shares.

(2) However, reduce this amount to the extent necessary to ensure that the sum of the following does not exceed $200,000:

(a) the sum of the *tax offsets under this Subdivision for the income year for which you and your *affiliates (if any) are entitled;

(b) the sum of the tax offsets under this Subdivision that you and your affiliates (if any) carry forward to the income year.

360-30 Amount of the tax offset—members of trusts or partnerships

(1) If subsection 360-15(2) applies, the amount of the *member's *tax offset for the income year is as follows:

Determined share of notional tax offset × Notional tax offset amount

where:

determined share of notional tax offset is the percentage determined under subsection (2) for the *member.

notional tax offset amount is what would, under section 360-25, have been the amount of the trust's or partnership's *tax offset (the ***notional tax offset***) if the trust or partnership had been an individual.

(2) The trustee or partnership may determine the percentage of the notional tax offset that is the *member's share of the notional tax offset.

(3) If the *member would be entitled to a fixed proportion of any *capital gain from a *disposal were the disposal to happen in relation to the trust or partnership at the end of the income year, then:

(a) the percentage determined under subsection (2) must be equivalent to that fixed proportion; and

(b) a determination of any other percentage has no effect.

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(4) The trustee or partnership must give the *member written notice of the determination. The notice:

(a) must enable the member to work out the amount of the member's *tax offset by including enough information to enable the member to work out the member's share of the notional tax offset; and

(b) must be given to the member within 3 months after the end of the income year, or within such further time as the Commissioner allows.

(5) The sum of all the percentages determined under subsection (2) in relation to the *members of the trust or partnership must not exceed 100%.

360-35 Amount of the tax offset—trustees

If subsection 360-15(3) applies, the amount of the *tax offset is the difference between:

(a) what would, under section 360-25, have been the amount of the tax offset to which the trustee would have been entitled if the trustee had been an individual; and

(b) if *members of the trust are entitled to tax offsets under subsection 360-15(2) arising from the same *shares to which the trustee's entitlement arises under subsection 360-15(3)—the sum of the amounts, under section 360-30, of those tax offsets.

360-40 Early stage innovation companies

(1) This subsection applies to a company at a particular time (the ***test time***) in an income year (the ***current year***) if:

(a) the company was:

(i) incorporated in Australia within the last 3 income years (the latest being the current year); or

(ii) incorporated in Australia within the last 6 income years (the latest being the current year), and across the last 3

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of those income years it and its *100% subsidiaries (if any) incurred total expenses of $1 million or less; or

(iii) registered in the *Australian Business Register within the last 3 income years (the latest being the current year); and

(b) the company and its 100% subsidiaries (if any) incurred total expenses of $1 million or less in the income year before the current year; and

(c) the company and its 100% subsidiaries (if any) had a total assessable income of $200,000 or less in the income year before the current year; and

(d) at the test time, none of the company's *equity interests are listed for quotation in the official list of any stock exchange in Australia or a foreign country; and

(e) at the test time, the company has at least 100 points under section 360-45, or:

(i) the company is genuinely focussed on developing for commercialisation one or more new, or significantly improved, products, processes, services or marketing or organisational methods; and

(ii) the business relating to those products, processes, services or methods has a high growth potential; and

(iii) the company can demonstrate that it has the potential to be able to successfully scale that business; and

(iv) the company can demonstrate that it has the potential to be able to address a broader than local market, including global markets, through that business; and

(v) the company can demonstrate that it has the potential to be able to have competitive advantages for that business.

(2) For the purposes of paragraph (1)(c), disregard any Accelerating Commercialisation Grant under the program administered by the Commonwealth known as the Entrepreneurs' Programme.

(3) Subparagraphs (1)(e)(i) to (v) cannot be satisfied for:

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(a) a product, process, service or method; or

(b) an improvement to a product, process, service or method;

that is of a kind prescribed by regulations made for the purposes of this subsection.

(4) Subsection (1) does not apply to a company if, before the test time, the company engaged in an activity of a kind prescribed by regulations made for the purposes of this subsection.

360-45 100 point innovation test

(1) At a particular time (the ***test time***) in an income year (the ***current year***), a company has the points mentioned in an item of the following table if that item applies to the company at that time.

Innovation points potentially available at that time in the current year

	Column 1	Column 2
Item	**Points**	**Innovation criteria**
1	75	At least 50% of the company's total expenses for the previous income year is expenditure that the company can notionally deduct for that income year under section 355-205 (about R&D expenditure).
2	75	The company has received an Accelerating Commercialisation Grant under the program administered by the Commonwealth known as the Entrepreneurs' Programme.
3	50	At least 15%, but less than 50%, of the company's total expenses for the previous income year is expenditure that the company can notionally deduct for that income year under section 355-205 (about R&D expenditure).

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Innovation points potentially available at that time in the current year

	Column 1	Column 2
Item	**Points**	**Innovation criteria**
4	50	(a) the company has completed or is undertaking an accelerator program that: (i) provides time-limited support for entrepreneurs with start-up businesses; and (ii) is provided to entrepreneurs that are selected in an open, independent and competitive manner; and (b) the entity providing that program has been providing that, or other accelerator programs for entrepreneurs, for at least 6 months; and (c) such programs have been completed by at least one cohort of entrepreneurs.
5	50	(a) a total of at least $50,000 has been paid for *equity interests that are *shares in the company; and (b) the company issued those shares to one or more entities that: (i) were not *associates of the company immediately before the issue of those shares; and (ii) did not *acquire those shares primarily to assist another entity become entitled to a *tax offset (or a modified CGT treatment) under this Subdivision; and (c) the company issued those shares at least one day before the test time.
6	50	(a) the company has rights (including equitable rights) under a *Commonwealth law as: (i) the patentee, or a licensee, of a standard patent; or (ii) the owner, or a licensee, of a plant breeder's right; granted in Australia within the last 5 years (ending at the test time); or (b) the company has equivalent rights under a *foreign law.

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

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Innovation points potentially available at that time in the current year		
	Column 1	**Column 2**
Item	**Points**	**Innovation criteria**
7	25	Unless item 6 applies to the company at the test time: (a) the company has rights (including equitable rights) under a *Commonwealth law as: (i) the patentee, or a licensee, of an innovation patent granted and certified in Australia; or (ii) the owner, or a licensee, of a registered design registered in Australia; within the last 5 years (ending at the test time); or (b) the company has equivalent rights under a *foreign law.
8	25	The company has a written agreement with: (a) an institution or body listed in Schedule 1 to the *Higher Education Funding Act 1988* (about institutions or bodies eligible for special research assistance); or (b) an entity registered under section 29A of the *Industry Research and Development Act 1986* (about research service providers); to co-develop and commercialise a new, or significantly improved, product, process, service or marketing or organisational method.

(2) At the test time, the company also has the points prescribed by regulations made for the purposes of this subsection if the prescribed innovation criteria for those points apply to the company at that time.

360-50 Modified CGT treatment

(1) This section applies if the issuing of a *share to an entity gives rise to an entitlement to a *tax offset under this Subdivision.

Note: This section applies to any share that gives rise to the entitlement, regardless of whether subsection 360-25(2) reduces the amount of the tax offset.

(2) The entity is taken to hold the *share on capital account.

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(3) The entity must disregard any *capital loss it makes from any *CGT event happening in relation to the *share if:

(a) the entity has continuously held the share since its issue; and

(b) the CGT event happens before the tenth anniversary of the issue of the share.

(4) The entity may disregard any *capital gain it makes from any *CGT event happening in relation to the *share if:

(a) the entity has continuously held the share since its issue; and

(b) the CGT event happens on or after the first anniversary, but before the tenth anniversary, of the issue of the share.

(5) If the entity has continuously held the *share since its issue, the *first element of its *cost base and *reduced cost base becomes, on the tenth anniversary of its issue, its *market value on that anniversary.

360-55 Modified CGT treatment—partnerships

(1) The purpose of this section is to ensure that the modifications made by section 360-50 apply to each partner in a partnership in a case where the partnership is the entity that is issued with the *share mentioned in subsection 360-50(1).

(2) In such a case, subsections 360-50(2) to (4) apply as if:

(a) the first reference in those subsections to the entity were a reference to each partner in the partnership; and

(b) the first reference in those subsections to the *share were a reference to the partner's interest in the share.

Note: The references to the entity and the share in the paragraphs of subsections 360-50(3) and (4) continue to apply unchanged.

(3) In such a case, treat subsection 360-50(5) as if it read as follows:

"If the partnership has continuously held the *share since its issue, on the tenth anniversary of its issue:

(a) the *first element of the *cost base for a partner's interest in the share becomes so much of the share's *market value on

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

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that anniversary as is calculated by reference to the partnership agreement, or partnership law if there is no agreement; and

(b) the *first element of the *reduced cost base is worked out similarly.".

360-60 Modified CGT treatment—not affected by certain roll-overs

(1) The purpose of this section is to ensure that the modifications made by section 360-50 are not affected merely because of one or more *same-asset roll-overs or *replacement-asset roll-overs (other than roll-overs under Division 122 or Subdivision 124-M).

(2) If, apart from those roll-overs, the entity (the ***original entity***) mentioned in subsection 360-50(1) would continue to hold the *share (the ***original share***) mentioned in that subsection, then subsections 360-50(2) to (5) apply as if:

(a) the following asset were the original share:

(i) if the last roll-over is a *same-asset roll-over—the asset for the roll-over;

(ii) if the last roll-over is a *replacement-asset roll-over—the replacement asset for the roll-over; and

Note: The asset for subparagraph (i) will be the original share unless a replacement-asset roll-over happened beforehand.

(b) that asset was issued when the original share was issued; and

(c) the entity that *acquired that asset for the roll-over had continuously held that asset since the original share was issued; and

(d) that entity were the original entity; and

(e) in a case where that entity is a partnership—paragraphs (a) to (d) modify subsections 360-50(2) to (5) as they apply with the modifications in section 360-55; and

(f) in a case where that entity is not a partnership but the entity that owned the original asset for the roll-over is—paragraphs (a) to (d) modify subsections 360-50(2) to (5) as they apply without the modifications in section 360-55.

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Note: A roll-over under Division 122 (about wholly-owned companies) or Subdivision 124-M (about scrip for scrip roll-overs) will stop the modified CGT treatment under section 360-50 from continuing to apply.

360-65 Separate modified CGT treatment for roll-overs about wholly-owned companies or scrip for scrip roll-overs

(1) If:

(a) a *share mentioned in subsection 360-50(1) has been continuously held by the entity mentioned in that subsection; and

(b) then:

(i) the share, or interests in the share, are *disposed of in a way that gives rise to a trigger event (see section 122-15 or 122-125) for a roll-over under Division 122; or

(ii) the share becomes the original interest (see paragraph 124-780(1)(a)) for a roll-over under Subdivision 124-M; and

(c) the roll-over happens on or after the first anniversary, but before the tenth anniversary, of the issue of the share;

the *first element of the *cost base and *reduced cost base of the share just before the roll-over is taken to be its *market value at that time.

Note: This subsection is a separate modified CGT treatment, and not a continuation of the modifications made by section 360-50.

(2) If:

(a) an asset mentioned in paragraph 360-60(2)(a) for a roll-over has been continuously held by the entity that *acquired that asset for that roll-over; and

(b) then:

(i) that asset, or interests in that asset, are *disposed of in a way that gives rise to a trigger event (see section 122-15 or 122-125) for a roll-over under Division 122; or

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

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(ii) that asset becomes the original interest (see paragraph 124-780(1)(a)) for a roll-over under Subdivision 124-M; and

(c) the later roll-over happens on or after the first anniversary, but before the tenth anniversary, of the issue of the original share (see subsection 360-60(2) for the earlier roll-over;

the *first element of the *cost base and *reduced cost base of that asset just before the later roll-over is taken to be its *market value at that time.

Note: This subsection is a separate modified CGT treatment, and not a continuation of the modifications made by section 360-50.

*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)

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
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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

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

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(c) a refundable tax offset for Australian expenditure on post, digital and visual effects production for any film (the PDV offset).

(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.

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

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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

(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)

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376-15 Amount of the location offset

376-20 Minister must issue certificate for a film for the location offset

376-25 Meaning of ***documentary***

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

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

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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

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:

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(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

(d) a certificate for the film has been issued at any time under section376-65 (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

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

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(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, game show, 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

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

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(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

(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).

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(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).

376-25 Meaning of *documentary*

Meaning of documentary

(1) A *film is a ***documentary*** if the film is a creative treatment of actuality, having regard to:
   (a) the extent and purpose of any contrived situation featured in the film; and
   (b) the extent to which the film explores an idea or a theme; and
   (c) the extent to which the film has an overall narrative structure; and
   (d) any other relevant matters.

Exclusion of infotainment or lifestyle programs and magazine programs

(2) However, a *film is not a ***documentary*** if it is:
   (a) an infotainment or lifestyle program (within the meaning of Schedule 6 to the *Broadcasting Services Act 1992*); or
   (b) a film that:
      (i) presents factual information; and

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(ii) has 2 or more discrete parts, each dealing with a different subject or a different aspect of the same subject; and

(iii) does not contain an over-arching narrative structure or thesis.

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

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

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(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

(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

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

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(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 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

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(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, game show, 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 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

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(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 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.

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

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(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

(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

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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 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

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(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.

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.

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

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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

(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, game show, 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

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

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(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

(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.

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

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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

(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.

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

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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
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

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

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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 ...**
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.

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).

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

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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.

(2) In making a determination under subsection (1), the *film authority must have regard to the matters in Subdivision 376-C.

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

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(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.

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

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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

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

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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

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:

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

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(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

(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.

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

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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.

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	*Financing expenditure* 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	*Development expenditure* *development expenditure on the *film	*qualifying Australian production expenditure under item 1 of the table in subsection 376-150(1)

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

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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 ...**
3	*Copyright acquisition expenditure* 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)
4	*General business overheads* expenditure incurred to meet the 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	*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)
5	*Publicity and promotion expenditure* expenditure incurred in publicising or otherwise promoting the *film (including press expenses, still photography, videotapes, public relations and other similar expenses)	*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)
6	*Deferments* amounts that are payable only out of the receipts, earnings or profits from the *film	

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

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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 ...**
7	*Profit participation* amounts that: (a) depend on the receipts, earnings or profits from the *film; or (b) are otherwise dependent on the commercial performance of the film	
8	*Residuals* 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	*Advances* 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	*Acquisition of depreciating asset* 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	*Regulations* expenditure specified in regulations	

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

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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

(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:

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

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Special Australian expenditure	
Item	**Type of expenditure**
1	*Australian development expenditure* *development 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 [see subsection (2)]
2	*Expenditure incurred in acquiring Australian copyright* 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	*Expenditure incurred in producing Australian copyrighted promotional material* 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	*Expenditure incurred in producing additional content* 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	*Regulations* expenditure prescribed by the regulations

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

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Special Australian expenditure	
Item	**Type of expenditure**
6	*Certain financing expenditure* 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.

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:

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

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(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.

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:

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

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Special Australian expenditure—location offset and PDV offset	
Item	**Type of expenditure**
1	*Australian business overheads* 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 (2).
2	*Travel to Australia* 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
3	*Expenditure incurred in freighting goods to Australia* expenditure incurred in freighting goods to Australia, to the extent that the goods will be used in the *making of the *film

(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.

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

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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.

(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:

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

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Special Australian expenditure—producer offset	
Item	**Type of expenditure**
1	*Australian business overheads* 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	*Travel to Australia and other countries* 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	*Expenditure incurred in freighting goods within and between countries* 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.

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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.

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

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Special Australian expenditure—producer offset	
Item	**Type of expenditure**
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.

(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.

(3A) Expenditure incurred for the purchase of services is not covered by item 4 of the table in subsection (2) if the services are, to any extent, performed by an individual who is not an Australian resident.

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;

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

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(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
(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

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

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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

(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:

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

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(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).

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
376-235 Notice of refusal to issue certificate
376-240 Issue of certificate
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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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376-250 Notice of decision or determination
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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).

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

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

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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, 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.

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

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(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.

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

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

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(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.

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

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

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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
  (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

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

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(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.

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.

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

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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

(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.

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

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(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.

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Division 380—National Rental Affordability Scheme

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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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380-10 Members of NRAS consortiums—individuals, corporate tax entities and superannuation funds
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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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380-13 Elections by NRAS approved participants—special rule for partnerships and 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.

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

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Amount

(2) The amount of the entity's *tax offset is the amount stated in the *NRAS certificate.

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:

$$\text{Amount stated in the *NRAS certificate for the *NRAS dwelling} \times \frac{\text{*NRAS rent *derived by the *member from the *NRAS dwelling during the *NRAS year}}{\text{Total *NRAS rent *derived from the *NRAS dwelling during the *NRAS year}}$$

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

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(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.

380-11 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.

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

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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:

$$\text{Amount of the *tax offset to which the electing member would be entitled under section 380-10 because of the *NRAS certificate and the *NRAS dwelling, if the election were disregarded} \times \frac{\text{Member's rent}}{\text{Total rent}}$$

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:

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

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(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 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

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

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(ii) from which the member *derives *NRAS rent during the NRAS year; and

(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

(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.

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(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:

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

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(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.

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:

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

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total tax offsets has the same meaning as in subsection (2).

(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

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

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(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;

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

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

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(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 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

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

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(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

(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

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

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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:

(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.

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

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(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.

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.

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:**
1	a partnership is the ***intermediary entity*** and a partner in that partnership is the ***focal entity*** 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.

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***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 ***intermediary entity*** and a partner in that partnership is the ***focal entity*** 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 ***intermediary entity*** and the trustee or a beneficiary of the trust is the ***focal entity*** 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.

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***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 ***intermediary entity*** and the trustee or a beneficiary of the trust is the ***focal entity*** 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.

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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

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.

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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

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

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

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

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385-105 Election to spread tax profit over 5 years
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:

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

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(i) land is compulsorily acquired or resumed under an Act; or

(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 carcases in the ordinary course of *business—the total of:

(i) any amount you receive as payment for the live stock or carcases; and

(ii) any compensation you receive for the death or destruction, or a reduction in *market value, of the live stock or their carcases from an *Australian government agency; or

(b) if you dispose of the *live stock or their carcases outside the ordinary course of *business—the total of:

(i) the market value of the live stock or their carcases, 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 carcases from an *Australian government agency; or

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

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(c) if the *live stock die, and you do not dispose of their carcases to someone else—any compensation you receive for their death or destruction from an *Australian government agency.

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

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

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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.

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.

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

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*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.

(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;

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

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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 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.

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

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(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;

(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

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

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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.

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.

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

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(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.

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

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

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(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.

(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

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

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(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.

(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.

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

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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.

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

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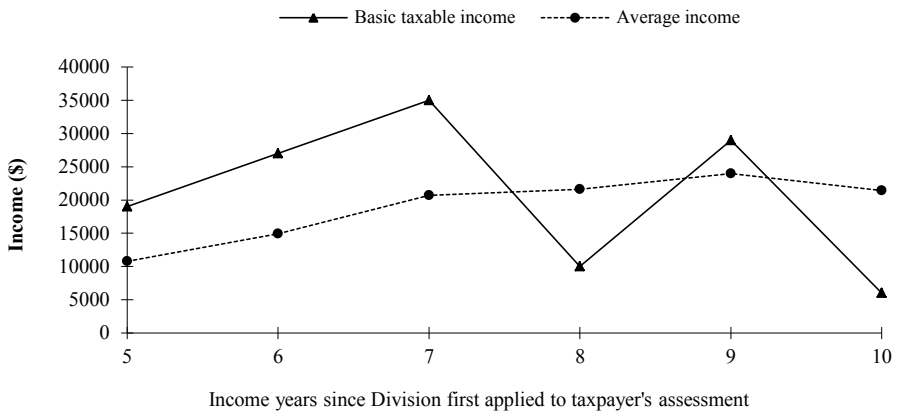
Example: The graph shows how averaging taxable income reduces the effect of variations in taxable income (giving a fairly steady comparison rate from year to year).



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).

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

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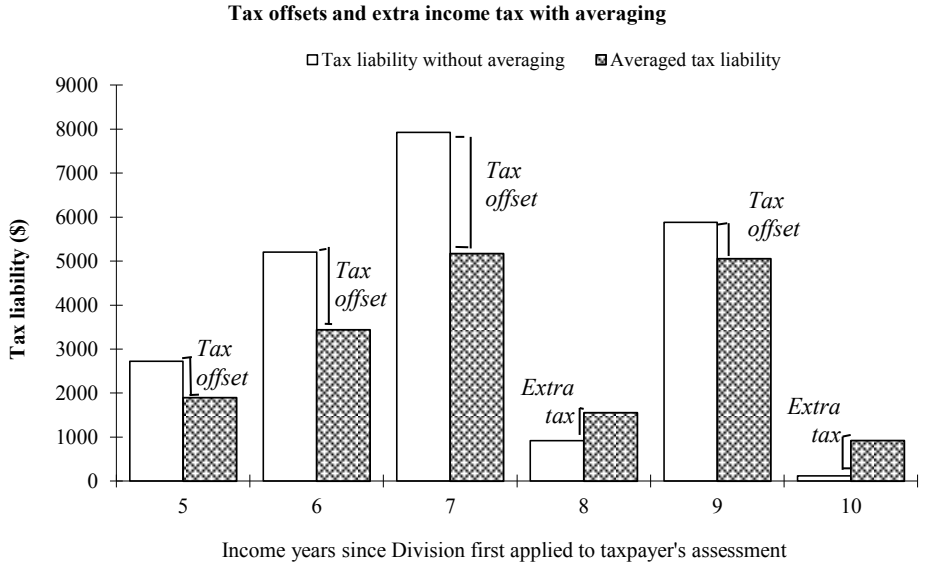
Example of the effect of averaging

(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).



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.)

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

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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 10 income years.

Subdivision 392-A—Is your income tax affected by averaging?

Table of sections

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:

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

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(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;

(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*.

(3) This section applies as if you did not carry on a *primary production business during a particular income year if, because you made a choice under section 392-25, this Division did not apply to your assessment for that income year.

Note: A choice that you make under section 392-25 has the effect that this Division does not apply to your assessments for 10 income years. None of these income years can be taken into account in applying this section after the 10 year opt-out period.

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:

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	(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.

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

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

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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.

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.

Public trading trusts

(5) You are not taken to carry on a *primary production business carried on by the trustee of a public trading trust (as defined in section 102R of the *Income Tax Assessment Act 1936*, which deals with public trading trusts).

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

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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.

(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 of the next 9 income years.

(1A) Your choice must not cover any income year that a previous choice of yours has already covered.

(2) You must make your choice in writing and give it to the Commissioner by the time you lodge your *income tax return for

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

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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?

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:

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

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*Basic taxable income for *current year × *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.

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

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

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(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.

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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

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

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(b) any *net capital gain included in your assessable income under Division 102 of the *Income Tax Assessment Act 1997*.

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

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

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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

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.

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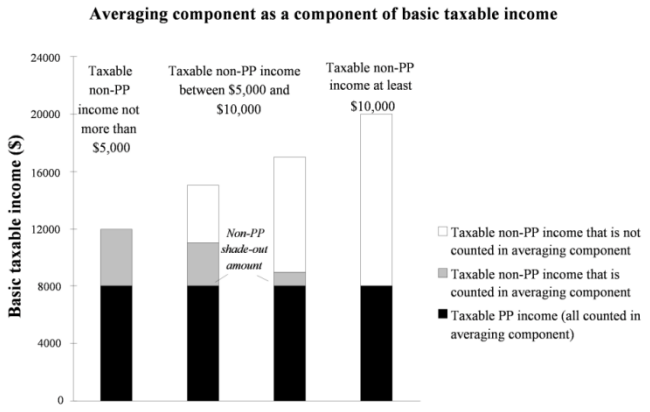

The second and third columns show that as taxable non-primary production income increases above $5,000 (up to a maximum of $10,000), less of it is counted in the averaging component.

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.

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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

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relate to your assessable primary production income for the current year.

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.

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

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392-90 Work out your averaging component

(1) Work out your ***averaging component*** for the *current year using the following table, taking into account:

(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	The averaging component equals: 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 – Taxable non-PP income

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

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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:

$$\$10{,}000 - \text{Taxable non-PP income} - \left(\text{PP deductions} - \text{Assessable PP income}\right)$$

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

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

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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.

(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.

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Division 393—Farm management deposits

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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 the event of a severe drought or an applicable natural disaster.

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

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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.

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
393-16 Consolidation of farm management deposits
393-17 Tax consequences of liabilities reducing because of farm management deposits

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

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

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(d) your *taxable non-primary production income for the year is not more than $100,000; 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 sections 393-15 and 393-16.

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).

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

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

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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 sections 393-15 and 393-16.

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.

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

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

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(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*.

Note 1A: Subsection 393-16(3) affects the unrecouped FMD deduction of a consolidated farm management deposit.

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

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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*.

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

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

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(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

(ca) subsection 393-40(3) (about repayment of a farm management deposit in the event of severe drought); and

(d) subsections 393-40(3A) and (4) (about repayment of a farm management deposit 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.

393-16 Consolidation of farm management deposits

(1) The provisions mentioned in subsection (2) do not apply in relation to the immediate reinvestment of 2 or more *farm management deposits (***original deposits***) if:

(a) just before the reinvestment occurs the balance of each of the original deposits is equal to the *unrecouped FMD deduction for the deposit; and

(b) the original deposits are immediately reinvested as a single farm management deposit with the same *FMD provider, or with a different FMD provider; and

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

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(c) just before the reinvestment occurs the original deposits have each been held for a period of at least 12 months.

Note: This means that the reinvestment:
(a) will not result in assessable income for the owner; and
(b) will not give rise to a deduction.

(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).

(3) Despite paragraph 393-10(2)(a), the ***unrecouped FMD deduction*** in respect of the *farm management deposit at a time before any part of the deposit has been repaid is the sum of the unrecouped FMD deductions in respect of each of the original deposits just before the reinvestment occurred.

(4) Section 393-40 (about the repayment of farm management deposits within 12 months) applies as if the new *farm management deposit was made on the same day that the most recent of the original deposits was made.

393-17 Tax consequences of liabilities reducing because of farm management deposits

(1) To avoid doubt, if amounts of interest payable by the *owner of a *farm management deposit, or by a partnership of which the owner is a partner, to the *FMD provider in respect of loans or other debts of the owner or partnership fall short of what they otherwise would be because the owner holds the farm management deposit, then:
(a) any income of the owner or partnership comprising the shortfall is neither assessable income nor *exempt income of the owner or partnership; and
(b) any amount that any person:
(i) is not liable to pay because of the shortfall; and

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

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(ii) could have, apart from this section, deducted under this Act;

is not deductible.

(2) However, this section applies only to the extent that the loans or other debts relate to a *primary production business that the *owner or partnership carries on.

Subdivision 393-B—Meaning of farm management deposit and owner

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393-25 Owners of farm management deposits
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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
393-37 Agreements for a farm management deposit may allow for some offsets of a depositor's liabilities
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

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

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(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

(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

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

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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

(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 (other than subsection 393-17(2) and paragraph 393-37(b)), 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).

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

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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
   (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.

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

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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.

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.

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

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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 and 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***.

Note: There is an administrative penalty if a requirement contained in the relevant agreement as set out in item 8 of the table in section 393-35 is contravened: see section 288-120 in Schedule 1 to the *Taxation Administration Act 1953*.

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:

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).

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

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Requirements of agreement for a farm management deposit	
Item	**Requirement**
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.
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.
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).
6	Rights of the depositor in respect of the deposit must not be transferable to another entity.
7	The deposit must not be the subject of a charge or other encumbrance to secure any amount.
8	The fact that the *owner is the owner of the deposit must not be the reason why, or one of the reasons why, amounts of interest that are or will be payable to the *FMD provider in respect of loans or other debts of the owner, or of a partnership of which the owner is a partner, are or will be less than they would otherwise be.
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.
10	The deposit must not be more than $800,000, 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 $800,000.
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.

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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.

393-37 Agreements for a farm management deposit may allow for some offsets of a depositor's liabilities

An agreement mentioned in paragraph 393-20(1)(b) does not contravene the requirements of item 8 of the table in section 393-35 to the extent that:

(a) it provides for amounts of interest to be payable to the *FMD provider in respect of a loan or other debt of the *owner of the *farm management deposit, or of a partnership of which the owner is a partner, to be reduced; and

(b) that loan or other debt relates to a *primary production business that the owner or partnership carries on.

393-40 Repayment of deposit within first 12 months

Partial repayment within first 12 months

(1) Any part of a deposit repaid before the last day of the 12 months after the day the deposit is made is not, and is taken never to have been, part of a ***farm management deposit***.

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

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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 before the last day of the 12 months after the day the deposit is made.

Note 1: A repayment covered by subsection (3), (3A) or (5) is disregarded in applying this subsection.

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 the event of severe drought

(3) Subsections (1) and (2) do not apply to a repayment of the whole or a part of a *farm management deposit if:

(a) the *owner of the deposit carries on a *primary production business that satisfies one or more of paragraphs (a), (b), (c) and (f) of the definition of ***primary production business*** in subsection 995-1(1); and

(b) any of the land on which the owner of the deposit carries on any primary production business that satisfies one or more of those paragraphs has, for the period specified in subsection (3AA), had rainfall that:

(i) is deficient to an extent prescribed by the regulations; or

(ii) if there are no such regulations—is within the lowest 5% of rainfall for that land according to records held by the Commonwealth Bureau of Meteorology; and

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

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(c) for the period specified in subsection (3AA):
(i) the owner of the deposit has carried on, on that land, a primary production business that satisfies one or more of those paragraphs; and
(ii) the amount of the repayment has been held in that farm management deposit.

(3AA) For the purposes of paragraphs (3)(b) and (c), the period is:
(a) a period prescribed by the regulations; or
(b) if there are no such regulations—the most recent period of 6 consecutive months:
(i) that precede the repayment; and
(ii) for which rainfall records held by the Commonwealth Bureau of Meteorology are publicly available at the time of the repayment.

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.

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***.

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

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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.

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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.

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393-55 Farm management deposits arising from farm management deposits with ADIs subject to financial claims scheme

393-60 Repayment if owner of farm management deposit with insolvent ADI dies, is bankrupt or ceases to be a primary producer

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

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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 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

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

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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));

(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 (3A) and (4) (about repayment 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.

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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:

$$\text{Unrecouped FMD deduction in respect of old deposit just before declaration time} \times \frac{\text{New deposit}}{\text{Old deposit just before declaration time}}$$

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).

(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

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

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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;

(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.

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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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394-10 Deduction for amounts paid under forestry managed investment schemes
394-15 Forestry managed investment schemes and related concepts
394-20 Payments on behalf of participant in forestry managed investment scheme
394-25 CGT event in relation to forestry interest in forestry managed investment scheme—initial participant
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

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

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(b) allowing secondary market trading of interests in such schemes, while minimising tax arbitrage and providing tax certainty for investors.

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:

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

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(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

(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.

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

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(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).

(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;

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

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(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.

(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);

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(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 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;

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

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(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.

(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

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

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(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 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;

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(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.

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;

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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.

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.

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Division 405—Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons

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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.

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

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Section 405-5

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 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.

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

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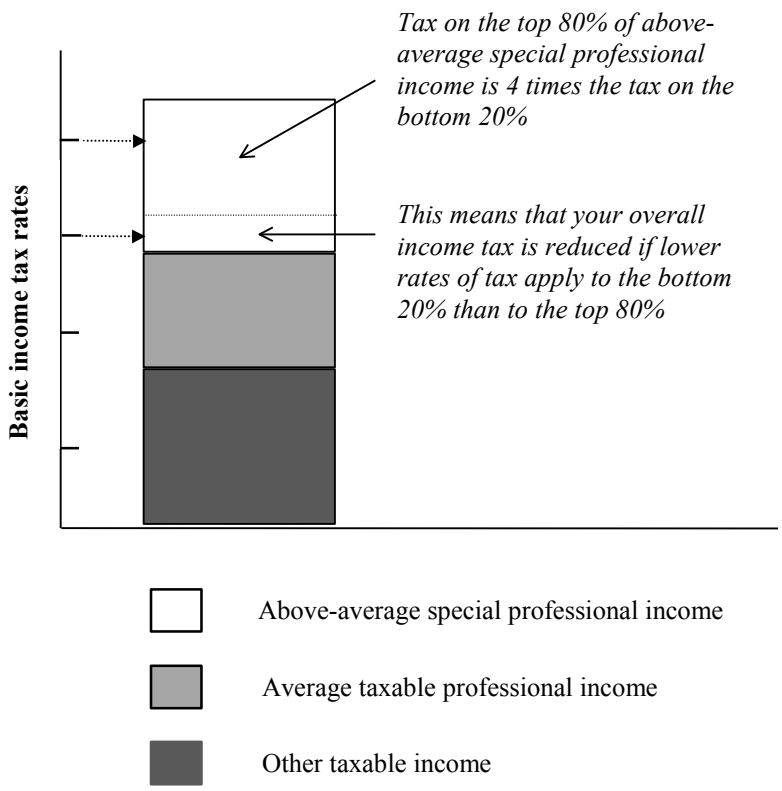
Income tax treatment of above-average special professional income



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.

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Section 405-10

(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.

See section 405-45.

(5) Your assessable professional income is assessable income from your work as an author, inventor, performing artist, production associate or sportsperson.

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.

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.

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

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Subdivision 405-A—Above-average special professional income

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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

(b) your *average taxable professional income for the current year.

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

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Subdivision 405-B—Assessable professional income

Table of sections

405-20 What you count as *assessable professional income*
405-25 Meaning of *special professional*, *performing artist*, *production associate*, *sportsperson* and *sporting competition*
405-30 What you *cannot* 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.

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(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

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

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(c) for an invention that you invented; or

(d) in relation to a patent for such an invention.

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.

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

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Production associate

(4) You are a ***production associate*** if you provide *artistic support for:
  (a) an activity described in subsection (2); or
  (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

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

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(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

(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

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

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(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.

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

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

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(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.

(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

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

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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:

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:

$$\text{*Apportionable deductions} \times \frac{\left(\text{*Assessable professional income} - \text{Sum from Step 1}\right)}{\text{Taxable income} + \text{*Apportionable deductions}}$$

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.

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

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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).

(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

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

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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.

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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.

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

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(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* 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.

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Division 415—Designated infrastructure projects

Table of Subdivisions

Guide to Division 415
415-A Object of this Division
415-B Tax losses and bad debts
415-C Designating infrastructure projects

Guide to Division 415

415-1 What this Division is about

This Division provides for special treatment for tax losses and bad debts for certain entities (called "designated infrastructure project entities") that carry on infrastructure projects that the Infrastructure CEO designates under Subdivision 415-C.

Subdivision 415-A—Object of this Division

Table of sections

415-5 Object of this Division

415-5 Object of this Division

The object of this Division is to reduce the disincentives for private expenditure on nationally significant infrastructure that result from the long lead times between incurring deductions for, and earning assessable income from, such expenditure.

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

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Subdivision 415-B—Tax losses and bad debts

Guide to Subdivision 415-B

415-10 What this Subdivision is about

The unutilised amounts of a designated infrastructure project entity's tax losses are increased each year by the long term bond rate. A ***designated infrastructure project entity*** is a fixed trust or company that:

(a) carries on an infrastructure project designated under Subdivision 415-C; and

(b) only engages, and has only ever engaged, in activities for the purposes of carrying on that designated infrastructure project.

The tests that apply in relation to tax losses and bad debts if there is a change of ownership of an entity are modified so that periods during which the entity is a designated infrastructure project entity are not tested.

The loss utilisation rules in Subdivision 707-C do not apply if the head company of a consolidated group is a designated infrastructure project entity after another designated infrastructure project entity joins the group.

Note: The transfer rules in subsection 707-120(1A) do not apply if a designated infrastructure project entity joins a consolidated group: see subsection 707-120(5).

Table of sections

Uplift of tax losses

415-15 Uplift of tax losses of designated infrastructure project entities
415-20 ***Designated infrastructure project entity***

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

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Change of ownership of trusts and companies

415-25 Tax losses of trusts
415-30 Bad debts written off etc. by trusts
415-35 Tax losses of companies
415-40 Bad debts written off by companies

Consolidated groups

415-45 Losses transferred to head companies of consolidated groups

Uplift of tax losses

415-15 Uplift of tax losses of designated infrastructure project entities

(1) The amount of a *tax loss of a *loss year of an entity is increased, at the end of each later income year (and before any *utilisation of the tax loss by the entity in the later income year), by the amount worked out using the following formula:

$$\text{Amount of the *tax loss, to the extent it has not been *utilised} \times \text{*Long term bond rate for the later income year} \times \text{Eligible portion of the later income year}$$

where:

eligible portion of the later income year means the amount worked out using the following formula:

$$\frac{\text{Number of days in the later income year on which subsection (2) applies to the entity}}{\text{Number of days in the later income year}}$$

(2) This subsection applies to the entity on a day in the later income year if:

(a) the entity is a *designated infrastructure project entity on that day; and

(b) on the day mentioned in subsection (3), the entity has notified the Commissioner (whether before, during or after

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

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the later income year) in the *approved form that the entity was, at any time, a designated infrastructure project entity.

(3) For the purposes of paragraph (2)(b), the day is the day after the latest of the following days:

(a) the day before which the entity:

(i) is required to lodge its *income tax return for the later income year with the Commissioner; or

(ii) if the entity is not required to lodge an income tax return for the later income year—would be required to lodge its income tax return for the later income year were the entity required to lodge such a return;

(b) the 28th day after the first day the entity carries on the infrastructure project mentioned in paragraph 415-20(1)(b);

(c) the 28th day after the day the *Infrastructure CEO designates the infrastructure project under section 415-70;

(d) a later day allowed by the Commissioner.

Note: The increase under this section can occur at the end of an income year even if, at the end of the year, the entity does not know the entity is a designated infrastructure project entity (e.g. because the Infrastructure CEO has not yet designated the infrastructure project that the entity carries on, but the Infrastructure CEO does so later).

Consolidated groups

(4) Disregard paragraph 701-30(3)(a) for the purposes of the denominator in the formula in the definition of ***eligible portion of the later income year*** in subsection (1) of this section.

Note: Paragraph 701-30(3)(a) applies if the entity becomes a subsidiary member of a consolidated group during the later income year.

(5) For the purposes of applying this section to a *tax loss the *head company of a *consolidated group makes as mentioned in subsection 707-140(1):

(a) the head company is treated as having made the loss in the income year before the income year in which the transfer mentioned in that subsection occurs; and

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

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(b) subsection (2) of this section is treated as not applying to the head company on or before the day the transfer occurs;

unless the transferred loss was a non-membership period loss (within the meaning of subsection 701-30(3)) in relation to the group.

Note: Subsection 707-140(1) treats the head company of a consolidated group as having made a loss in an income year in which a loss is transferred to the head company from an entity that joins the group.

415-20 *Designated infrastructure project entity*

Designated infrastructure project entity

(1) An entity is a ***designated infrastructure project entity*** at a time (the ***relevant time***) if:

(a) at the relevant time, the entity is a *fixed trust or a company; and

(b) at or after the relevant time, the entity carries on a single *designated infrastructure project; and

(c) the entity does not, at or before the relevant time, carry on any other designated infrastructure project; and

(d) the only activities in which the entity engages at the relevant time, or engaged before the relevant time, are or were for the purposes of the entity carrying on the single designated infrastructure project.

(2) For the purposes of this section:

(a) an *enterprise that becomes a *designated infrastructure project at a time is treated as having been a designated infrastructure project at all earlier times; and

(b) if the entity carries on (whether or not at the same time) one or more parts, but not the whole, of a single designated infrastructure project—the parts are treated as being a single designated infrastructure project; and

(c) in any case—the following are treated as being a single designated infrastructure project:

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

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(i) a single designated infrastructure project (the ***listed infrastructure project***) that is included on an Infrastructure Priority List;

(ii) any designated infrastructure projects that the entity carries on (whether or not at the same time) and that are part of the listed infrastructure project; and

Note: For Infrastructure Priority Lists, see paragraph 5(b) of the *Infrastructure Australia Act 2008*.

(d) in any case—any designated infrastructure projects that the entity carries on (whether or not at the same time) and that are part of a single infrastructure project that:

(i) is included on an Infrastructure Priority List; and

(ii) is not a designated infrastructure project;

are treated as being a single designated infrastructure project.

Partnerships

(3) Subsection (4) applies to an entity if:

(a) the entity is a *fixed trust or a company; and

(b) the person that is the trustee of the trust, or the person that is the company, is a partner in a partnership.

(4) For the purposes of subsections (1) and (2), the entity:

(a) is treated as carrying on any *designated infrastructure project carried on by the partnership; and

(b) is treated as engaging in any activity engaged in by the partnership; and

(c) if the partnership engages in an activity for the purpose of the partnership carrying on a designated infrastructure project—is treated as engaging in that activity for the purpose of the entity carrying on that designated infrastructure project.

Consolidated groups

(5) For the purposes of working out whether the *head company of a *consolidated group was a *designated infrastructure project entity at a time (whether before or after the group consolidates),

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

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section 701-5 (Entry history rule) is treated as not applying to the head company in relation to an entity that was not a *member of the consolidated group at that time.

(6) For the purposes of working out whether an entity is a *designated infrastructure project entity at a time after the entity ceases to be a *subsidiary member of a *consolidated group, section 701-40 (Exit history rule) is treated as not applying to the entity in relation to the group.

Change of ownership of trusts and companies

415-25 Tax losses of trusts

Scope

(1) This section applies to a *tax loss of a *trust if the trust is a *designated infrastructure project entity at a time (the ***status time***) in the *loss year.

Modifications of Schedule 2F to the Income Tax Assessment Act 1936

(2) Despite paragraph 266-25(1)(b), 266-30(a), 266-75(1)(b) or (2)(b), 266-80(1)(a) or (2)(a), 266-110(1)(b), 266-115(a), 266-150(2)(a), 266-155(2)(a), 267-20(1)(b) or 267-60(a) in Schedule 2F to the *Income Tax Assessment Act 1936*, for the purposes of sections 266-40 and 266-45, section 266-90, subsections 266-125(1) and (2), subsections 266-165(1) and (2), sections 267-40 and 267-45 or sections 267-70 and 267-75 in that Schedule (whichever are applicable), the test period starts at the first time:

(a) that occurs after the status time; and

(b) at which the trust is not a *designated infrastructure project entity;

if, apart from this subsection, the test period would start earlier.

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

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(3) For the purposes of section 267-30 in that Schedule, disregard any part of an income year during which the trust is a *designated infrastructure project entity.

(4) For the purposes of working out, under subsection 268-10(3), 268-15(3) or 268-20(3) in that Schedule, the end of the first period, disregard any part of the income year mentioned in that subsection during which the trust is a *designated infrastructure project entity.

Note: A trust does not calculate its net income and tax loss under Division 268 in that Schedule if the trust was a designated infrastructure project entity during the whole of the income year: see paragraphs 266-30(c), 266-80(1)(d) and (2)(c), 266-115(b), 266-155(2)(b), 267-60(b) and 272-100(f) in that Schedule.

(5) For the purposes paragraph 268-20(4)(b) in that Schedule, disregard any part of the first of the successive periods during which the trust is a *designated infrastructure project entity.

415-30 Bad debts written off etc. by trusts

Scope

(1) This section applies to a debt to which paragraph 266-35(1)(a), 266-85(1)(a) or (2)(a), 266-120(1)(a), 266-160(1)(a) or (b), 267-25(1)(a) or 267-65(1)(a) in Schedule 2F to the *Income Tax Assessment Act 1936* applies, if the trust is a *designated infrastructure project entity at a time (the ***status time***) in the income year in which the debt was incurred.

Modifications of Schedule 2F to the Income Tax Assessment Act 1936

(2) Despite paragraph 266-35(1)(b), 266-85(1)(b) or (2)(b), 266-120(1)(b), 266-160(2)(a), 267-25(1)(b) or 267-65(1)(a) in that Schedule, for the purposes of sections 266-40 and 266-45, section 266-90, subsections 266-125(1) and (2), subsections 266-165(1) and (2), sections 267-40 and 267-45 or sections 267-70 and 267-75 in that Schedule (whichever are applicable), the test period starts at the first time:

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

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(a) that occurs after the status time; and
(b) at which the trust is not a *designated infrastructure project entity.

(3) For the purposes of section 267-30 in that Schedule, disregard any part of an income year during which the trust is a *designated infrastructure project entity.

415-35 Tax losses of companies

Scope

(1) This section applies to a *tax loss of a company if the company is a *designated infrastructure project entity at a time (the ***status time***) in the *loss year.

Modifications of Divisions 165 and 166

(2) Despite subsection 165-12(1), 166-5(2) or 166-20(1), the *ownership test period or *test period under that subsection starts at the earlier of:
(a) the first time:
(i) that occurs after the status time; and
(ii) at which the company is not a *designated infrastructure project entity; and
(b) the end of the income year referred to in that subsection as the income year.

(3) In a case to which paragraph (2)(b) applies, the company is treated as meeting the conditions in section 165-12.

(4) Despite subsection 165-13(2), 166-5(5), 165-15(2) or 166-20(4), the *business continuity test period under that subsection starts at the start of the *ownership test period or *test period (whichever is applicable) if, apart from this subsection, the business continuity test period would start earlier.

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

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(5) Despite subsection 165-13(2), 165-15(3), 166-5(6) or 166-20(4), the *test time under that subsection occurs just after the start of the *ownership test period or *test period (whichever is applicable) if, apart from this subsection, the test time would occur earlier.

(6) A reference in subsection 165-15(1) to the *loss year is treated as being a reference to the period:

(a) starting at the start of the *ownership test period; and

(b) ending at the end of the income year in which the ownership test period starts.

(7) For the purposes of working out, under paragraph 165-45(3)(a) or (b) or subsection 165-45(4), the end of the first period, disregard any part of the income year mentioned in section 165-45 during which the company is a *designated infrastructure project entity.

Note: A company does not calculate its taxable income and tax loss under Subdivision 165-B if the company was a designated infrastructure project entity during the whole of the income year: see paragraph 165-35(c).

Exceptions

(8) Disregard this section for the purposes of Subdivisions 165-CA and 165-CB (about net capital losses) and 175-A and 175-CA (about tax benefits).

415-40 Bad debts written off by companies

Scope

(1) This section applies to a debt that a company writes off as bad, if the company is a *designated infrastructure project entity at a time (the ***status time***) in the income year in which the debt was incurred.

Modifications of Divisions 165 and 166

(2) Despite subsection 165-123(1) or 166-40(2), the *ownership test period or *test period under that subsection starts at the earlier of:

(a) the first time that occurs after the status time and on or after:

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

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(i) in the case of subsection 165-123(1)—the start of the *first continuity period; or

(ii) in the case of subsection 166-40(2)—the time the company chooses under that subsection;

and at which the company is not a *designated infrastructure project entity; and

(b) the end of the *second continuity period.

(3) In a case to which paragraph (2)(b) applies, the company is treated as meeting the conditions in section 165-123.

(4) Despite subsection 165-126(2), 165-129(2), 165-132(1) or 166-40(5), the *business continuity test period under that subsection starts at the start of the *ownership test period or *test period (whichever is applicable) if, apart from this subsection, the business continuity test period would start earlier.

(5) Despite subsection 165-126(2), 165-129(3) or 166-40(6), the *test time under that subsection occurs just after the start of the *ownership test period or *test period (whichever is applicable) if, apart from this subsection, the test time would occur earlier.

(6) A reference in subsection 165-129(1) to the *first continuity period is treated as being a reference to the period:

(a) starting at the start of the *ownership test period; and

(b) ending at the end of the income year in which the ownership test period starts.

Exception

(7) Disregard this section for the purposes of Subdivision 175-C (about tax benefits).

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

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Consolidated groups

415-45 Losses transferred to head companies of consolidated groups

Subdivision 707-C (Amount of transferred losses that can be utilised) does not apply to a loss transferred under Subdivision 707-A (Transfer of previously unutilised losses to head company), if:

(a) just before the transfer, the transferor of the loss was a *designated infrastructure project entity; and

(b) just after the transfer, the transferee of the loss is a designated infrastructure project entity.

Subdivision 415-C—Designating infrastructure projects

Guide to Subdivision 415-C

415-50 What this Subdivision is about

To receive the special treatment for tax losses and bad debts under Subdivision 415-B, an entity must only engage in activities for the purposes of carrying on an infrastructure project designated by the Infrastructure CEO under this Subdivision.

Designation is dependent on:

(a) criteria prescribed by the Minister; and

(b) a cap on the total estimated private capital expenditure that would be incurred for all provisionally designated and designated infrastructure projects.

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

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Designating infrastructure projects

415-55 Applications for designation

(1) An entity may apply to the *Infrastructure CEO to have the Infrastructure CEO designate an *enterprise (the ***infrastructure project***) that is a proposed investment in, or enhancement to, infrastructure as being an infrastructure project in relation to which Subdivision 415-B applies.

Note: The Infrastructure CEO holds office under the *Infrastructure Australia Act 2008*.

(2) The application must include an estimate of the *infrastructure project capital expenditure that would be incurred for the purpose of the infrastructure project.

(3) Subsection (2) does not apply to *infrastructure project capital expenditure to the extent that the infrastructure project capital expenditure would be:

(a) incurred by an *Australian government agency; or

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

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(b) funded by a grant from an Australian government agency.

(4) The application must:
(a) be in a form (if any) approved by the *Infrastructure CEO; and
(b) be accompanied by the fee (if any) prescribed by the *infrastructure project designation rules.

(5) A fee prescribed as mentioned in paragraph (4)(b) is payable to the *Infrastructure CEO, on behalf of the Commonwealth.

415-60 Dealing with applications

Dealing with applications

(1) The *Infrastructure CEO must deal with applications made under this Division:
(a) in accordance with the requirements prescribed by the *infrastructure project designation rules; or
(b) if the infrastructure project designation rules do not prescribe any requirements—in the order in which the applications are made.

(2) Without limiting paragraph (1)(a), the requirements the *infrastructure project designation rules may prescribe for the purposes of that paragraph include:
(a) requirements relating to the time at which or by which the *Infrastructure CEO must deal with an application; and
(b) requirements relating to applications that, in the opinion of the Infrastructure CEO, are incomplete or do not contain sufficient information for the Infrastructure CEO to deal with the applications.

(3) For the purposes of subsection (1), the *Infrastructure CEO deals with an application by:
(a) designating the infrastructure project provisionally under section 415-65, or deciding not to designate the infrastructure project provisionally under that section; or

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

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(b) designating the infrastructure project under section 415-70 or deciding not to designate the infrastructure project under that section (whether or not the Infrastructure CEO has previously dealt with the application by designating the infrastructure project provisionally under section 415-65).

(4) Paragraph (1)(b) does not apply to the *Infrastructure CEO deciding whether to designate a *provisionally designated infrastructure project under section 415-70.

No designation after 30 June 2017 or later prescribed day

(5) Despite anything else in this Subdivision, the *Infrastructure CEO must not provisionally designate the infrastructure project under section 415-65, or designate the infrastructure project under section 415-70, after:

(a) 30 June 2017; or

(b) a later day (if any) prescribed by the *infrastructure project designation rules.

415-65 Provisional designation

Provisional designation

(1) The *Infrastructure CEO must, by instrument in writing, designate the infrastructure project provisionally for the purposes of this Division if:

(a) the entity applies to have the Infrastructure CEO designate the infrastructure project in accordance with section 415-55; and

(b) the Infrastructure CEO accepts the estimate of the *infrastructure project capital expenditure under section 415-80; and

(c) the provisional designation would not breach the infrastructure project capital expenditure cap under section 415-75; and

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

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(d) the following conditions are satisfied:
  (i) the conditions prescribed by the *infrastructure project designation rules;
  (ii) if the infrastructure project designation rules do not prescribe any conditions—in the opinion of the Infrastructure CEO, the infrastructure is nationally significant infrastructure (within the meaning of the *Infrastructure Australia Act 2008*); and
(e) the infrastructure project is not a *designated infrastructure project.

(2) The instrument of provisional designation must contain any details prescribed by the *infrastructure project designation rules.

Amendment of instruments of provisional designation

(3) The *Infrastructure CEO must, by instrument in writing, amend the instrument of provisional designation in accordance with any requirements prescribed by the *infrastructure project designation rules. The Infrastructure CEO must not amend the instrument in any other circumstances.

(4) Without limiting subsection (3), the requirements the *infrastructure project designation rules may prescribe for the purposes of that subsection include requirements relating to when an amendment must take effect, which may be a time before the amendment is made.

Revocation of instruments of provisional designation

(5) The *Infrastructure CEO must, by instrument in writing, revoke the instrument of provisional designation:
(a) if the Infrastructure CEO has designated the project under section 415-70, or decides not to designate the project; or
(b) if the Infrastructure CEO has revoked the instrument of acceptance of the estimate under section 415-80; or
(c) in the circumstances (if any) prescribed by the *infrastructure project designation rules.

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

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The Infrastructure CEO must not revoke the instrument in any other circumstances.

(6) Without limiting paragraph (5)(c), the circumstances the *infrastructure project designation rules may prescribe for the purposes of that paragraph include:

(a) circumstances involving a failure by a prescribed entity to give prescribed information to the *Infrastructure CEO; and

(b) circumstances involving a breach of conditions set by the Infrastructure CEO for the *provisionally designated infrastructure project to remain provisionally designated.

(7) The *infrastructure project designation rules must prescribe matters to which the *Infrastructure CEO must have regard in setting conditions for a *provisionally designated infrastructure project to remain provisionally designated, if the infrastructure project designation rules provide for the Infrastructure CEO to set such conditions, as mentioned in paragraph (6)(b).

415-70 Designation

Designation

(1) The *Infrastructure CEO must, by instrument in writing, designate the infrastructure project for the purposes of this Division if:

(a) the entity applies to have the Infrastructure CEO designate the infrastructure project in accordance with section 415-55; and

(b) the Infrastructure CEO accepts the estimate of the *infrastructure project capital expenditure under section 415-80; and

(c) the designation would not breach the infrastructure project capital expenditure cap under section 415-75; and

(d) the following conditions are satisfied:

(i) the conditions prescribed by the *infrastructure project designation rules;

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

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(ii) if the infrastructure project designation rules do not prescribe any conditions—the conditions mentioned in subsection (2);

(whether or not the infrastructure project is a *provisionally designated infrastructure project).

(2) For the purposes of subparagraph (1)(d)(ii), the following are the conditions:

(a) in the opinion of the *Infrastructure CEO, the infrastructure is nationally significant infrastructure (within the meaning of the *Infrastructure Australia Act 2008*);

(b) in the opinion of the Infrastructure CEO, financial close on the infrastructure project has occurred or is imminent.

(3) The instrument of designation must contain any details prescribed by the *infrastructure project designation rules.

Amendment of instruments of designation

(4) The *Infrastructure CEO must, by instrument in writing, amend the instrument of designation in accordance with any requirements prescribed by the *infrastructure project designation rules. The Infrastructure CEO must not amend the instrument in any other circumstances.

(5) Without limiting subsection (4), the requirements the *infrastructure project designation rules may prescribe for the purposes of that subsection include requirements relating to when an amendment must take effect, which may be a time before the amendment is made.

Revocation of instruments of designation

(6) The *Infrastructure CEO must, by instrument in writing, revoke the instrument of designation in the circumstances prescribed by the *infrastructure project designation rules. The Infrastructure CEO must not revoke the instrument in any other circumstances.

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

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(7) Without limiting subsection (6), the circumstances the *infrastructure project designation rules may prescribe for the purposes of that subsection include:

(a) circumstances involving a failure by a prescribed entity to give prescribed information to the *Infrastructure CEO; and

(b) circumstances involving a breach of conditions set by the Infrastructure CEO for the *designated infrastructure project to remain designated.

(8) The *infrastructure project designation rules must prescribe matters to which the *Infrastructure CEO must have regard in setting conditions for a *designated infrastructure project to remain designated, if the infrastructure project designation rules provide for the Infrastructure CEO to set such conditions, as mentioned in paragraph (7)(b).

Infrastructure CEO must notify Commissioner

(9) The *Infrastructure CEO must notify the Commissioner of a decision made by the Infrastructure CEO:

(a) to designate the infrastructure project; or

(b) to amend or to revoke the instrument of designation;

within 28 days after making the decision.

Infrastructure project capital expenditure cap

415-75 Infrastructure project capital expenditure cap

(1) Provisional designation, or designation, of the infrastructure project would breach the *infrastructure project capital expenditure cap under this section if, were the provisional designation or designation to occur, the total of the estimates accepted under section 415-80 for each infrastructure project that, just after the provisional designation or designation, would be:

(a) a *provisionally designated infrastructure project; or

(b) a *designated infrastructure project;

would exceed the amount mentioned in subsection (2).

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

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(2) The amount is:
  (a) $25 billion; or
  (b) if the *infrastructure project designation rules prescribe a greater amount—that prescribed amount.

(3) For the purposes of subsection (1), disregard so much of the amount of an estimate for an infrastructure project (the ***listed infrastructure project***) as relates to a part of the listed infrastructure project, if:
  (a) that part of the listed project is (or would be, were the provisional designation or designation mentioned in that subsection to occur):
    (i) a *provisionally designated infrastructure project; or
    (ii) a *designated infrastructure project; and
  (b) the listed infrastructure project is included on an Infrastructure Priority List.

    Note: For Infrastructure Priority Lists, see paragraph 5(b) of the *Infrastructure Australia Act 2008*.

(4) In this Act:

infrastructure project capital expenditure:
  (a) has the meaning given by the *infrastructure project designation rules; or
  (b) if the infrastructure project designation rules do not give ***infrastructure project capital expenditure*** a meaning—means capital expenditure.

415-80 Acceptance of estimates of infrastructure project capital expenditure

Acceptance of estimates

(1) The *Infrastructure CEO must, by instrument in writing, accept the estimate of *infrastructure project capital expenditure if the following conditions are satisfied:

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

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(a) the conditions prescribed by the *infrastructure project designation rules;

(b) if the infrastructure project designation rules do not prescribe any conditions—in the opinion of the Infrastructure CEO, the estimate is acceptable.

Revocation of instruments of acceptance

(2) The *Infrastructure CEO must not revoke the instrument of acceptance if the infrastructure project is a *designated infrastructure project.

(3) Subject to subsection (2), the *Infrastructure CEO must, by instrument in writing, revoke the instrument of acceptance in the circumstances prescribed by the *infrastructure project designation rules. The Infrastructure CEO must not revoke the instrument in any other circumstances.

(4) Without limiting subsection (3), the circumstances the *infrastructure project designation rules may prescribe for the purposes of that subsection include:

(a) circumstances involving a failure by a prescribed entity to give prescribed information to the *Infrastructure CEO; and

(b) circumstances involving a failure by the applicant to amend the estimate in accordance with a request made by the Infrastructure CEO.

(5) The *infrastructure project designation rules must prescribe matters to which the *Infrastructure CEO must have regard in requesting the applicant to amend the estimate, if the infrastructure project designation rules provide for the Infrastructure CEO to make such requests as mentioned in paragraph (4)(b).

(6) If:

(a) the *infrastructure project designation rules provide for the *Infrastructure CEO to request the applicant to amend the estimate; and

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

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(b) the applicant amends the estimate in accordance with such a request;

the acceptance is treated, from the time the amendment is made, as being an acceptance of the amended estimate.

Miscellaneous

415-85 Review of decisions

Applications may be made to the *AAT for review of the following decisions of the *Infrastructure CEO:

(a) a decision not to designate the infrastructure project provisionally under section 415-65;

(b) a decision to amend or revoke the instrument of provisional designation under section 415-65;

(c) a decision not to designate the infrastructure project under section 415-70;

(d) a decision to amend or revoke the instrument of designation under section 415-70.

415-90 Information to be made public

The *Infrastructure CEO must comply with any requirements prescribed by the *infrastructure project designation rules in relation to the publication of information about:

(a) *provisionally designated infrastructure projects and *designated infrastructure projects; and

(b) the *infrastructure project capital expenditure cap under section 415-75.

415-95 Delegation

The *Infrastructure CEO may, by instrument in writing, delegate any of the Infrastructure CEO's powers or functions under this Subdivision to an SES employee, or acting SES employee, referred to in paragraph 39(1)(a) or 39A(1)(a) of the *Infrastructure Australia Act 2008*.

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

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415-100 Infrastructure project designation rules

(1) The Minister may, by legislative instrument, make rules (the ***infrastructure project designation rules***) prescribing matters:

(a) required or permitted by this Subdivision to be prescribed by the rules; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Subdivision.

(2) Despite subsection 14(2) of the *Legislation Act 2003*, the *infrastructure project designation rules may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument, or other writing, made by Infrastructure Australia as in force or existing from time to time.

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

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Division 417—Timor Sea petroleum

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Guide to Division 417

417-1 What this Division is about

This Division alters the operation of this Act on several topics (outlined in the table of Subdivisions above) to address how the Timor Sea Maritime Boundaries Treaty could affect the tax treatment, under Australian income tax law, of entities that undertake petroleum activities in the affected area.

Subdivision 417-A—Introduction

Table of sections

417-5 Object
417-10 Meaning of *transitioned petroleum activities*

417-5 Object

The object of this Division is to give effect to Australia's obligations under the *Timor Sea Maritime Boundaries Treaty to provide, in relation to *transitioned petroleum activities, equivalent

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

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tax treatment to the tax treatment previously applying in relation to those activities.

417-10 Meaning of *transitioned petroleum activities*

(1) ***Transitioned petroleum activities*** are petroleum activities (within the meaning of the *Timor Sea Maritime Boundaries Treaty) that are undertaken:

(a) pursuant to the terms of any of the following *production sharing contracts:

(i) Production Sharing Contract JPDA 03-12;

(ii) Production Sharing Contract JPDA 03-13;

(iii) Production Sharing Contract JPDA 06-105;

(iv) Production Sharing Contract JPDA 11-106; or

(b) pursuant to the terms of a production sharing contract that:

(i) comes into force after, or when, that treaty entered into force; and

(ii) has the effect of replacing, and relates to the same area as, a production sharing contract mentioned in paragraph (a); or

(c) in a part of the *Petroleum Exploration Permit WA-523-P permit area that, as a result of that treaty entering into force, ceased to be within the continental shelf of Australia.

Note: This part of the Petroleum Exploration Permit WA-523-P permit area includes the Buffalo Oil Field.

(2) The ***Petroleum Exploration Permit WA-523-P permit area*** is the area that, just before the *Timor Sea Maritime Boundaries Treaty entered into force, was the subject of Petroleum Exploration Permit WA-523-P, granted under Part 2.2 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* on 27 May 2016.

Subdivision 417-B—Capital allowances

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

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417-25 Deducting amounts for depreciating assets

(1) If:

(a) you use a *depreciating asset, or you have it *installed ready for use, for a purpose of undertaking *transitioned petroleum activities; and

(b) before the *Timor Sea Maritime Boundaries Treaty entered into force, you or another entity used the asset, or you or another entity had it installed ready for use, for a purpose of undertaking transitioned petroleum activities;

to the extent that you use the asset, or you have it installed ready for use, for that purpose, you are taken to use the asset, or to have it installed ready for use, entirely for a *taxable purpose.

(2) For the purposes of subsection 40-25(2), if:

(a) you can deduct an amount for a decline in value of the asset; and

(b) apart from subsection (1), you would not be able to deduct an amount, or would only be able to deduct a lesser amount, for that decline in value; and

(c) the *transitioned petroleum activities are wholly or partly undertaken, or to be undertaken, in relation to the *JPDA;

to the extent that the activities are so undertaken, or so to be undertaken, the part of the asset's decline in value that is attributable to your use of the asset, or your having it *installed ready for use, for a *taxable purpose is reduced to 10% of what it would be apart from this subsection.

(3) For the purposes of Subdivision 40-C, if:

(a) you can deduct an amount for a decline in value of the asset; and

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(b) apart from subsection (1), you would not be able to deduct an amount, or would only be able to deduct a lesser amount, for that decline in value;

in working out the second element of the *cost of the asset, disregard any amount that you pay, and any expenditure that you incur, on or after the day on which the *Timor Sea Maritime Boundaries Treaty entered into force.

417-30 Balancing adjustments

(1) If:

(a) before the *Timor Sea Maritime Boundaries Treaty entered into force, you *held a *depreciating asset that you used, or had *installed ready for use, for a purpose of undertaking *transitioned petroleum activities; and

(b) you stopped holding the asset when that treaty entered into force, because the asset ceased to exist at that time; and

(c) the cessation occurred in connection with the entry into force of that treaty;

the cessation is taken, for the purposes of this Act, not to be a *balancing adjustment event.

(2) Section 40-285 does not apply in relation to a *depreciating asset you *held if:

(a) before the *Timor Sea Maritime Boundaries Treaty entered into force, you or another entity used the asset, or you or another entity had it *installed ready for use, for a purpose of undertaking *transitioned petroleum activities; and

(b) on or after the day on which that treaty entered into force, a *balancing adjustment event occurs for the asset.

Note: The effect of this subsection is to prevent an amount being included in your assessable income, or a deduction arising, because of a balancing adjustment event. The balancing adjustment event still occurs, so the operation of a section such as section 118-24 is unaffected.

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

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(3) It does not matter, for the purposes of paragraph (2)(a), whether the asset is also used, or *installed ready for use, for a purpose other than the purpose of undertaking *transitioned petroleum activities.

(4) If, as a result of the *balancing adjustment event mentioned in paragraph (2)(b), another entity *holds the asset, the *cost of the asset to the other entity is taken to be the asset's *adjustable value to you just before the balancing adjustment event occurs.

417-35 Allocating assets to a project pool

(1) You may choose to allocate to a project pool all the *depreciating assets (the ***pooled assets***) that:

(a) you *held when the *Timor Sea Maritime Boundaries Treaty entered into force; and

(b) before that treaty entered into force, you used, or had *installed ready for use, for a purpose of undertaking *transitioned petroleum activities.

(2) You must choose by the day you lodge your *income tax return for the income year (the ***initial income year***) in which that treaty entered into force.

(3) The choice is irrevocable.

(4) If you make the choice, for the purposes of Division 40 and section 417-30:

(a) the pooled assets are taken to be a single *depreciating asset that you *hold; and

(b) the single asset is taken to be used, or *installed ready for use, for the same purpose as the purpose for which the pooled assets were used, or installed ready for use, when the *Timor Sea Maritime Boundaries Treaty entered into force; and

(c) the *cost of the single asset is taken to be an amount equal to the sum of the *adjustable values of all of the pooled assets when that treaty entered into force; and

(d) the decline in value of the single asset is taken to be:

(i) for the initial income year—40% of its cost; and

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

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(ii) for the next income year—40% of its cost; and

(iii) for the income year after that next income year—20% of its cost; and

(e) a *balancing adjustment event cannot occur for the single asset; and

(f) a *CGT event cannot occur for the single asset; and

(g) amounts are not deductible, by you or any other entity, for declines in value of any of the assets allocated to the pool for:

(i) the part of the initial income year occurring on or after the entry into force of that treaty; or

(ii) any subsequent income year.

(5) The transfer of a pooled asset to another entity does not affect the operation of subsection (4) in relation to the single asset.

417-40 Deduction for expenditure on mining site rehabilitation

(1) You can deduct, for an income year, 10% of expenditure on *mining site rehabilitation that you incur in that year if the rehabilitation relates to the undertaking (by you or another entity) of *transitioned petroleum activities in relation to the *JPDA.

(2) However, expenditure on these things is not deductible under this section:

(a) acquiring land or an interest in land or a right, power or privilege to do with land;

(b) a bond or security, however described, for performing *mining site rehabilitation;

(c) *housing and welfare.

417-45 Capital expenditure

(1) For the purposes of section 40-835, if:

(a) a *project amount was allocated to a project pool before the *Timor Sea Maritime Boundaries Treaty entered into force; and

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

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(b) the project amount was expenditure for a purpose of undertaking *transitioned petroleum activities in relation to the *JPDA;

to the extent that the operation of the project in an income year relates to that expenditure, 10% of the project is taken to operate, in the year, for a *taxable purpose.

(2) For the purposes of section 40-835, if:

(a) a *project amount was allocated to a project pool before the *Timor Sea Maritime Boundaries Treaty entered into force; and

(b) the project amount was expenditure for a purpose of undertaking *transitioned petroleum activities otherwise than in relation to the *JPDA;

to the extent that the operation of the project in an income year relates to that expenditure, the project is taken to operate, in the year, for a *taxable purpose.

(3) If subsection (1) or (2) applies to one or more *project amounts allocated to a project pool, for the income year (the ***initial income year***) in which the *Timor Sea Maritime Boundaries Treaty entered into force or a later income year, calculate your deduction under section 40-830 or 40-832 for the project pool as follows:

(a) calculate the amount of the deduction as if none of those project amounts had been allocated to the project pool;

(b) add to that amount the following:

(i) for the initial income year—40% of the sum of those project amounts;

(ii) for the next income year—40% of that sum;

(iii) for the income year after that next income year—20% of that sum.

417-50 Transferring entitlement to deductions relating to a project pool

(1) You may choose to transfer, to a *corporate tax entity, either or both of the following:

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(a) all or part of your entitlement to deductions under Division 40 in relation to the declines in value of the single asset mentioned in subsection 417-35(4) (including future declines in value but not including declines in value that have already been deducted under that Division);

(b) all or part of so much of your entitlement to deductions under section 40-830 or 40-832 as arises because of the operation of section 417-45.

(2) The choice:

(a) must be in the *approved form; and

(b) must be made no later than the day you lodge your *income tax return for the first income year for which all or part of your entitlement is to be transferred.

(3) The choice cannot be revoked.

(4) Only one choice can be made under this section in relation to the same part of the entitlement.

(5) If you choose under this section to transfer to another entity all or part of your entitlement:

(a) the other entity can make deductions arising from that entitlement or part; and

(b) at the time of the choice, a *franking credit arises in the *franking account of the other entity; and

(c) you can no longer make deductions arising from that entitlement or part.

(6) The amount of the *franking credit under paragraph (5)(b) is an amount equal to the amount of the deduction transferred multiplied by the standard corporate tax rate (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*).

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

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Subdivision 417-C—Capital gains tax

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417-70 Tax treatment of consideration for transferred entitlement to deductions or tax loss
417-75 Membership interests affected by transfer of entitlement to deductions or tax loss

417-65 CGT events not created by Timor Sea Maritime Boundaries Treaty entering into force

If:

(a) before the *Timor Sea Maritime Boundaries Treaty entered into force, you owned an intangible *CGT asset connected with undertaking *transitioned petroleum activities; and

(b) your ownership of the asset ended when that treaty entered into force; and

(c) the ending of your ownership occurred in connection with the entry into force of that treaty;

the ending of your ownership is not a *CGT event.

417-70 Tax treatment of consideration for transferred entitlement to deductions or tax loss

(1) If:

(a) you choose to transfer to another entity:

(i) under section 417-50, an entitlement to deductions; or

(ii) under Subdivision 417-D, an amount of a *tax loss for an income year; and

(b) you receive any consideration from the other entity for the entitlement to deductions or for the amount of the tax loss;

then:

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

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(c) so much of the consideration as is given for the entitlement to deductions or for the amount of the tax loss is not included in your assessable income or your exempt income; and

(d) a *capital gain does not accrue to you because of the receipt of the consideration.

(2) If:

(a) you choose to transfer to another entity:

(i) under section 417-50, an entitlement to deductions; or

(ii) under Subdivision 417-D, an amount of a *tax loss for an income year; and

(b) the other entity gives you any consideration for the entitlement to deductions or for the amount of the tax loss;

then:

(c) the other entity cannot deduct the amount or value of the consideration; and

(d) the other entity does not incur a *capital loss because of the giving of the consideration.

417-75 Membership interests affected by transfer of entitlement to deductions or tax loss

If:

(a) an entity chooses to transfer:

(i) under section 417-50, an entitlement to deductions; or

(ii) under Subdivision 417-D, an amount of a *tax loss for an income year; and

(b) another entity *holds, either directly or indirectly, a *membership interest in that entity;

disregard a *capital loss from a *CGT event that arises in relation to the membership interest after the transfer takes effect, except to the extent that the entity can demonstrate that the loss is attributable to a matter other than the transfer.

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

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Subdivision 417-D—Transferring or applying tax losses

Table of sections

417-90 Tax losses from transitioned petroleum activities
417-95 How choices are made
417-100 The effect of choosing to transfer losses
417-105 The effect of choosing to apply losses to earlier income years
417-110 Continuity of ownership and business continuity tests

417-90 Tax losses from transitioned petroleum activities

Transferring tax losses attributable to activities undertaken before the Timor Sea Maritime Boundaries Treaty entered into force

(1) If:

(a) you have a *tax loss for the income year in which the *Timor Sea Maritime Boundaries Treaty entered into force, or for an earlier income year; and

(b) some or all of the tax loss is attributable to you undertaking *transitioned petroleum activities before that treaty entered into force;

you may, for that income year or a later income year, choose to transfer all or any part of the amount of the tax loss that is so attributable to a *corporate tax entity (the ***transferee***) that is your *associate and either is an Australian resident or has a *permanent establishment in Australia.

Transferring or applying other tax losses

(2) If:

(a) you have a *tax loss for an income year (the ***loss year***); and

(b) some or all of the tax loss is attributable to you undertaking *transitioned petroleum activities; and

(c) paragraph (1)(b) does not apply to those activities;

you may, for that income year or a later income year:

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

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(d) choose to transfer all or any part of the amount of the tax loss that is so attributable to a *corporate tax entity (the ***transferee***) that either is an Australian resident or has a *permanent establishment in Australia; or

(e) choose to apply all or any part of the amount of the tax loss that is so attributable as a deduction from your assessable income for any of the 4 income years preceding the income year for which you make the choice.

(3) However:

(a) the total amount chosen to be transferred or applied under subsection (2) for an income year must not exceed 10% of the total amount:

(i) on which your liability for *foreign income tax under the law of Timor-Leste is required to be worked out; and

(ii) that relates to undertaking those *transitioned petroleum activities during that year; and

(b) you cannot make a choice under paragraph (2)(e) for an income year if you do not have a *franking surplus at the end of that year; and

(c) the total amount chosen to be applied under paragraph (2)(e) for an income year must not exceed the sum of:

(i) the amount of your franking surplus at the end of that year; and

(ii) the product of the amount of that surplus and the *corporate tax gross-up rate.

(4) In working out for the purposes of paragraph (3)(a) the total amount chosen to be transferred or applied under subsection (2) for an income year, disregard:

(a) any part of the *tax loss attributable to deductions for assets allocated to a project pool under section 417-35; and

(b) any part of the *tax loss attributable to deductions for assets allocated to a project pool under Subdivision 40-I, to the extent that the deductions relate to *project amounts to which subsection 417-45(1) or (2) applies.

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

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(5) In working out for the purposes of paragraph (3)(a) the total amount on which your liability for *foreign income tax under the law of Timor-Leste is required to be worked out, disregard the amounts of any deductions for tax paid under the law of Timor-Leste.

(6) Paragraphs (3)(b) and (c) do not apply if you were a foreign resident (other than a *NZ franking company) for more than half of the income year for which the choice was made.

417-95 How choices are made

(1) A choice under section 417-90:
  (a) must be in the *approved form; and
  (b) must be made no later than:
    (i) the day you lodge your *income tax return for the income year for which the choice is made; or
    (ii) a later time allowed by the Commissioner; and
  (c) must be given to the Commissioner within 30 days after you make the choice.

(2) The choice cannot be revoked.

(3) Only one choice can be made under this Subdivision in relation to the same part of a *tax loss.

417-100 The effect of choosing to transfer losses

(1) If you choose under this Subdivision to transfer an amount of a *tax loss for an income year (the ***loss year***):
  (a) the amount is taken to be a tax loss incurred by the transferee in the loss year; and
  (b) the transferee can deduct the amount in accordance with section 36-17 (which is about how to deduct a tax loss); and
  (c) at the time of the choice, a *franking credit arises in the *franking account of the transferee; and

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

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(d) you can no longer *utilise the amount, and you are taken not to have incurred the tax loss to the extent of the amount.

(2) Despite paragraph (1)(a), if the loss year is the same as the income year of the transfer, the transferee is taken to have incurred the *tax loss in the income year before the loss year.

Note: This rule is needed because Division 36 allows a tax loss to be deducted only if it was incurred in an earlier income year.

(3) The amount of the *franking credit under paragraph (1)(c) is an amount equal to the amount of the *tax loss transferred multiplied by the standard corporate tax rate (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*).

(4) Paragraph (1)(c) does not apply if you are not, and have never been, a *corporate tax entity.

417-105 The effect of choosing to apply losses to earlier income years

If you choose under this Subdivision to apply an amount of a *tax loss for an income year as a deduction from your assessable income for an earlier income year:

(a) you can deduct the amount from your assessable income for the earlier income year; and

(b) you can no longer *utilise the amount, and you are taken not to have incurred the tax loss to the extent of the amount.

417-110 Continuity of ownership and business continuity tests

Section 165-10 does not apply to a *tax loss that meets the requirements of:

(a) paragraphs 417-90(1)(a) and (b); or

(b) paragraphs 417-90(2)(a) and (b).

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

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Subdivision 417-E—Foreign income tax offset

Table of sections

417-125 Foreign income tax offset

417-125 Foreign income tax offset

(1) If:

(a) you are entitled to a *tax offset under Subdivision 770-A for an income year for *foreign income tax; and

(b) the foreign income tax is payable on income you earned as an employee in relation to *transitioned petroleum activities undertaken, or to be undertaken, in relation to the *JPDA;

the amount of the offset is to be worked out in accordance with the Taxation Code in Annex G under Article 13(b) of the Treaty (within the meaning of that Act), as if that Taxation Code applied in relation to the income.

(2) Subdivision 770-B does not apply in relation to the amount of the offset.

Subdivision 417-F—Transfer pricing

Table of sections

417-140 Transfer pricing benefits relating to transitioned petroleum activities

417-140 Transfer pricing benefits relating to transitioned petroleum activities

Acquisitions of Timor Sea petroleum

(1) An entity is taken, for the purposes of Division 815, not to get a *transfer pricing benefit from conditions that operate between the entity and another entity in connection with their commercial or financial relations just because the entity acquires petroleum (within the meaning of the *Timor Sea Maritime Boundaries Treaty) from the other entity if:

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

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(a) the petroleum was produced by undertaking *transitioned petroleum activities in the Bayu-Undan Gas Field (within the meaning of that treaty); and

(b) the price for the acquisition is the price that is used by, or agreed with, a *foreign government agency of Timor-Leste in relation to the acquisition for the purposes of administering the law of Timor-Leste relating to taxation.

Supplies of goods and services

(2) An entity is taken, for the purposes of Division 815, not to get a *transfer pricing benefit from conditions that operate between the entity and another entity in connection with their commercial or financial relations just because the entity supplies goods or services to the other entity if:

(a) the supply occurred pursuant to the terms of an *arrangement, connected with undertaking *transitioned petroleum activities, that:

(i) was in force just before the *Timor Sea Maritime Boundaries Treaty was made; or

(ii) is substantially similar to an arrangement that was in force just before that time; and

(b) the price for the supply is the price that is used by, or agreed with, a *foreign government agency of Timor-Leste in relation to the supply for the purposes of administering the law of Timor-Leste relating to taxation.

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

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Division 418—Exploration for minerals

Table of Subdivisions

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418-B Junior minerals exploration incentive tax offset
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418-D Creating exploration credits
418-DA Exploration credits allocation
418-E Issuing exploration credits
418-F Excess exploration credits
418-G Other matters

Guide to Division 418

418-1 What this Division is about

Generally, you are entitled to a tax offset for an income year for exploration credits issued to you for the income year.

A greenfields minerals explorer can create exploration credits for an income year. Before creating exploration credits, the explorer must obtain an allocation of exploration credits from the Commissioner for the year.

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

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The exploration credits created for an income year cannot exceed an amount based on the explorer's greenfields minerals expenditure or tax loss for the year. If the explorer's exploration credits allocation for the year is smaller than that amount, the amount of exploration credits that the explorer can create will be reduced to sit within the allocation. However, any unused allocation of exploration credits from the preceding year would be carried over and so would increase the amount of exploration credits that the explorer can create.

An exploration credit created by a greenfields minerals explorer can be issued to you if you have invested in the explorer. While the tax offset you receive for the exploration credit issued to you for an income year will apply to that income year, the investment that gives rise to that offset may have been made in that or the preceding income year.

There are rules to ensure that exploration credits are not streamed to some investors rather than others. There are also rules to ensure that the total of the exploration credits you receive because of an investment (whether those credits are issued to you for the year in which you invest or the subsequent year) do not exceed the corporate tax that might be paid by the greenfields minerals explorer on that investment.

The explorer is liable to pay excess exploration credit tax if the explorer issues exploration credits in breach of these rules.

There is a cap on total allocations made by the Commissioner for each income year, but if part of the cap from the preceding year is unallocated it will be carried over. Allocations are made in the order in which applications for an allocation are made.

If an exploration credit is issued to a corporate tax entity, it will give rise to a franking credit (rather than a tax offset).

Note: Excess exploration credit tax is imposed by the *Excess Exploration Credit Tax Act 2015*, and the amount of the tax is set out in that Act.

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

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Subdivision 418-A—Object of this Division

Table of sections

418-5 Object of this Division

418-5 Object of this Division

The object of this Division is to encourage investment in minerals exploration in Australia by allowing the benefit of losses from minerals exploration to flow to shareholders who share in the risk of the exploration.

Subdivision 418-B—Junior minerals exploration incentive tax offset

Table of sections

Entitlement to junior minerals exploration incentive tax offset

418-10 Who is entitled to the tax offset—ordinary case
418-15 Who is entitled to the tax offset—life insurance company
418-20 Entitlement of member of a trust or partnership to a share of exploration credits

Amount of junior minerals exploration incentive tax offset

418-25 The amount of the tax offset
418-30 Reduced amount of the tax offset for certain trusts

Entitlement to junior minerals exploration incentive tax offset

418-10 Who is entitled to the tax offset—ordinary case

You are entitled to a *tax offset for an income year if:

(a) an *exploration credit is issued to you under Subdivision 418-E for the income year; and

(b) you are not:

(i) a *corporate tax entity; or

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

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(ii) a trust (other than a trust in relation to which some or all of the liability of the trustee to tax is provided under subsection 98(1) or (2) or 99(2) or (3) of the *Income Tax Assessment Act 1936*); or

(iii) a partnership; or

(iv) an *exempt entity (other than an *exempt institution that is eligible for a refund); and

(c) you are an Australian resident during the whole of that income year.

418-15 Who is entitled to the tax offset—life insurance company

(1) An entity is entitled to a *tax offset for an income year if:

(a) the entity is a *life insurance company; and

(b) an *exploration credit is issued to the entity under Subdivision 418-E for the income year; and

(c) the entity is an Australian resident during the whole of that income year; and

(d) were the exploration credit to be a *franked distribution made:

(i) by the same entity that issued the credit; and

(ii) in the same circumstances in which the credit was issued;

the exploration credit would give rise to a *tax offset for the entity that would be subject to the refundable tax offset rules because of paragraph 67-25(1C)(b) or (1D)(b).

(2) If:

(a) an *exploration credit is issued to a *life insurance company; and

(b) paragraph (1)(d) applies in relation to only part of the exploration credit;

this Division applies as if that part of the exploration credit, and the part of the exploration credit in relation to which that paragraph does not apply, were 2 separate exploration credits issued to the life insurance company.

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

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418-20 Entitlement of member of a trust or partnership to a share of exploration credits

Members taken to be issued with exploration credits

(1) If:

(a) you are a *member of a trust or partnership during the income year; and

(b) an *exploration credit is issued to the trust or partnership under Subdivision 418-E for the income year; and

(c) the trust or partnership is not a *corporate tax entity; and

(d) the trustee of the trust, or the partnership, determines that you are entitled to a share of the exploration credits issued to the trust or partnership for the income year; and

(e) the trustee of the trust, or the partnership, gives you a statement, in accordance with subsection (4), informing you of that entitlement;

you are taken, for the purposes of this Subdivision, to have been issued with an exploration credit under Subdivision 418-E, for the income year, of an amount equal to your share of the exploration credits issued to the trust or partnership for the income year.

Effect of restrictions on distributions

(2) Despite subsection (1), you are not taken, under that subsection, to have been issued with an *exploration credit under Subdivision 418-E to the extent that, if the exploration credit referred to in paragraph (1)(b) were a *franked distribution of the same amount made:

(a) at the time of the determination referred to in paragraph (1)(d); and

(b) in relation to the interest, held by the trust or partnership, in relation to which the exploration credit referred to in paragraph (1)(b) is issued to the trust or partnership during the income year;

the terms and conditions under which the trust or partnership operates would not permit you to be paid the amount, or the

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

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proportion, of the franked distribution that would reflect your entitlement referred to in paragraph (1)(d).

Anti-avoidance

(3) Despite subsection (1), you are not taken, under that subsection, to have been issued with an *exploration credit under Subdivision 418-E to the extent that, if the exploration credit were a distribution to you, from the trust or partnership, of a *franked distribution that:

(a) was of the same amount as the amount of your share, referred to in paragraph (1)(d), of the exploration credit referred to in paragraph (1)(b); and

(b) was made:

(i) by the same entity that issued that exploration credit; and

(ii) in relation to the same interest in that entity; and

(iii) in the same circumstances in which that exploration credit was issued; and

(c) *flowed indirectly through one or more trusts or partnerships that were the same as the one or more trusts or partnerships that, apart from subparagraphs 418-10(b)(ii) and (iii), would have been entitled to a *tax offset under this Subdivision in relation to:

(i) that exploration credit; or

(ii) another exploration credit from which that exploration credit is directly or indirectly derived;

you would not be entitled to a tax offset under Division 207 in relation to the franked distribution.

Statements to members

(4) A statement referred to in paragraph (1)(e) must:

(a) be in the *approved form; and

(b) be given to you on or before the due date:

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

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(i) if the trust or partnership is an *investment body for *Part VA investments—for giving to the Commissioner an *annual investment income report in respect of the *financial year corresponding to the income year; or

(ii) otherwise—for the trust or partnership to lodge its *income tax return for the income year.

Reports to the Commissioner

(5) A trust or partnership that has given one or more statements under paragraph (1)(e) relating to *exploration credits for an income year must give to the Commissioner, on or before the due date referred to in paragraph (4)(b) in relation to that income year, a report that:

(a) relates to all the statements that the trust or partnership has given under paragraph (1)(e) relating to exploration credits for that income year; and

(b) is in the *approved form.

Amount of junior minerals exploration incentive tax offset

418-25 The amount of the tax offset

The amount of your *tax offset under this Subdivision for an income year is the sum of:

(a) all the *exploration credits issued to you under Subdivision 418-E; and

(b) all the exploration credits taken under section 418-20 to have been issued to you;

for the income year.

418-30 Reduced amount of the tax offset for certain trusts

(1) If an entity is a trust in relation to which some, but not all, of the liability of the trustee to tax is provided under subsection 98(1) or (2) or 99(2) or (3) of the *Income Tax Assessment Act 1936*, the amount of the entity's *tax offset under this Subdivision for an income year is:

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

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$$\text{The amount of the entity's *tax offset apart from this section} \times \frac{\text{Income taxed under subsection 98(1) or (2) or 99(2) or (3)}}{\text{The *net income of the trust for the income year}}$$

where:

income taxed under subsection 98(1) or (2) or 99(2) or (3) is the amount of the *net income of the trust, for the income year, in relation to which the trustee is liable to tax under subsection 98(1) or (2) or 99(2) or (3) of the *Income Tax Assessment Act 1936*.

(2) If:

(a) an entity is a trust; and

(b) one or more *members of the trust are taken under section 418-20 to have been issued with one or more *exploration credits for an income year;

the amount of the entity's *tax offset, under section 418-25 or subsection (1) of this section, for the income year is reduced by the sum of amounts of the exploration credits taken to be issued to those members.

Subdivision 418-C—Junior minerals exploration incentive franking credit

Table of sections

418-50 Junior minerals exploration incentive franking credit—ordinary case
418-55 Junior minerals exploration incentive franking credit—life insurance company

418-50 Junior minerals exploration incentive franking credit—ordinary case

(1) A *franking credit arises in the *franking account of a *corporate tax entity (other than a *life insurance company) if:

(a) an *exploration credit is issued to the entity under Subdivision 418-E during an income year; and

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

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(b) if the entity were not a corporate tax entity, the entity would be entitled to a *tax offset under Subdivision 418-B in relation to the exploration credit.

(2) The amount of the *franking credit is the amount of the *tax offset to which the entity would be entitled under Subdivision 418-B if:

(a) the entity were not a *corporate tax entity; and

(b) no other *exploration credits were issued to the entity during the income year.

(3) The *franking credit arises at the same time the *exploration credit is issued.

418-55 Junior minerals exploration incentive franking credit—life insurance company

(1) A *franking credit arises in the *franking account of a *life insurance company if:

(a) an *exploration credit is issued to the life insurance company under Subdivision 418-E during an income year; and

(b) paragraph 418-15(1)(d) does not apply in relation to the exploration credit; and

(c) if that paragraph were to apply in relation to the credit, the life insurance company would be entitled to a *tax offset under Subdivision 418-B in relation to the exploration credit.

(2) The amount of the *franking credit is the amount of the *tax offset to which the *life insurance company would be entitled under Subdivision 418-B if no other *exploration credits were issued to the life insurance company during the income year.

(3) The *franking credit arises at the same time the *exploration credit is issued.

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

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Subdivision 418-D—Creating exploration credits

Table of sections

418-70 Entities that may create exploration credits
418-75 Meaning of ***greenfields minerals explorer***
418-80 Meaning of ***greenfields minerals expenditure***
418-81 Meaning of ***exploration credits allocation*** for an income year
418-82 When does an entity have an ***unused allocation of exploration credits*** from an income year
418-85 Exploration credits must not exceed maximum exploration credit amount
418-95 Effect on tax losses of creating exploration credits

418-70 Entities that may create exploration credits

(1) An entity may create ***exploration credits*** for an income year if:

(a) the entity was a *greenfields minerals explorer in the income year; and

(b) the entity has an *exploration credits allocation for the income year or an *unused allocation of exploration credits from the immediately preceding income year.

(2) The entity cannot create *exploration credits for an income year before income tax is assessed for the entity for the year.

(3) The entity cannot create *exploration credits for the 2021-22 income year or a later income year.

(4) A failure to comply with subsection (1) or (2) does not invalidate the creation of an *exploration credit.

(5) An *exploration credit is to be expressed as an amount.

(6) The entity cannot make more than one decision to create *exploration credits for an income year, and the decision is final and irrevocable.

418-75 Meaning of *greenfields minerals explorer*

(1) An entity is a ***greenfields minerals explorer*** in an income year if:

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

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(a) the entity has *greenfields minerals expenditure for the income year; and

(b) during the income year, the entity is a disclosing entity (within the meaning of section 111AC of the *Corporations Act 2001*); and

(c) during the income year, the entity is a *constitutional corporation; and

(d) during the income year, and during the immediately preceding income year, neither:

(i) the entity; nor

(ii) any other entity that is *connected with or is an *affiliate of the entity;

carried on any mining operations on a mining property for extracting *minerals (except *petroleum) from their natural site, for the *purpose of producing assessable income.

(2) However, an entity is not a ***greenfields minerals explorer*** in an income year in which either or both of the following happens, or in any subsequent income year:

(a) the entity fails to comply with a request of the Commissioner under subsection 418-80(5);

(b) a determination under section 418-185 has effect.

Note 1: Under subsection 418-80(5), the Commissioner may request a report on an area in relation to which an entity has greenfields minerals expenditure.

Note 2: Under section 418-185, the Commissioner may determine that an entity that is, or has been, liable to excess exploration credit tax is not to be treated as a greenfields minerals explorer.

418-80 Meaning of *greenfields minerals expenditure*

(1) An entity's ***greenfields minerals expenditure*** for an income year is the sum of:

(a) the amounts of any deductions to which the entity is entitled under section 40-25 for that income year in relation to declines in value that:

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

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(i) are declines in value of *depreciating assets used for *exploration or prospecting for *minerals in an area to which subsection (3) of this section applies; and

(ii) are worked out under subsection 40-80(1); and

(b) the amounts of any deductions for that income year to which the entity is entitled in relation to expenditure:

(i) that is of a kind referred to in subsection 40-730(1); and

(ii) in relation to which the entity satisfies one or more of paragraphs 40-730(1)(a) to (c); and

(iii) that is expenditure on exploration or prospecting for minerals in an area to which subsection (3) of this section applies.

(2) For the purposes of subsection (1), disregard a deduction to the extent that it relates to:

(a) matters other than:

(i) declines in value of *depreciating assets used for; or

(ii) expenditure on;

*exploration or prospecting for *minerals in an area to which subsection (3) of this section applies; or

(b) exploration or prospecting for *petroleum or oil shale; or

(c) activities (such as feasibility studies) undertaken to identify the viability of a mineral resource rather than its existence.

(3) This subsection applies to an area:

(a) that is in Australia; and

(b) in relation to which the entity *holds a *mining, quarrying or prospecting right at the time of incurring the expenditure, or is the transferee under a *farm-in farm-out arrangement; and

(c) that has not been identified as containing a mineral resource that is at least inferred in a report prepared in accordance with the requirements of:

(i) unless subparagraph (ii) applies—the document that is known as the Australasian Code for Reporting of Exploration Results, Minerals Resources and Ore Reserves and that took effect on 20 December 2012; or

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

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Note: This document is commonly referred to as the JORC Code (2012 Edition).

(ii) such other document as the regulations prescribe; and

(d) that is not, and is not in, any of the following:

(i) the coastal sea of Australia (within the meaning of subsection 15B(4) of the *Acts Interpretation Act 1901*);

(ii) an area referred to in subsection 960-505(2).

(4) For the purposes of paragraph (3)(c), disregard any mineral resource, identified in a report of a kind referred to in that paragraph, that does not include *minerals the *exploration or prospecting for which involved:

(a) use of assets referred to in paragraph (1)(a); or

(b) expenditure referred to in paragraph (1)(b).

(5) The Commissioner may request an entity that is a *greenfields minerals explorer in an income year to prepare, within the period specified in the request, a report that:

(a) is of the kind referred to in paragraph (3)(c); and

(b) relates to an area in relation to which the entity has *greenfields minerals expenditure for the income year.

The request may specify the manner in which, and the form in which, the report is to be prepared.

418-81 Meaning of *exploration credits allocation* for an income year

(1) An entity has an ***exploration credits allocation*** for an income year if the Commissioner makes a determination under section 418-101 allocating the entity *exploration credits for the income year.

(2) The amount of the entity's ***exploration credits allocation*** for the income year is the amount of *exploration credits allocated to the entity under the determination.

(3) If no determination is made allocating *exploration credits to the entity for the income year, the amount of the entity's ***exploration credits allocation*** for the year is nil.

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

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418-82 When does an entity have an *unused allocation of exploration credits* from an income year

(1) An entity has an ***unused allocation of exploration credits*** from an income year if each of the following:

(a) the entity's *exploration credits allocation for the income year;

(b) the total credits issue for investment in the entity for the income year;

exceeds the total amount of all *exploration credits created by the entity for the income year.

(2) The amount of the ***unused allocation of exploration credits*** from the income year is the lesser of:

(a) the amount by which the amount mentioned in paragraph (1)(a) exceeds the total amount of all *exploration credits created by the entity for the income year; and

(b) the amount by which the amount mentioned in paragraph (1)(b) exceeds the total amount of all *exploration credits created by the entity for the income year.

(3) If neither the amount mentioned in paragraph (1)(a) nor (1)(b) exceeds the total amount of all *exploration credits created by the entity for the income year, there is ***no unused allocation of exploration credits*** from the income year, and the amount of any ***unused allocation of exploration credits*** from the income year is nil.

(4) In this section:

total credits issue for investment in the entity (the ***minerals explorer***) for an income year means the total of all *exploration credits that may be issued by the minerals explorer to all other entities in relation to *exploration investment made by those other entities in the minerals explorer in the income year if section 418-120 is complied with.

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

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418-85 Exploration credits must not exceed maximum exploration credit amount

(1) An entity must not create *exploration credits for an income year of a total amount that exceeds the entity's *maximum exploration credit amount for the income year.

(2) An entity's ***maximum exploration credit amount*** for an income year (the ***credit year***) is the smallest of the following amounts:

(a) the entity's *greenfields minerals expenditure for the credit year multiplied by the entity's *corporate tax rate for the credit year;

(b) the entity's *tax loss for the credit year multiplied by the entity's corporate tax rate for the credit year;

(c) the sum of:

(i) the entity's *exploration credits allocation for the credit year; and

(ii) the entity's *unused allocation of exploration credits from the income year immediately preceding the credit year.

(3) In working out the entity's *greenfields minerals expenditure for the credit year for the purposes of paragraph (2)(a), reduce that greenfields minerals expenditure by the sum of:

(a) all *recoupments that the entity receives in relation to the entity's greenfields minerals expenditure for the credit year; and

(b) if:

(i) an amount has been included in the entity's assessable income because a *balancing adjustment event occurs for a *depreciating asset; and

(ii) all or part of the amount of the deduction to which the entity is entitled under section 40-25 for the credit year in relation to the decline in value of the asset is included in the entity's greenfields minerals expenditure for that year;

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

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so much of the amount of that deduction as was included in that greenfields minerals expenditure.

(4) In working out the entity's *tax loss for the credit year for the purposes of paragraph (2)(b), reduce that tax loss by the sum of:

(a) all *recoupments that the entity receives in relation to the entity's *greenfields minerals expenditure for the credit year; and

(b) any part of the entity's tax loss for the credit year that would not be deductible in the income year immediately following the credit year; and

(c) if:

(i) an amount has been included in the entity's assessable income because a *balancing adjustment event occurs for a *depreciating asset; and

(ii) all or part of the amount of the deduction to which the entity is entitled under section 40-25 for the credit year in relation to the decline in value of the asset is included in the entity's greenfields minerals expenditure for that year;

so much of the amount of that deduction as was included in that greenfields minerals expenditure.

(5) For the purposes of paragraph (4)(b), assume that the entity's assessable income for the income year immediately following the credit year is sufficient to allow the entity to utilise the whole of that *tax loss in relation to the credit year.

(6) A failure to comply with this section does not invalidate the creation of an *exploration credit.

418-95 Effect on tax losses of creating exploration credits

(1) If an entity creates any *exploration credits for a *loss year, the amount of the entity's *tax loss for the loss year is reduced by the amount worked out as follows:

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

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$$\frac{\text{The sum of all the *exploration credits the entity creates for the *loss year}}{\text{The entity's *corporate tax rate for the loss year}}$$

(2) However, if the amount worked out under subsection (1) equals or exceeds what would (apart from this section) be the entity's *tax loss for the *loss year, that tax loss is taken to be nil.

Subdivision 418-DA—Exploration credits allocation

Table of sections

418-100 Applying for an exploration credits allocation
418-101 Determination by the Commissioner
418-102 General allocation rules
418-103 Meaning of ***annual exploration cap***
418-104 Failure to comply with this Subdivision does not affect allocation

418-100 Applying for an exploration credits allocation

(1) An entity may apply to the Commissioner for a determination under section 418-101 allocating *exploration credits to the entity for an income year.

(2) The application must be made within 1 month before the start of the *financial year corresponding to the income year for which the allocation is sought.

(3) The application must:
  (a) be *lodged electronically; and
  (b) be in the *approved form; and
  (c) include an estimate of:
    (i) the entity's *greenfields minerals expenditure for the income year; and
    (ii) the entity's *tax loss for the income year; and
    (iii) the entity's *corporate tax rate for the income year.

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

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(4) The Commissioner must give the entity:
  (a) if the Commissioner makes a determination under section 418-101—a copy of the determination; or
  (b) if the Commissioner decides to refuse the application—notice of that decision.

418-101 Determination by the Commissioner

Determination allocating exploration credits

(1) The Commissioner may make a written determination allocating *exploration credits of an amount specified in the determination to an entity for an income year.

Circumstances in which the Commissioner must not make a determination

(2) The Commissioner must not make a determination allocating *exploration credits to an entity for an income year if the Commissioner is not satisfied that:
  (a) there is a reasonable possibility that the entity will have:
    (i) *greenfields minerals expenditure of the amount estimated by the entity in the application, or greater; and
    (ii) a *tax loss of the amount estimated by the entity in the application, or greater; and
    (iii) the *corporate tax rate estimated by the entity in the application; and
  (b) the entity meets any other requirement prescribed under the regulations.

Amount of the exploration credits allocated

(3) The amount of the *exploration credits specified in the determination must be the smallest of the following amounts:
  (a) the entity's estimated *greenfields minerals expenditure for the income year multiplied by the entity's estimated *corporate tax rate for the income year;

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

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(b) the entity's estimated *tax loss for the income year multiplied by the entity's estimated corporate tax rate for the income year;
(c) either:
(i) 5% of an amount equal to the *annual exploration cap for the income year; or
(ii) if another amount, or a method for working out another amount, is prescribed—the other amount.

Determination not a legislative instrument

(4) A determination made under subsection (1) is not a legislative instrument.

418-102 General allocation rules

(1) The total amount of *exploration credits allocated to entities for an income year by the Commissioner must not exceed the *annual exploration cap for the year.

(2) The Commissioner must consider applications for *exploration credits from entities for an income year in the order in which the Commissioner receives the applications.

(3) If the Commissioner receives more than one application at the same time, the Commissioner may decide the order in which the Commissioner considers the applications.

(4) If the Commissioner would contravene this section by allocating *exploration credits to an entity for an income year of an amount worked out under subsection 418-101(3) then, despite that subsection, the amount of exploration credits allocated to that entity for the income year is to be the difference between the *annual exploration cap for the year and the total amount of exploration credits already allocated to other entities for the year.

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

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418-103 Meaning of *annual exploration cap*

(1) The ***annual exploration cap*** for an income year is the following amount:

(a) for the 2017-18 income year—$15 million;

(b) for the 2018-19 income year—$25 million, plus the *exploration credits remainder for the immediately preceding income year;

(c) for the 2019-20 income year—$30 million, plus the exploration credits remainder for the immediately preceding income year and any other amount prescribed for the purposes of this paragraph;

(d) for the 2020-21 income year—$30 million, plus the exploration credits remainder for the immediately preceding income year and any other amount prescribed for the purposes of this paragraph.

(2) If the total amount of *exploration credits allocated by the Commissioner for an income year is less than the *annual exploration cap for the year, the difference is the ***exploration credits remainder*** for the income year.

418-104 Failure to comply with this Subdivision does not affect allocation

A failure by the Commissioner to comply with this Subdivision does not invalidate a determination allocating *exploration credits to an entity for an income year.

Subdivision 418-E—Issuing exploration credits

Table of sections

418-110 Issuing exploration credits
418-111 Working out whether an ***exploration investment*** has been made in an income year
418-115 Who may receive an exploration credit and what is the pool from which the credit may be issued
418-116 Exploration credits issued must be in proportion to exploration investment

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

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418-120 The total of all exploration credits issued in relation to exploration investment
418-125 Expiry of exploration credits
418-130 Notifying the Commissioner of issuing or expiry of exploration credits

418-110 Issuing exploration credits

(1) An entity that has created *exploration credits for an income year (the ***minerals explorer***) may issue an exploration credit for that income year to another entity (the ***investor***).

(2) The *exploration credit issued to the investor for the income year may relate to:

(a) *exploration investment made by the investor in the minerals explorer in the income year; or

(b) exploration investment made by the investor in the minerals explorer in the immediately preceding income year.

However, this rule is subject to the limitations imposed under sections 418-115, 418-116 and 418-120.

(3) An *exploration credit is issued to an entity by giving the entity a statement in the *approved form.

418-111 Working out whether an *exploration investment* has been made in an income year

(1) An entity (the ***investor***) makes an ***exploration investment*** in another entity (the ***minerals explorer***) in an income year if:

(a) *shares in the minerals explorer are issued to the investor by the minerals explorer:

(i) on or after the day on which the Commissioner makes a determination under section 418-101 allocating *exploration credits to the minerals explorer for the income year; and

(ii) before the end of the income year; and

(b) those shares are *equity interests.

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

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(2) The amount of the ***exploration investment*** made by the investor in the minerals explorer in the income year is equal to the total amount paid up by the investor on the shares during the period mentioned in paragraph (1)(a).

418-115 Who may receive an exploration credit and what is the pool from which the credit may be issued

(1) If *exploration credits are to be issued by an entity (the ***minerals explorer***) for an income year (the ***credit year***), work out each of the following by identifying whether scenario 1, 2 or 3 applies, and applying the rules for that scenario:

(a) whether the minerals explorer can issue an exploration credit to another entity in relation to *exploration investment made by the other entity in the minerals explorer in the credit year;

(b) whether the minerals explorer can issue an exploration credit to another entity in relation to exploration investment made by the other entity in the minerals explorer in the income year immediately preceding the credit year (the ***preceding year***);

(c) the pool of exploration credits from which an exploration credit may be issued to another entity in relation to exploration investment made by the other entity in the minerals explorer in the credit year (this is called the ***issue pool*** for exploration investment made in the minerals explorer in the credit year);

(d) the pool of exploration credits from which an exploration credit may be issued to another entity in relation to exploration investment made by the other entity in the minerals explorer in the preceding year (this is called the ***issue pool*** for exploration investment made in the minerals explorer in the preceding year).

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

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Scenario 1—no unused allocation of exploration credits from the preceding year

(2) If there is no *unused allocation of exploration credits from the preceding year:

(a) *exploration credits can be issued to another entity in relation to *exploration investment made by the other entity in the minerals explorer in the credit year; and

(b) no exploration credits can be issued to another entity in relation to exploration investment made by the other entity in the minerals explorer in the preceding year.

(3) In this scenario:

(a) the ***issue pool*** for *exploration investment made in the minerals explorer in the credit year is equal to the total amount of *exploration credits created by the minerals explorer for the credit year; and

(b) the ***issue pool*** for exploration investment made in the minerals explorer in the preceding year is nil.

Scenario 2—exploration credits for the credit year exceed unused allocation of exploration credits from the preceding year

(4) If the amount of the *exploration credits created by the minerals explorer for the credit year is more than the *unused allocation of exploration credits from the preceding year:

(a) exploration credits can be issued to another entity in relation to *exploration investment made by the other entity in the minerals explorer in the credit year; and

(b) exploration credits can be issued to another entity in relation to exploration investment made by the other entity in the minerals explorer in the preceding year.

(5) In this scenario:

(a) the ***issue pool*** for *exploration investment made in the minerals explorer in the credit year is equal to the difference between the *unused allocation of exploration credits from the preceding year and the total amount of *exploration

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

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credits created by the minerals explorer for the credit year; and

(b) the ***issue pool*** for exploration investment made in the minerals explorer in the preceding year is equal to the unused allocation of exploration credits from the preceding year.

(6) However, no *exploration credit can be issued to another entity in relation to *exploration investment made by the entity in the minerals explorer in the credit year unless the *issue pool for exploration investment in the preceding year is exhausted.

Scenario 3—exploration credits for the credit year are equal to or less than the unused allocation of exploration credits from the preceding year

(7) If the amount of the *exploration credits created by the minerals explorer for the credit year is equal to or less than the *unused allocation of exploration credits from the preceding year:

(a) no exploration credits can be issued to another entity in relation to *exploration investment made by the entity in the minerals explorer in the credit year; and

(b) exploration credits can be issued to another entity in relation to exploration investment made by the other entity in the minerals explorer in the preceding year.

(8) In this scenario:

(a) the ***issue pool*** for *exploration investment made in the minerals explorer in the credit year is nil; and

(b) the ***issue pool*** for exploration investment made in the minerals explorer in the preceding year is equal to the total amount of *exploration credits created by the minerals explorer for the credit year.

418-116 Exploration credits issued must be in proportion to exploration investment

If an *exploration credit is issued by an entity (the ***minerals explorer***) for an income year to another entity (the ***investor***) in

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

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relation to *exploration investment made by the investor in the minerals explorer in an income year (the ***investment year***):

(a) the proportion of the *issue pool for exploration investment made in the minerals explorer in the investment year that is issued to the investor as an exploration credit must be the same as the proportion of the total exploration investment in the minerals explorer in the investment year that is represented by the investor's exploration investment in the minerals explorer in the investment year; and

(b) the minerals explorer must issue an exploration credit to every entity who made an exploration investment in the minerals explorer in the investment year.

418-120 The total of all exploration credits issued in relation to exploration investment

The total amount of all *exploration credits issued by an entity (the ***minerals explorer***) to another entity (the ***investor***) in relation to *exploration investment made by the investor in the minerals explorer in an income year (the ***investment year***) must not exceed the amount worked out using the following formula:

$$\text{The *corporate tax rate for the minerals explorer for the investment year} \times \text{The amount of the investor's *exploration investment in the minerals explorer in the investment year}$$

418-125 Expiry of exploration credits

An *exploration credit created by an entity for an income year (the ***credit year***) expires if the entity does not issue the credit under this Subdivision on or before 30 June in the financial year that corresponds to the income year that immediately follows the credit year.

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

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418-130 Notifying the Commissioner of issuing or expiry of exploration credits

(1) An entity that has created *exploration credits for an income year (the ***credit year***) must notify the Commissioner of the issuing or expiry of the credits.

(2) The notice must:
  (a) be in the *approved form; and
  (b) be given to the Commissioner on or before the due date:
    (i) if the entity is an *investment body for *Part VA investments—for giving to the Commissioner an *annual investment income report in respect of the *financial year corresponding to the year immediately following the credit year; or
    (ii) otherwise—for the entity to lodge its *income tax return for the income year that immediately follows the credit year.

Subdivision 418-F—Excess exploration credits

Table of sections

418-150 Excess exploration credit tax
418-151 Complying exploration credit amount
418-155 Due date for payment of excess exploration credit tax
418-160 Returns
418-165 When shortfall interest charge is payable
418-170 General interest charge
418-175 Refunds of amounts overpaid
418-180 Record keeping
418-185 Determining an entity not to be a greenfields minerals explorer

418-150 Excess exploration credit tax

An entity is liable to pay *excess exploration credit tax for an income year if the sum of the *exploration credits it issues for the

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

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income year exceeds the amount worked out under section 418-151 for the income year (the ***complying exploration credit amount***).

Note: The tax is imposed by the *Excess Exploration Credit Tax Act 2014*, and the amount of the tax is set out in that Act.

418-151 Complying exploration credit amount

(1) The complying exploration credit amount (which may be nil) for an income year is worked out by:

(a) starting with the sum of the *exploration credits the entity issues for the income year; and

(b) subtracting from the result of paragraph (a) the sum of any of those exploration credits covered by subsection (2); and

(c) if the result of paragraph (b) exceeds the entity's *maximum exploration credit amount for the income year—subtracting from that result the amount of the excess.

Note: The complying exploration credit amount is the sum of issued exploration credits that were issued (and created) in compliance with this Division. A liability arises under section 418-150 if the sum of all issued exploration credits exceeds this amount.

(2) This subsection covers an *exploration credit to the extent to which either or both of the following apply to the credit:

(a) the credit was issued in contravention of a requirement in this Division;

(b) the credit was created in contravention of a requirement in Subdivision 418-D (other than section 418-85).

Note: Because the maximum exploration credit amount from section 418-85 is taken into account in paragraph (1)(c) of this section, it is disregarded here.

418-155 Due date for payment of excess exploration credit tax

An entity's *excess exploration credit tax for an income year, as assessed under Schedule 1 to the *Taxation Administration Act 1953*, is due and payable at the end of the day by which the entity

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

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is required under section 418-160 to give the return relating to the income year.

Note: For assessments of excess exploration credit tax, see Division 155 in Schedule 1 to the *Taxation Administration Act 1953*.

418-160 Returns

An entity that is liable to pay *excess exploration credit tax for an income year (the ***credit year***) must give the Commissioner a return relating to excess exploration credit tax, in the *approved form, within 21 days after the end of the *financial year corresponding to the income year that immediately follows the credit year.

418-165 When shortfall interest charge is payable

An amount of *shortfall interest charge that an entity is liable to pay is due and payable 21 days after the day on which the Commissioner gives the entity notice of the charge.

Note: Shortfall interest charge is imposed if the Commissioner amends an assessment and the amended assessment results in an increase in some tax payable. For provisions about liability for shortfall interest charge, see Division 280 in Schedule 1 to the *Taxation Administration Act 1953*.

418-170 General interest charge

If:

(a) *excess exploration credit tax or *shortfall interest charge payable by an entity remains unpaid after the time by which it is due and payable; and

(b) the Commissioner has not allocated the unpaid amount to an *RBA;

the entity is liable to pay the *general interest charge on the unpaid amount for each day in the period that:

(c) starts at the beginning of the day on which the excess exploration credit tax or shortfall interest charge was due to be paid; and

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

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(d) 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 exploration credit tax or shortfall interest charge;

(ii) general interest charge on any of the excess exploration credit tax or shortfall interest charge.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

418-175 Refunds of amounts overpaid

Section 172 of the *Income Tax Assessment Act 1936* applies for the purposes of this Division as if references in that section to tax included references to *excess exploration credit tax.

418-180 Record keeping

Section 262A of the *Income Tax Assessment Act 1936* applies for the purposes of this Division as if:

(a) the reference in that section to a person carrying on a business were a reference to a *corporate tax entity; and

(b) the reference in paragraph (2)(a) of that section to the person's income and expenditure were a reference to the entity's liability to pay *excess exploration credit tax; and

(c) paragraph (5)(a) of that section were omitted.

418-185 Determining an entity not to be a greenfields minerals explorer

(1) The Commissioner may determine, by written notice given to an entity that is, or has been, liable to pay *excess exploration credit tax for an income year, that the entity is no longer to be treated as a *greenfields minerals explorer.

(2) The determination takes effect from:

(a) if, at the time the notice is given, the entity has not issued any *exploration credits for the income year (the ***credit year***)

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

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immediately preceding the income year in which the notice is given—the credit year; or

(b) otherwise—the next income year.

(3) If the entity or a *member of the entity is dissatisfied with a determination under subsection (1), the entity or member may object to it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Subdivision 418-G—Other matters

Table of sections

418-190 Annual impact assessments of this Division

418-190 Annual impact assessments of this Division

(1) As soon as practicable after the end of each income year referred to in subsection (2), the Minister must cause to be conducted an impact assessment of the operation of this Division during that income year. The objective of the impact assessment should be to measure the additional *exploration or prospecting attributable to the Division.

(2) The income years are as follows:

(a) the 2017-2018 income year;

(b) the 2018-2019 income year;

(c) the 2019-2020 income year;

(d) the 2020-2021 income year.

(3) Each impact assessment must make provision for public consultation, including consultation with the industry.

(4) The Minister must cause to be prepared a report of each impact assessment. The report must include any information made publicly available by the Commissioner under section 3F of the *Taxation Administration Act 1953* in relation to *exploration credits allocated for the income year.

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

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(5) The Minister must cause a copy of a report of an impact assessment to be published on the Australian Taxation Office website as soon as practicable after the completion of the preparation of the report.

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

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Part 3-50—Climate change

Division 420—Registered emissions units

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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

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

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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.

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 ***registered emissions unit***
420-12 Meaning of ***hold*** a registered emissions unit

420-10 Meaning of *registered emissions unit*

A ***registered emissions unit*** is:
  (b) a *Kyoto 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*).

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

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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.

(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.

Timing

(2) You deduct the expenditure in the income year in which you start to *hold the *registered emissions unit.

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*

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

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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.

(2) This section does not apply if a *registered emissions unit *held by an individual just before the individual's death:

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

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(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 the issue of an *Australian carbon credit unit under the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

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:

(iii) a *Kyoto 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) a Kyoto 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*

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

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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 Kyoto 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.

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:

(iii) a *Kyoto 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) a Kyoto unit is transferred from your nominee's foreign account (within the meaning of the *Australian National*

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

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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 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

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

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(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

(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

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

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420-42 Deduction for expenses incurred in ceasing to hold a registered emissions unit

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;

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

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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.

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:

(ii) if the unit is a *Kyoto 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 Kyoto 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.

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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:

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

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(i) the first entity's legal personal representative is treated as having disposed of the unit for the amount included 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.

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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.

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

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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.

Timing

(2) You deduct the expenditure in the income year in which you cease to *hold the *registered emissions unit.

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
420-60 Cost of registered emissions units

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.

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

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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.

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.

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

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420-51 Valuation methods

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.

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:

(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

(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,

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

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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.

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.

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

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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.

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.

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.

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

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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.

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.

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

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420-60 Cost of registered emissions units

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) The ***cost*** of a *registered emissions unit (other than an *Australian carbon credit unit to which subsection (3) applies) 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.

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;

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

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under any provision of this Act outside this Division.

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:

(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.

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

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Note: An amount included in your assessable income under this Division may be ordinary or statutory income for the purposes of Division 6.

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.

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