# Income Tax Assessment Act 1997

**No. 38, 1997**

## Compilation No. 237

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This compilation is in 12 volumes

| | |
|---|---|
| Volume 1: | sections 1-1 to 36-55 |
| **Volume 2:** | **sections 40-1 to 67-30** |
| Volume 3: | sections 70-1 to 121-35 |
| Volume 4: | sections 122-1 to 197-85 |
| Volume 5: | sections 200-1 to 253-15 |
| Volume 6: | sections 275-1 to 313-85 |
| Volume 7: | sections 315-1 to 420-70 |
| Volume 8: | sections 615-1 to 721-40 |
| Volume 9: | sections 723-1 to 880-205 |
| Volume 10: | sections 900-1 to 995-1 |
| Volume 11: | Endnotes 1 to 3 |
| Volume 12: | Endnote 4 |

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 14 October 2022 (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.

### Application, saving and transitional provisions for provisions and amendments

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.

### Editorial changes

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

### Modifications

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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# Chapter 2—Liability rules of general application

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

### Division 40—Capital allowances

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



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# Guide to Division 40

## 40-1 What this Division is about

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

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

You can also deduct amounts for certain other capital expenditure.

## 40-10 Simplified outline of this Division

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

| **Simplified outline of this Division** | | |
|---|---|---|
| **Item** | **Major topic**<br>*Subordinate topics*<br>Rules | **Provisions** |
| **1** | **Rules about depreciating assets** | |

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



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**Simplified outline of this Division**

| Item | Major topic<br>*Subordinate topics*<br>Rules | Provisions |
|---|---|---|
| 1.1 | *Core provisions*<br>***Depreciating assets*** are assets with a limited effective life that are reasonably expected to decline in value.<br>Broadly, the ***effective life*** of a depreciating asset is the period it can be used to produce income.<br>The ***decline in value*** is based on the cost and effective life of the depreciating asset, not its actual change in value. It begins at ***start time***, when you begin to use the asset (or when you have it installed ready for use). It continues while you use the asset (or have it installed).<br>Usually, the owner of a depreciating asset ***holds*** the asset and can therefore claim deductions for its decline in value. Sometimes the economic owner will be different to the legal owner and the economic owner will be the holder. | Subdivision 40-B |
| 1.2 | *Cost*<br>The ***cost*** of a depreciating asset includes both:<br>• expenses you incur to start holding the asset; and<br>• additional expenses that contribute to its present condition and location (e.g. improvements). | Subdivision 40-C |
| 1.3 | *Balancing adjustments*<br>When you stop holding a depreciating asset you may have to include an amount in your assessable income, or deduct an amount under a ***balancing adjustment***. The adjustment reconciles the decline with the actual change in value. | Subdivision 40-D |
| 1.4 | *Low-value and software development pools*<br>Low-cost assets and assets depreciated to a low value may be placed in a ***low value pool***, which is treated as a single depreciating asset. You can also pool in-house software expenditure in a ***software development pool***. | Subdivision 40-E |

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



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| **Simplified outline of this Division** | | |
|---|---|---|
| **Item** | **Major topic**<br>*Subordinate topics*<br>Rules | **Provisions** |
| 1.5 | *Primary production depreciating assets*<br>You can deduct amounts for capital expenditure on:<br>• ***water facilities*** immediately; or<br>• ***horticultural plants*** over a period that relates to the effective life of the plant; or<br>• ***fodder storage assets*** immediately; or<br>• ***fencing assets*** immediately. | Subdivision 40-F |
| **2** | **Rules about other capital expenditure** | |
| 2.1 | *Capital expenditure of primary producers and other landholders*<br>You can deduct amounts for capital expenditure on:<br>• ***landcare operations*** immediately; or<br>• ***electricity and telephone lines*** over 10 income years. | Subdivision 40-G |
| 2.2 | *Capital expenditure that is immediately deductible*<br>You can get an immediate deduction for certain capital expenditure on:<br>• ***exploration or prospecting***; and<br>• ***rehabilitation of mine and quarry sites***; and<br>• ***paying petroleum taxes***; and<br>• ***environmental protection activities***. | Subdivision 40-H |
| 2.3 | *Capital expenditure that is deductible over time*<br>You can deduct amounts for certain capital expenditure associated with projects you carry on. You deduct the amount over the life of the project using a ***project pool***.<br>You can also deduct amounts for certain business related costs over 5 years where the amounts are not otherwise taken into account and are not denied a deduction. | Subdivision 40-I |

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



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

## Subdivision 40-A—Objects of Division

### Table of sections

40-15 Objects of Division

### 40-15 Objects of Division

The objects of this Division are:

(a) to allow you to deduct the *cost of a *depreciating asset; and

(b) to spread the deduction over a period that reflects the time for which the asset can be used to obtain benefits; and

(c) to provide deductions for certain other capital expenditure that is not otherwise deductible.

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

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

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



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# Subdivision 40-B—Core provisions

## Guide to Subdivision 40-B

### 40-20 What this Subdivision is about

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

- what a *depreciating asset* is; and
- when you start deducting amounts for depreciating assets; and
- how to work out your deductions.

It also contains rules for splitting and merging depreciating assets.

## Table of sections

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40-25 Deducting amounts for depreciating assets
40-27 Further reduction of deduction for second-hand assets in residential property
40-30 What a *depreciating asset* is
40-35 Jointly held depreciating assets
40-40 Meaning of *hold* a depreciating asset
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40-55 Use of the "cents per kilometre" car expense deduction method
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40-70 Diminishing value method
40-72 Diminishing value method for post-9 May 2006 assets
40-75 Prime cost method
40-80 When you can deduct the asset's cost

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40-85 Meaning of *adjustable value* and *opening adjustable value* of a depreciating asset
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40-130 Choices
40-135 Certain anti-avoidance provisions
40-140 Getting tax information from associates

## Operative provisions

### 40-25 Deducting amounts for depreciating assets

*You deduct the decline in value*

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

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

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

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

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*Reduction of deduction*

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

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

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

Note: You may have to make a further reduction under subsections (3) and (4) or section 40-27.

*Further reduction: leisure facilities*

(3) You may have to make a further reduction for a *depreciating asset that is a *leisure facility attributable to your use of it, or your having it *installed ready for use, for a *taxable purpose.

(4) That reduction is the part of the *leisure facility's decline in value that is attributable to your use of it, or your having it *installed ready for use, at a time when:

(a) its use did not constitute a *fringe benefit; or

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

*Exception: low-value pools*

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

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

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

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



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*Meaning of taxable purpose*

(7) Subject to subsection (8), a ***taxable purpose*** is:
  (a) the *purpose of producing assessable income; or
  (b) the purpose of *exploration or prospecting; or
  (c) the purpose of *mining site rehabilitation; or
  (d) *environmental protection activities.

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

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

(8) If Division 250 applies to you and an asset that is a *depreciating asset:
  (a) if section 250-150 applies—you are taken not to be using the asset for a *taxable purpose to the extent of the *disallowed capital allowance percentage; or
  (b) otherwise—you are taken not to be using the asset for such a purpose.

## 40-27 Further reduction of deduction for second-hand assets in residential property

(1) In addition to subsections 40-25(2) to (4), you may have to further reduce your deduction for a *depreciating asset for the income year.

(2) Reduce your deduction by any part of the asset's decline in value that is attributable to your use of it, or your having it *installed ready for use, for the *purpose of producing assessable income:
  (a) from the use of *residential premises to provide residential accommodation; but
  (b) not in the course of carrying on a *business;
  if:

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



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(c) you did not *hold the asset when it was first used, or first installed ready for use, (other than as trading stock) by any entity; or

(d) at any time during the income year or an earlier income year, the asset was used, or installed ready for use, either:

(i) in residential premises that were one of your residences at that time; or

(ii) for a purpose that was not a *taxable purpose, and in a way that was not occasional.

Note: Your deduction could be reduced to nil if the purpose to which paragraphs (a) and (b) relate is your only taxable purpose for using the asset or having the asset installed ready for use.

*Exception—kind of entity*

(3) Subsection (2) does not apply to you for the asset if, at any time during the income year, you are:

(a) a *corporate tax entity; or

(b) a *superannuation plan that is not a *self managed superannuation fund; or

(c) a *managed investment trust; or

(d) a public unit trust (within the meaning of section 102P of the *Income Tax Assessment Act 1936*); or

(e) a unit trust or partnership, if each *member of the trust or partnership is covered by a paragraph of this subsection at that time during the income year.

*Exception—certain assets in new residential premises*

(4) Paragraph (2)(c) does not apply to you for the asset if:

(a) the *residential premises referred to in paragraph (2)(a) (the ***current premises***) are supplied to you as new residential premises on a particular day (the ***current supply day***); and

(b) the asset is supplied to you as part of that supply of the current premises; and

(c) at the time you first *hold the asset as a result of that supply, the asset is used, or *installed ready for use, in:

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(i) the current premises; or

(ii) any other real property in which an interest was supplied to you as part of that supply of the current premises; and

(d) at any earlier time, no entity was residing in any residential premises in which the asset was used, or installed ready for use, at that earlier time; and

(e) no amount can be deducted under this Division, or under Subdivision 328-D, for the asset for any income year by any previous holder of the asset.

Note: An entity residing at an earlier time in other residential premises in the same complex will not cause paragraph (d) to prevent this subsection from applying.

(5) However, disregard paragraph (4)(d) for an earlier time if:

(a) the asset was used, or installed ready for use, in the current premises at that time; and

(b) both that time, and the current supply, happen during the 6-month period starting on the day the current premises became new residential premises.

*Exception—low-value pools*

(6) Subsection (2) does not apply to *depreciating assets allocated to a low-value pool.

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

## 40-30 What a *depreciating asset* is

(1) A ***depreciating asset*** is an asset that has a limited *effective life and can reasonably be expected to decline in value over the time it is used, except:

(a) land; or

(b) an item of *trading stock; or

(c) an intangible asset, unless it is mentioned in subsection (2).

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



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(2) These intangible assets are ***depreciating assets*** if they are not *trading stock:

(a) *mining, quarrying or prospecting rights;

(b) *mining, quarrying or prospecting information;

(c) items of *intellectual property;

(d) *in-house software;

(e) *IRUs;

(f) *spectrum licences;

(h) *telecommunications site access rights.

(3) This Division applies to an improvement to land, or a fixture on land, whether the improvement or fixture is removable or not, as if it were an asset separate from the land.

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

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

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

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

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

(5) This Division applies to a renewal or extension of a *depreciating asset that is a right as if the renewal or extension were a continuation of the original right.

(6) This Division applies to a *mining, quarrying or prospecting right (the ***new right***) as if it were a continuation of another mining, quarrying or prospecting right you *held if:

(a) the other right ends; and

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(b) the new right and the other right relate to the same area, or any difference in area is not significant.

## 40-35 Jointly held depreciating assets

(1) This Division and the provisions referred to in subsection (3) apply to a *depreciating asset (the ***underlying asset***) that you *hold, and that is also held by one or more other entities, as if *your interest in* the underlying asset were itself the underlying asset.

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

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

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

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

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

(3) The provisions are:

(a) Divisions 41, 328 and 775 of this Act; and

(b) Divisions 40 and 328 of the *Income Tax (Transitional Provisions) Act 1997*.

## 40-40 Meaning of *hold* a depreciating asset

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

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



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**Identifying the holder of a depreciating asset**

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

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



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

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



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

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

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

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

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

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

## 40-45 Assets to which this Division does not apply

*Eligible work related items*

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

*Capital works*

(2) This Division does not apply to capital works for which you can deduct amounts under Division 43, or for which you could deduct amounts under that Division:

(a) but for expenditure being incurred, or capital works being started, before a particular day; or

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(b) had you used the capital works for a purpose relevant to those capital works under section 43-140.

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

*Films*

(5) This Division does not apply to a *depreciating asset if you or another taxpayer has deducted or can deduct amounts for it under:

(a) former Division 10BA of Part III of the *Income Tax Assessment Act 1936* (about Australian films); or

(b) former Division 10B of Part III of that Act if the depreciating asset relates to a copyright in an Australian film within the meaning of that Division.

(6) This Division applies to a *depreciating asset that is copyright in a *film where a company is entitled to a *tax offset under section 376-55 in respect of the film as if the asset's *cost were reduced by the amount of that offset.

## 40-50 Assets for which you deduct under another Subdivision

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

(2) You cannot deduct an amount, or work out a decline in value, for *in-house software under this Subdivision if you have allocated expenditure on the software to a software development pool under Subdivision 40-E.

## 40-53 Alterations etc. to certain depreciating assets

(1) These things are not the same *depreciating asset for the purposes of section 40-50 and Subdivision 40-F:

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



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(a) a depreciating asset; and

(b) a repair of a capital nature, or an alteration, addition or extension, to that asset that would, if it were a separate depreciating asset, be a *water facility, *fodder storage asset or *fencing asset.

(2) These things are not the same *depreciating asset for the purposes of section 40-50 and Subdivision 40-G:

(a) a depreciating asset; and

(b) a repair of a capital nature, or an alteration, addition or extension, to that asset that would, if it were a separate depreciating asset, be a *landcare operation.

## 40-55 Use of the "cents per kilometre" car expense deduction method

You cannot deduct any amount for the decline in value of a *car for an income year if you use the "cents per kilometre" method for the car for that year.

Note: See Subdivision 28-C for that method.

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

(1) A *depreciating asset you *hold starts to decline in value from when its *start time occurs.

(2) The ***start time*** of a *depreciating asset is when you first use it, or have it *installed ready for use, for any purpose.

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

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

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



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

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

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

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

Note 3: In some cases you do not have to make the choice because you can deduct the asset's cost: see sections 40-80 and 40-82.

Note 4: Subdivisions 40-BA and 40-BB of the *Income Tax (Transitional Provisions) Act 1997* may affect the operation of this section.

*Exception: asset acquired from associate*

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

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

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

(3) For a *depreciating asset that you acquire from a former *holder of the asset, you must use the same method that the former holder was using for the asset if:

(a) the former holder or another entity (each of which is the ***former user***) was using the asset at a time before you became the holder; and

(b) while you hold the asset, the former user or an *associate of the former user uses the asset.

(4) However, you must use the *diminishing value method if:

(a) you do not know, and cannot readily find out, which method the former holder was using; or

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



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(b) the former holder did not use a method.

*Exception: low-value pools*

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

*Exception: also notionally deductible under R&D provisions*

(6) If:

(a) only one of the following events has happened:

(i) you have deducted one or more amounts under this Division for an asset;

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

(b) later, the other event happens for the asset;

then, for the purposes of working out the deduction for the later event, you must choose the same method that you chose for the first event.

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

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

(7) If:

(a) the events in paragraph (6)(a) could both arise for the same period for an asset; and

(b) neither event has already arisen for the asset;

then you must choose the same method for the purposes of working out the deduction for each event.

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



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## 40-70 Diminishing value method

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

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

where:

***base value*** is:

(a) for the income year in which the asset's *start time occurs—its *cost; or

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

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

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

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

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

*Exception: intangibles*

(2) You cannot use the *diminishing value method to work out the decline in value of:

(a) *in-house software; or

(b) an item of *intellectual property (except copyright in a *film); or

(c) a *spectrum licence; or

(e) a *telecommunications site access right.

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



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*Limit on decline*

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

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

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

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

where:

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

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

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

*Exception: intangibles*

(2) You cannot use the *diminishing value method to work out the decline in value of:

(a) *in-house software; or

(b) an item of *intellectual property (except copyright in a *film); or

(c) a *spectrum licence; or

(e) a *telecommunications site access right.

*Limit on decline*

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

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



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## 40-75 Prime cost method

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

where:

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

where:

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

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

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

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

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

(2) However, you must adjust the formula in subsection (1) for an income year (the ***change year***):

(a) for which you recalculate the *depreciating asset's *effective life; or

(b) after the year in which the asset's start time occurs and in which an amount is included in the second element of the asset's *cost; or

(c) for which the asset's *opening adjustable value is reduced under section 40-90 (about debt forgiveness); or

(d) in which the *remaining effective life of the asset is calculated under section 40-103; or

(e) for which there is a reduction to the asset's opening adjustable value under paragraph 40-365(5)(b) (about involuntary disposals) where you are using the prime cost method; or

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



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(f) for which the opening adjustable value of the asset is modified under subsection 27-80(3A) or (4), 27-85(3) or 27-90(3); or

(g) for which there is a reduction in the asset's opening adjustable value under section 775-70; or

(h) for which there is an increase in the asset's opening adjustable value under section 775-75.

The adjustments apply for the change year and later years.

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

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

Note 3: Subdivision 40-BA or 40-BB of the *Income Tax (Transitional Provisions) Act 1997* may also require you to adjust the formula: see subsections 40-135(3) and 40-180(2) of that Act.

(3) The adjustments are:

(a) instead of the asset's *cost, you use its *opening adjustable value for the change year plus the amounts (if any) included in the second element of its cost for that year; and

(b) instead of the asset's *effective life, you use its *remaining effective life.

(4) The ***remaining effective life*** of a *depreciating asset is any period of its *effective life that is yet to elapse as at:

(a) the start of the change year; or

(b) in the case of a roll-over under section 40-340—the time when the *balancing adjustment event occurs for the transferor.

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

(5) You must also adjust the formula in subsection (1) for an intangible *depreciating asset that:

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



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(a) is mentioned in an item in the table in subsection 40-95(7) (except item 5, 7 or 8); and

(b) you acquire from a former *holder of the asset.

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

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

*Limit on decline*

(7) The decline in value of a *depreciating asset under this section for an income year cannot be more than:

(a) for the income year in which the asset's *start time occurs—its *cost; or

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

## 40-80 When you can deduct the asset's cost

*Exploration or prospecting*

(1) The decline in value of a *depreciating asset you *hold is the asset's *cost if:

(a) you first use the asset for *exploration or prospecting for *minerals, or quarry materials, obtainable by *mining and quarrying operations; and

(b) when you first use the asset, you do not use it for:

(i) development drilling for *petroleum; or

(ii) operations in the course of working a mining property, quarrying property or petroleum field; and

(c) you satisfy one or more of these subparagraphs at the asset's *start time:

(i) you carry on mining and quarrying operations;

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



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(ii) it would be reasonable to conclude you proposed to carry on such operations;

(iii) you carry on a *business of, or a business that included, exploration or prospecting for minerals or quarry materials obtainable by such operations, and expenditure on the asset was necessarily incurred in carrying on that business; and

(d) in a case where the asset is a *mining, quarrying or prospecting right—you acquired the asset from an *Australian government agency or a *government entity; and

(e) in a case where the asset is *mining, quarrying or prospecting information:

(i) you acquired the asset from an Australian government agency or a government entity; or

(ii) the asset is a geophysical or geological data package you acquired from an entity to which subsection (1AA) applies; or

(iii) you created the asset, or contributed to the cost of its creation; or

(iv) you caused the asset to be created, or contributed to the cost of it being created, by an entity to which subsection (1AA) applies.

(1AA) This subsection applies to an entity if, at the time of the acquisition referred to in subparagraph (1)(e)(ii) or the creation referred to in subparagraph (1)(e)(iv), the entity predominantly carries on a *business of providing *mining, quarrying or prospecting information to other entities that:

(a) carry on *mining and quarrying operations; or

(b) it would be reasonable to conclude propose to carry on such operations; or

(c) carry on a business of, or a business that included, *exploration or prospecting for *minerals or quarry materials obtainable by such operations.

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



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(1AB) If an amount is included in the second element of the *cost of a *depreciating asset, subsection (1) applies in relation to that amount only if:

(a) your first use of the asset, after the inclusion of the amount in the second element, is for *exploration or prospecting for *minerals, or quarry materials, obtainable by *mining and quarrying operations; and

(b) at the time of that first use:

(i) you satisfy paragraph (1)(b) as if that first use was your first use of the asset; and

(ii) you satisfy paragraph (1)(c) as if the time of that first use was the asset's *start time; and

(c) if the amount relates to a *mining, quarrying or prospecting right—after the inclusion of the amount in the second element, you satisfy paragraph (1)(d) in relation to the right; and

(d) if the amount relates to *mining, quarrying or prospecting information—after the inclusion of the amount in the second element:

(i) you satisfy paragraph (1)(e) in relation to the information; or

(ii) you would satisfy that paragraph, in relation to the economic benefit that resulted in the inclusion of the amount in the second element, if that economic benefit were the asset referred to in that paragraph.

(1AC) If subsection (1) does not apply to a *depreciating asset:

(a) the fact that subsection (1) does not apply to the asset does not prevent the application of subsection (1AB) to an amount included in the second element of the *cost of the asset; but

(b) subsection (1) only affects the asset's decline in value to the extent that the asset's cost consists of that amount.

*Depreciating assets used for certain purposes*

(2) The decline in value of a *depreciating asset you start to *hold in an income year is the asset's *cost if:

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



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(a) that cost does not exceed $300; and

(b) you use the asset predominantly for the *purpose of producing assessable income that is not income from carrying on a *business; and

(c) the asset is not one that is part of a set of assets that you started to hold in that income year where the total cost of the set of assets exceeds $300; and

(d) the total cost of the asset and any other identical, or substantially identical, asset that you start to hold in that income year does not exceed $300.

### 40-82 Assets costing less than $150,000—medium sized businesses—assets first acquired between 2 April 2019 and 31 December 2020

*Year in which asset first used, or installed ready for use, for a taxable purpose*

(1) The decline in value of a *depreciating asset you *hold for the income year (the ***current year***) in which you start to use the asset, or have it *installed ready for use, for a *taxable purpose is the amount worked out under subsection (2) if:

(a) you are an entity covered by subsection (4) (about medium sized businesses) for:

(i) the current year; and

(ii) the income year in which you started to hold the asset; and

(b) you first acquired the asset:

(i) at or after 7.30 pm, by legal time in the Australian Capital Territory, on 2 April 2019; and

(ii) before 12 March 2020; and

(c) the current year ends on or after 2 April 2019; and

(d) you start to use the asset, or have it installed ready for use, for a taxable purpose before 12 March 2020; and

(e) the asset is a depreciating asset whose *cost as at the end of the current year is less than $30,000.

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



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Note: The amount you can deduct may be reduced by other provisions, such as subsection 40-25(2) (about taxable purpose) and section 40-215 (about double deductions).

(2) The amount is:

(a) unless paragraph (b) applies—the asset's *cost as at the end of the current year; or

(b) if the asset's *start time occurred in an earlier income year—the sum of the asset's *opening adjustable value for the current year and any amount included in the second element of its cost for the current year.

(2A) The decline in value of a *depreciating asset you *hold for the income year (the ***current year***) in which you start to use the asset, or have it *installed ready for use, for a *taxable purpose is the amount worked out under subsection (2B) if:

(a) you are an entity covered by subsection (4) (about medium sized businesses), or by subsection (4A) (about medium sized businesses and certain assets) in relation to the asset, for:

(i) the current year; and

(ii) the income year in which you started to hold the asset; and

(b) you first acquired the asset:

(i) at or after 7.30 pm, by legal time in the Australian Capital Territory, on 2 April 2019; and

(ii) on or before 31 December 2020; and

(c) the current year ends on or after 12 March 2020; and

(d) you start to use the asset, or have it installed ready for use, for a taxable purpose:

(i) on or after 12 March 2020; and

(ii) on or before 30 June 2021; and

(e) the asset is a depreciating asset whose *cost as at the end of the earlier of:

(i) the end of the current year; and

(ii) 31 December 2020;

is less than $150,000.

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



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Note 1: The amount you can deduct may be reduced by other provisions, such as subsection 40-25(2) (about taxable purpose) and section 40-215 (about double deductions).

Note 2: This subsection does not apply if Subdivision 40-BB of the *Income Tax (Transitional Provisions) Act 1997* applies: see section 40-145 of that Act.

(2B) The amount is:

(a) unless paragraph (b) applies—the asset's *cost as at the earlier of:

(i) the end of the current year; and

(ii) 31 December 2020; or

(b) if the asset's *start time occurred in an earlier income year—the sum of:

(i) the asset's *opening adjustable value for the current year; and

(ii) any amount included in the second element of the asset's cost for the current year, other than an amount included after 31 December 2020.

*Later year*

(3) The decline in value of a *depreciating asset you *hold for an income year (the ***later year***) is the first amount included in the second element of the asset's *cost for the later year if:

(a) you are an entity covered by subsection (4) (about medium sized businesses) for the later year; and

(aa) the amount is included before 12 March 2020; and

(b) the amount included is less than $30,000; and

(c) you worked out the decline in value of the asset for an earlier income year under subsection (1); and

(d) the later year ends on or after 2 April 2019.

Note: The amount you can deduct may be reduced by other provisions, such as subsection 40-25(2) (about taxable purpose) and section 40-215 (about double deductions).

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



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(3A) The decline in value of a *depreciating asset you *hold for an income year (the ***later year***) is the first amount included in the second element of the asset's *cost for the later year if:

(a) you are an entity covered by subsection (4) (about medium sized businesses), or by subsection (4B) (about medium sized businesses and certain amounts) in relation to the amount, for the later year; and

(b) the amount is included:

(i) on or after 12 March 2020; and

(ii) on or before 31 December 2020; and

(c) the amount included is less than $150,000; and

(d) you worked out the decline in value of the asset for an earlier income year under subsection (1) or (2A); and

(e) the later year ends on or after 12 March 2020.

Note 1: The amount you can deduct may be reduced by other provisions, such as subsection 40-25(2) (about taxable purpose) and section 40-215 (about double deductions).

Note 2: This subsection does not apply if Subdivision 40-BB of the *Income Tax (Transitional Provisions) Act 1997* applies: see section 40-145 of that Act.

*Medium sized business*

(4) An entity is covered by this subsection for an income year if:

(a) the entity is not a *small business entity for the income year; and

(b) the entity would be a small business entity for the income year if:

(i) each reference in Subdivision 328-C (about what is a small business entity) to $10 million were instead a reference to $50 million; and

(ii) the reference in paragraph 328-110(5)(b) to a small business entity were instead a reference to an entity covered by this subsection.

(4A) An entity is covered by this subsection for an income year in relation to an asset mentioned in subsection (2A) if:

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



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(a) the entity starts to use the asset, or has the asset *installed ready for use, for a *taxable purpose in the period beginning on 12 March 2020 and ending on 30 June 2021; and

(b) the entity is not a *small business entity for the income year; and

(c) the entity would be a small business entity for the income year if:

(i) each reference in Subdivision 328-C (about what is a small business entity) to $10 million were instead a reference to $500 million; and

(ii) the reference in paragraph 328-110(5)(b) to a small business entity were instead a reference to an entity covered by this subsection in relation to the asset.

(4B) An entity is covered by this subsection for an income year in relation to an amount included as mentioned in subsection (3A) if:

(a) the amount is so included in the period beginning on 12 March 2020 and ending on 31 December 2020; and

(b) the entity is not a *small business entity for the income year; and

(c) the entity would be a small business entity for the income year if:

(i) each reference in Subdivision 328-C (about what is a small business entity) to $10 million were instead a reference to $500 million; and

(ii) the reference in paragraph 328-110(5)(b) to a small business entity were instead a reference to an entity covered by this subsection in relation to the amount.

*Assets you start to use, or have installed ready for use, after 30 June 2021*

(5) The decline in value of a *depreciating asset you start to use, or have *installed ready for use, for a *taxable purpose after 30 June 2021 is worked out under the other provisions of this Division.

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



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*Amounts included in second element of cost after 31 December 2020*

(6) The effect on the value of a *depreciating asset of an amount included in the second element of the asset's *cost after 31 December 2020 is worked out under the other provisions of this Division.

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

(1) The ***adjustable value*** of a *depreciating asset at a particular time is:

(a) if you have not yet used it or had it *installed ready for use for any purpose—its *cost; or

(b) for a time in the income year in which you first use it, or have it installed ready for use, for any purpose—its cost less its decline in value up to that time; or

(c) for a time in a later income year—the sum of its *opening adjustable value for that year and any amount included in the second element of its cost for that year up to that time, less its decline in value for that year up to that time.

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

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

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

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

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



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## 40-90 Debt forgiveness

(1) This section applies if an amount (the ***debt forgiveness amount***) is applied in reduction of expenditure for a *depreciating asset in an income year under section 245-155 or 245-157.

(2) The asset's *cost is reduced for that income year by the debt forgiveness amount.

(3) The asset's *opening adjustable value for that income year is reduced by the debt forgiveness amount if that income year is later than the one in which its *start time occurs.

## 40-95 Choice of determining effective life

(1) You must choose either:

(a) to use an *effective life determined by the Commissioner for a *depreciating asset under section 40-100; or

(b) to work out the effective life of the asset yourself under section 40-105.

Note: If you choose to use an effective life determined by the Commissioner for a depreciating asset, a capped life may apply to the asset under section 40-102.

(2) Your choice of an *effective life determined by the Commissioner for a *depreciating asset is limited to one in force as at:

(a) the time when you entered into a contract to acquire the asset, you otherwise acquired it or you started to construct it if its *start time occurs within 5 years of that time; or

(b) for *plant that you entered into a contract to acquire, you otherwise acquired or you started to construct before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999—the time when you entered into the contract to acquire it, otherwise acquired it or started to construct it; or

(c) otherwise—its *start time.

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



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(3) You must make the choice for the income year in which the asset's *start time occurs.

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

*Exception: asset acquired from associate*

(4) For a *depreciating asset that you start to *hold where the former holder is an *associate of yours and the associate has deducted or can deduct an amount for the asset under this Division, you must use:

(a) if the associate was using the *diminishing value method for the asset—the same *effective life that the associate was using; or

(b) if the associate was using the *prime cost method—an effective life equal to any period of the asset's effective life the associate was using that is yet to elapse at the time you started to hold it.

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

(4A) Subsection (4) does not apply to a *depreciating asset if subsection (4B) or (4C) applies to the asset.

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

(a) the former holder is an *associate of yours; and

(b) the associate has deducted or can deduct an amount for the asset under this Division; and

(c) section 40-102 applied to the asset immediately before you started to hold it because an item in the tables in subsections 40-102(4) and (5) applied to it at the relevant time (the ***relevant time for the associate***) that applied to the associate under subsection 40-102(3); and

(d) a different item in the tables in subsections 40-102(4) and (5) applies to the asset when you start to hold it; and

(e) the item referred to in paragraph (d) would have applied to the asset at the relevant time for the associate if the use to

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



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which the asset were put at that time were the use (the ***new use***) to which it is put when you start to hold it;

you must use:

(f) if the associate was using the *diminishing value method for the asset—an *effective life equal to the *capped life that would have applied to the asset under subsection 40-102(4) or (5) at the relevant time for the associate if the use to which the asset were put at that time were the new use; or

(g) if the associate was using the *prime cost method—an effective life equal to the capped life that:

(i) would have applied to the asset under subsection 40-102(4) or (5) at the relevant time for the associate if the use to which the asset were put at that time were the new use; and

(ii) is yet to elapse at the time you start to hold it.

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

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

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

(a) the former holder is an *associate of yours; and

(b) the associate has deducted or can deduct an amount for the asset under this Division; and

(c) section 40-102 applied to the asset immediately before you started to hold it; and

(d) one of the following applies:

(i) no item in the tables in subsections 40-102(4) and (5) applies to the asset when you start to hold it;

(ii) subsection (4B) would apply to the asset but for paragraph (e) of that subsection not being satisfied;

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you must use:

(e) if the associate was using the *diminishing value method for the asset—the *effective life determined by the Commissioner for the asset under section 40-100 that the associate would have used if section 40-102 had not applied to the asset; or

(f) if the associate was using the *prime cost method—an effective life equal to any period of the effective life determined by the Commissioner for the asset under section 40-100 that:

(i) the associate would have used if section 40-102 had not applied to the asset; and

(ii) is yet to elapse at the time you start to hold it.

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

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

(5) For a *depreciating asset that you start to *hold where:

(a) the former holder or another entity (each of which is the ***former user***) was using the asset at a time before you became the holder; and

(b) while you hold the asset, the former user or an *associate of the former user uses the asset;

you must use:

(c) if the former holder was using the *diminishing value method for the asset—the same *effective life that the former holder was using; or

(d) if the former holder was using the *prime cost method—an effective life equal to any period of the asset's effective life the former holder was using that is yet to elapse at the time you started to hold it.

(5A) Subsection (5) does not apply to a *depreciating asset if subsection (5B) or (5C) applies to the asset.

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



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(5B) For a *depreciating asset that you start to *hold if:

(a) paragraphs (5)(a) and (b) apply; and

(b) section 40-102 applied to the asset immediately before you started to hold it because an item in the tables in subsections 40-102(4) and (5) applied to it at the relevant time (the ***relevant time for the former holder***) that applied to the former holder under subsection 40-102(3); and

(c) a different item in the tables in subsections 40-102(4) and (5) applies to the asset when you start to hold it; and

(d) the item referred to in paragraph (c) would have applied to the asset at the relevant time for the former holder if the use to which the asset were put at that time were the use (the ***new use***) to which it is put when you start to hold it;

you must use:

(e) if the former holder was using the *diminishing value method for the asset—an *effective life equal to the *capped life that would have applied to the asset under subsection 40-102(4) or (5) at the relevant time for the former holder if the use to which the asset were put at that time were the new use; or

(f) if the former holder was using the *prime cost method—an effective life equal to the capped life that:

(i) would have applied to the asset under subsection 40-102(4) or (5) at the relevant time for the former holder if the use to which the asset were put at that time were the new use; and

(ii) is yet to elapse at the time you start to hold it.

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

(5C) For a *depreciating asset that you start to *hold if:

(a) paragraphs (5)(a) and (b) apply; and

(b) section 40-102 applied to the asset immediately before you started to hold it; and

(c) one of the following applies:

(i) no item in the tables in subsections 40-102(4) and (5) applies to the asset when you start to hold it;

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



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(ii) subsection (5B) would apply to the asset but for paragraph (d) of that subsection not being satisfied;

you must use:

(d) if the former holder was using the *diminishing value method for the asset—the *effective life determined by the Commissioner for the asset under section 40-100 that the former holder would have used if section 40-102 had not applied to the asset; or

(e) if the former holder was using the *prime cost method—an effective life equal to any period of the effective life determined by the Commissioner for the asset under section 40-100 that:

(i) the former holder would have used if section 40-102 had not applied to the asset; and

(ii) is yet to elapse at the time you start to hold it.

(6) However, you must use an *effective life determined by the Commissioner if:

(a) you do not know, and cannot readily find out, which effective life the former holder was using and, if subsection (5B) or (5C) applied to the asset, either of the following matters:

(i) the effective life the former holder would have used if section 40-102 had not applied to the asset;

(ii) the relevant time that applied to the former holder under subsection 40-102(3); or

(b) the former holder did not use an effective life.

*Exception: intangible depreciating assets*

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

***Effective life*** **of certain intangible depreciating assets**

| Item | For this asset: | The effective life is: |
|---|---|---|
| 1 | Standard patent | 20 years |
| 2 | Innovation patent | 8 years |

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



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| ***Effective life*** **of certain intangible depreciating assets** | | |
|---|---|---|
| **Item** | **For this asset:** | **The effective life is:** |
| 3 | Petty patent | 6 years |
| 4 | Registered design | 15 years |
| 5 | Copyright (except copyright in a *film) | The shorter of:<br>(a) 25 years from when you acquire the copyright; or<br>(b) the period until the copyright ends |
| 6 | A licence (except one relating to a copyright or *in-house software) | The term of the licence |
| 7 | A licence relating to a copyright (except copyright in a *film) | The shorter of:<br>(a) 25 years from when you become the licensee; or<br>(b) the period until the licence ends |
| 8 | *In-house software | 5 years |
| 9 | *Spectrum licence | The term of the licence |
| 14 | *Telecommunications site access right | The term of the right |

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

(9) The ***effective life*** of an *IRU is the *effective life of the telecommunications cable over which the IRU is granted.

*Exceptions: mining, quarrying or prospecting rights and mining, quarrying or prospecting information*

(10) Subject to subsection (12), the ***effective life*** of:
(a) a *mining, quarrying or prospecting right; or
(b) *mining, quarrying or prospecting information;

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



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is the period you work out yourself by estimating the period (in years, including fractions of years) set out in column 2 of this table:

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

(10A) However, if the only reason that subsection 40-80(1) does not apply to the *mining, quarrying or prospecting right, or *mining, quarrying or prospecting information, is that the right or information does not meet the requirements of paragraph 40-80(1)(d) or (e), the ***effective life*** of the right or information is the shorter of:

(a) the period that would, apart from this subsection, be the effective life of the information or right under subsection (10); and

(b) 15 years.

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



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(11) You work out the period in subsection (10):

(a) as from the *start time of the *mining, quarrying or prospecting right or *mining, quarrying or prospecting information; and

(b) by reference only to the period of time over which the reserves, reasonably estimated using an appropriate accepted industry practice, are expected to be extracted from the mine, *petroleum field or quarry.

(12) The ***effective life*** of a *mining, quarrying or prospecting right, or *mining, quarrying or prospecting information, is 15 years if the right or information does not relate to:

(a) a mine or proposed mine; or

(b) a petroleum field or proposed petroleum field; or

(c) a quarry or proposed quarry.

## 40-100 Commissioner's determination of effective life

(1) The Commissioner may make a written determination specifying the ***effective life*** of *depreciating assets. The determination may specify conditions for particular depreciating assets.

(2) A determination may specify a day from which it takes effect for *depreciating assets specified in the determination.

(3) A determination may operate retrospectively to a day specified in the determination if:

(a) there was no applicable determination at that day for the *depreciating asset covered by the determination; or

(b) the determination specifies a shorter *effective life for the depreciating asset covered by the determination than was previously applicable.

*Criteria for making a determination*

(4) The Commissioner is to make a determination of the ***effective life*** of a *depreciating asset in accordance with subsections (5) and (6).

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



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(5) Firstly, estimate the period (in years, including fractions of years) the asset can be used by any entity for one or more of the following purposes:

(a) a *taxable purpose;

(b) the purpose of producing *exempt income or *non-assessable non-exempt income;

(c) the purpose of conducting *R&D activities, assuming that this is reasonably likely.

(6) Secondly, if relevant for the asset:

(a) assume the asset will be subject to wear and tear at a rate that is reasonable for the Commissioner to assume; and

(b) assume the asset will be maintained in reasonably good order and condition; and

(c) have regard to the period within which the asset is likely to be scrapped, sold for no more than scrap value or abandoned.

However, for paragraph (c), disregard reasons attributable to the technical risk in conducting *R&D activities if it is reasonably likely that the asset will be used for such activities.

## 40-102 Capped life of certain depreciating assets

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

*Working out if this section applies*

(2) This section applies to a *depreciating asset if:

(a) you choose, under paragraph 40-95(1)(a), to use an *effective life determined by the Commissioner for the asset under section 40-100; and

(b) your choice is limited to a determination in force at the time mentioned in paragraph 40-95(2)(a) or (c); and

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



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(c) a *capped life applies to the asset under subsection (4) or (5) at the relevant time (which is worked out using subsection (3)); and

(d) the capped life is shorter than the effective life mentioned in paragraph (a).

(3) For the purposes of this section, the relevant time is:

(a) the *start time of the *depreciating asset if:

(i) paragraph 40-95(2)(c) applies to you; or

(ii) paragraph 40-95(2)(a) applies to you and a *capped life does not apply to the asset under subsection (4) or (5) at the time mentioned in that paragraph; or

(iii) paragraph 40-95(2)(a) applies to you and the capped life that applies to the asset under subsection (4) or (5) at the time mentioned in that paragraph is longer than the capped life that applies to the asset at its start time; or

(b) if paragraph (a) does not apply—the time mentioned in paragraph 40-95(2)(a).

*Capped life*

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

***Capped life*** **of certain depreciating assets**

| Item | Kind of depreciating asset | Period |
|---|---|---|
| 1 | Aeroplane used predominantly for agricultural spraying or agricultural dusting | 8 years |
| 2 | Aeroplane to which item 1 does not apply | 10 years |
| 3 | Helicopter used predominantly for mustering, agricultural spraying or agricultural dusting | 8 years |
| 4 | Helicopter to which item 3 does not apply | 10 years |
| 5 | Bus with a *gross vehicle mass of more than 3.5 tonnes | 7.5 years |

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



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| ***Capped life* of certain depreciating assets** | | |
|---|---|---|
| **Item** | **Kind of depreciating asset** | **Period** |
| 6 | Light commercial vehicle with a *gross vehicle mass of 3.5 tonnes or less and designed to carry a load of 1 tonne or more | 7.5 years |
| 7 | Minibus with a *gross vehicle mass of 3.5 tonnes or less and designed to carry 9 or more passengers | 7.5 years |
| 8 | Trailer with a *gross vehicle mass of more than 4.5 tonnes | 10 years |
| 9 | Truck with a *gross vehicle mass of more than 3.5 tonnes (other than a truck that is used in *mining and quarrying operations and that is not of a kind that can be registered to be driven on a public road in the place in which the truck is operated) | 7.5 years |
| 10 | Vessel for which you have a certificate under Part 2 of the *Shipping Reform (Tax Incentives) Act 2012* | 10 years |

(4A) Item 10 of the table in subsection 40-102(4) does not apply to a vessel if:

(a) *ordinary income that you *derive, or your *statutory income, in relation to the vessel; or

(b) ordinary income that your *associate derives, or your associate's statutory income, in relation to the vessel;

is exempt from income tax under section 51-100 for the income year for which you are working out the vessel's decline in value.

(5) If the *depreciating asset is of a kind described in column 2 of the table and is used in the industry specified in column 3 of the table for the asset, the ***capped life*** of the asset is the period specified in column 4 of the table.

| ***Capped life* of certain depreciating assets used in specified industries** | | | |
|---|---|---|---|
| **Item** | **Kind of depreciating asset** | **Industry in which the asset is used** | **Period** |
| 1 | Gas transmission asset | Gas supply | 20 years |
| 2 | Gas distribution asset | Gas supply | 20 years |

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



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

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

(1) If, at a particular time, item 10 of the table in subsection 40-102(4):

(a) starts to apply to a vessel (whether or not that item has previously applied to the vessel); or

(b) ceases to apply to a vessel (whether or not that item subsequently applies to the vessel);

at that time the ***effective life*** of the vessel changes accordingly.

(2) If subsection (1) applies and the decline in value of the vessel is worked out using the *prime cost method, the ***remaining effective life*** of the vessel just after that time is:

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

where:

***alternative effective life*** is:

(a) if that item starts to apply to the vessel at that time—what would have been the *effective life of the vessel just before that time if that item had applied to the vessel; or

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

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

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

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

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

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

## 40-105 Self-assessing effective life

(1) You work out the ***effective life*** of a *depreciating asset yourself in accordance with this section.

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



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(1A) Firstly, estimate the period (in years, including fractions of years) the asset can be used by any entity for one or more of the following purposes:

(a) a *taxable purpose;

(b) the purpose of producing *exempt income or *non-assessable non-exempt income;

(c) the purpose of conducting *R&D activities, assuming that this is reasonably likely.

(1B) Secondly, if relevant for the asset:

(a) have regard to the wear and tear you reasonably expect from your expected circumstances of use; and

(b) assume that the asset will be maintained in reasonably good order and condition.

(2) If, in working out that period, you decide that the asset would be likely to be:

(a) scrapped; or

(b) sold for no more than scrap value or abandoned;

before the end of that period, its ***effective life*** ends at the earlier time. However, when making your decision, disregard reasons attributable to the technical risk in conducting *R&D activities if it is reasonably likely that the asset will be used for such activities.

(3) You work out the period mentioned in subsection (1A) or (2) beginning at the *start time of the *depreciating asset.

*Exception: intangibles*

(4) This section does not apply to the following intangible *depreciating assets:

(a) assets to which an item in the table in subsection 40-95(7) applies;

(b) *mining, quarrying or prospecting rights;

(c) *mining, quarrying or prospecting information.

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



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## 40-110 Recalculating effective life

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

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

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

(2) You must recalculate a *depreciating asset's *effective life from a later income year if:

(a) you:

(i) self-assessed its effective life; or

(ii) are using an effective life worked out under section 40-100 (about the Commissioner's determination), or 40-102 (about the capped life of certain depreciating assets), and the *prime cost method; or

(iii) are using an effective life because of subsection 40-95(4), (4B), (4C), (5), (5B) or (5C); and

(b) its *cost is increased in that year by at least 10%.

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

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

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

Example 2: Fiona also purchases a photocopier and self-assesses its effective life at 6 years. In a later year she incurs expenditure to incorporate a more

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



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robust paper handling system. She recalculates its effective life, and concludes that it is increased to 7 years.

(3) You must recalculate a *depreciating asset's *effective life for the income year in which you started to *hold it if:

(a) you are using an effective life because of subsection 40-95(4), (4B), (4C), (5), (5B) or (5C); and

(b) the asset's *cost is increased after you started to hold it in that year by at least 10%.

(3A) Subsections (1), (2) and (3) do not apply to a *depreciating asset that is a *mining, quarrying or prospecting right or *mining, quarrying or prospecting information.

(3B) You may choose to recalculate the *effective life of a *mining, quarrying or prospecting right, or *mining, quarrying or prospecting information, from a later income year if the effective life you have been using is no longer accurate:

(a) because of changed circumstances relating to an existing or proposed mine, petroleum field or quarry to which that right or information relates; or

(b) because that right or information now relates to an existing or proposed mine, petroleum field or quarry; or

(c) because that right or information no longer relates to an existing or proposed mine, petroleum field or quarry.

(4) A recalculation under this section must be done using:

(a) if paragraph (b) does not apply—section 40-105 (about self-assessing effective life); or

(b) if the *depreciating asset is a *mining, quarrying or prospecting right or *mining, quarrying or prospecting information:

(i) subsections 40-95(10) and (11) (if the right or information relates to an existing or proposed mine, petroleum field or quarry); or

(ii) subsection 40-95(12) (if the right or information no longer relates to an existing or proposed mine, petroleum field or quarry).

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



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*Exception: intangibles*

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

## 40-115 Splitting a depreciating asset

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

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

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

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

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

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

## 40-120 Replacement spectrum licences

(1) If:

(a) some (but not all) of a *spectrum licence you *hold is assigned or resumed; and

(b) your original licence is replaced by one or more other spectrum licences (possibly including a modified version of your original licence); and

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



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(c) the replacement licences together cover exactly the same rights as were covered by your original licence just after the assignment or resumption;

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

Example: MGP Communications Ltd buys a spectrum licence on 1 July 2003 for $5 million. The licence specifies areas A, B, C and D. The company assigns the spectrum relating to area C. Area C represents 20% of the market value of the overall licence. $1m of the adjustable value is allocated to it and $4m is allocated to the remaining licence.

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

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

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

## 40-125 Merging depreciating assets

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

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

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

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



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## 40-130 Choices

(1) A choice you can make under this Division about a *depreciating asset must be made:

(a) by the day you lodge your *income tax return for the income year to which the choice relates; or

(b) within a further time allowed by the Commissioner.

(2) Your choice, once made, applies to that income year and all later income years.

*Exception: recalculating effective life*

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

## 40-135 Certain anti-avoidance provisions

These anti-avoidance provisions:

(a) section 51AD (Deductions not allowable in respect of property under certain leveraged arrangements) of the *Income Tax Assessment Act 1936*;

(b) Division 16D (Certain arrangements relating to the use of property) of Part III of that Act;

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

## 40-140 Getting tax information from associates

(1) If you acquire a *depreciating asset from an *associate of yours where the associate has deducted or can deduct an amount for the asset under this Division, you may give the associate a written notice requiring the associate to tell you:

(a) the method the associate was using to work out the decline in value of the asset; and

(b) the *effective life the associate was using; and

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



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(c) if section 40-102 applied to the asset at any time:
(i) the effective life that the associate would have used if section 40-102 had not applied to the asset; and
(ii) the relevant time that applied to the associate under subsection 40-102(3).

(2) The notice must:
(a) be given within 60 days of your acquiring the asset; and
(b) specify a period of at least 60 days within which the information must be given; and
(c) set out the effect of subsection (3).

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

*Requirement to comply with notice*

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

Penalty: 10 penalty units.

*Giving the notice to a partnership*

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

(5) A partner must not intentionally refuse or fail to comply with that obligation, unless another partner has already complied with it.

Penalty: 10 penalty units.

*Limits on giving a notice*

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

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



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# Subdivision 40-C—Cost

## Guide to Subdivision 40-C

### 40-170 What this Subdivision is about

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

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

## Table of sections

**Operative provisions**

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40-225 Adjustment: acquiring a car at a discount
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## Operative provisions

### 40-175 Cost

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

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



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

- Subdivision 27-B;
- subsection 40-90(2);
- paragraph 40-362(3)(c);
- paragraph 40-365(5)(a);
- section 40-1110;
- section 775-70;
- section 775-75.

## 40-180 First element of cost

(1) The first element is worked out as at the time when you began to *hold the *depreciating asset (except for a case to which item 3, 4 or 14 of the table in subsection (2) applies). It is:

(a) if an item in that table applies—the amount specified in that item; or

(b) otherwise—the amount you are taken to have paid to hold the asset under section 40-185.

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

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

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

**First element of the *cost* of a depreciating asset**

| Item | In this case: | The *cost* is: |
|---|---|---|
| 1 | A *depreciating asset you *hold is split into 2 or more assets | For each of the assets into which it is split, the amount worked out under section 40-205 |
| 2 | A *depreciating asset or assets that you *hold is or are merged into another depreciating asset | For the other asset, the amount worked out under section 40-210 |

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



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**First element of the *cost* of a depreciating asset**

| Item | In this case: | The *cost* is: |
|---|---|---|
| 3 | A *balancing adjustment event happens to a *depreciating asset you *hold because you stop using it for any purpose expecting never to use it again, and you continue to hold it | The *termination value of the asset at the time of the event |
| 4 | A *balancing adjustment event happens to a *depreciating asset you *hold but have not used because you expect never to use it, and you continue to hold it | The *termination value of the asset at the time of the event |
| 5 | A partnership asset that was *held, just before it became a partnership asset, by one or more partners (whether or not any other entity was a joint holder) or a partnership asset to which subsection 40-295(2) applies | The *market value of the asset when the partnership started to hold it or when the change referred to in subsection 40-295(2) occurred |
| 6 | There is roll-over relief under section 40-340 for a *balancing adjustment event happening to a *depreciating asset | The *adjustable value of the asset to the transferor just before the balancing adjustment event occurred |
| 7 | You are the legal owner of a *depreciating asset that is hired under a *hire purchase agreement and you start *holding it because the entity to whom it is hired does not become the legal owner | The *market value of the asset when you started to hold it |
| 8 | You started to *hold the asset under an *arrangement and:<br>(a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and<br>(b) apart from this item, the first element of the asset's cost would exceed its *market value | The market value of the asset when you started to hold it |
| 9 | You started to *hold the asset under an *arrangement that was private or domestic in nature to you (for example, a gift) | The *market value of the asset when you started to hold it |

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



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| **First element of the *cost* of a depreciating asset** | | |
|---|---|---|
| **Item** | **In this case:** | **The *cost* is:** |
| 10 | The *Finance Minister has determined a cost for you under section 49A, 49B, 50A, 50B, 51A or 51B of the *Airports (Transitional) Act 1996* | The cost so determined |
| 11 | To which Division 58 (which deals with assets previously owned by an *exempt entity) applies | The amount applicable under subsections 58-70(3) and (5) |
| 12 | A *balancing adjustment event happens to a *depreciating asset because a person dies and the asset devolves to you as the person's *legal personal representative | The asset's *adjustable value on the day the person died or, if the asset is allocated to a low-value pool, so much of the *closing pool balance for the income year in which the person died as is reasonably attributable to the asset |
| 13 | You started to *hold a *depreciating asset because it *passed to you as the beneficiary or a joint tenant | The *market value of the asset when you started to hold it reduced by any *capital gain that was disregarded under section 128-10 or subsection 128-15(3), whether by the deceased or by the *legal personal representative |
| 14 | A *balancing adjustment event happens to a *depreciating asset you *hold because of subsection 40-295(1B) | What would, apart from subsection 40-285(3), be the asset's *adjustable value on the day the *balancing adjustment event occurs |

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



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(3) The first element of *cost includes an amount you paid or are taken to have paid in relation to starting to *hold the *depreciating asset if that amount is directly connected with holding the asset.

(4) The first element of *cost of a *depreciating asset does not include an amount that forms part of the second element of cost of another depreciating asset.

Note: The first element of cost may be reduced under section 40-1130 to account for exploration benefits received under farm-in farm-out arrangements.

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

(1) This Division applies to you as if you had paid, to *hold a *depreciating asset or for an economic benefit for such an asset, the greater of these amounts:

(a) the sum of the amounts that would have been included in your assessable income because you started to hold the asset or received the benefit, or because you gave something to start holding the asset or receive the benefit, if you ignored the value of anything you gave that reduced the amount actually included; or

(b) the sum of the applicable amounts set out in this table in relation to holding the asset or receiving the benefit.

Example 1: Gold Medals Ltd manufactures some medals for a local sporting association's annual meeting in return for a die cut stamping machine. The medals have a market value of $20,000. The machine has an arm's length value of $100,000 but Gold Medals has to contribute $75,000 towards acquiring it from the association. Gold Medals will have to include:

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

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

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

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



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

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

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

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

| Item | In this case: | The amount is: |
|---|---|---|
| 1 | You pay an amount | The amount |
| 2 | You incur or increase a liability to pay an amount | The amount of the liability or increase when you incurred or increased it |
| 3 | All or part of a liability to pay an amount owed to you by another entity is terminated | The amount of the liability or part when it is terminated |
| 4 | You provide a *non-cash benefit | The *market value of the non-cash benefit when it is provided |
| 5 | You incur or increase a liability to provide a *non-cash benefit | The *market value of the non-cash benefit or the increase when you incurred or increased the liability |
| 6 | All or part of a liability to provide a *non-cash benefit (except the *depreciating asset) owed to you by another entity is terminated | The *market value of the non-cash benefit when the liability is terminated |

Note 1: Item 1 includes not only amounts actually paid but also amounts taken to have been paid. Examples include the price of the notional purchase made when trading stock is converted to a depreciating asset under section 70-110, the cost of an asset held under a hire purchase

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



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arrangement under section 240-25 and a lessor's deemed purchase price when a luxury car lease ends under subsection 242-90(3).

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

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

## 40-190 Second element of cost

(1) The second element is worked out after you start to *hold the *depreciating asset.

(2) The second element is:

(a) the amount you are taken to have paid under section 40-185 for each economic benefit that has contributed to bringing the asset to its present condition and location from time to time since you started to *hold the asset; and

(b) expenditure you incur that is reasonably attributable to a *balancing adjustment event occurring for the asset.

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

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

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

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

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

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



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

**Second element of the *cost* of a depreciating asset**

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

## 40-195 Apportionment of cost

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

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

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

## 40-200 Exclusion from cost

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

(a) before 1 July 2001; or

(b) under a contract entered into before that day.

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



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## 40-205 Cost of a split depreciating asset

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

(a) the *adjustable value of the original asset just before it was split; and

(b) the amount you are taken to have paid under section 40-185 for any economic benefit involved in splitting the original asset.

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

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

## 40-210 Cost of merged depreciating assets

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

(a) the *adjustable value or adjustable values of the original asset or assets just before the merger; and

(b) the amount you are taken to have paid under section 40-185 for any economic benefit involved in merging the original asset or assets.

## 40-215 Adjustment: double deduction

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

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



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

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

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

### 40-222 Cost reduced by water infrastructure improvement expenditure

The *cost of a *depreciating asset is reduced by any portion of it that consists of expenditure that you cannot deduct because of section 26-100.

### 40-225 Adjustment: acquiring a car at a discount

(1) You must increase the first element of the ***cost*** of a *car designed mainly for carrying passengers you acquire at a discount if:

(a) it is reasonable to conclude that any portion (the ***discount portion***) of the discount is referable to you or another entity selling another asset for less than its *market value; and

(b) you, or another entity, has deducted or can deduct an amount for the other asset for any income year; and

(c) the sum of the cost of the car and the discount portion exceeds the *car limit for the *financial year in which you first use the car for any purpose.

(2) The first element of the ***cost*** of the *car is increased by the discount portion.

(3) This section does not apply to a *car that is excluded from the *car limit by subsection 40-230(2).

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



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## 40-230 Adjustment: car limit

(1) The first element of the ***cost*** of a *car designed mainly for carrying passengers (after applying section 40-225 and Subdivision 27-B) is reduced to the *car limit for the *financial year in which you started to *hold it if its cost exceeds that limit.

(2) However, the *car limit does not apply to a *car:

(a) fitted out for transporting disabled people in wheelchairs for profit; or

(b) whose first element of *cost exceeds that limit only because of modifications made to enable an individual with a disability to use it for a *taxable purpose.

(3) The ***car limit*** for the 2000-01 *financial year is $55,134. The limit is indexed annually.

Note: Subdivision 960-M shows you how to index amounts.

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

## 40-235 Adjustment: National Disability Insurance Scheme costs

The *cost of a *depreciating asset does not include an amount to the extent that section 26-97 prevents the amount from being deducted (even if some other provision also prevents it being deducted).

Note: Section 26-97 denies deductions for National Disability Insurance Scheme expenditure.

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



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# Subdivision 40-D—Balancing adjustments

## Guide to Subdivision 40-D

### 40-280 What this Subdivision is about

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

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

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40-290 Reduction for non-taxable use
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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



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40-365 Involuntary disposals
40-370 Balancing adjustments where there has been use of different car expense methods

## Operative provisions

### 40-285 Balancing adjustments

(1) An amount is included in your assessable income if:

(a) a *balancing adjustment event occurs for a *depreciating asset you *held and:

(i) whose decline in value you worked out under Subdivision 40-B; or

(ii) whose decline in value you would have worked out under that Subdivision if you had used the asset; and

(b) the asset's *termination value is more than its *adjustable value just before the event occurred.

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

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

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

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

(2) You can deduct an amount if:

(a) a *balancing adjustment event occurs for a *depreciating asset you *held and:

(i) whose decline in value you worked out under Subdivision 40-B; or

(ii) whose decline in value you would have worked out under that Subdivision if you had used the asset; and

(b) the asset's *termination value is less than its *adjustable value just before the event occurred.

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



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

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

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

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

(3) The *adjustable value of a *depreciating asset you *hold after this section applies to it is then zero.

(4) However, subsection (3) does not apply to a *depreciating asset for which you have a *cost under item 3, 4 or 14 of the table in subsection 40-180(2). Instead, the asset's *opening adjustable value for the income year (the ***later year***) after the one in which the *balancing adjustment event occurred is that cost plus any amounts included in the second element of that cost after the event occurred and before the start of the later year.

Note: Those items deal with a case where a balancing adjustment event happens even though you still hold the asset in question.

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

(a) the *depreciating asset is a vessel; and

(b) you have a certificate for the vessel under Part 2 of the *Shipping Reform (Tax Incentives) Act 2012* that:

(i) applies to the day that the balancing adjustment event occurs; and

(ii) is not a *shipping exempt income certificate.

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

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



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## 40-290 Reduction for non-taxable use

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

(2) The reduction is:

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

where:

***sum of reductions*** is the sum of:

(a) the reductions in your deductions for the asset under section 40-25; and

(b) if there has been roll-over relief for the asset under section 40-340—the reductions in deductions for the asset for the transferor or an earlier successive transferor under section 40-25; and

(c) if you *hold the asset as the *legal personal representative of an individual—the reductions in deductions for the asset for the individual under section 40-25.

***total decline*** is the sum of:

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

(b) if there has been roll-over relief for the asset under section 40-340—the decline in value of the asset for the transferor or an earlier successive transferor; and

(c) if you *hold the asset as the *legal personal representative of an individual—the decline in value of the asset for the individual.

(3) You must further reduce the amount included in your assessable income, or the amount you can deduct, under section 40-285 for a *depreciating asset (the ***current asset***) if:

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



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(a) the asset's *cost (for you) was worked out under section 40-205 (Cost of a split depreciating asset) or 40-210 (Cost of merged depreciating assets); and

(b) you used the depreciating asset from which the current asset was split, or a depreciating asset that was merged into the current asset, or had it *installed ready for use, for a purpose other than a *taxable purpose.

(4) The further reduction is such amount as is reasonable having regard to the extent of the use referred to in paragraph (3)(b).

*Exception: mining, quarrying or prospecting information*

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

## 40-291 Reduction for second-hand assets used in residential property

(1) In addition to section 40-290, you must reduce the amount (the ***balancing adjustment amount***) included in your assessable income, or that you can deduct, under section 40-285 for a *depreciating asset if your deductions for the asset have been reduced under section 40-27.

(2) The reduction is the following, as increased under subsection (3) if applicable:

$$\frac{\text{Sum of section 40-27 reductions}}{\text{Total decline}} \times \text{Balancing adjustment amount}$$

where:

***sum of section 40-27 reductions*** is the sum of:

(a) the reductions in your deductions for the asset under section 40-27; and

(b) if there has been roll-over relief for the asset under section 40-340—the reductions in deductions for the asset for

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



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the transferor or an earlier successive transferor under section 40-27; and

(c) if you *hold the asset as the *legal personal representative of an individual—the reductions in deductions for the asset for the individual under section 40-27.

***total decline*** is the sum of:

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

(b) if there has been roll-over relief for the asset under section 40-340—the decline in value of the asset for the transferor or an earlier successive transferor; and

(c) if you hold the asset as the *legal personal representative of an individual—the decline in value of the asset for the individual.

(3) If:

(a) the *cost (for you) of the asset (the ***current asset***) was worked out under section 40-205 (Cost of a split depreciating asset) or 40-210 (Cost of merged depreciating assets); and

(b) you used the *depreciating asset from which the current asset was split, or a depreciating asset that was merged into the current asset, or had it *installed ready for use, for the purpose to which paragraphs 40-27(2)(a) and (b) relate;

the reduction includes an increase equal to such amount as is reasonable having regard to the extent of the use referred to in paragraph (b) of this subsection.

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

(1) This section applies if:

(a) a *balancing adjustment event happens in an income year (the ***event year***) for an asset you *held and for which:

(i) you can deduct, for an income year, an amount under section 40-25, as that section applies apart from

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Division 355 and former section 73BC of the *Income Tax Assessment Act 1936*; or

(ii) you could have deducted, for an income year, an amount as described in subparagraph (i) if you had used the asset; and

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

Note 1: This section applies in a modified way if you have deductions for the asset under former section 73BA or 73BH of the *Income Tax Assessment Act 1936* (see section 40-292 of the *Income Tax (Transitional Provisions) Act 1997*).

Note 2: To the extent that any amount is included in your assessable income under section 40-285 in relation to R&D activities, you may have an additional amount included in your assessable income (see section 355-447).

Note 3: To the extent any amount that you are entitled to as a deduction under section 40-285 relates to R&D activities, you may have an additional amount you can deduct (see section 355-466).

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

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

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

(1) This section applies to an *R&D partnership if:

(a) a *balancing adjustment event happens in an income year (the ***event year***) for a *depreciating asset *held by the R&D partnership and for which:

(i) the R&D partnership can deduct, for an income year, an amount under section 40-25, as that section applies

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apart from Division 355 and former section 73BC of the *Income Tax Assessment Act 1936*; or

(ii) the R&D partnership could have deducted, for an income year, an amount as described in subparagraph (i) if it had used the asset; and

(b) one or more partners of the R&D partnership are entitled under section 355-100 to *tax offsets for one or more income years for deductions (the ***R&D deductions***) under section 355-520 for the asset.

Note 1: This section applies in a modified way if the partners have deductions for the asset under former section 73BA or 73BH of the *Income Tax Assessment Act 1936* (see section 40-293 of the *Income Tax (Transitional Provisions) Act 1997*).

Note 2: To the extent any amount that is included in the R&D partnership's assessable income under section 40-285 relates to R&D activities, a partner may have an additional amount included in the partner's assessable income (see section 355-449).

Note 3: To the extent any amount that the R&D partnership is entitled to as a deduction under section 40-285 relates to R&D activities, a partner may have an additional amount the partner can deduct (see section 355-468).

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

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

## 40-295 Meaning of *balancing adjustment event*

(1) A ***balancing adjustment event*** occurs for a *depreciating asset if:

(a) you stop *holding the asset; or

(b) you stop using it, or having it *installed ready for use, for any purpose and you expect never to use it, or have it installed ready for use, again; or

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



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(c) you have not used it and:

(i) if you have had it installed ready for use—you stop having it so installed; and

(ii) you decide never to use it.

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

(1A) A ***balancing adjustment event*** occurs for a *depreciating asset you *hold that is a *mining, quarrying or prospecting right, or *mining, quarrying or prospecting information, if:

(a) the only reason that subsection 40-80(1) does not apply to the right or information is that the right or information does not meet the requirements of paragraph 40-80(1)(d) or (e); and

(b) you have neither budgeted nor planned for further expenditure that:

(i) will relate to the tenement to which the right or information relates; and

(ii) will exceed the minimum expenditure required to maintain the tenement; and

(c) you choose to apply this subsection to the right or information.

(1B) A ***balancing adjustment event*** occurs for a *depreciating asset you *hold that is a *mining, quarrying or prospecting right, or *mining, quarrying or prospecting information, if:

(a) since the last time you commenced to hold the right or information, a *balancing adjustment event occurred, because of subsection (1A), to the right or information; and

(b) paragraph (1A)(b) no longer applies.

(2) A ***balancing adjustment event*** occurs for a *depreciating asset if:

(a) for any reason, a change occurs in the *holding of, or in the interests of entities in, the asset; and

(b) the entity or one of the entities that had an interest in the asset before the change has an interest in it after the change; and

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(c) the asset was a partnership asset before the change or becomes one as a result of the change.

(3) However, a ***balancing adjustment event*** does not occur for a *depreciating asset merely because you split it into 2 or more depreciating assets or you merge it with one or more other depreciating assets.

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

## 40-300 Meaning of *termination value*

(1) The ***termination value*** of a *depreciating asset is worked out as at the time when the *balancing adjustment event occurs. It is:

(a) if an item in the table in subsection (2) applies—the amount specified in that item; or

(b) otherwise—the amount you are taken to have received under section 40-305 for the asset.

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

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

**Termination value table**

| Item | For this balancing adjustment event: | The termination value is: |
|---|---|---|
| 1 | You stop using a *depreciating asset, or having it *installed ready for use, for any purpose and you expect never to use it again even though you still *hold it | The *market value of the asset when you stopped using it or having it *installed ready for use |
| 2 | You decide never to use a *depreciating asset that you have not used even though you still *hold it | The *market value of the asset when you make the decision |

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



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**Termination value table**

| Item | For this balancing adjustment event: | The termination value is: |
|---|---|---|
| 3 | You stop using *in-house software for any purpose and you expect never to use it again even though you still *hold it | Zero |
| 4 | You decide never to use *in-house software that you have not used even though you still *hold it | Zero |
| 5 | One or more partners stop holding a *depreciating asset when it becomes a partnership asset or a *balancing adjustment event referred to in subsection 40-295(2) occurs | The *market value of the asset when the partnership started to *hold it or when the balancing adjustment event occurred |
| 6 | You stop *holding a *depreciating asset under an *arrangement and:<br>(a) there is at least one other party to the arrangement with whom you did not deal at *arm's length; and<br>(b) apart from this item, the *termination value would be less than its *market value | The market value of the asset just before you stopped holding it |
| 7 | You stop *holding a *depreciating asset under an *arrangement that was private or domestic in nature to you (for example, a gift) | The *market value of the asset just before you stopped *holding it |
| 8 | A *depreciating asset is lost or destroyed | The amount or value received or receivable under an insurance policy or otherwise for the loss or destruction |

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



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**Termination value table**

| Item | For this balancing adjustment event: | The termination value is: |
|---|---|---|
| 9 | You stop *holding a *depreciating asset because you die and the asset starts being held by the *legal personal representative | The asset's *adjustable value on the day you died or, if the asset is allocated to a low-value pool, so much of the *closing pool balance for the income year in which you died as is reasonably attributable to the asset |
| 10 | You stop *holding a *depreciating asset because it *passes directly to a beneficiary or joint tenant when you die | The *market value of the asset on the day you die |
| 11 | A *depreciating asset for which the *Finance Minister has determined an amount for you under section 52A of the *Airports (Transitional) Act 1996* | The amount so determined |
| 13 | The *balancing adjustment event occurs under subsection 40-295(1A) | Zero |
| 14 | The *balancing adjustment event occurs under subsection 40-295(1B) | What would, apart from subsection 40-285(3), be the asset's *adjustable value on the day the *balancing adjustment event occurs |

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

Note 1: Termination value may be adjusted under Subdivision 27-B so that any GST consequences are accounted for.

Note 2: Termination value may be reduced under section 40-1105 to account for exploration benefits received under farm-in farm-out arrangements.

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



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

(1) This Division applies to you as if you had received, under a *balancing adjustment event, the greater of these amounts:

(a) the sum of the amounts you have deducted or can deduct, or has been or will be taken into account in working out an amount you can deduct because of the balancing adjustment event and any amount by which the amount so deductible was reduced because of a case described in the table in this subsection; and

(b) the sum of the applicable amounts set out in that table:

**Amount you are taken to have received under a balancing adjustment event**

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

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

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deemed consideration when a luxury car lease ends under subsection 242-90(3).

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

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

### 40-310 Apportionment of termination value

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

### 40-320 Car to which section 40-225 applies

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

### 40-325 Adjustment: car limit

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

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

where:

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

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



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

(1) You can deduct expenditure you incurred on *in-house software if:

(a) you incurred the expenditure with the intention of using the software for a *taxable purpose; and

(b) the expenditure relates to a unit of software that you have not used or had *installed ready for use; and

(c) the expenditure is not allocated to a software development pool (see Subdivision 40-E); and

(d) in the *current year, you have decided that you will never use the software, or have it installed ready for use.

(2) The amount that you can deduct in the *current year is:

(a) the total of your expenditure on the *in-house software in the current year and any previous income year; *less*

(b) any amount of consideration you *derive in relation to the software or any part of it (but no more than the total in paragraph (a));

but only to the extent that, when you incurred the expenditure, you intended to use the software, or have it *installed ready for use, for a *taxable purpose.

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

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

## 40-340 Roll-over relief

*Automatic roll-over relief*

(1) There is roll-over relief if:

(a) there is a *balancing adjustment event because an entity (the ***transferor***) disposes of a *depreciating asset in an income year to another entity (the ***transferee***); and

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(b) the disposal involves a *CGT event; and

(c) the conditions in an item in this table are satisfied.

**CGT roll-overs that qualify transferor for relief**

| Item | Type of CGT roll-over | Conditions |
|---|---|---|
| 1 | Disposal of asset to wholly-owned company | The transferor is able to choose a roll-over under Subdivision 122-A for the *CGT event. |
| 2 | Disposal of asset by partnership to wholly-owned company | The transferor is a partnership, the property is partnership property and the partners are able to choose a roll-over under Subdivision 122-B for the disposal by the partners of the *CGT assets consisting of their interests in the property. |
| 2A | Transfer of a *CGT asset of a trust to a company under a trust restructure | The transferor and transferee are able to choose a roll-over under Subdivision 124-N for the *CGT event. |
| 3 | Marriage or relationship breakdown | There is a roll-over under Subdivision 126-A for the *CGT event. |
| 4 | Disposal of asset to another member of the same wholly-owned group | The transferor is able to choose a roll-over under Subdivision 126-B for the *CGT event. |
| 5 | *Disposal of asset between certain trusts | The trustees of the trusts choose to obtain a roll-over under Subdivision 126-G in relation to the disposal. |
| 6 | Disposal of asset as part of merger of superannuation funds | The transferor chooses a roll-over under Subdivision 310-D in relation to the disposal. |
| 8 | Transfer of asset under a small business restructure roll-over | A roll-over under Subdivision 328-G would be available in relation to the asset if the asset were not a *depreciating asset. |

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

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

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

(a) an exemption in Division 118 (which contains the general exemptions from CGT); and

(b) subsection 122-25(3) (which excludes certain assets from some kinds of CGT roll-over); and

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

*Choosing roll-over relief*

(3) There is also roll-over relief if:

(a) there is a *balancing adjustment event for a *depreciating asset because of subsection 40-295(2) (about a change in the holding of, or in interests in, the asset); and

(b) the entity or entities that had an interest in the asset before the change (also the ***transferor***) and the entity or entities that have an interest in the asset after the change (also the ***transferee***) jointly choose the roll-over relief.

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

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

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

(4) The choice must:

(a) be in writing; and

(b) contain enough information about the transferor's holding of the property for the transferee to work out how this Division or Subdivision 328-D applies to the transferee's holding of the *depreciating asset; and

(c) be made within 6 months after the end of the transferee's income year in which the *balancing adjustment event occurred, or within a longer period allowed by the Commissioner.

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(5) If you die before the end of the time allowed for jointly choosing roll-over relief, the trustee of your estate may be a party to the choice.

(6) The transferor must keep the choice or a copy of it for 5 years after the *balancing adjustment event occurred.

Penalty: 30 penalty units.

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

Penalty: 30 penalty units.

*Exception: Subdivision 170-D applies*

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

## 40-345 What the roll-over relief is

(1) Section 40-285 does not apply to the *balancing adjustment event for the transferor.

(2) The transferee can deduct the decline in value of the *depreciating asset using the same method and *effective life (or *remaining effective life if that method is the *prime cost method) that the transferor was using.

## 40-350 Additional consequences

(1) For the purposes of Division 45:

(a) if the transferor, or a partnership of which the transferor was a member, leased the *depreciating asset to another entity for most of the time that the transferor or partnership *held the asset, the transferee is taken also to have done so; and

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



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(b) if the transferor, or a partnership of which the transferor was a member, leased the asset to another entity for a period on or after 22 February 1999, the transferee is taken also to have done so; and

(c) if the main *business of the transferor, or a partnership of which the transferor was a member, was to lease assets, the main business of the transferee is taken also to have been to lease assets.

(2) However, subsection (1) does not apply to roll-over relief under subsection 40-340(3) if the sum of the amounts specified in paragraph 45-5(1)(e) or 45-10(1)(f), or subsection 45-5(4) or 45-10(4), is at least equal to the *market value of the *plant or interest concerned.

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

(1) This section applies if there is roll-over relief because of subsection 40-340(1).

(2) The transferor must give the transferee a notice containing enough information about the transferor's *holding of the property for the transferee to work out how this Division applies to the transferee's holding of the *depreciating asset.

(3) The transferor must give the notice within 6 months after the end of the transferee's income year in which the *balancing adjustment event occurred, or within a longer period allowed by the Commissioner.

(4) The transferee must keep the notice until the end of 5 years after the earlier of these events:

(a) the transferee disposes of the property;

(b) the property is lost or destroyed.

Penalty: 30 penalty units.

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

*Circumstances giving rise to roll-over relief*

(1) There is roll-over relief if:

(a) there is a *balancing adjustment event under section 40-295 because you cease to *hold a *depreciating asset that is a vessel (the ***original vessel***); and

(b) on the day that the balancing adjustment event occurs, you have a certificate for the vessel under Part 2 of the *Shipping Reform (Tax Incentives) Act 2012* that:

(i) applies to that day; and

(ii) is not a *shipping exempt income certificate; and

(c) there is no roll-over relief under section 40-340 relating to the original vessel; and

(d) on the day occurring 2 years after the day you cease to hold the original vessel, you are the holder of another depreciating asset that is a vessel (the ***other vessel***):

(i) for which you choose to apply roll-over relief in relation to the original vessel; and

(ii) for which you have a certificate under Part 2 of the *Shipping Reform (Tax Incentives) Act 2012* (other than a shipping exempt income certificate) that applies to the day of that choice; and

(e) you became the holder of the other vessel during the period starting 1 year before the day you cease to hold the original vessel and ending 2 years after that day.

*Choosing to apply roll-over relief*

(2) The choice must:

(a) be in writing; and

(b) be made within 6 months after the end of the second income year after the income year in which the *balancing

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adjustment event occurs, or within a longer period allowed by the Commissioner.

*The effect of roll-over relief*

(3) If there is roll-over relief under this section:

(a) subsection 40-285(1) does not apply to the *balancing adjustment event in relation to the original vessel; and

(b) an amount is included in your assessable income if the original vessel's *termination value exceeds the sum of:

(i) the original vessel's *adjustable value just before the balancing adjustment event occurred; and

(ii) the *cost of the other vessel (disregarding paragraph (3)(c)); and

(c) for the purpose of applying this Act to the other vessel, its cost is reduced (but not below zero) by the difference between:

(i) the original vessel's termination value; and

(ii) the original vessel's adjustable value just before the balancing adjustment event occurred.

(4) The amount included in your assessable income under paragraph (3)(b) is the amount of the excess mentioned in that paragraph. It is included in the second income year after the income year in which the *balancing adjustment event occurs.

## 40-363 Roll-over relief for interest realignment arrangements

*Circumstances giving rise to roll-over relief*

(1) There is roll-over relief if:

(a) there is a *balancing adjustment event under section 40-295 because, in an income year, you dispose of a *depreciating asset to another entity; and

(b) the asset is a *mining, quarrying or prospecting right; and

(c) the disposal occurs under an *interest realignment arrangement; and

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



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(d) you choose to apply roll-over relief in relation to the asset.

*Choosing to apply roll-over relief*

(2) The choice must:
(a) be in writing; and
(b) be made at or before the time you lodge your *income tax return for the income year in which the *balancing adjustment event occurs, or within a longer period allowed by the Commissioner.

*The effect of roll-over relief*

(3) If there is roll-over relief under this section:
(a) section 40-285 does not apply to the *balancing adjustment event in relation to the asset; and
(b) an amount is included in your assessable income if such an amount (the ***non-realignment amount***) would have been included under subsection 40-285(1) if:
(i) paragraph (a) of this subsection did not apply; and
(ii) the *adjustable value of the *mining, quarrying or prospecting rights that you disposed of under the arrangement were taken to be the market value of the mining, quarrying or prospecting rights that you received under the arrangement; and
(c) in working out the *cost of a mining, quarrying or prospecting right that you receive under the arrangement, if:
(i) some or all of the cost consists of a *non-cash benefit that you provide; and
(ii) that benefit is a mining, quarrying or prospecting right that you disposed of under the arrangement;
the market value of the benefit is taken to be the adjustable value of the benefit.

(4) The amount included in your assessable income under paragraph (3)(b) is the non-realignment amount, and it is included

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for the income year in which the balancing adjustment event occurred.

*Meaning of **interest realignment arrangement** etc.*

(5) An ***interest realignment arrangement*** is an *arrangement:

(a) that is entered into between entities:

(i) that are undertaking jointly, or propose to undertake jointly, a project for carrying out *mining and quarrying operations; and

(ii) that each *holds one or more *mining, quarrying or prospecting rights relating to the project; and

(b) under which those entities exchange (or agree to exchange), with the effect set out in subsection (6), parts of those rights; and

(c) that does not provide for any transfer, of a mining, quarrying or prospecting right, that does not give rise to the effect referred to in subsection (6).

Note: The parts referred to in paragraph (b) are themselves mining, quarrying or prospecting rights (see paragraph (c) of the definition of ***mining, quarrying or prospecting right*** in subsection 995-1(1)), and are therefore not referred to elsewhere in this Act as parts of such rights.

(6) The effect referred to in paragraphs (5)(b) and (c) must be that, for each of those entities, the following are equal:

(a) the entity's percentage interest in the project;

(b) the reserves and resources represented by the *mining, quarrying or prospecting rights that the entity *holds relating to the project, expressed as a percentage of the reserves and resources represented by all mining, quarrying or prospecting rights that any of the entities hold relating to the project.

(7) For the purposes of subsection (6):

(a) the reserves represented by a *mining, quarrying or prospecting right are taken to be the reserves, reasonably estimated using an appropriate accepted industry practice,

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



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that are expected to be extracted from the mine, *petroleum field or quarry to which the right relates; and

(b) the resources represented by a mining, quarrying or prospecting right are taken to be the resources, reasonably estimated using an appropriate accepted industry practice, that are expected to be situated in the area to which the right relates (other than those resources that are reserves referred to in paragraph (a)).

## 40-364 Interest realignment adjustments

*Effect of receiving interest realignment adjustment on assessable income*

(1) If you receive an *interest realignment adjustment in an income year, include in your assessable income for the year an amount (the ***adjustment amount***) equal to:

(a) the amount of the adjustment; or

(b) if the adjustment is not an amount—the *market value of the adjustment.

*Effect of providing interest realignment adjustment on cost, or cost base and reduced cost base*

(2) If an *interest realignment adjustment is provided by you or on your behalf:

(a) include the adjustment amount in the second element of the *cost of a *mining, quarrying or prospecting right that you acquired under the *interest realignment arrangement to which the adjustment amount relates; or

(b) if this Division does not apply to that right—include the adjustment amount in the *cost base and *reduced cost base of that right.

However, if you acquired more than one such right under the arrangement, apportion the adjustment amount between the costs, or cost bases and reduced cost bases, of those rights on a reasonable basis.

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Note: Subsections 40-77(1D) and (1E) of the *Income Tax (Transitional Provisions) Act 1997* set out when this Division does not apply to the right.

*Tax effects of the right to an interest realignment adjustment*

(3) In calculating the *termination value of a *mining, quarrying or prospecting right that you provide under an *interest realignment arrangement, assume to be zero the *market value of any contractual right conferred by the arrangement to an *interest realignment adjustment to be received by you.

(4) In calculating the *cost of a *mining, quarrying or prospecting right that you receive under an *interest realignment arrangement, assume to be zero the *market value of any contractual right conferred by the arrangement to an *interest realignment adjustment to be provided by you.

(5) The creation of a right to an *interest realignment adjustment does not cause *CGT event D1 or CGT event D3 to happen.

(6) Your receipt of an *interest realignment adjustment does not cause *CGT event C2 to happen in relation to the right to receive the adjustment.

*Meaning of **interest realignment adjustment***

(7) An ***interest realignment adjustment*** is an amount, or an asset (other than a *mining, quarrying or prospecting right), that:
  (a) is provided under an *interest realignment arrangement to a party to the arrangement by or on behalf of another party to the arrangement; and
  (b) is provided as an adjustment, to the parties' contributions of value to the project to which the arrangement relates, that arises because information that has become available since the time the arrangement took effect indicates that the other party did not make an appropriate contribution at that time.

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



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## 40-365 Involuntary disposals

(1) You may exclude some or all of an amount that has been included in your assessable income for a *depreciating asset (the ***original asset***) as a result of a *balancing adjustment event to the extent that you choose to treat it as an amount to be applied under subsection (5) for one or more replacement assets.

(2) You can only make this choice if you stop *holding the asset because:

(a) the original asset is lost or destroyed; or

(b) the original asset is compulsorily acquired by an *Australian government agency; or

(c) the original asset is acquired by an entity (other than an Australian government agency or a *foreign government agency) under a power of compulsory acquisition conferred by a law covered under subsection (2A); or

(d) you dispose of the original asset to an entity (other than a foreign government agency) in circumstances meeting all of these conditions:

(i) the disposal takes place after a notice was served on you by or on behalf of the entity;

(ii) the notice invited you to negotiate with the entity with a view to the entity acquiring the asset by agreement;

(iii) the notice informed you that if the negotiations were unsuccessful, the asset would be compulsorily acquired by the entity;

(iv) the compulsory acquisition would have been under a power of compulsory acquisition conferred by a law covered under subsection (2A); or

(e) you dispose of land onto which the original asset was fixed to an entity (other than a foreign government agency) in circumstances meeting all of these conditions:

(i) a mining lease was compulsorily granted over the land;

(ii) the lease significantly affected your use of the land;

(iii) the lease was in force just before the disposal;

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



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(iv) the entity to which you dispose of the land was the lessee under the lease; or

(f) you dispose of land onto which the original asset was fixed to an entity (other than a foreign government agency) in circumstances meeting all of these conditions:

(i) a mining lease would have been compulsorily granted over the land if you had not disposed of it;

(ii) that lease would have significantly affected your use of the land;

(iii) the entity to which you dispose of the land would have been the lessee under the lease.

(2A) A law is covered under this subsection if it is:

(a) an *Australian law (other than Chapter 6A of the *Corporations Act 2001*); or

(b) a *foreign law (other than a foreign law corresponding to Chapter 6A of the *Corporations Act 2001*).

(3) You can only make this choice for a replacement asset if you incur the expenditure on the replacement asset, or you start to *hold it:

(a) no earlier than one year, or within a further period the Commissioner allows, before the *balancing adjustment event occurred; and

(b) no later than one year, or within a further period the Commissioner allows, after the end of the income year in which the balancing adjustment event occurred.

(4) You can only make this choice for a replacement asset if:

(a) at the end of the income year in which you incurred the expenditure on the asset, or you started to *hold it, you used it, or had it *installed ready for use, wholly for a *taxable purpose; and

(b) you can deduct an amount for it.

(5) For the purposes of applying this Act to the replacement asset:

(a) its *cost is reduced by the amount covered by the choice for the income year in which the asset's *start time occurs; and

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



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(b) if the income year is later than the one in which the asset's *start time occurs—the sum of its *opening adjustable value for that later year and any amount included in the second element of the asset's cost for that later year is reduced by the amount covered by the choice.

(6) If you are making the choice for 2 or more replacement assets, you apportion the amount covered by the choice between those items in proportion to their *cost.

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

(1) An amount is included in your assessable income or you can deduct an amount under this section instead of section 40-285 if:

(a) a *balancing adjustment event occurs for a *car you *held; and

(b) you have deducted or can deduct an amount for the decline in value of the car for an income year under this Division; and

(c) you chose the "cents per kilometre" method in Subdivision 28-C for deducting your car expenses for the car for one or more other income years.

Note 1: This means if you have only used the "log book" method since you began using the car, you calculate the assessable amount or deductible amount under section 40-285.

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

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

*Method statement*

Step 1. Subtract the *car's *adjustable value just before the *balancing adjustment event occurred from the car's *termination value.

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



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

(3) In working out the *adjustable value for the income years for which you chose the "cents per kilometre method", assume the decline in value was calculated under this Division on the same basis as those income years when that method did not apply.

(4) In working out the reduction in step 2 for the income years for which you chose the "cents per kilometre method", assume that:

(a) you had not chosen that method for the *car; and

(b) Division 28 (about car expenses) had not applied to the car; and

(c) 20% was the extent of your use of the car for *taxable purposes.

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



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

## Guide to Subdivision 40-E

### 40-420 What this Subdivision is about

> You may choose to work out the decline in value of low-cost assets (assets costing less than $1,000) and certain other depreciating assets through a low-value pool.
>
> You may also choose to deduct amounts for expenditure you incur on in-house software through a software development pool.

## Table of sections

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40-430 Rules for assets in low-value pools
40-435 Private or exempt use of assets
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40-445 Balancing adjustment events
40-450 Software development pools
40-455 How to work out your deduction
40-460 Your assessable income includes consideration for pooled software

## Operative provisions

### 40-425 Allocating assets to a low-value pool

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

(2) A ***low-cost asset*** is a *depreciating asset (except a *horticultural plant) whose *cost as at the end of the income year in which you start to use it, or have it *installed ready for use, for a *taxable purpose is less than $1,000.

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



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(3) You may also choose to allocate a *low-value asset to a low-value pool.

(4) You cannot allocate a *depreciating asset to a low-value pool if:

(a) its *cost does not exceed $300; and

(b) you use the asset predominantly for the *purpose of producing assessable income that is not income from carrying on a *business; and

(c) the asset is not part of a set of assets that you started to hold in that income year where the total cost of the set of assets exceeds $300; and

(d) the total cost of the asset and any other identical, or substantially identical, asset that you start to hold in that income year does not exceed $300.

(5) A ***low-value asset*** is a *depreciating asset, except a *horticultural plant, you *hold:

(a) if you have deducted or can deduct amounts for it under this Division for a previous income year—for which you used the *diminishing value method; and

(b) that has an *opening adjustable value for the current year of less than $1,000 (worked out using the diminishing value method); and

(c) that is not a *low-cost asset.

(6) A *depreciating asset:

(a) to which Division 58 (about assets previously owned by an exempt entity) applied for an entity sale situation; and

(b) for which you used the *diminishing value method; and

(c) whose *adjustable value as at the end of the income year before the *current year is less than $1,000;

is also a ***low-value asset***.

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



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*Exception: small business entities*

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

*Exception: medium sized businesses*

(7A) You cannot allocate a *depreciating asset to a low-value pool if the decline in value of the asset for any income year is determined by section 40-82 (about assets costing below a threshold).

*Exception: R&D*

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

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

## 40-430 Rules for assets in low-value pools

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

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

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

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

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



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## 40-435 Private or exempt use of assets

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

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

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

(2) For the purposes of subsection (1), disregard a *taxable purpose that is the *purpose of producing assessable income:

(a) from the use of *residential premises to provide residential accommodation; but

(b) not in the course of carrying on a *business;

if, apart from subsections 40-25(5) and 40-27(6), section 40-27 would reduce your deductions under subsection 40-25(1) for the asset.

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

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

| | |
|---|---|
| Step 1. | Work out the amount obtained by taking 18$^{3}/_{4}$% of the taxable use percentage of the *cost of each *low-cost asset you allocated to the pool for that year. Add those amounts. |
| Step 2. | Add to the step 1 amount 18$^{3}/_{4}$% of the taxable use percentage of any amounts included in the second element of the *cost for that year of:<br>(a) assets allocated to the pool for an earlier income year; and |

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(b) *low-value assets allocated to the pool for the *current year.

Step 3. Add to the step 2 amount 37 1/2% of the sum of:

(a) the *closing pool balance for the previous income year; and

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

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

(2) The ***closing pool balance*** of a low-value pool for an income year is the sum of:

(a) the *closing pool balance of the pool for the previous income year; and

(b) the taxable use percentage of the *costs of *low-cost assets you allocated to the pool for that year; and

(c) the taxable use percentage of the *opening adjustable values of any *low-value assets you allocated to the pool for that year as at the start of that year; and

(d) the taxable use percentage of any amounts included in the second element of the cost for the income year of:

(i) assets allocated to the pool for an earlier income year; and

(ii) low-value assets allocated to the pool for the *current year;

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

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

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



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## 40-445 Balancing adjustment events

(1) If a *balancing adjustment event happens to a *depreciating asset in a low-value pool in an income year, the *closing pool balance for that year is reduced (but not below zero) by the taxable use percentage of the asset's *termination value.

(2) If the sum of the *termination values, or the part of it, applicable under subsection (1) exceeds the *closing pool balance of the pool for that year, the excess is included in your assessable income.

## 40-450 Software development pools

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

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

(2) Once you choose to create a software development pool for an income year, any amounts of the kind referred to in subsection (1) you incur after the pool is created (whether in that income year or a later one) must be allocated to a software development pool.

(3) However, an amount of expenditure on *in-house software can only be allocated to a software development pool if you intend to use the software solely for a *taxable purpose.

(4) You must create a separate software development pool for each income year for which you incur amounts of the kind referred to in subsection (1).

## 40-455 How to work out your deduction

For all the expenditure on *in-house software in a software development pool that was incurred in a particular income year

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



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(***Year 1***), you get deductions in successive income years as follows:

**Deductions allowed for software development pool**

| | Column 1 | Column 2 |
|---|---|---|
| **Item** | **Income year** | **Amount of expenditure you can deduct for that year** |
| 1 | Year 1 | Nil |
| 2 | Year 2 | 30% |
| 3 | Year 3 | 30% |
| 4 | Year 4 | 30% |
| 5 | Year 5 | 10% |

### 40-460 Your assessable income includes consideration for pooled software

(1) If expenditure on *in-house software is (or was) in your software development pool, your assessable income includes any amount you *derive as consideration in relation to the software.

(2) However, subsection (1) does not apply if subsection 40-340(3) (roll-over relief) applies to the change.

## Subdivision 40-F—Primary production depreciating assets

## Guide to Subdivision 40-F

### 40-510 What this Subdivision is about

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

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

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



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# Operative provisions

## 40-515 Water facilities, horticultural plants, fodder storage assets and fencing assets

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

(a) a *water facility;

(b) a *horticultural plant;

(c) a *fodder storage asset;

(d) a *fencing asset.

Note 1: Sections 40-540, 40-545, 40-548 and 40-551 show you how to work out the decline.

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

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



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*Conditions*

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

*Limit on deduction*

(3) You cannot deduct more in total than:
  (a) for a *water facility—the amount of capital expenditure (disregarding expenditure that you cannot deduct because of section 26-100 (about water infrastructure improvement expenditure)) incurred on the facility; or
  (b) for a *horticultural plant—the amount of capital expenditure incurred on the plant; or
  (c) for a *fodder storage asset—the amount of capital expenditure incurred on the asset; or
  (d) for a *fencing asset—the amount of capital expenditure incurred on the asset.

*Reduction of deduction: water facilities, fodder storage assets and fencing assets*

(4) You must reduce your deduction for a *water facility, *fodder storage asset or *fencing asset for an income year by the part of the decline in value of the facility or asset that is attributable to the period (if any) in the income year when it was:
  (a) not wholly used in carrying on a *primary production business on land in Australia; or
  (b) not wholly used for a *taxable purpose.

(5) Paragraph (4)(a) does not apply to a *water facility if the expenditure incurred on the construction, manufacture, installation or acquisition of the water facility was incurred by an *irrigation water provider.

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



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*Meaning of* ***irrigation water provider***

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

## 40-520 Meaning of *water facility*, *horticultural plant*, *fodder storage asset* and *fencing asset*

(1) A ***water facility*** is:

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

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

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

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

(3) A ***fodder storage asset*** is an asset or a structural improvement, or a repair of a capital nature, or an alteration, addition or extension, to an asset or a structural improvement, that is primarily and principally for the purpose of storing fodder.

(4) A ***fencing asset*** is:

(a) an asset or a structural improvement that is a fence; or

(b) a repair of a capital nature, or an alteration, addition or extension, to a fence.

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



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## 40-525 Conditions

*Water facilities*

(1) The capital expenditure you incurred on the construction, manufacture, installation or acquisition of the *water facility must have been incurred:

(a) primarily and principally for the purpose of conserving or conveying water for use in a *primary production business that you conduct on land in Australia; or

(b) for expenditure incurred by an *irrigation water provider—primarily and principally for the purpose of conserving or conveying water for use in primary production businesses conducted by other entities on land in Australia, being entities supplied with water by the irrigation water provider.

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

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

(b) otherwise—the condition in this subsection is taken not to be satisfied for the facility.

*Horticultural plants*

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

**Conditions relating to horticultural plants**

| Item | Condition |
|---|---|
| 1 | You own the *horticultural plant and any holder of a lease, lesser interest or licence relating to the land does not carry on a *business of *horticulture on the land |

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



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| **Conditions relating to horticultural plants** | |
|---|---|
| **Item** | **Condition** |
| 2 | The *horticultural plant is attached to land you hold under a lease, or a *quasi-ownership right granted by an *exempt Australian government agency or an *exempt foreign government agency, and:<br>(a) the lease or quasi-ownership right enables you to carry on a *business of *horticulture on the land; and<br>(b) any holder of a lesser interest or licence relating to the land does not carry on a *business of *horticulture on the land. |
| 3 | You:<br>(a) hold a licence relating to the land to which the *horticultural plant is attached; and<br>(b) carry on a *business of *horticulture on the land as a result of holding the licence. |

Note: If Division 250 applies to you and an asset that is a horticultural plant:
(a) if section 250-150 applies—a condition in this subsection is taken not to be satisfied for the plant to the extent specified under subsection 250-150(3); or
(b) otherwise—the conditions in this subsection are taken not to be satisfied for the horticultural plant.

*Fodder storage assets*

(3) The capital expenditure you incurred on the construction, manufacture, installation or acquisition of the *fodder storage asset must have been incurred primarily and principally for use in a *primary production business that you conduct on land in Australia.

Note: If Division 250 applies to you and an asset that is a fodder storage asset:
(a) if section 250-150 applies—the condition in this subsection is taken not to be satisfied for the asset to the extent specified under subsection 250-150(3); or
(b) otherwise—the condition in this subsection is taken not to be satisfied for the asset.

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



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*Fencing assets*

(4) The capital expenditure you incurred on the construction, manufacture, installation or acquisition of the *fencing asset must have been incurred primarily and principally for use in a *primary production business that you conduct on land in Australia.

Note: If Division 250 applies to you and an asset that is a fencing asset:
(a) if section 250-150 applies—the condition in this subsection is taken not to be satisfied for the asset to the extent specified under subsection 250-150(3); or
(b) otherwise—the condition in this subsection is taken not to be satisfied for the asset.

## 40-530 When declines in value start

(1) A *water facility, *fodder storage asset or *fencing asset starts to decline in value in the income year in which you first incur expenditure on the facility or asset.

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

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

(1) ***Horticulture*** includes:
(a) propagation and cultivation of a *horticultural plant in any environment (whether natural or artificial); and
(b) propagation and cultivation of seeds, bulbs, spores and similar things; and
(c) propagation and cultivation of fungi.

(2) Use for ***commercial horticulture*** means use for the *purpose of producing assessable income in a *business of *horticulture.

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



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

(1) The decline in value of a *water facility for the income year in which you incurred the expenditure is the amount of capital expenditure you incurred on the construction, manufacture, installation or acquisition of the water facility.

(2) However, disregard expenditure that you cannot deduct because of section 26-100 (about water infrastructure improvement expenditure).

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

(1) The decline in value of a *horticultural plant for the income year in which it starts to decline in value is all of the capital expenditure attributable to the establishment of the plant if its *effective life is less than 3 years.

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

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

where:

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

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

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

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



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

*Limit on write-off days*

(3) Disregard your use of the *horticultural plant on a day outside the period that:

(a) starts when the plant *can* first be used for *commercial horticulture; and

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

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

## 40-548 How you work out the decline in value for fodder storage assets

The decline in value of a *fodder storage asset for the income year in which you incurred the expenditure is the amount of capital

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expenditure you incurred on the construction, manufacture, installation or acquisition of the fodder storage asset.

### 40-551 How you work out the decline in value for fencing assets

The decline in value of a *fencing asset for the income year in which you incurred the expenditure is the amount of capital expenditure you incurred on the construction, manufacture, installation or acquisition of the fencing asset.

### 40-555 Amounts you cannot deduct

*Water facilities*

(1) You cannot deduct an amount for any income year for capital expenditure on the acquisition of a *water facility if any entity has deducted or can deduct an amount under this Subdivision for any income year for earlier capital expenditure on:

(a) the construction or manufacture of the facility; or

(b) a previous acquisition of the facility.

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

*Horticultural plants*

(3) In working out your deduction under this Subdivision for a *horticultural plant, disregard expenditure incurred:

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

(b) in clearing land.

*Fodder storage assets*

(4) You cannot deduct an amount for any income year for capital expenditure on the acquisition of a *fodder storage asset if any entity has deducted or can deduct an amount under this Subdivision for any income year for earlier capital expenditure on:

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



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(a) the construction or manufacture of the asset; or
(b) a previous acquisition of the asset.

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

*Fencing assets*

(5) You cannot deduct an amount for any income year for capital expenditure on the acquisition of a *fencing asset if any entity has deducted or can deduct an amount under this Subdivision for any income year for earlier capital expenditure on:
(a) the construction or manufacture of the fencing asset; or
(b) a previous acquisition of the fencing asset.

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

(6) You cannot deduct an amount for any income year for capital expenditure on a *fencing asset to the extent that any entity has deducted or can deduct the amount under subsection 40-630(1) (about landcare operations).

(7) You cannot deduct an amount for any income year for capital expenditure on a *fencing asset if the fencing asset is (or is a repair, alteration, addition or extension to):
(a) a stockyard or pen; or
(b) a portable fence.

## 40-560 Non-arm's length transactions

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

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

### 40-565 Extra deduction for destruction of a horticultural plant

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

(2) Work out your deduction as follows:

*Method statement*

Step 1. Work out the total of the amounts you could have deducted under this Subdivision for the *horticultural plant for the period:

(a) starting when the plant could first be used for *commercial horticulture; and

(b) ending when it was destroyed;

assuming that, during that period, you satisfied a condition in section 40-525 for the plant and used it for commercial horticulture.

Step 2. Subtract from the capital expenditure that is attributable to the establishment of the *horticultural plant:

(a) the result from step 1; and

(b) any amount you received (under an insurance policy or otherwise) for the destruction.

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

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

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



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## 40-570 How this Subdivision applies to partners and partnerships

(1) This section applies to allocate expenditure to you for the purposes of this Subdivision if you were a partner in a partnership when it incurred capital expenditure during an income year.

(2) For the purposes of this Subdivision, you are taken to have incurred during that income year:

(a) the amount of the expenditure that the partners agreed you should bear; or

(b) if there was no such agreement—the proportion of the expenditure equal to the proportion of your individual interest in the net income or partnership loss of the partnership for that income year.

(3) Disregard this Subdivision when working out the net income or partnership loss of the partnership under section 90 of the *Income Tax Assessment Act 1936*.

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

(1) If you begin to satisfy a condition in section 40-525 for a *horticultural plant, you may give the last entity (if any) that satisfied such a condition for the plant a written notice requiring the entity to give you any or all of the following information:

(a) the amount of establishment expenditure for the plant;

(b) if the entity used the plant's *effective life to work out the decline in value of the plant—its effective life and the day on which it could first be used for *commercial horticulture.

(2) The notice must:

(a) be given within 60 days of your beginning to satisfy that condition; and

(b) specify a period of at least 60 days within which the information must be given; and

(c) set out the effect of subsection (3).

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

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



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*Requirement to comply with notice*

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

Penalty: 10 penalty units.

*Giving the notice to a partnership*

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

(5) A partner must not intentionally refuse or fail to comply with that obligation, unless another partner has already complied with it.

Penalty: 10 penalty units.

*Limits on giving a notice*

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

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

## Guide to Subdivision 40-G

### 40-625 What this Subdivision is about

You can deduct amounts for capital expenditure you incur:

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

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



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# Operative provisions

## 40-630 Landcare operations

(1) You can deduct capital expenditure you incur at a time in an income year on a *landcare operation for:

(a) land in Australia you use at the time for carrying on a *primary production business; or

(b) rural land in Australia you use at the time for carrying on a *business for a *taxable purpose from the use of that land (except a business of *mining and quarrying operations).

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

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

(b) otherwise—you are taken not to be using the land for such a purpose.

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

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



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

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

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

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

(a) an *irrigation water provider; or

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

*Exception: plant*

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

(a) a fence erected for a purpose described in paragraph 40-635(1)(a) or (b); or

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

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

*Exception: deduction available under Subdivision 40-F*

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

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



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*Exception: deduction available under Subdivision 40-J*

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

*Reduction of deduction*

(3) You must reduce your deduction by a reasonable amount to reflect your use of the land in the income year after the time when you incurred the expenditure for a purpose other than the purpose of carrying on:

(a) a *primary production business; or

(b) a *business for the *purpose of producing assessable income from the use of rural land (except a business of *mining and quarrying operations).

(4) Subsection (3) does not apply to expenditure incurred by a *rural land irrigation water provider. Instead, a rural land irrigation water provider must reduce its deduction in relation to particular land by a reasonable amount to reflect an entity's use of the land in the income year after the rural land irrigation water provider incurred the expenditure for a purpose other than a *taxable purpose.

## 40-635 Meaning of *landcare operation*

(1) ***Landcare operation*** for land means:

(a) erecting a fence to separate different land classes on the land in accordance with an *approved management plan for the land; or

(b) erecting a fence on the land primarily and principally for the purpose of excluding animals from an area affected by land degradation:

(i) to prevent or limit extension or worsening of land degradation in the area; and

(ii) to help reclaim the area; or

(c) constructing a levee or a similar improvement on the land; or

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



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(d) constructing drainage works on the land primarily and principally for the purpose of controlling salinity or assisting in drainage control; or

(e) an operation primarily and principally for the purpose of:

(i) eradicating or exterminating from the land animals that are pests; or

(ii) eradicating, exterminating or destroying plant growth detrimental to the land; or

(iii) preventing or fighting land degradation (except by erecting fences on the land); or

(f) a repair of a capital nature, or an alteration, addition or extension, to an asset described in paragraph (a), (b), (c) or (d) or an extension of an operation described in paragraph (e); or

(g) constructing a structural improvement, or a repair of a capital nature, or an alteration, addition or extension, to a structural improvement, that is reasonably incidental to an asset described in paragraph (c) or (d).

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

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

## 40-640 Meaning of *approved management plan*

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

(a) shows the different classes within the land and the location of any fencing needed to separate any of the land classes to prevent land degradation; and

(b) describes the kind of fencing and how it will prevent land degradation; and

(c) has been prepared by, or approved in writing as a suitable plan for the land by:

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



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(i) an officer of an *Australian government agency responsible for land conservation who has authority to do so; or

(ii) an individual who was at the time approved as a farm consultant under this Subdivision.

## 40-645 Electricity and telephone lines

(1) You can deduct amounts for capital expenditure you incur on *connecting power to land or upgrading the connection if, when you incur the expenditure:

(a) you have an interest in the land or are a share-farmer carrying on a *business on the land; and

(b) you or another entity intends to use some or all of the electricity to be supplied as a result of the expenditure in carrying on a business on the land for a *taxable purpose at a time when you have an interest in the land or are a share-farmer carrying on a business on the land.

(2) You can also deduct amounts for capital expenditure you incur on a telephone line on or extending to land if, when you incurred the expenditure:

(a) a *primary production business was carried on the land; and

(b) you had an interest in the land or you were a share-farmer carrying on a primary production business on the land.

(3) The amount you can deduct is 10% of the expenditure:

(a) for the income year in which you incur it; and

(b) for each of the next 9 income years.

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

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

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



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

## 40-650 Amounts you cannot deduct under this Subdivision

(1) You cannot deduct amounts for capital expenditure you incur on *connecting power to land or upgrading the connection if, during the 12 months after electricity is first supplied to the land as a result of the expenditure, no electricity supplied as a result of the expenditure is used in carrying on a *business on the land for a *taxable purpose.

(2) If you deducted an amount for any income year under this Subdivision for the expenditure, your assessment for that income year may be amended under section 170 of the *Income Tax Assessment Act 1936* to disallow the deduction.

(3) You cannot deduct an amount for capital expenditure you incur on *connecting power to land or upgrading the connection for:

(a) expenditure in providing water, light or power for use on, access to or communication with the site of *mining and quarrying operations; or

(b) a contribution to the cost of providing water, light or power for those operations.

(4) You cannot deduct an amount for any income year for your capital expenditure on a part of a telephone line if:

(a) any entity has deducted, or can deduct, an amount for any income year for the cost of that part under a provision of this Act (except this Subdivision); or

(b) the cost of that part has been, or must be, taken into account in working out:

(i) the amount of any entity's deduction (including a deduction for a *depreciating asset) for any income year under a provision of this Act (except this Subdivision); or

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



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(ii) the net income, or partnership loss, of a partnership under section 90 of the *Income Tax Assessment Act 1936*.

(5) However, you can deduct an amount under this Subdivision for your expenditure on a part of a telephone line even if:

(a) an entity that worked on installing that part has deducted, or can deduct, an amount relating to that part for any income year under this Act (except this Subdivision); or

(b) the cost of that part has been, or must be, taken into account:

(i) in working out the amount of such an entity's deduction for any income year under a provision of this Act (except this Subdivision); or

(ii) under section 90 of the *Income Tax Assessment Act 1936* in working out the net income, or partnership loss, of a partnership that worked on installing that part.

(6) Subsection (5) has effect whether the entity did the work itself or through one or more employees or *agents.

(7) If you can deduct, or have deducted, an amount for any income year under section 40-645 for your expenditure:

(a) an entity cannot deduct an amount for any income year under a provision of this Act (except this Subdivision) for the expenditure; and

(b) the expenditure cannot be taken into account to work out the amount of an entity's deduction for any income year under a provision of this Act (except this Subdivision).

(8) Subsection (7) also applies in working out the net income, or partnership loss, of a partnership under section 90 of the *Income Tax Assessment Act 1936*.

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

(1) Each of these operations is ***connecting power to land or upgrading the connection***:

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



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(a) connecting a mains electricity cable to a *metering point on the land (whether or not the point from which the cable is connected is on the land);

(b) providing or installing equipment designed to measure the amount of electricity supplied through a mains electricity cable to a metering point on the land;

(c) providing or installing equipment for use directly in connection with the supply of electricity through a mains electricity cable to a metering point on the land;

(d) work to increase the amount of electricity that can be supplied through a mains electricity cable to a metering point on the land;

(e) work to modify or replace equipment designed to measure the amount of electricity supplied through a mains electricity cable to a metering point on the land, if the modification or replacement results from increasing the amount of electricity supplied to the land;

(f) work to modify or replace equipment for use directly in connection with the supply of electricity through a mains electricity cable to the land, if the modification or replacement results from increasing the amount of electricity supplied to the land;

(g) work carried out as a result of a contribution to the cost of a project consisting of the connection of mains electricity facilities to that land and other land.

(2) However, an operation described in subsection (1) done in the course of replacing or relocating mains electricity cable or equipment is ***connecting power to land or upgrading the connection*** only if done to increase the amount of electricity that can be supplied to a *metering point on the land.

(3) A ***metering point*** on land is a point where consumption of electricity supplied to the land through a mains electricity cable is measured.

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



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## 40-660 Non-arm's length transactions

If you incurred capital expenditure under an *arrangement and:

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

(b) apart from this section, the amount of the expenditure would be more than the *market value of what it was for;

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

## 40-665 How this Subdivision applies to partners and partnerships

(1) This section applies to allocate expenditure to you for the purposes of this Subdivision if you were a partner in a partnership when it incurred capital expenditure during an income year.

(2) For the purposes of this Subdivision, you are taken to have incurred during that income year:

(a) the amount of the expenditure that the partners agreed you should bear; or

(b) if there was no such agreement—the proportion of the expenditure equal to the proportion of your individual interest in the net income or partnership loss of the partnership for that income year.

(3) Disregard this Subdivision when working out the net income or partnership loss of the partnership under section 90 of the *Income Tax Assessment Act 1936*.

## 40-670 Approval of persons as farm consultants

(1) A person may be approved in writing as a farm consultant by:

(a) the *Agriculture Secretary; or

(b) an officer of the *Agriculture Department who has been authorised in writing by the Agriculture Secretary to approve persons as farm consultants.

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



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

(2) The following matters must be taken into account when deciding whether to approve a person as a farm consultant:

(a) the person's qualifications, experience and knowledge relating to *land conservation and farm management;

(b) the person's standing in the professional community;

(c) any other relevant matters.

### 40-675 Review of decisions relating to approvals

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

(a) to refuse to approve the person as a farm consultant; or

(b) to revoke the approval of the person as a farm consultant.

## Subdivision 40-H—Capital expenditure that is immediately deductible

## Guide to Subdivision 40-H

### 40-725 What this Subdivision is about

You get an immediate deduction for certain capital expenditure on:

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

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



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# Operative provisions

## 40-730 Deduction for expenditure on exploration or prospecting

(1) You can deduct expenditure you incur in an income year on *exploration or prospecting for *minerals, or quarry materials, obtainable by *mining and quarrying operations if, for that expenditure, you satisfy one or more of these paragraphs:

(a) you carried on mining and quarrying operations;

(b) it would be reasonable to conclude you proposed to carry on such operations;

(c) you carried on a *business of, or a business that included, exploration or prospecting for minerals or quarry materials obtainable by such operations, and the expenditure was necessarily incurred in carrying on that business.

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

(a) if section 250-150 applies—you cannot deduct expenditure you incur in relation to the land to the extent specified under subsection 250-150(3); or

(b) otherwise—you cannot deduct such expenditure.

(2) However, you cannot deduct expenditure under subsection (1) if it is expenditure on:

(a) development drilling for *petroleum; or

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



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(b) operations in the course of working a mining property, quarrying property or petroleum field.

(3) Also, you cannot deduct expenditure under subsection (1) to the extent that it forms part of the *cost of a *depreciating asset.

*Definitions*

(4) ***Exploration or prospecting*** includes:

(a) for mining in general, and quarrying:

(i) geological mapping, geophysical surveys, systematic search for areas containing *minerals (except *petroleum) or quarry materials, and search by drilling or other means for such minerals or materials within those areas; and

(ii) search for ore within, or near, an ore-body or search for quarry materials by drives, shafts, cross-cuts, winzes, rises and drilling; and

(b) for petroleum mining:

(i) geological, geophysical and geochemical surveys; and

(ii) exploration drilling and appraisal drilling; and

(c) feasibility studies to evaluate the economic feasibility of mining minerals or quarry materials once they have been discovered; and

(d) obtaining *mining, quarrying or prospecting information associated with the search for, and evaluation of, areas containing minerals or quarry materials.

(5) ***Minerals*** includes *petroleum.

(6) ***Petroleum*** means:

(a) any naturally occurring hydrocarbon or naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or

(b) any naturally occurring mixture of:

(i) one or more hydrocarbons, whether in a gaseous, liquid or solid state; and

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(ii) one or more of the following: hydrogen sulphide, nitrogen, helium or carbon dioxide;

whether or not that substance has been returned to a natural reservoir.

(7) ***Mining and quarrying operations*** means:

(a) mining operations on a mining property for extracting *minerals (except *petroleum) from their natural site; or

(b) mining operations for the purpose of obtaining petroleum; or

(c) quarrying operations on a quarrying property for extracting quarry materials from their natural site;

for the *purpose of producing assessable income.

(8) ***Mining, quarrying or prospecting information*** is geological, geophysical or technical information that:

(a) relates to the presence, absence or extent of deposits of *minerals or quarry materials in an area; or

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

## 40-735 Deduction for expenditure on mining site rehabilitation

(1) You can deduct for an income year expenditure you incur in that year to the extent it is on *mining site rehabilitation of:

(a) a site on which you:

(i) carried on *mining and quarrying operations; or

(ii) conducted *exploration or prospecting; or

(iii) conducted *ancillary mining activities; or

(b) a *mining building site.

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

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

(a) if section 250-150 applies—you cannot deduct expenditure you incur in relation to the land to the extent specified under subsection 250-150(3); or

(b) otherwise—you cannot deduct such expenditure.

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



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

(3) However, you cannot deduct expenditure under subsection (1) to the extent that it forms part of the *cost of a *depreciating asset.

(4) ***Mining site rehabilitation*** is an act of restoring or rehabilitating a site or part of a site to, or to a reasonable approximation of, the condition it was in before *mining and quarrying operations, *exploration or prospecting or *ancillary mining activities were first started on the site, whether by you or by someone else.

(5) *Partly* restoring or rehabilitating such a site counts as ***mining site rehabilitation*** (even if you had no intention of completing the work).

(6) For a *mining building site, the time when *ancillary mining activities were first started on the site is the earliest time when the buildings, improvements or *depreciating assets concerned were located on the site.

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

(1) Any of the following are ***ancillary mining activities***:

(a) preparing a site for you to carry on *mining and quarrying operations;

(b) providing water, light or power for, access to, or communications with, a site on which you carry on, or will carry on, mining and quarrying operations;

(c) *minerals treatment of *minerals or minerals treatment of quarry materials, obtained by you in carrying on mining and quarrying operations;

(d) storing (whether before or after minerals treatment) such minerals, *petroleum or quarry materials in relation to the operation of a *depreciating asset for use primarily and principally in treating such minerals or quarry materials;

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



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(e) liquefying natural gas obtained from mining and quarrying operations you carry on.

(2) A ***mining building site*** is a site, or a part of a site, where there are *depreciating assets that are or were necessary for you to carry on *mining and quarrying operations. However, a ***mining building site*** does not include anything covered by the definition of ***housing and welfare***.

## 40-745 No deduction for certain expenditure

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

(a) acquiring land or an interest in land or a right, power or privilege to do with land;

(b) a bond or security, however described, for performing *mining site rehabilitation;

(c) *housing and welfare.

## 40-750 Deduction for payments of petroleum resource rent tax

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

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

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

(a) if section 250-150 applies—you cannot deduct expenditure you incur in relation to the asset to the extent specified under subsection 250-150(3); or

(b) otherwise—you cannot deduct such expenditure.

(2) You cannot deduct under subsection (1) a payment that you make under paragraph 99(c) of the *Petroleum Resource Rent Tax Assessment Act 1987*.

(3) These amounts are included in your assessable income for the income year in which they are refunded, credited, paid or applied:

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



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(a) an amount the Commissioner pays you in total or partial discharge of a debt of the kind referred to in subsection 47(1) of the *Petroleum Resource Rent Tax Assessment Act 1987*; or

(b) an amount the Commissioner applies under subsection 47(2) of the *Petroleum Resource Rent Tax Assessment Act 1987* in total or partial discharge of a liability you have.

## 40-755 Environmental protection activities

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

Note: If Division 250 applies to you and an asset that is land:
(a) if section 250-150 applies—you cannot deduct expenditure you incur in relation to the land to the extent specified under subsection 250-150(3); or
(b) otherwise—you cannot deduct such expenditure.

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

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

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

No other activities are environmental protection activities.

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



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(3) ***Your earning activity*** is an activity you carried on, carry on, or propose to carry on:

(a) for the *purpose of producing assessable income for an income year (except a *net capital gain); or

(b) for the purpose of *exploration or prospecting; or

(c) for the purpose of *mining site rehabilitation; or

(d) for purposes that include one or more of those purposes.

(4) If *your earning activity is:

(a) leasing a site you own; or

(b) granting a *right to use a site you own or control; or

(c) a similar activity involving a site;

that site is taken to be the site of your earning activity.

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

## 40-760 Limits on deductions from environmental protection activities

*Expenditure you cannot deduct*

(1) You cannot deduct an amount under section 40-755 for an income year for:

(a) expenditure for acquiring land; or

(b) capital expenditure for constructing a building, structure or structural improvement; or

(c) capital expenditure for constructing an extension, alteration or improvement to a building, structure or structural improvement; or

(d) a bond or security (however described) for performing *environmental protection activities; or

(e) expenditure to the extent that you can deduct an amount for it under a provision of this Act outside this Subdivision.

Note: You may be able to deduct expenditure described in paragraph (1)(b) or (c) under Division 43 (which deals with capital works).

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



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(2) In particular, you cannot deduct under section 40-755 expenditure to the extent that you incur it on carrying out an activity for environmental impact assessment of your project.

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

### 40-765 Non-arm's length transactions

If you incurred capital expenditure under an *arrangement and:

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

(b) apart from this section, the amount of the expenditure would be more than the *market value of what it was for;

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

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

## Guide to Subdivision 40-I

### 40-825 What this Subdivision is about

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

You can also deduct amounts for certain business related costs. You deduct these amounts over 5 years (or immediately in the case of some start-up expenses for small businesses) if the amounts are not otherwise taken into account and are not denied a deduction.

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



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# Operative provisions

## 40-830 Project pools

(1) You can allocate *project amounts to a project pool.

(2) You can deduct amounts for *project amounts that are allocated to the project pool.

(3) You calculate your deduction for an income year for a project pool in this way:

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

where:

***DV project pool life*** is:

(a) the *project life of the project; or

(b) if its project life has been recalculated—its most recently recalculated project life.

***pool value*** is:

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



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(a) for the first income year that a *project amount is allocated to the pool—the sum of the project amounts allocated to the pool for that year; or

(b) for a later income year—the sum of the pool's *closing pool value for the previous income year and any project amounts allocated to the pool for the later year.

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

(4) If, in an income year, you abandon, sell or otherwise dispose of a project for which you have a project pool, you can deduct for that year the sum of the pool's *closing pool value for the previous income year and any *project amounts allocated to the pool for the income year.

(5) Your assessable income for that income year includes any amount you receive for the abandonment, sale or other disposal.

(6) Your assessable income for an income year includes other capital amounts that you *derive in that year in relation to a *project amount allocated to your project pool or in relation to something on which the project amount is expended.

(7) The ***closing pool value*** of a project pool for an income year is:

(a) for the first income year that a *project amount is allocated to the pool—the sum of the project amounts allocated to the pool for that year less the amount you could deduct for the pool for that year (apart from section 40-835); or

(b) for a later income year—the sum of the pool's *closing pool value for the previous income year and any project amounts allocated to the pool for the later year less the amount you could deduct for the pool for the later year (apart from section 40-835).

(8) Your deduction for an income year cannot be more than the amount of the component "pool value" in the formula in subsection (3) for that year.

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

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

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

where:

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

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

(2) If, in an income year, you abandon, sell or otherwise dispose of a project for which you have a project pool, you can deduct for that year the sum of the pool's *closing pool value for the previous income year and any *project amounts allocated to the pool for the income year.

(3) Your assessable income for that income year includes any amount you receive for the abandonment, sale or other disposal.

(4) Your assessable income for an income year includes other capital amounts that you *derive in that year in relation to a *project amount allocated to your project pool or in relation to something on which the project amount is expended.

(5) Your deduction for an income year cannot be more than the amount of the component "pool value" in the formula in subsection (1) for that year.

## 40-835 Reduction of deduction

You must reduce your deduction under section 40-830 or 40-832 for an income year by a reasonable amount for the extent (if any)

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to which the project operates in the year for purposes other than *taxable purposes.

Note: If Division 250 applies to you and an asset:
(a) if section 250-150 applies—you are taken not to be using the asset for taxable purposes to the extent specified under subsection 250-150(3); or
(b) otherwise—you are taken not to be using the asset for such purposes.

## 40-840 Meaning of *project amount*

(1) An amount of *mining capital expenditure or *transport capital expenditure you incur is a ***project amount*** if:
(a) it does not form part of the *cost of a *depreciating asset you *hold or held; and
(b) you cannot deduct it under a provision of this Act outside this Subdivision; and
(c) it is directly connected with:
(i) for mining capital expenditure—carrying on the *mining and quarrying operations in relation to which the expenditure is incurred; or
(ii) for transport capital expenditure—carrying on the *business in relation to which the expenditure is incurred.

(2) Another amount of capital expenditure you incur is also a ***project amount*** so far as:
(a) it does not form part of the *cost of a *depreciating asset you *hold or held; and
(b) you cannot deduct it under a provision of this Act outside this Subdivision; and
(c) it is directly connected with a project you carry on or propose to carry on for a *taxable purpose; and
(d) it is one of these:
(i) an amount paid to create or upgrade community infrastructure for a community associated with the project; or

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



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(ii) an amount incurred for site preparation costs for depreciating assets (except, for *horticultural plants, in draining swamp or low-lying land or in clearing land); or

(iii) an amount incurred for feasibility studies for the project; or

(iv) an amount incurred for environmental assessments for the project; or

(v) an amount incurred to obtain information associated with the project; or

(vi) an amount incurred in seeking to obtain a right to *intellectual property; or

(vii) an amount incurred for ornamental trees or shrubs.

## 40-845 Project life

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

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

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

## 40-860 Meaning of *mining capital expenditure*

(1) ***Mining capital expenditure*** is capital expenditure you incur:

(a) in carrying on *mining and quarrying operations; or

(b) in preparing a site for those operations; or

(c) on buildings or other improvements necessary for you to carry on those operations; or

(d) in providing, or in contributing to the cost of providing:

(i) water, light or power for use on the site of those operations; or

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(ii) access to, or communications with, the site of those operations; or

(e) on buildings for use directly in connection with operating or maintaining *plant that is primarily and principally for *treating *minerals, or quarry materials, that you obtain by carrying on such operations; or

(f) on buildings or other improvements for use directly in connection with storing minerals or quarry materials or to facilitate *minerals treatment of them (whether the storage happens before or after the treatment).

(2) Capital expenditure you incur on *housing and welfare in carrying on *mining and quarrying operations (except quarrying operations) is also ***mining capital expenditure***, but only if:

(a) for residential accommodation—the accommodation is provided by you, on or adjacent to a site where you carry on those operations, for the use of:

(i) your employees, or someone else's employees, who are employed or engaged in those operations, or in operations of yours that are connected with those operations; or

(ii) dependants of such employees; or

(b) for health, education, recreation or other similar facilities, or facilities for meals—the facilities:

(i) are on or adjacent to a site where you carry on those operations, and are principally for the benefit of the employees or dependants covered by paragraph (a); and

(ii) are not run for profit by any person, except in the case of facilities for meals (which may be run for profit); or

(c) in the case of works, including works for providing water, light, power, access or communications—the works are carried out directly in connection with the accommodation or facilities covered by this section.

(3) However, expenditure on these is *not* ***mining capital expenditure***:

(a) railway lines, roads, pipelines or other facilities, for use wholly or partly for transporting *minerals or quarry

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



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materials, or their products, other than facilities used for transport wholly within the site of *mining and quarrying operations you carry on;

(b) works carried out in connection with, or buildings or other improvements constructed or acquired for use in connection with, establishing, operating or using a port facility or other facility for ships;

(c) an office building that is not at or adjacent to the site of mining and quarrying operations you carry on;

(d) *housing and welfare in relation to quarrying operations.

## 40-865 Meaning of *transport capital expenditure*

(1) ***Transport capital expenditure*** is capital expenditure you incur, in carrying on a *business for a *taxable purpose, on:

(a) a *transport facility; or

(b) obtaining a right to construct or install a transport facility, or part of one, on land owned or leased by another entity or in an area referred to in subsection 960-505(2) (about offshore areas and installations); or

(c) paying compensation for any damage or loss caused by constructing or installing a transport facility or part of one; or

(d) earthworks, bridges, tunnels or cuttings that are necessary for a transport facility.

(2) ***Transport capital expenditure*** also includes capital expenditure you incur, in carrying on a *business for a *taxable purpose, by way of contribution to:

(a) someone else's capital expenditure on a *transport facility or on anything else covered by a paragraph of subsection (1); or

(b) an *exempt Australian government agency's capital expenditure on railway rolling-stock.

(3) ***Transport capital expenditure*** does *not* include expenditure on:

(a) road vehicles or ships; or

(b) railway rolling-stock; or

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



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(c) a thing covered by the definition of ***housing and welfare***; or

(d) works for providing water, light or power, in connection with a port facility or other facility for ships;

and does not include expenditure by way of contribution to that expenditure (except expenditure by way of contribution to an *exempt Australian government agency's capital expenditure on railway rolling-stock).

## 40-870 Meaning of *transport facility*

(1) A ***transport facility*** is a railway, a road, a pipe-line, a port facility or other facility for ships, or another facility, that is used primarily and principally for transport of:

(a) *minerals or quarry materials obtained by any entity in carrying on *mining and quarrying operations; or

(b) *processed minerals produced from minerals or quarry materials.

(2) However, a facility used for these is not a ***transport facility***:

(a) transport wholly within the site of *mining and quarrying operations;

(b) transport of *petroleum:

(i) that has been treated at a refinery; or

(ii) that forms part of a system of reticulation to consumers; or

(iii) to a particular consumer or consumers.

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

(1) ***Processed minerals*** are any of the following:

(a) materials resulting from *minerals treatment of *minerals or quarry materials (except *petroleum);

(b) materials resulting from sintering or calcining;

(c) pellets or other agglomerated forms of iron;

(d) alumina and blister copper.

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



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(2) ***Minerals treatment*** means:

(a) cleaning, leaching, crushing, grinding, breaking, screening, grading or sizing; or

(b) concentration by a gravity, magnetic, electrostatic or flotation process; or

(c) any other treatment:

(i) that is applied to *minerals, or to quarry materials, before that concentration; or

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

but does not include:

(d) sintering or calcining; or

(e) producing alumina, or pellets or other agglomerated forms of iron, or processing connected with such production.

## 40-880 Business related costs

*Object*

(1) The object of this section is to make certain *business capital expenditure deductible over 5 years, or immediately in the case of some start-up expenses for small businesses, if:

(a) the expenditure is not otherwise taken into account; and

(b) a deduction is not denied by some other provision; and

(c) the business is, was or is proposed to be carried on for a *taxable purpose.

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

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

(b) otherwise—you cannot deduct an amount for such expenditure.

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



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*Deduction*

(2) You can deduct, in equal proportions over a period of 5 income years starting in the year in which you incur it, capital expenditure you incur:

(a) in relation to your *business; or

(b) in relation to a business that used to be carried on; or

(c) in relation to a business proposed to be carried on; or

(d) to liquidate or deregister a company of which you were a *member, to wind up a partnership of which you were a partner or to wind up a trust of which you were a beneficiary, that carried on a business.

(2A) However, you can deduct the capital expenditure in the income year in which you incur it if:

(a) the expenditure is incurred in relation to a business that is proposed to be carried on; and

(b) the expenditure is incurred:

(i) in obtaining advice or services relating to the proposed structure, or proposed operation of the business; or

(ii) in payment to an *Australian government agency of fees, taxes or charges relating to establishing the business or its operating structure; and

(c) you are a *small business entity, or an entity covered by subsection (2B), for the income year, or both of the following apply:

(i) you are not carrying on a *business in the income year;

(ii) you are not *connected with, or an *affiliate of, another entity that carries on a business in the income year and that is neither a small business entity, nor an entity covered by subsection (2B), for the income year.

(2B) An entity is covered by this subsection for an income year if:

(a) the entity is not a *small business entity for the income year; and

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(b) the entity would be a small business entity for the income year if:

(i) each reference in Subdivision 328-C (about what is a small business entity) to $10 million were instead a reference to $50 million; and

(ii) the reference in paragraph 328-110(5)(b) to a small business entity were instead a reference to an entity covered by this subsection.

*Limitations and exceptions*

(3) You can only deduct the expenditure, for a *business that you carry on, used to carry on or propose to carry on, to the extent that the business is carried on, was carried on or is proposed to be carried on for a *taxable purpose.

(4) You can only deduct the expenditure, for a *business that another entity used to carry on or proposes to carry on, to the extent that:

(a) the business was carried on or is proposed to be carried on for a *taxable purpose; and

(b) the expenditure is in connection with:

(i) your deriving assessable income from the business; and

(ii) the business that was carried on or is proposed to be carried on.

(5) You cannot deduct anything under this section for an amount of expenditure you incur to the extent that:

(a) it forms part of the *cost of a *depreciating asset that you *hold, used to hold or will hold; or

(b) you can deduct an amount for it under a provision of this Act other than this section; or

(c) it forms part of the cost of land; or

(d) it is in relation to a lease or other legal or equitable right; or

(e) it would, apart from this section, be taken into account in working out:

(i) a profit that is included in your assessable income (for example, under section 6-5 or 15-15); or

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(ii) a loss that you can deduct (for example, under section 8-1 or 25-40); or

(f) it could, apart from this section, be taken into account in working out the amount of a *capital gain or *capital loss from a *CGT event; or

(g) a provision of this Act other than this section would expressly make the expenditure non-deductible if it were not of a capital nature; or

(h) a provision of this Act other than this section expressly prevents the expenditure being taken into account as described in paragraphs (a) to (f) for a reason other than the expenditure being of a capital nature; or

(i) it is expenditure of a private or domestic nature; or

(j) it is incurred in relation to gaining or producing *exempt income or *non-assessable non-exempt income.

(6) The exceptions in paragraphs (5)(d) and (f) do not apply to expenditure you incur to preserve (but not enhance) the value of goodwill if the expenditure you incur is in relation to a legal or equitable right and the value to you of the right is solely attributable to the effect that the right has on goodwill.

(7) You cannot deduct an amount under paragraph (2)(c) in relation to a *business proposed to be carried on unless, having regard to any relevant circumstances, it is reasonable to conclude that the business is proposed to be carried on within a reasonable time.

(8) You cannot deduct anything under this section for an amount of expenditure that, because of a market value substitution rule, was excluded from the *cost of a *depreciating asset or the *cost base or *reduced cost base of a *CGT asset.

Note: Some examples of market value substitution rules are subsection 40-180(2) (table item 8), subsection 40-190(3) (table item 1) and sections 40-765 and 112-20.

(9) You cannot deduct anything under this section for an amount of expenditure you incur:

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(a) by way of returning an amount you have received (except to the extent that the amount was included in your assessable income or taken into account in working out an amount so included); or

(b) to the extent that, for another entity, the amount is a *return on or of:

(i) an *equity interest; or

(ii) a *debt interest that is an obligation of yours.

### 40-885 Non-arm's length transactions

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

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

(b) apart from this section:

(i) the amount of the expenditure would be more than the *market value of what it was for; or

(ii) the amount you received would be less than the market value of what it was for;

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

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

## Guide to Subdivision 40-J

### 40-1000 What this Subdivision is about

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

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



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# Operative provisions

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

(1) You can deduct an amount for an income year if:

(a) you or another entity incurred capital expenditure that is covered under section 40-1010 in relation to particular trees; and

(b) you satisfy a condition in subsection (5) for the trees for at least part of the income year; and

(c) you are carrying on a *business in the income year; and

(d) you use the land occupied by the trees for the primary and principal purpose of *carbon sequestration by the trees (see section 40-1015); and

(e) your purposes in using the land occupied by the trees do not include any of the following:

(i) felling the trees;

(ii) using the trees for *commercial horticulture; and

(f) you do not use the land in connection with:

(i) a *managed investment scheme; or

(ii) a *forestry managed investment scheme.

(2) The amount of the deduction is worked out under this formula:

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



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

where:

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

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

(a) that occur within the period:

(i) starting on the first day of the income year in which the trees are established; and

(ii) ending 14 years and 105 days after that day; and

(b) on which you use the land occupied by the trees for the primary and principal purpose of *carbon sequestration by the trees; and

(c) on which you satisfy a condition in subsection (5) for the trees.

***write-off rate*** is 7%.

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

(5) The conditions are as follows:

**Conditions for deduction for establishing trees in carbon sink forest**

| Item | Condition |
|---|---|
| 1 | You own the trees and any holder of a lease, lesser interest or licence relating to the land occupied by the trees does not use the land for the primary and principal purpose of *carbon sequestration by the trees. |

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



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| Conditions for deduction for establishing trees in carbon sink forest | |
|---|---|
| **Item** | **Condition** |
| 2 | The trees occupy land you hold under a lease, or a *quasi-ownership right granted by an *exempt Australian government agency or an *exempt foreign government agency, and:<br>(a) the lease or quasi-ownership right enables you to use the land for the primary and principal purpose of *carbon sequestration by the trees; and<br>(b) any holder of a lesser interest or licence relating to the land does not use the land for the primary and principal purpose of carbon sequestration by the trees. |
| 3 | You:<br>(a) hold a licence relating to the land occupied by the trees; and<br>(b) use the land for the primary and principal purpose of *carbon sequestration by the trees, as a result of holding the licence. |

## 40-1010 Expenditure for establishing trees in carbon sink forests

(1) Expenditure is covered under this section in relation to particular trees if:

(a) the trees are established in an income year; and

(b) you incur or another entity incurs the expenditure in the income year or an earlier income year for establishing the trees; and

(c) the entity incurring the expenditure (the ***establishing entity***) is carrying on a *business in the income year; and

(d) the establishing entity's primary and principal purpose for establishing the trees is *carbon sequestration by the trees (see section 40-1015); and

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



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(e) the establishing entity's purposes for establishing the trees do not include any of the following:
(i) felling the trees;
(ii) using the trees for *commercial horticulture; and
(f) the establishing entity does not incur the expenditure under:
(i) a *managed investment scheme; or
(ii) a *forestry managed investment scheme; and
(g) all of the conditions in subsection (2) are satisfied for the trees; and
(h) the establishing entity gives the Commissioner, in accordance with subsection (4), a statement that:
(i) sets out all information necessary to determine whether all of the conditions in subsection (2) are satisfied for the trees; and
(ii) is in the *approved form.

(2) The conditions are as follows:
(a) at the end of the income year, the trees occupy a continuous land area in Australia of 0.2 hectares or more;
(b) at the time the trees are established, it is more likely than not that they will:
(i) attain a crown cover of 20% or more; and
(ii) reach a height of at least 2 metres;
(c) on 1 January 1990, the area occupied by the trees was clear of other trees that:
(i) attained, or were more likely than not to attain, a crown cover of 20% or more; and
(ii) reached, or were more likely than not to reach, a height of at least 2 metres;
(d) the establishment of the trees meets the requirements of the guidelines mentioned in subsection (3).

(3) The *Climate Change Minister must, by legislative instrument, make guidelines about environmental and natural resource

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



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management in relation to the establishment of trees for the purposes of *carbon sequestration.

(4) The statement mentioned in paragraph (1)(h) is to be given to the Commissioner no later than:

(a) if the establishing entity lodges its *income tax return for the income year within 5 months after the end of the income year—the day the establishing entity lodges that income tax return; or

(b) otherwise—5 months after the end of the income year.

(5) However, expenditure is *not* covered under this section if the *Climate Change Secretary gives the Commissioner a notice under subsection (6) in relation to the trees.

(6) The *Climate Change Secretary must give the Commissioner a notice in writing under this subsection if the Climate Change Secretary is satisfied that one or more of the conditions in subsection (2) have not been satisfied for the trees.

(7) A person may apply to the *AAT for review of a decision (as defined in the *Administrative Appeals Tribunal Act 1975*) of the *Climate Change Secretary to give a notice under subsection (6).

(8) The Commissioner may give the *Climate Change Secretary a copy of the statement mentioned in paragraph (1)(h), for the purposes of subsections (5), (6) and (7).

## 40-1015 *Carbon sequestration* by trees

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

## 40-1020 Certain expenditure disregarded

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

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

(b) in clearing land.

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



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

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

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

(b) apart from this section, the amount of the expenditure would be more than the *market value of what it was for;

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

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

(1) You can deduct the amount worked out under subsection (2) for an income year if:

(a) you or another entity incurred capital expenditure that is covered under section 40-1010 in relation to particular trees; and

(b) you use the land occupied by the trees for the primary and principal purpose of *carbon sequestration by the trees; and

(c) the trees are destroyed during the income year; and

(d) you satisfy a condition in subsection 40-1005(5) for the trees just before they are destroyed.

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

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

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



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(a) starting on the first day of the income year in which the trees are established; and

(b) ending when the trees were destroyed;

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

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

(a) the result from step 1; and

(b) any amount you received (under an insurance policy or otherwise) for the destruction.

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

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

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

(1) This section applies if:

(a) you or another entity incurred capital expenditure; and

(b) the expenditure is covered under section 40-1010 in relation to particular trees; and

(c) you begin to satisfy a condition in the table in subsection 40-1005(5) for the trees.

(2) You may give the last entity (if any) that satisfied a condition mentioned in subsection 40-1005(5) for the trees a written notice requiring the entity to give you any or all of the following information:

(a) the amount of the expenditure covered under section 40-1010 in relation to the trees;

(b) the income year in which the trees were established.

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



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(3) The notice must:

(a) be given within 60 days of your beginning to satisfy the condition mentioned in paragraph (1)(c); and

(b) specify a period of at least 60 days within which the information must be given; and

(c) set out the effect of subsection (4).

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

*Requirement to comply with notice*

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

Penalty: 10 penalty units.

*Giving the notice to a partnership*

(5) If the entity to whom the notice is given is a partnership:

(a) you may give it to the partnership by giving it to any of the partners (this does not limit how else you can give it); and

(b) the obligation to comply with the notice is imposed on each of the partners (not on the partnership), but may be discharged by any of them.

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

Penalty: 10 penalty units.

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

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

*Limits on giving a notice*

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

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



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# Subdivision 40-K—Farm-in farm-out arrangements

## Guide to Subdivision 40-K

### 40-1095 What this Subdivision is about

> The costs and termination values of parts of interests in mining, quarrying or prospecting rights that are transferred under farm-in farm-out arrangements are reduced by the market value of the exploration benefits conferred under the arrangements.

## Table of sections

**Farm-in farm-out arrangements and exploration benefits**

40-1100 Meaning of ***farm-in farm-out arrangement*** and ***exploration benefit***

**Consequences for transferors**

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40-1115 Deductions relating to receipt of exploration benefits
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**Consequences for transferees**

40-1130 Consequences of certain exploration benefits provided under farm-in farm-out arrangements

## Farm-in farm-out arrangements and exploration benefits

### 40-1100 Meaning of *farm-in farm-out arrangement* and *exploration benefit*

(1) A ***farm-in farm-out arrangement*** is an *arrangement under which:

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



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(a) an entity (the ***transferor***) transfers, or agrees to transfer, part of the entity's interest in a *mining, quarrying or prospecting right to another entity (the ***transferee***); and

(b) in exchange for the transfer, the transferee provides to the transferor one or more *exploration benefits.

(2) The transferee provides an ***exploration benefit*** to the transferor if:

(a) the transferee:

(i) conducts *exploration or prospecting for *minerals, or quarry materials, obtainable by *mining and quarrying operations; or

(ii) undertakes to conduct exploration or prospecting for minerals, or quarry materials, obtainable by mining and quarrying operations; or

(iii) funds, on the transferor's behalf, expenditure that the transferor incurs in relation to exploration or prospecting by the transferor or another entity (other than the transferee); or

(iv) undertakes to fund, on the transferor's behalf, expenditure that the transferor incurs in relation to exploration or prospecting by the transferor or another entity (other than the transferee); and

(b) the exploration or prospecting relates to the part of the transferor's interest in the *mining, quarrying or prospecting right that the transferor does not transfer, or agree to transfer, under the arrangement; and

(c) in a case where the transferor conducts the exploration or prospecting—expenditure incurred by the transferor relating to the exploration or prospecting is:

(i) included in the *cost of *mining, quarrying or prospecting information *held by the transferor; or

(ii) included in any other *depreciating asset, held by the transferor, for which the decline in value is provided under section 40-80; or

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



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(iii) expenditure, of a kind referred to in subsection 40-730(1), that meets the requirements of subsection (3) of this section; and

(d) in a case where the transferor does not conduct the exploration or prospecting—were the transferor to conduct the exploration or prospecting, expenditure incurred by the transferor relating to the exploration or prospecting would:

(i) be included in the cost of mining, quarrying or prospecting information held by the transferor; or

(ii) be included in any other depreciating asset, held by the transferor, for which the decline in value is provided under section 40-80; or

(iii) be expenditure, of a kind referred to in subsection 40-730(1), that meets the requirements of subsection (3) of this section.

(3) Expenditure meets the requirements of this subsection if:

(a) for that expenditure, the transferor satisfies, or would satisfy, one or more of paragraphs 40-730(1)(a) to (c); and

(b) the expenditure is not of a kind referred to in subsection 40-730(2) or (3); and

(c) the expenditure is not of a kind that another provision of this Act provides is not deductible.

## Consequences for transferors

### 40-1105 Treatment of certain exploration benefits received under farm-in farm-out arrangements

If, under a *farm-in farm-out arrangement, you receive an *exploration benefit in relation to the transfer of part of your interest in a *mining, quarrying or prospecting right, the *termination value of the part of the interest is reduced by the *market value of the exploration benefit.

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



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## 40-1110 Cost of split interests resulting from farm-in farm-out arrangements

Despite section 40-205, if:

(a) under a *farm-in farm-out arrangement, you provide a part of your interest in a *mining, quarrying or prospecting right; and

(b) because of subsection 40-115(2), this Division applies as if you had split your interest into the part you stopped *holding and the rest of your interest;

then:

(c) the first element of the *cost of the asset that consists of the part you stopped holding is a reasonable proportion of the amount you are taken to have paid under section 40-185 for any economic benefit involved in splitting your interest; and

(d) the first element of the cost of the asset that consists of the rest of your interest is the sum of:

(i) the *adjustable value of your interest just before it was split; and

(ii) a reasonable proportion of the amount you are taken to have paid under section 40-185 for any economic benefit involved in splitting your interest.

## 40-1115 Deductions relating to receipt of exploration benefits

(1) If:

(a) under a *farm-in farm-out arrangement, you receive an *exploration benefit in exchange for providing a part of your interest in a *mining, quarrying or prospecting right; and

(b) because of section 40-1105, the *termination value of the interest you provide is reduced (including reduced to nil);

you are not entitled to a deduction under a provision of this Act in relation to your expenditure consisting of the provision of that part.

(2) If:

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



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(a) under a *farm-in farm-out arrangement, you receive an *exploration benefit in exchange for providing a part of your interest in a *mining, quarrying or prospecting right; and

(b) because of section 40-1105, the *termination value of the interest you provide is reduced (including reduced to nil); and

(c) the exploration benefit consists of another party to the arrangement funding on your behalf, or undertaking to fund on your behalf, expenditure that you incur in relation to exploration or prospecting;

your entitlement (if any) to a deduction under a provision of this Act in relation to that expenditure is reduced to the same extent as the extent to which the expenditure is reasonably attributable to the exploration benefit.

### 40-1120 Cost base and reduced cost base of exploration benefits etc.

If:

(a) under a *farm-in farm-out arrangement, you receive an *exploration benefit; and

(b) the benefit involves one or more undertakings of the kinds referred to in subparagraphs 40-1100(2)(a)(ii) and (iv);

the first element of the *cost base and the *reduced cost base of the benefit are reduced by the *market value of the undertakings.

### 40-1125 Effect of exploration benefits on the cost of mining, quarrying or prospecting information

If:

(a) you *hold a *depreciating asset that is *mining, quarrying or prospecting information; and

(b) under a *farm-in farm-out arrangement, you receive an *exploration benefit; and

(c) an amount or expenditure would, apart from this section, be included in the second element of the *cost of the asset;

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



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do not include that amount or expenditure in the second element to the extent (if any) that it is reasonably attributable to the exploration benefit.

## Consequences for transferees

### 40-1130 Consequences of certain exploration benefits provided under farm-in farm-out arrangements

(1) If, under a *farm-in farm-out arrangement, you provide an *exploration benefit in relation to the transfer to you of part of another entity's interest in a *mining, quarrying or prospecting right:

(a) the first element of the *cost of the part of the interest is reduced by the *market value of the exploration benefit; and

(b) if, for providing the exploration benefit, you receive a reward as a result of which an amount would, apart from this paragraph, be included in your assessable income—the entire amount of the reward is not assessable income and is not *exempt income; and

(c) subsection 40-730(3) does not apply in relation to expenditure that you incur under the arrangement if the reduction in market value under paragraph (a) took into account your liability to incur that expenditure.

(2) A reduction under paragraph(1)(a) may be a reduction to nil.

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



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# Division 41—Additional deduction for certain new business investment

## Guide to Division 41

### 41-1 What this Division is about

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

(a) you can deduct an amount for the decline in value for the asset for the relevant year under Subdivision 40-B; and

(b) you make certain new investments in respect of the asset in the period starting on 13 December 2008 and ending on 31 December 2009; and

(c) the total of those new investments is at least $1000 (for small businesses) or $10,000 (for other businesses).

## Table of sections

**Operative provisions**

41-5 Object of Division
41-10 Entitlement to deduction for investment
41-15 Amount of deduction
41-20 Recognised new investment amount
41-25 Investment commitment time
41-30 First use time
41-35 New investment threshold

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



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## Operative provisions

### 41-5 Object of Division

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

### 41-10 Entitlement to deduction for investment

(1) You can deduct an amount for an income year in relation to an asset if:

(a) the asset is a *depreciating asset, other than an intangible asset; and

(b) you can deduct an amount under section 40-25 in relation to the asset for the income year; and

(c) the income year is the 2008-09, 2009-10, 2010-11 or 2011-12 income year; and

(d) the total of the *recognised new investment amounts for the income year in relation to the asset equals or exceeds the *new investment threshold for the income year in relation to the asset.

(2) Subsection 355-715(2) (tax offset for assets used for R&D activities) does not apply to a deduction under subsection (1).

(3) For the purposes of paragraph (1)(b), in determining whether you can deduct the amount in relation to the asset under section 40-25 for the income year:

(aa) disregard section 40-90 (reduction in cost where debt is forgiven); and

(ab) disregard subsection 40-365(5) (reduction in cost for replacement asset where involuntary disposal); and

(b) disregard Subdivision 328-D (capital allowances for small business entities); and

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

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



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

(4) For the purposes of paragraph (1)(d), treat each of the following as a *recognised new investment amount for the income year in relation to the asset (the ***relevant asset***):

(a) a recognised new investment amount for a previous income year in relation to the relevant asset;

(b) a recognised new investment amount for the income year or a previous income year in relation to another asset, if:

(i) the other asset is part of a set of assets including the relevant asset; or

(ii) the other asset is identical, or substantially identical, to the relevant asset;

(c) a recognised new investment amount for the income year or a previous income year in relation to an asset *held by another entity, if:

(i) subsection 40-35(1) (jointly held depreciating assets) applies in relation to the relevant asset because it is your interest in an asset (the ***underlying asset***); and

(ii) the asset held by the other entity is the other entity's interest in the underlying asset.

## 41-15 Amount of deduction

(1) The amount that you can deduct is:

(a) if the *new investment threshold for the income year in relation to the asset is $1000 (small business entities)—50% of the total of the *recognised new investment amounts for the income year in relation to the asset; or

(b) if paragraph (a) does not apply but subsection (3), (4) or (5) applies—10% of that total; or

(c) otherwise—the sum of:

(i) 30% of the total of the recognised new investment amounts for the income year in relation to the asset that meet the condition in subsection (2); and

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



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(ii) 10% of the total of the other recognised new investment amounts for the income year in relation to the asset.

(2) A *recognised new investment amount meets the condition in this subsection if:

(a) the *investment commitment time for the amount occurred before 1 July 2009; and

(b) the *first use time for the amount occurred before 1 July 2010.

(3) This subsection applies if the income year is the 2011-12 income year.

(4) This subsection applies if:

(a) you can deduct the amount because of paragraph 41-10(4)(a); and

(b) the *new investment threshold for the income year in relation to the asset exceeds the total of the *recognised new investment amounts for the income year in relation to the asset that meet the condition in subsection (2).

(5) This subsection applies if:

(a) you can deduct the amount because of paragraph 41-10(4)(b) or (c); and

(b) the *new investment threshold for the income year in relation to the asset exceeds the sum of:

(i) the total of the *recognised new investment amounts for the income year in relation to the asset that meet the condition in subsection (2); and

(ii) the total of the amounts treated under paragraph 41-10(4)(b) or (c) (as the case requires) as recognised new investment amounts for the income year in relation to the asset that meet the condition in subsection (2).

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



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## 41-20 Recognised new investment amount

(1) An amount is a recognised new investment amount for the income year in relation to the asset if:

(a) either:

(i) the amount is included in the first element of the asset's *cost (worked out in accordance with Subdivision 40-C); or

(ii) the amount is included in the second element of the asset's cost under paragraph 40-190(2)(a); and

(b) the *investment commitment time for the amount occurs in the period:

(i) starting at 12.01 am, by legal time in the Australian Capital Territory, on 13 December 2008; and

(ii) ending on 31 December 2009; and

(c) the *first use time for the amount occurs:

(i) no later than the end of the income year; and

(ii) no later than 31 December 2010; and

(d) at the first use time for the amount, it is reasonable to conclude that you will use the asset principally in Australia for the principal purpose of carrying on a *business; and

(e) if the amount is included in the first element of the asset's cost—the first use time for the amount is the first time you or any other entity have used the asset, or have it installed ready for use, for any purpose; and

(f) you have not been entitled to a deduction under this Division for any previous income year in relation to the amount.

(2) Treat the requirements in paragraph (1)(d) as *not* being met if, at the first use time for the amount, it is reasonable to conclude that the asset will never be located in Australia.

(3) For the purposes of paragraph (1)(e), disregard any previous use of the asset that was merely for the purposes of reasonable testing or trialling.

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



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(4) Treat the requirements in paragraph (1)(e) as *not* being met if the amount becomes included in the first element of the asset's *cost at a time because of paragraph 40-205(a) (splitting depreciating assets) or 40-210(a) (merging depreciating assets).

(5) In determining the amount of a *recognised new investment amount, disregard:

(a) subsection 40-90(2) (reduction in cost where debt is forgiven); and

(b) paragraph 40-365(5)(a) (reduction in cost for replacement asset where involuntary disposal).

## 41-25 Investment commitment time

(1) The ***investment commitment time*** for the amount is:

(a) if the amount is included in the first element of the asset's *cost—the time at which you:

(i) enter into a contract under which you *hold the asset at that time, or will hold the asset at a later time; or

(ii) start to construct the asset; or

(iii) start to hold the asset in some other way; or

(b) if the amount is included in the second element of the asset's cost—the time at which you enter into a contract, or start construction, for the economic benefit in relation to which the amount becomes, or will become, included in that element under paragraph 40-190(2)(a).

*Integrity rule*

(2) Subsection (3) applies in relation to an amount if:

(a) at a time, you:

(i) enter into a contract under which you *hold an asset at that time, or will hold the asset at a later time; or

(ii) start to construct an asset; or

(iii) start to hold an asset in some other way; and

(b) at a later time, you engage in conduct that results in you:

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(i) entering into a contract under which you hold the asset mentioned in paragraph (a) (or an identical or substantially similar asset) at that later time, or will hold that asset (or an identical or substantially similar asset) at an even later time; or

(ii) starting to construct an asset that is identical or substantially similar to the asset mentioned in paragraph (a); or

(iii) starting to hold the asset mentioned in paragraph (a) (or an identical or substantially similar asset) in some other way; and

(c) you engage in that conduct for the purpose, or for purposes that include the purpose, of becoming entitled to a deduction under this Division.

(3) Despite paragraph (1)(a), the ***investment commitment time*** for an amount to which that paragraph would otherwise apply is the time mentioned in paragraph (2)(a).

(3A) For the purposes of paragraph (1)(a) and subsection (2), treat yourself as having started to construct an asset at a time if you first incur expenditure in respect of the construction of the asset at that time.

(3B) For the purposes of paragraph (1)(b), treat yourself as having started construction for an economic benefit at a time if you first incur expenditure in respect of the construction for the benefit at that time.

*Options*

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

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



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## 41-30 First use time

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

(a) if the amount is included in the first element of the asset's *cost—the time at which you start to use the asset, or have it *installed ready for use; or

(b) if the amount is included in the second element of the asset's cost—the later of:

(i) the time at which it becomes included in that element under paragraph 40-190(2)(a); or

(ii) the time mentioned in paragraph (a).

## 41-35 New investment threshold

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

(a) $1000 if you are a *small business entity during any of the following income years:

(i) the income year in which occurs the *investment commitment time for any *recognised new investment amount for the asset in relation to the relevant income year;

(ii) the income year in which occurs the *first use time for any such amount;

(iii) the relevant income year; or

(b) otherwise—$10,000.

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



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# Division 43—Deductions for capital works

## Table of Subdivisions

Guide to Division 43
43-A Key operative provisions
43-B Establishing the deduction base
43-C Your area and your construction expenditure
43-D Deductible uses of capital works
43-E Special rules about uses
43-F Calculation of deduction
43-G Undeducted construction expenditure
43-H Balancing deduction on destruction of capital works

## Guide to Division 43

### 43-1 What this Division is about

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

### Table of sections

43-2 Key concepts used in this Division

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

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

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



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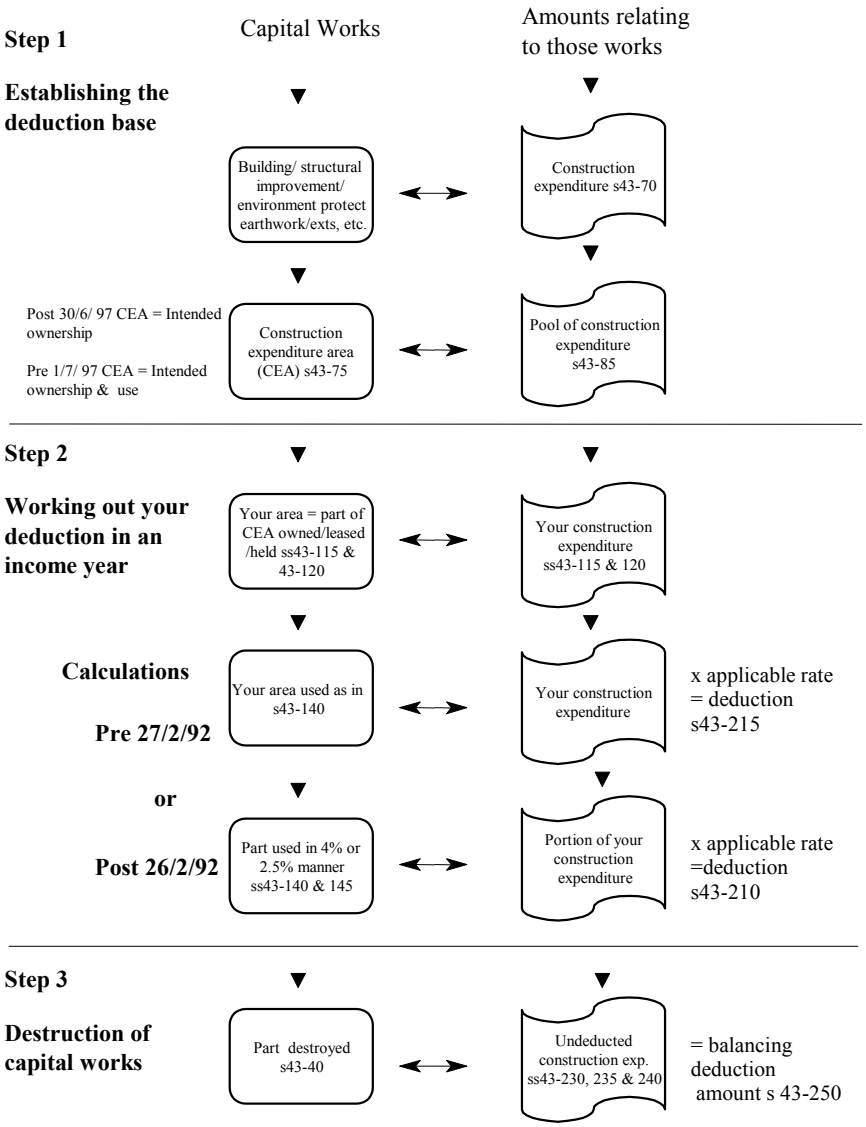


*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



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# Subdivision 43-A—Key operative provisions

## Guide to Subdivision 43-A

### 43-5 What this Subdivision is about

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

### Table of sections

**Operative provisions**

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

## Operative provisions

### 43-10 Deductions for capital works

(1) You can deduct an amount for capital works for an income year.

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

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



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

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

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

## 43-15 Amount you can deduct

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

Note: The limit in this subsection has 2 effects:

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

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

## 43-20 Capital works to which this Division applies

*Buildings*

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

(a) begun in Australia after 21 August 1979; or

(b) begun outside Australia after 21 August 1990.

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

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



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*Structural improvements*

(2) This Division also applies to capital works (other than capital works referred to in subsection (1)) begun after 26 February 1992 that are structural improvements, or extensions, alterations or improvements to structural improvements, whether they are in or outside Australia.

(3) Some examples of structural improvements are:

(a) sealed roads, sealed driveways, sealed car parks, sealed airport runways, bridges, pipelines, lined road tunnels, retaining walls, fences, concrete or rock dams and artificial sports fields; and

(b) earthworks that are integral to the construction of a structural improvement (other than a structural improvement described in subsection (4)), for example, embankments, culverts and tunnels associated with a runway, road or railway.

(4) This Division does not apply to structural improvements being:

(a) earthworks that:

(i) are not integral to the installation or construction of a structure; and

(ii) are permanent (assuming they are maintained in reasonably good order and condition); and

(iii) can be economically maintained in reasonably good order and condition for an indefinite period;

for example, unlined channels, unlined basins, earth tanks and dirt tracks; or

(b) earthworks that merely create artificial landscapes, for example, grass golf course fairways and greens, gardens, and grass sports fields.

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



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*Environment protection earthworks*

(5) This Division also applies to capital works being earthworks, or extensions, alterations or improvements to earthworks, if:

(a) they are constructed as a result of carrying out of *environmental protection activities; and

(b) they can be economically maintained in reasonably good order and condition for an indefinite period; and

(c) they are not integral to the construction of capital works; and

(d) the expenditure on the capital works was incurred after 18 August 1992.

Note: This subsection allows you to deduct an amount for some earthworks that are excluded by paragraph (4)(a) if the earthworks are constructed in carrying out an environmental protection activity.

## 43-25 Rate of deduction

(1) For capital works begun after 26 February 1992, there is a basic entitlement to a rate of 2.5% for parts used as described in Table 43-140 (Current year use). The rate increases to 4% for parts used as described in Table 43-145 (Use in the 4% manner).

(2) For capital works begun before 27 February 1992 and used as described in Table 43-140, the rate is:

(a) 4% if the capital works were begun after 21 August 1984 and before 16 September 1987; or

(b) 2.5% in any other case.

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

## 43-30 No deduction until construction is complete

You cannot deduct an amount for any period before the completion of construction of the capital works even though you used them, or part of them, before completion.

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



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## 43-35 Requirement for registration under the Industry Research and Development Act

You may deduct an amount under this Division on the basis of using capital works for the purpose of conducting *R&D activities only if:

(a) you are registered under section 27A (registering R&D activities) of the *Industry Research and Development Act 1986* for the R&D activities for an income year; or

(b) if you are an *R&D partnership—an *R&D entity, who was a partner of the R&D partnership at some time while the R&D activities were conducted, is registered under that section for the R&D activities for an income year.

Note 1: R&D activities must be conducted in connection with a business carried on for the purpose of producing assessable income, see section 43-195.

Note 2: You may still deduct an amount under this Division if you were registered for the R&D activities under former section 39J (Registration of eligible companies) of the *Industry Research and Development Act 1986* (see section 355-200 of the *Income Tax (Transitional Provisions) Act 1997*).

## 43-40 Deduction for destruction of capital works

(1) You can deduct an amount if all or a part of *your area is destroyed in an income year and:

(a) you have been allowed, or can claim, a deduction under this Division, or former Division 10C or 10D of Part III of the *Income Tax Assessment Act 1936*, for your area; and

(b) there is an amount of *undeducted construction expenditure for your area; and

(c) you were using your area in the way that applies to it under Table 43-140 (Current year use) immediately before the destruction or, if not, neither you nor any other entity used your area for any purpose since it was last used by you in that way.

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



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(2) The deduction is allowable in the income year in which the destruction occurs, and is calculated under section 43-250.

Note: The effect of this provision is to allow you to deduct an amount in the income year in which the capital works are destroyed for all of your construction expenditure that has not yet been deducted. However, you must reduce the deduction by any insurance and salvage receipts.

## 43-45 Certain anti-avoidance provisions

These anti-avoidance provisions:

(a) section 51AD (Deductions not allowable in respect of property under certain leveraged arrangements) of the *Income Tax Assessment Act 1936*;

(b) Division 16D (Certain arrangements relating to the use of property) of Part III of that Act;

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

## 43-50 Links and signposts to other parts of the Act

*Links*

(1) No part of a *pool of construction expenditure can be a deduction, or taken into account in working out the amount of a deduction, under a provision of this Act other than this Division.

(2) No part of an amount incurred by an entity in acquiring capital works for which there is a *pool of construction expenditure can be a deduction, or taken into account in working out the amount of a deduction, under a provision of this Act other than this Division.

(3) You will be taken not to be the owner of any part of capital works that are the subject of a lease to which you have chosen to apply section 104-115 (CGT event F2). The lessee or sublessee will be taken to be the owner of that part.

Note 1: Choosing to apply section 104-115 results in the lease being treated for CGT purposes more like an outright disposal.

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



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Note 2: See subsection 43-180(3) for the effect of the rule in subsection (3) of this section on the need to own 10 apartments, units or flats in an apartment building.

*Signposts*

(6) There are special record-keeping rules that apply to this Division in subsection 262A(4AJA) of the *Income Tax Assessment Act 1936*.

(7) Your deductions under this Division may be reduced if any of your commercial debts have been forgiven in the income year: see Subdivision 245-E.

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

## 43-55 Anti-avoidance—arrangement etc. with tax-exempt entity

(1) You will not be allowed a deduction under this Division for an income year if the Commissioner is satisfied that:

(a) you entered into an *arrangement with:

(i) an entity to which section 50-5, 50-10, 50-15, 50-25, 50-30, 50-40 or 50-45 (dealing with *exempt income) applies; or

(ii) an STB (within the meaning of Division 1AB of Part III of the *Income Tax Assessment Act 1936*) whose *ordinary income and *statutory income is exempt from income tax;

under which you were to pay an amount, or transfer property, directly or indirectly, to the entity; and

(b) the amount of the payment or the value of the property is calculated by reference to the amount of a deduction allowable to you under this Division; and

(c) a purpose of the arrangement that is not a merely incidental purpose is to ensure that the benefit of the deduction would

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



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pass wholly or substantially to the entity, whether directly or indirectly.

(2) Subsection (1) applies to *arrangements entered into with an entity referred to in subparagraph (1)(a)(i) after 1 May 1980 that relate to deductions for *hotel buildings or *apartment buildings begun before 1 July 1997.

(3) Subsection (1) also applies to *arrangements entered into with an entity referred to in subparagraph (1)(a)(ii) after 30 June 1994 that relate to deductions for *hotel buildings or *apartment buildings begun before 1 July 1997.

## Subdivision 43-B—Establishing the deduction base

## Guide to Subdivision 43-B

### 43-60 What this Subdivision is about

This Subdivision explains the meaning of the terms ***construction expenditure***, ***construction expenditure area*** and ***pool of construction expenditure***.

## Table of sections

43-65 Explanatory material

**Operative provisions**

43-70 What is construction expenditure?
43-72 Meaning of *forestry road*, *timber operation* and *timber mill building*
43-75 Construction expenditure area
43-80 When capital works begin
43-85 Pools of construction expenditure
43-90 Table of intended use at time of completion of construction
43-95 Meaning of *hotel building* and *apartment building*
43-100 Certificates by Industry Innovation and Science Australia

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



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### 43-65 Explanatory material

Expenditure in respect of the construction of capital works is only eligible for a deduction under this Division if there is a construction expenditure area for the capital works. The area defined as the construction expenditure area may comprise the whole of the capital works or only part of them.

Whether there is a construction expenditure area for capital works and how it is identified depends on the following factors:

- the type of expenditure incurred;
- the time when the capital works began;
- the area of the capital works that is to be owned, leased or held by the entity that incurred the expenditure;
- for capital works begun before 1 July 1997, the area of the capital works that was to be used in a particular manner.

A pool of construction expenditure is that part of an amount of construction expenditure that is attributable to a particular construction expenditure area.

## Operative provisions

### 43-70 What is construction expenditure?

(1) ***Construction expenditure*** is capital expenditure incurred in respect of the construction of capital works.

(2) ***Construction expenditure*** does not include:
  (a) expenditure on acquiring land; or
  (b) expenditure on demolishing existing structures; or
  (c) expenditure on clearing, levelling, filling, draining or otherwise preparing the construction site prior to carrying out excavation works; or

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



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(d) expenditure on landscaping; or

(e) expenditure on *plant; or

(f) expenditure on property for which a deduction is allowable, or would be allowable if the property were for use for the *purpose of producing assessable income, under:

(i) Subdivision 40-F (about primary production depreciating assets), Subdivision 40-G (about capital expenditure of primary producers and other landholders), Subdivision 40-H (about capital expenditure that is immediately deductible) or Subdivision 40-I (about capital expenditure that is deductible over time); or

(ii) the former Division 330 of this Act or the former Division 10, 10AAA or 10AA of Part III of the *Income Tax Assessment Act 1936* (all of which dealt with mining and/or quarrying); or

(iii) section 73A of the *Income Tax Assessment Act 1936* (about expenditure on scientific research); or

(iv) the former Subdivision 387-A of this Act or the former section 75D of the *Income Tax Assessment Act 1936* (both of which allowed deductions for capital expenditure to prevent land degradation); or

(v) the former Subdivision 387-B of this Act or the former section 75B of the *Income Tax Assessment Act 1936* (both of which allowed deductions for capital expenditure on facilities to conserve or convey water); or

(vi) the former Subdivision 387-G of this Act or the former section 124F or 124JA of the *Income Tax Assessment Act 1936* (all of which allowed deductions for capital expenditure on forestry roads and/or timber mill buildings); or

(fa) any of these kinds of expenditure if a deduction is allowable for the expenditure, or would be allowable if property had been used for the purpose of producing assessable income:

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



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(i) *mining capital expenditure or *transport capital expenditure;

(ii) expenditure on a *forestry road in connection with carrying on a *timber operation for a *taxable purpose;

(iii) expenditure for the construction or acquisition of a *timber mill building;

(iv) expenditure on a *depreciating asset you can deduct under subsection 40-80(1) (about exploration and prospecting); or

(g) expenditure on property for which a deduction under section 355-305 or 355-520 is allowable for the property, or would be allowable if the property were for use for conducting *R&D activities; or

(h) eligible heritage conservation expenditure within the meaning of the former Subdivision AAD of Division 17 of Part III of the *Income Tax Assessment Act 1936*; or

(i) expenditure that you cannot deduct because of section 26-100 (about water infrastructure improvement expenditure).

## 43-72 Meaning of *forestry road*, *timber operation* and *timber mill building*

(1) A ***forestry road*** is a road constructed primarily and principally for the purpose of providing access to an area to enable:

(a) trees to be planted or tended in the area; or

(b) timber felled in the area to be removed.

For this purpose, a road includes any bridge, culvert or similar work forming part of the road.

(2) A ***timber operation*** is:

(a) planting or tending trees for felling; or

(b) felling standing timber; or

(c) removing felled timber; or

(d) milling felled timber or processing it in another way.

(3) A ***timber mill building*** is a building:

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



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(a) for use primarily and principally:
  (i) in carrying on your *business of milling timber for a *taxable purpose; or
  (ii) as residential accommodation for your employees engaged in connection with the business, or for their dependants; and
(b) located in a forest, and in or adjacent to the area where timber milled in the business is, or is to be, felled.

## 43-75 Construction expenditure area

(1) The ***construction expenditure area*** of capital works begun after 30 June 1997 is the part of the capital works on which the *construction expenditure was incurred that, at the time when it was incurred by an entity, was to be owned or leased by the entity or held by the entity under a *quasi-ownership right over land granted by an *exempt Australian government agency or an *exempt foreign government agency.

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

(2) The ***construction expenditure area*** of capital works begun before 1 July 1997 is the part of the capital works on which the *construction expenditure was incurred that:
  (a) at the time when it was incurred by an entity, was to be owned or leased by the entity or held by the entity under a *quasi-ownership right over land granted by an *exempt Australian government agency or an *exempt foreign government agency; and
  (b) at the time of completion of construction, was to be used in the way described in Column 3 of Table 43-90 (intended use at completion) for the time period when the capital works began as set out in Column 1.

(3) There is taken to be a ***construction expenditure area*** for capital works purchased by an entity from another entity if:

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



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(a) the capital works would have had a construction expenditure area but for the fact that the other entity did not incur capital expenditure in constructing the capital works; and

(b) the other entity is not an *associate of the entity; and

(c) the other entity constructed the capital works on land that it owned or leased in the course of a business that included the construction and sale of capital works of that kind.

Note: Subsection (3) makes capital works purchased from a speculative builder eligible for deduction in the hands of the first and subsequent purchasers.

(4) The construction of the capital works must be complete before the *construction expenditure area is determined.

(5) Only one *construction expenditure area is created each time an entity constructs capital works.

Example: An entity undertakes the construction of a building. During the course of construction, the entity makes 3 progress payments to the builder. There is still only one construction expenditure area.

(6) A separate *construction expenditure area will be created each time an entity undertakes the construction of capital works.

Example: In the diagram below, area 1 relates to the original construction of a building which gives rise to one *construction expenditure area*. Area 2 is a subsequent extension of the same building which gives rise to another, while area 3 is a later renovation of the entire building which gives rise to another.

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



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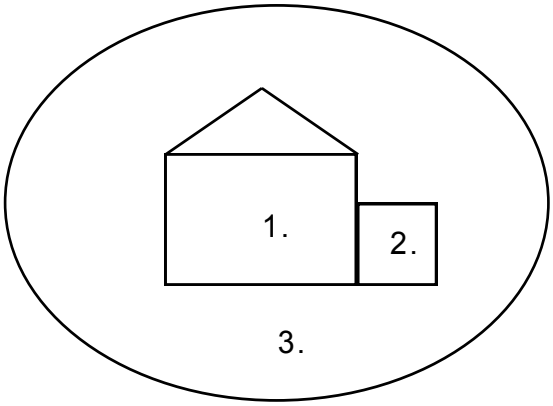


## 43-80 When capital works begin

Capital works are taken to begin when the first step in the construction phase starts. For example, the pouring of foundations or sinking of pilings for a building.

Note 1: Capital works begun after 15 September 1987 are taken to have begun before 16 September 1987 in certain circumstances. See section 43-220.

Note 2: The time when capital works begin is relevant for determining whether the capital works qualify for deduction, the use to which those works must be put, the rate of deduction and the calculation mechanism used. However, the time when capital works begin does not limit what qualifies as construction expenditure.

## 43-85 Pools of construction expenditure

(1) A ***pool of construction expenditure*** is so much of the *construction expenditure incurred by an entity on capital works as is attributable to the *construction expenditure area.

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



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(2) In applying subsection (1) in a case to which subsection 43-75(3) (dealing with purchases from speculative builders) applies, assume that the expenditure incurred by the other entity was capital expenditure, but that the limitations in subsection 43-70(2) (which sets out types of expenditure that are not *construction expenditure) still apply to the other entity's expenditure.

Note: The builder's profit margin does not form part of the construction expenditure of the purchaser.

## 43-90 Table of intended use at time of completion of construction

| **Column 1**<br>**Date capital works begin** | **Column 2**<br>**Type of capital works** | **Column 3**<br>**Intended use on completion** |
|---|---|---|
| Time period 1:<br>22/8/79 to 19/7/82 (inclusive) | Hotel building | For use by any entity wholly or mainly to operate a hotel, motel or guest house that has at least 10 bedrooms that are for use wholly or mainly to provide short-term accommodation for travellers. |
| | Apartment building | The building consisted of:<br>(a) at least 10 apartments, units or flats each of which was for use wholly or mainly to provide short-term accommodation for travellers; or<br>(b) at least 10 apartments, units or flats each of which was for use for that purpose and facilities that are wholly or mainly for use in association with providing short-term accommodation for travellers in those apartments, units or flats. |

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



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| **Column 1**<br>**Date capital works begin** | **Column 2**<br>**Type of capital works** | **Column 3**<br>**Intended use on completion** |
|---|---|---|
| Time period 2:<br>20/7/82 to 17/7/85 (inclusive) | Hotel building | As for time period 1. |
| | Apartment building | As for time period 1. |
| | Non-residential building | For:<br>(a) use by the entity that incurred the expenditure for the *purpose of producing assessable income or exempt income; or<br>(b) disposal by that entity to another entity for use by the other entity for the purpose of producing assessable income or exempt income. |
| Time period 3:<br>18/7/85 to 20/11/87 (inclusive) | Any building | For:<br>(a) use by the entity that incurred the expenditure for the *purpose of producing assessable income or exempt income; or<br>(b) disposal by that entity to another entity for use by the other entity for the purpose of producing assessable income or exempt income; or<br>(c) use by an entity wholly or mainly for, or in association with, residential accommodation. |

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



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| **Column 1**<br>**Date capital works begin** | **Column 2**<br>**Type of capital works** | **Column 3**<br>**Intended use on completion** |
|---|---|---|
| Time period 4:<br>21/11/87 to 26/2/92 (inclusive) | Any building | For:<br>(a) use by the entity that incurred the expenditure for the *purpose of producing assessable income or exempt income; or<br>(b) disposal by that entity to another entity for use by the other entity for the purpose of producing assessable income or exempt income; or<br>(c) use by an entity wholly or mainly for, or in association with, residential accommodation; or<br>(d) use by the entity that incurred the expenditure to carry on research and development activities (within the meaning of former section 73B of the *Income Tax Assessment Act 1936*) by or for that entity, or for disposal by that entity to another entity for use by the other entity for carrying on research and development activities (within the meaning of that former section) by or for the other entity. |
| Time period 5:<br>27/2/92 to 18/8/92 (inclusive) | Hotel building | As for time period 1. |
| | Apartment building | As for time period 1. |
| | Other buildings | As for any building in time period 4. |
| | Structural improvements | As for any building in time period 4. |

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



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| **Column 1**<br>**Date capital works begin** | **Column 2**<br>**Type of capital works** | **Column 3**<br>**Intended use on completion** |
|---|---|---|
| Time period 6:<br>19/8/92 to 30/6/97 (inclusive) | Hotel building | As for time period 1. |
| | Apartment building | As for time period 1. |
| | Other buildings | As for any building in time period 4. |
| | Structural improvements | As for any building in time period 4. |
| | Environment protection earthworks | As for any building in time period 4. |

Note: There are special rules that explain or qualify the uses described in Column 3 of this Table. These rules are set out in Subdivision 43-E (sections 43-155 to 43-195). For example, certain facilities that are not commonly provided in a hotel, motel or guest house in Australia are taken not to be used or for use to operate a hotel, motel or guest house, see subsection 43-180(6).

## 43-95 Meaning of *hotel building* and *apartment building*

(1) A ***hotel building*** is:

(a) a building begun after 21 August 1979 and before 18 July 1985, or after 26 February 1992 and before 1 July 1997, that, at the time of completion of its construction, was intended to be used in the way referred to in Column 3 of Table 43-90 (intended use at completion) for a hotel building; or

(b) a building begun after 30 June 1997 and that, in the income year, is used in the way referred to in Column 3 (time period 2) of Table 43-145 (use in the 4% manner) for a hotel building.

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



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(2) An ***apartment building*** is:

(a) a building begun after 21 August 1979 and before 18 July 1985, or after 26 February 1992 and before 1 July 1997, that, at the time of completion of its construction, was intended to be used in the way referred to in Column 3 of Table 43-90 for an apartment building; or

(b) a building begun after 30 June 1997 and that, in the income year, is used in the way referred to in Column 3 (time period 2) of Table 43-145 for an apartment building.

### 43-100 Certificates by Industry Innovation and Science Australia

A certificate by *Industry Innovation and Science Australia stating that activities carried on by or for an entity were or were not *core R&D activities or *supporting R&D activities is conclusive for the purposes of this Division.

Note: Core R&D activities and supporting R&D activities are kinds of R&D activities.

## Subdivision 43-C—Your area and your construction expenditure

## Guide to Subdivision 43-C

### 43-105 What this Subdivision is about

This Subdivision explains ***your area*** and ***your construction expenditure***.

## Table of sections

43-110 Explanatory material

**Operative provisions**

43-115 Your area and your construction expenditure—owners

43-120 Your area and your construction expenditure—lessees and quasi-ownership right holders

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



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43-125 Lessees' or right holders' pools can revert to owner
43-130 Identifying your area on acquisition or disposal

### 43-110 Explanatory material

You can only get a deduction under this Division for an income year if you own, lease or hold part of a construction expenditure area of capital works. The area you own, lease or hold is called ***your area***.

In working out your deductions, you must identify your area for each construction expenditure area of the capital works.

Your area may comprise the whole of the construction expenditure area or part of it.

Note: In certain circumstances the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

## Operative provisions

### 43-115 Your area and your construction expenditure—owners

(1) ***Your area*** is the part of the *construction expenditure area that you own.

(2) ***Your construction expenditure*** is the portion of the *pool of construction expenditure that is attributable to your area.

### 43-120 Your area and your construction expenditure—lessees and quasi-ownership right holders

*Own expenditure*

(1) ***Your area*** is the part of the *construction expenditure area that you lease, or hold under a *quasi-ownership right over land granted by an *exempt Australian government agency or an *exempt foreign government agency, and that:

(a) is attributable to a *pool of construction expenditure that you incurred; and

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



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(b) you have continuously leased or held since the construction was completed.

*Earlier lessees' or holders' expenditure*

(2) ***Your area*** is the part of the *construction expenditure area that you lease, or hold under a *quasi-ownership right over land granted by an *exempt Australian government agency or an *exempt foreign government agency, and that:

(a) is attributable to a *pool of construction expenditure incurred by another lessee or holder of a quasi-ownership right over land; and

(b) has been continuously leased or held since the construction was completed by the lessee or holder who incurred the expenditure or an assignee of that lessee's lease or that holder's quasi-ownership right over land.

(3) ***Your construction expenditure*** is the portion of the *pool of construction expenditure that is attributable to your area.

## 43-125 Lessees' or right holders' pools can revert to owner

(1) An amount that relates to a *pool of construction expenditure that arises as a result of expenditure incurred by a lessee or a holder of a *quasi-ownership right over land:

(a) can only be deducted by a lessee or a holder of a quasi-ownership right over land who satisfies subsection 43-120(1) or (2); and

(b) cannot be deducted by the owner of the capital works while there is a lessee or a holder of a quasi-ownership right over land who satisfies that subsection.

(2) The owner of the capital works may deduct an amount that relates to that pool if there is no longer a lessee or a holder of a *quasi-ownership right over land who satisfies subsection 43-120(1) or (2).

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



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### 43-130 Identifying your area on acquisition or disposal

There will be a separate *your area at each time in an income year when you:

(a) acquire an additional part of a *construction expenditure area; or

(b) dispose of some but not all of a construction expenditure area.

Example: You own half of a building (part A) throughout the income year, and you acquire the other half (part B) on 1 January. This section ensures that part A is your area for the entire year and that part B is your area for the second 6 months of the year.

Note: This ensures that the same area is not counted twice in calculating your deduction. You will have to make separate deduction calculations if you have identified more than one area as your area of the capital works.

## Subdivision 43-D—Deductible uses of capital works

## Guide to Subdivision 43-D

### 43-135 What this Subdivision is about

You can only get a deduction under this Division if you use your area in a way described in Table 43-140 or 43-145 of this Subdivision.

## Table of sections

**Operative provisions**

43-140 Using your area in a deductible way
43-145 Using your area in the 4% manner
43-150 Meaning of *industrial activities*

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



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## Operative provisions

### 43-140 Using your area in a deductible way

(1) The following table sets out the way you must use *your area in an income year for a deduction to be allowed under section 43-10 (the main deduction provision). The relevant use depends on the time when the capital works began (Column 1) and the type of capital works (Column 2). Column 3 sets out the use.

**Table 43-140—Current year use**

| Column 1<br>Date capital works begin | Column 2<br>Type of capital works | Column 3<br>Use of your area at some time in the income year |
|---|---|---|
| Time period 1:<br>After 30/6/97 | Any capital works | You use *your area for the purpose of:<br>(a) producing assessable income; or<br>(b) conducting *R&D activities. |
| Time period 2:<br>27/2/92 to 30/6/97 (inclusive) | *Hotel building | You use *your area for the *purpose of producing assessable income. |
| | *Apartment building | You use *your area for the *purpose of producing assessable income. |
| | Other capital works | You use *your area for the purpose of:<br>(a) producing assessable income; or<br>(b) conducting *R&D activities. |
| Time period 3:<br>Before 27/2/92 | *Hotel building | You use *your area for the *purpose of producing assessable income and:<br>(a) all or part of that area is used by any entity wholly or mainly to operate a hotel, motel or guest house; and<br>(b) that hotel, motel or guest house has at least 10 bedrooms that are used or available for use wholly to provide short-term accommodation for travellers. |

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



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**Table 43-140—Current year use**

| Column 1<br>Date capital works begin | Column 2<br>Type of capital works | Column 3<br>Use of your area at some time in the income year |
|---|---|---|
| | *Apartment building | You use *your area for the *purpose of producing assessable income and:<br>(a) that area is, is part of or contains an apartment, unit or flat that is used or available for use by any entity wholly to provide short-term accommodation for travellers, and you own or lease at least 9 other apartments, units or flats in the building that are used or available for use by any entity wholly to provide short-term accommodation for travellers; or<br>(b) that area is, is part of or contains a facility that is used or available for use by any entity wholly or mainly in association with providing short-term accommodation for travellers in apartments, units or flats in the building that are used in the way described in paragraph (a). |
| | Other capital works | You use *your area for the purpose of:<br>(a) producing assessable income; or<br>(b) conducting *R&D activities. |

Note 1: There are special rules that explain or qualify the uses described in Column 3 of this Table. These rules are set out in Subdivision 43-E (sections 43-155 to 43-195). For example:

- Your area is taken to be used, for use or available for use for a purpose or in a way if it is maintained ready for use for that purpose or in that way. See section 43-160.
- R&D activities must be conducted in connection with a business carried on for the purpose of producing assessable income, see section 43-195.

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



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Note 2: If Division 250 applies to you and an asset that is a capital work:

(a) if section 250-150 applies—you are taken not to be using the capital work for the purpose of producing assessable income, or for the purpose of conducting R&D activities, to the extent specified under subsection 250-150(3); or

(b) otherwise—you are taken not to be using the capital work for such a purpose.

(2) This Division applies to an entity as if the entity used property for the *purpose of producing assessable income if the entity uses the property for:

(a) *environmental protection activities; or

(b) the environmental impact assessment of a project;

unless a provision of this Act expressly provides that that use is not for the purpose of producing assessable income.

## 43-145 Using your area in the 4% manner

You use a part of *your area in the ***4% manner*** if you use it as described in the following Table. The relevant use depends on the time when the capital works began (Column 1) and the type of capital works (Column 2). Column 3 sets out the use.

**Table 43-145—Use in the 4% manner**

| **Column 1**<br>**Date capital works begin** | **Column 2**<br>**Type of capital works** | **Column 3**<br>**Use of a part of *your area at some time in the income year** |
|---|---|---|
| Time period 1:<br>After 30/6/97 | Capital works that are buildings | You use the part of *your area for the *purpose of producing assessable income and:<br>(a) that part is used by any entity wholly or mainly to operate a hotel, motel or guest house; and<br>(b) that hotel, motel or guest house has at least 10 bedrooms that are used or available for use wholly to provide short-term accommodation for travellers. |

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



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| **Table 43-145—Use in the 4% manner** | | |
|---|---|---|
| **Column 1**<br>**Date capital works begin** | **Column 2**<br>**Type of capital works** | **Column 3**<br>**Use of a part of *your area at some time in the income year** |
| | | You use the part of *your area for the *purpose of producing assessable income and:<br>(a) that part is, is part of or contains an apartment, unit or flat that is used or available for use by any entity wholly to provide short-term accommodation for travellers, and you own or lease at least 9 other apartments, units or flats in the building that are used or available for use by any entity wholly to provide short-term accommodation for travellers; or<br>(b) that part is, is part of or contains a facility that is used or available for use by any entity wholly or mainly in association with providing short-term accommodation for travellers in apartments, units or flats in the building that are used in the way described in paragraph (a). |

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



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| **Table 43-145—Use in the 4% manner** | | |
|---|---|---|
| **Column 1**<br>**Date capital works begin** | **Column 2**<br>**Type of capital works** | **Column 3**<br>**Use of a part of *your area at some time in the income year** |
| | | You use the part of *your area for the *purpose of producing assessable income, and that part is used by any entity:<br>(a) wholly or mainly for *industrial activities; or<br>(b) to provide meal rooms, rest rooms, first aid rooms, change rooms or similar facilities that are wholly or mainly for use by:<br>(i) workers employed wholly or mainly to undertake the work directly involved in carrying out industrial activities; or<br>(ii) the immediate supervisors of those workers; or<br>(c) wholly or mainly as office accommodation for the immediate supervisors of those workers. |
| Time period 2:<br>27/2/92 to 30/6/97 (inclusive) | *Hotel building | You use the part of *your area for the *purpose of producing assessable income and:<br>(a) that part is used by any entity wholly or mainly to operate a hotel, motel or guest house; and<br>(b) that hotel, motel or guest house has at least 10 bedrooms that are used or available for use wholly to provide short-term accommodation for travellers. |

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



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| **Table 43-145—Use in the 4% manner** | | |
|---|---|---|
| **Column 1**<br>**Date capital works begin** | **Column 2**<br>**Type of capital works** | **Column 3**<br>**Use of a part of *your area at some time in the income year** |
| | *Apartment building | You use the part of *your area for the *purpose of producing assessable income and:<br>(a) that part is, is part of or contains an apartment, unit or flat that is used or available for use by any entity wholly to provide short-term accommodation for travellers, and you own or lease at least 9 other apartments, units or flats in the building that are used or available for use by any entity wholly to provide short-term accommodation for travellers; or<br>(b) that part is, is part of or contains a facility that is used or available for use by any entity wholly or mainly in association with providing short-term accommodation for travellers in apartments, units or flats in the building that are used in the way described in paragraph (a). |

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



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| **Table 43-145—Use in the 4% manner** | | |
|---|---|---|
| **Column 1**<br>**Date capital works begin** | **Column 2**<br>**Type of capital works** | **Column 3**<br>**Use of a part of *your area at some time in the income year** |
| | Other buildings | You use the part of *your area for the *purpose of producing assessable income, and that part is used by any entity:<br>(a) wholly or mainly for *industrial activities; or<br>(b) to provide meal rooms, rest rooms, first aid rooms, change rooms or similar facilities that are wholly or mainly for use by:<br>(i) workers employed wholly or mainly to undertake the work directly involved in carrying out industrial activities; or<br>(ii) the immediate supervisors of those workers; or<br>(c) wholly or mainly as office accommodation for the immediate supervisors of those workers. |

Note: There are special rules that explain or qualify the uses described in Column 3 of this Table. These rules are set out in Subdivision 43-E (sections 43-155 to 43-195). For example:

- Your area is taken to be used, for use or available for use for a purpose or in a way if it is maintained ready for use for that purpose or in that way. See section 43-160.
- A suite of rooms in a hotel building may be treated as one bedroom, see subsection 43-180(2).

## 43-150 Meaning of *industrial activities*

***Industrial activities*** means:

(a) any of the following activities (***core activities***):

(i) operations where manufactured items are derived from other goods even if those manufactured items are

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



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themselves used as parts or materials in the manufacture of other items;

(ii) operations (other than packing, placing in containers or labelling) by which manufactured items are brought into or maintained in the form or condition in which they are sold or used, even if they are for sale or use as parts or materials in the manufacture of other items;

(iii) the separation of a metal or a compound of a metal from its ore (not including crushing, grinding, breaking, screening or sizing to facilitate that separation) or the treatment or processing of a metal or a compound of a metal after its separation;

(iv) for a metal or a compound of a metal not requiring separation—applying to the metal or compound a treatment or process which, if the metal or compound had required separation, would not have been applied until after the separation;

(v) refining *petroleum;

(vi) scouring or carbonising wool;

(vii) milling timber;

(viii) freezing primary products;

(ix) printing, lithographing or engraving, or a similar process, in the course of carrying on a business as a publisher, printer, lithographer or engraver;

(x) curing meat or fish;

(xi) producing chilled or frozen meat;

(xii) pasteurising milk;

(xiii) canning or bottling foodstuffs;

(xiv) producing electric current, hydraulic power, steam, compressed air or gases (other than natural gas) for the purpose of sale, or use wholly or mainly in carrying on another activity mentioned in this paragraph; or

(b) any of the following activities:

(i) the packing, placing in containers or labelling of any goods resulting from the carrying on of core activities;

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



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(ii) the disposal of waste substances resulting from the carrying on of core activities;

(iii) the cleansing or sterilising of bottles, vats or other containers used by the entity to store goods to be used in carrying on core activities or goods resulting from the carrying on of core activities;

(iv) the assembly, maintenance, cleansing, sterilising or repair of property used in carrying on core activities;

(v) the storage, within premises in which core activities are carried on, or premises contiguous to those premises, of goods in carrying on core activities, goods in relation to which core activities have commenced but not finally been completed or goods resulting from core activities;

but does not include the preparation of food or drink (whether for consumption on the premises where it is prepared or elsewhere) in, or in premises occupied in connection with, a hotel, motel, boarding house, catering establishment, restaurant, cafe, milk-bar, coffee shop, retail shop or similar establishment.

## Subdivision 43-E—Special rules about uses

## Guide to Subdivision 43-E

### 43-155 What this Subdivision is about

This Subdivision contains special rules about uses of capital works. It is relevant to whether you can get a deduction for capital works and also to the rate of that deduction. The rules in this Subdivision affect the uses of capital works described in Tables 43-90, 43-140 and 43-145.

## Table of sections

**Operative provisions**

43-160 Your area is used for a purpose if it is maintained ready for use for the purpose

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



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43-165 Temporary cessation of use
43-170 Own use—capital works other than hotel and apartment buildings
43-175 Own use—hotel and apartment buildings
43-180 Special rules for hotel and apartment buildings
43-185 Residential or display use
43-190 Use of facilities not commonly provided, and of certain buildings used to operate a hotel, motel or guest house
43-195 Use for R&D activities must be in connection with a business

## Operative provisions

### 43-160 Your area is used for a purpose if it is maintained ready for use for the purpose

A part of *your area is taken to be used, for use or available for use for a particular purpose or in a particular manner at a time if, at that time:

(a) it was maintained ready for use for that purpose or in that manner; and

(b) it was not used or for use for any other purpose or in any other manner; and

(c) its use or intended use for that purpose or in that manner had not been abandoned.

Note 1: Construction must be complete before you can deduct an amount, see section 43-30.

Note 2: This section affects Tables 43-140 and 43-145.

### 43-165 Temporary cessation of use

A part of *your area is taken to be used, for use or available for use for a particular purpose or in a particular manner if its use for that purpose or in that manner temporarily ceases because of:

(a) the construction of an extension, alteration or improvement, or the making of repairs; or

(b) seasonal or climatic factors.

Note: This section affects Tables 43-140 and 43-145.

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



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## 43-170 Own use—capital works other than hotel and apartment buildings

(1) A part of capital works, other than a *hotel building or an *apartment building, is taken not to be used for the *purpose of producing assessable income if that part is for use mainly for, or in association with, residential accommodation by you or an *associate.

Note: This subsection affects Tables 43-140 and 43-145.

(2) Subsection (1) does not apply to use by an *associate under an *arrangement:

(a) to which you and the associate are parties; and

(b) that is of a kind that the parties could reasonably be expected to have entered into if they had been dealing with each other at *arm's length; and

(c) that was not entered into for the purpose of obtaining a deduction under this Division.

(3) If property that constitutes the whole or part of capital works, other than a *hotel building or an *apartment building, is part of an individual's home, the property is taken to be used, or for use, wholly or mainly for or in association with residential accommodation.

Note: This subsection affects Tables 43-90 and 43-140.

## 43-175 Own use—hotel and apartment buildings

(1) An entity is taken not to have used a bedroom in a *hotel building, or an apartment, unit or flat in an *apartment building, for the *purpose of producing assessable income at a time if, at that time, the bedroom, apartment, unit or flat is used, or reserved for use, by:

(a) the entity; or

(b) if the entity is a partnership—any of the partners in the partnership.

Note: This subsection affects Tables 43-140 and 43-145.

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



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(2) Also, an entity is taken not to use a bedroom in a *hotel building, or an apartment, unit or flat in an *apartment building for any purpose at a time if:

(a) at that time, a *right to use or a right to occupy the bedroom, apartment, unit or flat was vested in the entity; and

(b) that right was vested in the entity because the entity was, at that time, a member of a company, a beneficiary of a trust estate or a partner in a partnership.

Note: This subsection affects Tables 43-90, 43-140 and 43-145.

## 43-180 Special rules for hotel and apartment buildings

*Rules about counting rooms or apartments etc.*

(1) A bedroom in a *hotel building, or an apartment, unit or flat in an *apartment building, is taken to be used or available for use wholly for short-term accommodation for travellers in a period if it is used or available for use mainly for short-term accommodation for travellers in that period.

Note: This subsection ensures that a limited period of non-short-term traveller accommodation use will be disregarded in counting the number of rooms provided the bedroom, apartment, unit or flat is used mainly for short-term traveller accommodation.

(2) For the purpose of counting the number of bedrooms in a *hotel building, if 2 or more rooms that are bedrooms or include a bedroom are for use together as a suite of rooms, the suite is taken to constitute one bedroom.

(3) Despite subsection 43-50(3) (which treats you as not being the owner of certain capital works), you can still count an apartment, unit or flat in relation to which CGT event F2 has happened in working out whether you own or lease at least 10 apartments, units or flats in an *apartment building if you own or lease at least one other apartment, unit or flat in the building.

Note 1: CGT event F2 results in a lease with a term of 50 years or more being treated for CGT purposes more like an outright disposal.

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



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Note 2: Subsection 43-50(3) treats you as not being the owner of capital works that are the subject of such a lease.

*Rules about hotel or apartment complexes*

(4) A group of buildings that constitutes a complex of buildings is taken to be one *hotel building or *apartment building, and none of the buildings in the group is taken to be a separate building.

(5) The construction of a *hotel building or *apartment building is taken to be an extension of another building if, after completion of the construction, those buildings are taken to be one building under subsection (4).

Note: Subsections (4) and (5) ensure that a hotel or apartment building that provides short-term traveller accommodation in detached buildings will be treated as a single building so that the 10 hotel room/apartment test is applied to the complex as a whole. It also has the effect that the complex as a whole must be completed before there can be a construction expenditure area.

*Rules about facilities not commonly provided in Australia*

(6) If a *hotel building contains a facility of a kind that is not commonly provided in a hotel, motel or guest house in Australia, the facility is taken not to be used or for use to operate a hotel, motel or guest house.

(7) If an *apartment building contains a facility of a kind that is not commonly provided in a hotel, motel or guest house in Australia, the facility is taken not to be a facility for use in association with providing short-term accommodation for travellers in apartments, units or flats.

Note: Subsections (6) and (7) exclude areas such as casinos from the construction expenditure area of a hotel building or apartment building.

## 43-185 Residential or display use

(1) A building, other than a *hotel building or an *apartment building, or an extension, alteration or improvement to such a building,

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



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begun after 19 July 1982 and before 18 July 1985 is taken not to be used for the *purpose of producing assessable income or exempt income if it is used or for use wholly or mainly for exhibition or display in connection with:

(a) the sale of all or part of any building; or

(b) the lease of all or part of any building for use wholly or mainly for or in association with residential accommodation.

Note: Subsection (1) affects time period 2 in Table 43-90 and time period 3 in Table 43-140.

(2) A building, other than a *hotel building or an *apartment building, begun after 19 July 1982 and before 18 July 1985 is taken not to be used for the *purpose of producing assessable income if it is used or available for use wholly or mainly for or in association with residential accommodation.

Note: Subsection (2) affects time period 2 in Table 43-90 and time period 3 in Table 43-140.

(3) A building, other than a *hotel building or an *apartment building, begun after 17 July 1985 and before 1 July 1997 is taken not to be used for the *purpose of producing assessable income if it is used or for use wholly or mainly for exhibition or display in connection with the sale of all or part of any building.

Note: Subsection (3) affects time periods 2 and 3 in Table 43-140.

## 43-190 Use of facilities not commonly provided, and of certain buildings used to operate a hotel, motel or guest house

(1) A facility in a *hotel building or an *apartment building that is not commonly provided in a hotel, motel or guest house in Australia is taken not to be used, or for use, for or in association with residential accommodation if the facility is part of a building begun after 19 July 1982 and before 18 July 1985.

Note: This subsection means that, for time period 2 in Table 43-90, a facility referred to in subsection 43-180(6) or (7) (dealing with facilities not commonly provided in Australia) is taken to be a non-residential building if it satisfies the use test in Column 3 of that table for a building of that kind, and is therefore eligible for deduction even

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



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though it would ordinarily be taken to be used for residential accommodation.

(2) A building, other than a *hotel building or an *apartment building, begun after 19 July 1982 and before 18 July 1985 that is used, or for use, wholly or mainly for the purpose of operating a hotel, motel or guest house is taken to be used or for use wholly or mainly for, or in association with, residential accommodation.

Note: This subsection ensures that hotels, motels and guest houses begun in the specified time period that do not satisfy the tests for hotel and apartment buildings (for example, because they had fewer than 10 bedrooms or apartments) do not qualify for a deduction under this Division.

### 43-195 Use for R&D activities must be in connection with a business

You are taken not to use capital works for *R&D activities unless you do so in connection with a business that you carry on for the *purpose of producing assessable income.

Note: This section affects Tables 43-90 and 43-140.

## Subdivision 43-F—Calculation of deduction

## Guide to Subdivision 43-F

### 43-200 What this Subdivision is about

This Subdivision shows you how to calculate the amount of a deduction under section 43-10. The calculations must be made separately for each area that is identified as your area.

There are 2 separate calculation provisions: One for capital works begun before 27 February 1992; and the other for capital works begun after 26 February 1992.

## Table of sections

43-205 Explanatory material

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



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**Operative provisions**

43-210 Deduction for capital works begun after 26 February 1992
43-215 Deduction for capital works begun before 27 February 1992
43-220 Capital works taken to have begun earlier for certain purposes

## 43-205 Explanatory material

*Capital works begun before 27 February 1992*

The calculation for these works is based on *your construction expenditure and the applicable rate of deduction. There can be only one rate of deduction that applies to *your area. However, reductions of deductions may apply.

You must reduce your deduction for any period in the income year that you did not own *your area and use it in the way described in Table 43-140 (Current year use). Because there are 2 use tests in Table 43-140 for *hotel buildings and *apartment buildings (a general income producing test and a more specific hotel and short-term traveller accommodation use test), there are 2 reduction steps.

The first step reduces your deduction if part of *your area was not used as a *hotel building or *apartment building. The second step reduces the deduction to the extent that your area is used only partly for the *purpose of producing assessable income. This occurs, for example, if you *derive both assessable and exempt income, or if part of your area is not used to produce assessable income for all or part of the period it was used as a hotel building or apartment building.

*Capital works begun after 26 February 1992*

The calculation for these works is based on a portion of *your construction expenditure and the applicable rate of deduction. There can be 2 rates of deduction for your area depending on the way you use it.

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



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If 2 rates apply, there will be a separate calculation for the part of *your area used in the way described in Table 43-140 and for the part of *your area used in the way described in Table 43-145 (Use in the 4% manner). A gross deduction and subsequent reduction is calculated for each.

The reduction is the same as the second reduction for capital works begun before 27 February 1992.

## Operative provisions

### 43-210 Deduction for capital works begun after 26 February 1992

**Step 1** Calculate the amount worked out using the formula:

$$\frac{\text{Portion of your CE} \times \text{Days used} \times 0.04}{365}$$

where:

***portion of your CE*** is the portion of *your construction expenditure that is attributable to the part of *your area that you used in the *4% manner.

***days used*** is the number of days in the income year that:

(a) you owned or were the lessee of that part of *your area and used it in the *4% manner; or

(b) you were the holder of that part of *your area under a *quasi-ownership right over land granted by an *exempt Australian government agency or an *exempt foreign government agency, and used that part of your area in the 4% manner.

**Step 2** Reduce the Step 1 amount by the extent to which the part referred to in Step 1 was used only partly for the *purpose of producing assessable income.

Note: This Step applies if:

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



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- part of your income from the part referred to in Step 1 is exempt income; or
- part of the part referred to in Step 1 was not used for the purpose of producing assessable income or was not available for that use; or
- the part of the part referred to in Step 1 was not used for such a purpose during a part of the days used period.

**Step 3** Calculate the amount worked out using the formula:

$$\frac{\text{Portion of your CE} \times \text{Days used} \times 0.025}{365}$$

where:

***portion of your CE*** is the portion of *your construction expenditure that is attributable to the part of *your area that you did not use in the *4% manner but was used as described in Table 43-140 (Current year use).

***days used*** is the number of days in the income year that:

(a) you owned or were the lessee of that part of *your area and used it in that manner; or

(b) you were the holder of that part of *your area under a *quasi-ownership right over land granted by an *exempt Australian government agency or an *exempt foreign government agency, and used that part of your area in that manner.

**Step 4** Reduce the Step 3 amount by the extent to which the part referred to in Step 3:

(a) for a *hotel building or *apartment building—was used only partly for the *purpose of producing assessable income; or

(b) for any other capital works—was used only partly for the purpose of *producing assessable income or conducting *R&D activities.

Note: This Step applies if:

- part of your income from the part referred to in Step 1 is exempt income; or

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



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- part of the part referred to in Step 3 was not used for the purpose of producing assessable income (or R&D activities) or was not available for that use; or
- the part of the part referred to in Step 3 was not used for such a purpose during a part of the days used period.

**Step 5** Add the Step 2 and Step 4 amounts.

**Step 6** The amount of your deduction is the lesser of your Step 5 amount or the *undeducted construction expenditure for *your area.

## 43-215 Deduction for capital works begun before 27 February 1992

**Step 1** Calculate the amount worked out using the formula:

$$\frac{\text{Your CE} \times \text{Days used} \times \text{Applicable rate}}{365}$$

where:

***your CE*** is *your construction expenditure.

***days used*** is the number of days in the income year that you owned or were the lessee of *your area and used it in the way that applies to the capital works under Table 43-140 (Current year use).

***applicable rate*** is:

(a) 0.04 if the capital works began after 21 August 1984 and before 16 September 1987; or

(b) 0.025 in any other case.

Note: For the purpose of working out the applicable rate, capital works begun after 15 September 1987 are taken to have begun before 16 September 1987 in certain circumstances. See section 43-220.

**Step 2** This step applies only to *hotel buildings and *apartment buildings. Reduce the Step 1 amount by the extent to which:

(a) for a hotel building—any part of *your area was not used wholly or mainly to operate a hotel, motel or guest house; or

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(b) for an apartment building—any part of *your area was not used wholly for or in association with providing short-term accommodation for travellers.

**Step 3** Reduce the Step 1 or 2 amount by the extent to which:

(a) for a *hotel building or *apartment building—*your area was used only partly for the *purpose of producing assessable income; or

(b) for any other capital works—*your area was used only partly for the *purpose of producing assessable income or conducting *R&D activities.

Note: This Step applies if:

- part of your income from the capital works is exempt income; or
- part of the capital works were not used for the purpose of producing assessable income or were not available for that use; or
- the capital works were not used for such a purpose during a part of the days used period.

**Step 4** The amount of your deduction is the lesser of your Step 3 amount or the *undeducted construction expenditure for *your area.

## 43-220 Capital works taken to have begun earlier for certain purposes

(1) A building, other than a *hotel building or an *apartment building, or an extension, alteration or improvement to such a building, begun after 15 September 1987 is taken to have begun before 16 September 1987 if:

(a) the construction was under a contract that was entered into before 16 September 1987, or was under 2 or more contracts any of which was entered into before that date; or

(b) money was borrowed for a purpose that included the purpose of financing the construction under a contract or contracts entered into before 16 September 1987 by an entity that was, or by entities each of which was, a *qualifying investor, and that money was used to finance the construction.

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



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(2) An entity is a ***qualifying investor*** for the construction of a building if:

(a) at the end of 15 September 1987, the entity was the owner or lessee of the land on which the building was constructed; or

(b) the entity became the owner or lessee of the land under a contract entered into before 16 September 1987.

(3) An entity is a ***qualifying investor*** for the construction of an extension, alteration or improvement to a building if:

(a) at the end of 15 September 1987, the entity was the owner or lessee of the building, or the part of the building to which the extension, alteration or improvement was made; or

(b) the entity became the owner or lessee of the building or that part under a contract entered into before 16 September 1987.

## Subdivision 43-G—Undeducted construction expenditure

## Guide to Subdivision 43-G

### 43-225 What this Subdivision is about

The undeducted construction expenditure for your area is the part of your construction expenditure you have left to write off. It is used to work out:

- the number of years in which you can deduct amounts for your construction expenditure; and
- the amount that you can deduct under section 43-40 if your area or a part is destroyed.

## Table of sections

**Operative provisions**

43-230 Calculating undeducted construction expenditure—common step
43-235 Post-26 February 1992 undeducted construction expenditure
43-240 Pre-27 February 1992 undeducted construction expenditure

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



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## Operative provisions

### 43-230 Calculating undeducted construction expenditure—common step

(1) Identify the date when the capital works began.

Note 1: The date determines whether your calculation is to be made under section 43-235 (for post-26/2/92 expenditure) or 43-240 (for pre-27/2/92 expenditure).

Note 2: Section 43-80 explains when capital works begin.

(2) If you are calculating a deduction under Subdivision 43-F, identify the period (***use period***) that:

(a) started when *your area, or a part of it, was first used by any entity for any purpose after completion of the relevant construction; and

(b) ended at the end of the preceding income year or, if you acquired your area during the income year, at the end of the day before the time of the acquisition.

(3) If you are calculating a deduction under Subdivision 43-H, identify the period (***use period***) that started at the time described in paragraph (2)(a) and ended at the time of the destruction.

### 43-235 Post-26 February 1992 undeducted construction expenditure

**Step 1** Calculate for each day in the use period the amount worked out using the formula:

$$\frac{\text{Portion of your CE} \times 0.04}{365}$$

where:

***portion of your CE*** is the portion of *your construction expenditure that is attributable to the part of *your area that you used in the *4% manner.

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



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**Step 2** Calculate for each day in the use period the amount worked out using the formula:

$$\frac{\text{Portion of your CE} \times 0.025}{365}$$

where:

***portion of your CE*** is the portion of *your construction expenditure that is attributable to the part of *your area that you did not use in the *4% manner.

**Step 3** Add the aggregate of the amounts calculated under Steps 1 and 2.

**Step 4** Deduct the sum of those amounts from *your construction expenditure. The result is the ***undeducted construction expenditure*** for *your area.

## 43-240 Pre-27 February 1992 undeducted construction expenditure

**Step 1** Calculate for each day in the use period the amount worked out using the formula:

$$\frac{\text{your CE} \times \text{applicable rate}}{365}$$

where:

***your CE*** is *your construction expenditure.

***applicable rate*** is:

(a) 0.04 if the capital works began after 21 August 1984 and before 16 September 1987; or

(b) 0.025 in any other case.

Note: For the purpose of working out the applicable rate, capital works begun after 15 September 1987 are taken to have begun before 16 September 1987 in certain circumstances. See section 43-220.

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



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**Step 2** Deduct the sum of the amounts calculated under Step 1 from *your construction expenditure. The result is the ***undeducted construction expenditure*** for *your area.

## Subdivision 43-H—Balancing deduction on destruction of capital works

## Guide to Subdivision 43-H

### 43-245 What this Subdivision is about

You may deduct an amount for the undeducted construction expenditure for your area if your area or part of it is destroyed in the circumstances described in section 43-40.

This Subdivision shows you how to work out that deduction.

The calculations in this Subdivision are made separately for each part of the capital works that is identified as your area.

## Table of sections

**Operative provisions**

43-250 The amount of the balancing deduction
43-255 Amounts received or receivable
43-260 Apportioning amounts received for destruction

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



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## Operative provisions

### 43-250 The amount of the balancing deduction

*Method statement*

Step 1. Calculate the amount (if any) by which the *undeducted construction expenditure for the part of *your area that was destroyed exceeds the amounts you have received or have a right to receive for the destruction of that part.

Step 2. Reduce the amount at Step 1 if one or more of these happened to that part of *your area:

(a) Step 2 or 4 in section 43-210, or Step 2 or 3 in section 43-215, applied to you or another person for it;

(b) you were, or another person was, not allowed a deduction for it under this Division;

(c) a deduction for it was not allowed or was reduced (for you or another person) under former Division 10C or 10D of Part III of the *Income Tax Assessment Act 1936*.

The reduction under this step must be reasonable.

### 43-255 Amounts received or receivable

The amounts you have received or have a right to receive for the destruction of that part of *your area include:

(a) an amount received under an insurance policy or otherwise for the destruction of that part; and

(b) an amount received for disposing of property that was included in that part of your area, less any demolition expenditure incurred on the property.

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



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## 43-260 Apportioning amounts received for destruction

If an amount received or receivable in respect of the destruction of property relates to both the part of *your area for which you are claiming the balancing deduction and to property:

(a) the cost of which did not form part of *your construction expenditure; or

(b) that is capital works that was not part of your area;

you must apportion the amount received or receivable to the amount that is attributable to the part of your area that was destroyed. The apportionment must be reasonable.

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



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# Division 45—Disposal of leases and leased plant

## Guide to Division 45

### 45-1 What this Division is about

This Division is designed to prevent tax being avoided through:

(a) the disposal of leased plant, or an interest in leased plant; or

(b) the disposal of a partnership interest in a partnership that leased plant; or

(c) the disposal of shares in a 100% subsidiary that leased plant;

where amounts have been deducted for the decline in value of the plant.

It includes amounts in assessable income. Any benefit received, and any reduction in a liability, is taken into account in calculating the amounts included.

Where the disposal of shares in a 100% subsidiary is involved, the companies in the former wholly-owned group may be made jointly and severally liable for tax that the former subsidiary does not pay.

## Table of sections

**Operative provisions**

45-5 Disposal of leased plant or lease
45-10 Disposal of interest in partnership
45-15 Disposal of shares in 100% subsidiary that leases plant
45-20 Disposal of shares in 100% subsidiary that leases plant in partnership

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



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45-25 Group members liable to pay outstanding tax
45-30 Reduction for certain plant acquired before 21.9.99
45-35 Limit on amount included for plant for which there is a CGT exemption
45-40 Meaning of *plant* and *written down value*

## Operative provisions

### 45-5 Disposal of leased plant or lease

(1) An amount is included in your assessable income if:

(a) you have deducted or can deduct an amount for the decline in value of *plant; and

(b) for most of the time when you *held the plant, you leased it to another entity; and

(c) all or part of the lease period occurred on or after 22 February 1999; and

(d) on or after that day, you dispose of the plant or an interest in the plant, and that disposal constitutes a *balancing adjustment event; and

(e) the sum of the following amounts is *more than* the plant's *written down value or of that part of it that is attributable to that interest:

(i) the money you receive or are entitled to receive for the disposal;

(ii) the amount of any reduction in a liability of yours as a result of the disposal;

(iii) the *market value of any other benefit you receive or are entitled to receive as a result of the disposal.

(2) The amount included is the excess referred to in paragraph (1)(e). It is included for the income year in which the disposal occurred.

Example: Sean owns a leased asset. The asset has a written down value of $20,000. He has an outstanding loan for the asset of $60,000.

Sean sells a 50% interest in the asset to Leprechaun Pty Ltd for $40,000. Leprechaun agrees to take over 50% of Sean's obligation to make debt service payments.

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



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The excess referred to in paragraph 45-5(1)(e) is:

$$\left[\$40{,}000 + \$30{,}000 = \$70{,}000\right] - \$10{,}000 = \$60{,}000$$

That amount is included in Sean's assessable income.

This amount would be reduced if part of it is included in Sean's assessable income under another provision (see subsection 45-5(5)).

Note 1: There is a reduction of the amount included for certain plant acquired before 21 September 1999: see section 45-30.

Note 2: There is a limit on the amount included for plant for which there is a CGT exemption: see section 45-35.

(3) An amount is also included in your assessable income if:

(a) you have deducted or can deduct an amount for the *plant's decline in value; and

(b) for most of the time when you *held the plant, you leased it to another entity; and

(c) all or part of the lease period occurred on or after 22 February 1999; and

(d) on or after that day, you dispose of:

(i) your interest in the plant, or part of it; or

(ii) a right under, or an interest in, the lease;

and that disposal does not constitute a *balancing adjustment event.

(4) The amount included is the sum of the following amounts:

(a) the money you receive or are entitled to receive for the disposal;

(b) the amount of any reduction in a liability of yours as a result of the disposal;

(c) the *market value of any other benefit you receive or are entitled to receive as a result of the disposal;

It is included for the income year in which the disposal occurred.

(5) However, an amount is not included in your assessable income under this section to the extent that:

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



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(a) it is included in that assessable income under a provision of this Act outside this Division; or

(b) you apply it under section 40-365 (about offsetting balancing adjustments); or

(c) roll-over relief is available for the disposal under section 40-340.

Note: There are special rules for disposals between 22 February 1999 and 21 September 1999: see Division 45 of the *Income Tax (Transitional Provisions) Act 1997*.

## 45-10 Disposal of interest in partnership

(1) An amount is included in your assessable income if:

(a) a partnership of which you are (or were) a member has deducted or can deduct an amount for the decline in value of *plant; and

(b) the deductions have been or would be reflected in your interest in the partnership net income or partnership loss; and

(c) for most of the time when the partnership *held the plant, it leased it to another entity; and

(d) all or part of the lease period occurred on or after 22 February 1999; and

(e) on or after that day, you dispose of your interest in the plant, or part of it, and that disposal constitutes a *balancing adjustment event; and

(f) the sum of the following amounts is *more than* that part of the plant's *written down value that is attributable to that interest:

(i) the money you receive or are entitled to receive for the disposal;

(ii) the amount of any reduction in a liability of yours as a result of the disposal;

(iii) the *market value of any other benefit you receive or are entitled to receive as a result of the disposal.

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



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(2) The amount included is the excess referred to in paragraph (1)(f). It is included for the income year in which the disposal occurred.

Example: Chris has a 50% share in a partnership formed to lease an asset. The asset has a written down value of $124,000 (of which Chris' share is $62,000).

Chris assigns his partnership share to another entity for $34,000 plus the other entity agreeing to take over Chris' obligations to service his share of the partnership debt (which is $165,000). The total consideration is:

$34,000 + $165,000 = $199,000

The amount assessable under section 45-10 is the excess referred to in paragraph 45-10(1)(f), which is:

$199,000 – $62,000 = $137,000

This amount would be reduced if part of it is included in Chris' assessable income under another provision (see subsection 45-10(5)).

Note 1: There is a reduction of the amount included for certain plant acquired before 21 September 1999: see section 45-30.

Note 2: There is a limit on the amount included for plant for which there is a CGT exemption: see section 45-35.

(3) An amount is also included in your assessable income if:

(a) a partnership of which you are (or were) a member has deducted or can deduct an amount for the decline in value of *plant; and

(b) the deductions have been or would be reflected in your interest in the partnership net income or partnership loss; and

(c) for most of the time when the partnership *held the plant, it leased it to another entity; and

(d) all or part of the lease period occurred on or after 22 February 1999; and

(e) on or after that day, you dispose of:

(i) your interest in the plant, or part of it; or

(ii) a right under, or an interest in, the lease;

and that disposal does not constitute a *balancing adjustment event.

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



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(4) The amount included is the sum of the following amounts:
   (a) the money you receive or are entitled to receive for the disposal;
   (b) the amount of any reduction in a liability of yours as a result of the disposal;
   (c) the *market value of any other benefit you receive or are entitled to receive as a result of the disposal.

   It is included for the income year in which the disposal occurred.

(5) However, an amount is not included in your assessable income under this section to the extent that:
   (a) it is included in that assessable income under a provision of this Act outside this Division; or
   (b) you apply it under section 40-365 (about offsetting balancing adjustments).

Note: There are special rules for disposals between 22 February 1999 and 21 September 1999: see Division 45 of the *Income Tax (Transitional Provisions) Act 1997*.

## 45-15 Disposal of shares in 100% subsidiary that leases plant

(1) A company (the ***former subsidiary***) is treated as if it had disposed of *plant, received its *market value for that disposal and immediately reacquired it for the same amount if:
   (a) the former subsidiary has deducted or can deduct an amount for the decline in value of the plant; and
   (b) the former subsidiary was a *100% subsidiary of another company in a *wholly-owned group at a time when it *held the plant; and
   (c) for most of the time when the former subsidiary held the plant, the plant was leased to another entity; and
   (d) the main *business of the former subsidiary was to lease assets; and
   (e) all or part of the lease period occurred on or after 22 February 1999; and

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



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(f) on or after that day, the direct or indirect beneficial ownership of more than 50% of the *shares in the former subsidiary is acquired by an entity or entities none of which is a member of the wholly-owned group; and

(g) the plant's *written down value at the time of that acquisition is less than its market value at that time.

(2) However, the former subsidiary is not treated as if it had disposed of *plant and reacquired it if the main business of each of the entities that acquired the direct or indirect beneficial ownership of *shares in the former subsidiary is the same as the main business of the *wholly-owned group of which the former subsidiary was a member.

(3) The disposal and reacquisition of the *plant:

(a) is taken to have occurred when that direct or indirect beneficial ownership was acquired; and

(b) is taken not to have affected any lease of the plant.

## 45-20 Disposal of shares in 100% subsidiary that leases plant in partnership

(1) A company (also the ***former subsidiary***) is treated as if it had disposed of its interest in *plant, received its *market value for that disposal and immediately reacquired it for the same amount if:

(a) a partnership of which the former subsidiary is (or was) a member has deducted or can deduct an amount for the decline in value of the plant; and

(b) the former subsidiary was a *100% subsidiary of another company in a *wholly-owned group at a time when:

(i) it was a member of that partnership; and

(ii) the partnership *held the plant; and

(c) for most of the time when the partnership held the plant, the plant was leased to another entity; and

(d) the main *business of the partnership was to lease assets; and

(e) all or part of the lease period occurred on or after 22 February 1999; and

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



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(f) on or after that day, the direct or indirect beneficial ownership of more than 50% of the *shares in the former subsidiary is acquired by an entity or entities none of which is a member of the wholly-owned group; and

(g) the plant's *written down value at the time of that acquisition is less than its market value at that time.

(2) However, the former subsidiary is not treated as if it had disposed of the interest and reacquired it if the main business of each of the entities that acquired the direct or indirect beneficial ownership of *shares in the former subsidiary is the same as the main business of the *wholly-owned group of which the former subsidiary was a member.

(3) The disposal and reacquisition of the interest:

(a) is taken to have occurred when that direct or indirect beneficial ownership was acquired; and

(b) is taken not to have affected any lease of the plant.

## 45-25 Group members liable to pay outstanding tax

(1) The consequences specified in subsection (2) apply if:

(a) an amount is included in the former subsidiary's assessable income for an income year because of section 45-15 or 45-20; and

(b) the former subsidiary is liable to pay an amount of income tax for that income year; and

(c) the former subsidiary does not pay all of that income tax within 6 months after it became payable.

(2) The consequences are that:

(a) the former subsidiary remains liable to pay the outstanding amount of income tax (reduced by any payments of tax imposed by the *New Business Tax System (Former Subsidiary Tax Imposition) Act 1999*); and

(b) each company that was, just before the time when the direct or indirect beneficial ownership referred to in

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



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paragraph 45-15(1)(f) or 45-20(1)(f) was acquired, a member of the former subsidiary's former *wholly-owned group, is jointly and severally liable to pay tax imposed by the *New Business Tax System (Former Subsidiary Tax Imposition) Act 1999*.

## 45-30 Reduction for certain plant acquired before 21.9.99

(1) The amount included in your assessable income under subsection 45-5(2) or 45-10(2) is reduced if:

(a) you acquired the *plant at or before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999 and you disposed of the plant or an interest in it after that time; and

(b) the sum of the amounts (your ***proceeds***) referred to in paragraph 45-5(1)(e) or 45-10(1)(f) is more than the plant's *cost, or that part of it that is attributable to the interest you disposed of.

(2) The amount included is reduced by the lesser of:

(a) the amount (if any) by which the *plant's *cost base exceeds its *cost, or that part of the excess that is attributable to the interest you disposed of; and

(b) the difference between your proceeds and the plant's cost, or that part of its cost that is attributable to the interest you disposed of.

(3) However, the amount is not reduced under this section if:

(a) the *plant was a *pre-CGT asset at the time of the *balancing adjustment event; or

(b) a *capital gain or *capital loss from the plant or interest would be disregarded because of a provision listed in the table in this subsection if:

(i) you had made the gain or loss from *CGT event A1; and

(ii) that CGT event had happened at the time of the balancing adjustment event.

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



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| Plant for which a reduction is not made under this section | | |
|---|---|---|
| **Item** | **Provision** | **Subject matter** |
| 1 | section 118-5 | cars, motor cycles and valour decorations |
| 2 | section 118-10 | collectables and personal use assets |
| 3 | section 118-12 | plant used to produce exempt income |

## 45-35 Limit on amount included for plant for which there is a CGT exemption

(1) For *plant to which subsection 45-30(3) applies there is a limit on the amount that can be included in your assessable income under subsection 45-5(2) or 45-10(2).

(2) The limit for subsection 45-5(2) is the lesser of:
  (a) the excess referred to in paragraph 45-5(1)(e); and
  (b) the amounts you have deducted or can deduct for the decline in value of the *plant or, if you disposed of an interest in the plant, so much of those amounts as is attributable to that interest.

(3) The limit for subsection 45-10(2) is the lesser of:
  (a) the excess referred to in paragraph 45-10(1)(f); and
  (b) that part of the amounts the partnership has deducted or can deduct for the decline in value of the *plant that has been or would be reflected in your interest in the partnership net income or partnership loss (your ***partnership amount***) or, if you disposed of part of your interest in the plant, so much of your partnership amount as is attributable to that part of that interest.

## 45-40 Meaning of *plant* and *written down value*

(1) ***Plant*** includes:
  (a) articles, machinery, tools and rolling stock; and
  (b) animals used as beasts of burden or working beasts in a *business, other than a *primary production business; and

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



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(c) fences, dams and other structural improvements, other than those used for domestic or residential purposes, on land that is used for agricultural or pastoral operations; and

(d) structural improvements, other than a *forestry road or structural improvements used for domestic or residential purposes, on land used in a business involving:

(i) planting or tending trees in a plantation or forest that are intended to be felled; or

(ii) felling trees in a plantation or forest; or

(iii) transporting trees, or parts of trees, that you felled in a plantation or forest to the place where they are first to be milled or processed, or from which they are to be transported to the place where they are first to be milled or processed; and

(e) structural improvements, other than those used for domestic or residential purposes, that are used wholly for operations (carried out in the course of a business) relating directly to:

(i) taking or culturing pearls or pearl shell; or

(ii) taking or catching trochus, bêche-de-mer or green snails;

and that are situated at or near a port or harbour from which the business is conducted; and

(f) structural improvements that are excluded from paragraph (c), (d) or (e) because they are used for domestic or residential purposes if they are provided for the accommodation of employees, tenants or sharefarmers who are engaged in or in connection with the activities referred to in that paragraph.

(2) ***Plant*** also includes plumbing fixtures and fittings (including wall and floor tiles) provided by an entity mainly for:

(a) either or both:

(i) employees in a *business carried on by the entity for the *purpose of producing assessable income; or

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



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(ii) employees in a business carried on for that purpose by a company that is a member of the same *wholly-owned group of which the entity is a member; or

(b) *children of any of those employees.

(3) The ***written down value*** of a *depreciating asset is its *cost less the sum of:

(a) the amounts you have deducted or can deduct for its decline in value; and

(b) if section 40-340 applied to your acquisition of it—the amounts the transferor, and earlier successive transferors, deducted or can deduct for its decline in value.

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



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# Part 2-15—Non-assessable income

## Division 50—Exempt entities

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50-A Various exempt entities
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## Subdivision 50-A—Various exempt entities

### Table of sections

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50-10 Community service
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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



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## 50-1 Entities whose ordinary income and statutory income is exempt

The total *ordinary income and *statutory income of the entities covered by the following tables is exempt from income tax. In some cases, the exemption is subject to special conditions.

Note 1: Ordinary and statutory income that is exempt from income tax is called exempt income: see section 6-20. The note to subsection 6-15(2) describes some of the other consequences of it being exempt income.

Note 2: Even if you are an exempt entity, the Commissioner can still require you to lodge an income tax return or information under section 161 of the *Income Tax Assessment Act 1936*.

Note 3: In all cases the exemption is subject to the special condition in section 50-47 (about an entity that is an ACNC type of entity).

## 50-5 Charity, education and science

**Charity, education, science and religion**

| Item | Exempt entity | Special conditions |
|---|---|---|
| 1.1 | registered charity | see sections 50-50 and 50-52 |
| 1.3 | scientific institution | see section 50-55 |
| 1.4 | public educational institution | see section 50-55 |
| 1.6 | fund established to enable scientific research to be conducted by or in conjunction with a public university or public hospital | see section 50-65 |
| 1.7 | society, association or club established for the encouragement of science | see section 50-70 |

Note 1: Section 50-52 has the effect that certain charities are exempt from income tax only if they are endorsed under Subdivision 50-B.

Note 2: Section 50-80 may affect which item a trust is covered by.

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



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## 50-10 Community service

| Community service | | |
|---|---|---|
| **Item** | **Exempt entity** | **Special conditions** |
| 2.1 | society, association or club established for community service purposes (except political or lobbying purposes) | see section 50-70 |

## 50-15 Employees and employers

| Employees and employers | | |
|---|---|---|
| **Item** | **Exempt entity** | **Special conditions** |
| 3.1 | (a) employee association; or<br>(b) employer association | the association:<br>(a) is registered or recognised under the *Fair Work (Registered Organisations) Act 2009* or an *Australian law relating to the settlement of industrial disputes; and<br>(b) is located in Australia, and incurs its expenditure and pursues its objectives principally in Australia; and<br>(c) complies with all the substantive requirements in its governing rules; and<br>(d) applies its income and assets solely for the purpose for which the association is established |

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



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| **Employees and employers** | | |
|---|---|---|
| **Item** | **Exempt entity** | **Special conditions** |
| 3.2 | trade union | the trade union:<br>(a) is located in Australia, and incurs its expenditure and pursues its objectives principally in Australia; and<br>(b) complies with all the substantive requirements in its governing rules; and<br>(c) applies its income and assets solely for the purpose for which the trade union is established |

## 50-25 Government

| **Government** | | |
|---|---|---|
| **Item** | **Exempt entity** | **Special conditions** |
| 5.1 | (a) a municipal corporation; or<br>(b) a *local governing body | none |
| 5.2 | a public authority constituted under an *Australian law | none |
| 5.3 | a *constitutionally protected fund | none |

Note: The ordinary and statutory income of a State or Territory body is exempt: see Division 1AB of Part III of the *Income Tax Assessment Act 1936*.

## 50-30 Health

| **Health** | | |
|---|---|---|
| **Item** | **Exempt entity** | **Special conditions** |
| 6.1 | public hospital | see section 50-55 |

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



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| Health | | |
|---|---|---|
| **Item** | **Exempt entity** | **Special conditions** |
| 6.2 | hospital carried on by a society or association | not carried on for the profit or gain of its individual members, see also section 50-55 |
| 6.3 | private health insurer within the meaning of the *Private Health Insurance (Prudential Supervision) Act 2015* | not carried on for the profit or gain of its individual members |

## 50-35 Mining

| Mining | | |
|---|---|---|
| **Item** | **Exempt entity** | **Special conditions** |
| 7.2 | the British Phosphate Commissioners Banaba Contingency Fund (established on 1 June 1981) | none |

## 50-40 Primary and secondary resources, and tourism

| Primary and secondary resources, and tourism | | |
|---|---|---|
| **Item** | **Exempt entity** | **Special conditions** |
| 8.1 | a society or association established for the purpose of promoting the development of:<br>(a) aviation; or<br>(b) tourism | not carried on for the profit or gain of its individual members |

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



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| **Primary and secondary resources, and tourism** | | |
|---|---|---|
| **Item** | **Exempt entity** | **Special conditions** |
| 8.2 | a society or association established for the purpose of promoting the development of any of the following Australian resources:<br>(a) agricultural resources;<br>(b) horticultural resources;<br>(c) industrial resources;<br>(d) manufacturing resources;<br>(e) pastoral resources;<br>(f) viticultural resources;<br>(g) aquacultural resources;<br>(h) fishing resources | not carried on for the profit or gain of its individual members |
| 8.3 | a society or association established for the purpose of promoting the development of Australian information and communications technology resources | not carried on for the profit or gain of its individual members |
| 8.4 | Global Infrastructure Hub Ltd | only amounts included as *ordinary income or *statutory income:<br>(a) on or after 24 December 2014; and<br>(b) before 1 July 2023 |

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



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## 50-45 Sports, culture and recreation

| Sports, culture, film and recreation | | |
|---|---|---|
| **Item** | **Exempt entity** | **Special conditions** |
| 9.1 | a society, association or club established for the encouragement of:<br>(a) animal racing; or<br>(b) art; or<br>(c) a game or sport; or<br>(d) literature; or<br>(e) music | see section 50-70 |
| 9.2 | a society, association or club established for musical purposes | see section 50-70 |
| 9.3 | ICC Business Corporation FZ-LLC | both of the following:<br>(a) the entity is a *wholly-owned subsidiary of International Cricket Council Limited;<br>(b) only amounts included as *ordinary income or *statutory income:<br>(i) on or after 1 July 2018; and<br>(ii) before 1 July 2023 |

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



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| **Sports, culture, film and recreation** | | |
|---|---|---|
| **Item** | **Exempt entity** | **Special conditions** |
| 9.4 | Fédération Internationale de Football Association | both of the following:<br>(a) only amounts included as *ordinary income or *statutory income:<br>(i) on or after 1 July 2020; and<br>(ii) before 1 January 2029;<br>(b) the ordinary income is *derived from, or the statutory income is from, activities relating to the Fédération Internationale de Football Association (FIFA) Women's World Cup Australia New Zealand 2023 |
| 9.5 | FWWC2023 Pty Ltd | all of the following:<br>(a) the entity is a *wholly-owned subsidiary of the Fédération Internationale de Football Association;<br>(b) only amounts included as *ordinary income or *statutory income:<br>(i) on or after 1 July 2020; and<br>(ii) before 1 January 2029;<br>(c) the ordinary income is *derived from, or the statutory income is from, activities relating to the Fédération Internationale de Football Association (FIFA) Women's World Cup Australia New Zealand 2023 |

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



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## 50-47 Special condition for all items

An entity that:

(a) is covered by any item; and

(b) is an *ACNC type of entity;

is not exempt from income tax unless the entity is registered under the *Australian Charities and Not-for-profits Commission Act 2012*.

## 50-50 Special conditions for item 1.1

(1) An entity covered by item 1.1 is not exempt from income tax unless the entity:

(a) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or

(b) is an institution that meets the description and requirements in item 1 of the table in section 30-15; or

(c) is a prescribed institution which is located outside Australia and is exempt from income tax in the country in which it is resident; or

(d) is a prescribed institution that has a physical presence in Australia but which incurs its expenditure and pursues its objectives principally outside Australia;

and the entity satisfies the conditions in subsection (2).

Note 1: Certain distributions may be disregarded: see section 50-75.

Note 2: The entity must also meet other conditions to be exempt from income tax: see section 50-52.

(2) The entity must:

(a) comply with all the substantive requirements in its governing rules; and

(b) apply its income and assets solely for the purpose for which the entity is established.

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## 50-52 Special condition for item 1.1

(1) An entity covered by item 1.1 is not exempt from income tax unless the entity is endorsed as exempt from income tax under Subdivision 50-B.

(3) This section has effect despite all the other sections of this Subdivision.

## 50-55 Special conditions for items 1.3, 1.4, 6.1 and 6.2

(1) An entity covered by item 1.3, 1.4, 6.1 or 6.2 is not exempt from income tax unless the entity:

(a) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or

(b) is an institution that meets the description and requirements in item 1 of the table in section 30-15; or

(c) is a prescribed institution which is located outside Australia and is exempt from income tax in the country in which it is resident;

and the entity satisfies the conditions in subsection (2).

Note: Certain distributions may be disregarded: see section 50-75.

(2) The entity must:

(a) comply with all the substantive requirements in its governing rules; and

(b) apply its income and assets solely for the purpose for which the entity is established.

## 50-65 Special conditions for item 1.6

(1) A fund covered by item 1.6 is not exempt from tax unless the fund is applied for the purposes for which it was established and is:

(a) a fund that is located in, and which incurs its expenditure principally in, Australia and that is established for the

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



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purpose of enabling scientific research to be conducted principally in Australia by or in conjunction with a public university or public hospital; or

(b) a scientific research fund that meets the description and requirements in item 1 or 2 of the table in section 30-15;

and the fund satisfies the conditions in subsection (2).

Note: Certain distributions may be disregarded: see section 50-75.

(2) The fund must:

(a) comply with all the substantive requirements in its governing rules; and

(b) apply its income and assets solely for the purpose for which the fund is established.

## 50-70 Special conditions for items 1.7, 2.1, 9.1 and 9.2

(1) An entity covered by item 1.7, 2.1, 9.1 or 9.2 is not exempt from tax unless the entity is a society, association or club that is not carried on for the purpose of profit or gain of its individual members and that:

(a) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or

(b) is a society, association or club that meets the description and requirements in item 1 of the table in section 30-15; or

(c) is a prescribed society, association or club which is located outside Australia and is exempt from income tax in the country in which it is resident;

and the entity satisfies the conditions in subsection (2).

Note: Certain distributions may be disregarded: see section 50-75.

(2) The entity must:

(a) comply with all the substantive requirements in its governing rules; and

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



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(b) apply its income and assets solely for the purpose for which the entity is established.

## 50-72 Special condition for item 4.1

(1) A fund covered by item 4.1 is not exempt from income tax unless the fund:

(a) is applied for the purposes for which it is established; and

(b) distributes solely, and has at all times since the time mentioned in subsection (2) distributed solely, to a fund, authority or institution that:

(i) meets the description and requirements in item 1 of the table in section 30-15; and

(ii) is an *exempt entity; and

(c) complies with all the substantive requirements in its governing rules; and

(d) applies its income and assets solely for the purpose for which the fund is established.

(2) The time is the start of the income year after the income year in which the *Tax Laws Amendment (2005 Measures No. 3) Act 2005* receives the Royal Assent.

## 50-75 Certain distributions may be made overseas

(1) In determining for the purposes of this Subdivision whether an institution, fund or other body incurs its expenditure or pursues its objectives principally in Australia, distributions of any amount received by the institution, fund or other body as a gift (whether of money or other property) or by way of government grant are to be disregarded.

(2) In determining for the purposes of this Subdivision whether an institution, fund or other body incurs its expenditure or pursues its objectives principally in Australia, distributions of any amount from a fund that is referred to in a table in Subdivision 30-B and

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



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operated by the institution, fund or other body are to be disregarded.

## Subdivision 50-B—Endorsing charitable entities as exempt from income tax

## Guide to Subdivision 50-B

### 50-100 What this Subdivision is about

This Subdivision sets out rules about endorsement of charities as exempt from income tax. Such entities are only exempt from income tax if they are endorsed.

### Table of sections

**Endorsing charitable entities as exempt from income tax**

50-105 Endorsement by Commissioner
50-110 Entitlement to endorsement

## Endorsing charitable entities as exempt from income tax

### 50-105 Endorsement by Commissioner

The Commissioner must endorse an entity as exempt from income tax if the entity:

(a) is entitled to be endorsed as exempt from income tax; and

(b) has applied for that endorsement in accordance with Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: For procedural rules relating to endorsement, see Division 426 in Schedule 1 to the *Taxation Administration Act 1953*.

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



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## 50-110 Entitlement to endorsement

*General rule*

(1) An entity is entitled to be endorsed as exempt from income tax if the entity meets all the relevant requirements of this section.

*Which entities are entitled to be endorsed?*

(2) To be entitled, the entity must be an entity covered by item 1.1 of the table in section 50-5.

*Requirement for ABN*

(3) To be entitled, the entity must have an *ABN.

*Requirement to meet special conditions*

(5) To be entitled:

(a) the entity must meet the relevant conditions referred to in the column headed "Special conditions" of item 1.1 of the table in section 50-5; or

(b) both of the following conditions must be met:

(i) the entity must not have carried on any activities as a charity;

(ii) there must be reasonable grounds for believing that the entity will meet the relevant conditions referred to in the column headed "Special conditions" of item 1.1 of the table.

The entity must also satisfy section 50-47, if the entity is an *ACNC type of entity.

(6) To avoid doubt, the condition set out in section 50-52 (requiring the entity to be endorsed under this Subdivision) is not a relevant condition for the purposes of subsection (5).

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



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# Division 51—Exempt amounts

## Table of sections

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51-5 Defence
51-10 Education and training
51-30 Welfare
51-32 Compensation payments for loss of deployment allowance for warlike service
51-33 Compensation payments for loss of pay and/or allowances as a Defence reservist
51-35 Payments to a full-time student at a school, college or university
51-40 Payments to a secondary student
51-42 Bonuses for early completion of an apprenticeship
51-43 Income collected or derived by copyright collecting society
51-45 Income collected or derived by resale royalty collecting society
51-50 Maintenance payments to a spouse or child
51-52 Income derived from eligible venture capital investments by ESVCLPs
51-54 Gain or profit from disposal of eligible venture capital investments
51-55 Gain or profit from disposal of venture capital equity
51-57 Interest on judgment debt relating to personal injury
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51-100 Shipping
51-105 *Shipping activities*
51-110 *Core shipping activities*
51-115 *Incidental shipping activities*
51-120 Interest on unclaimed money and property
51-125 2018 storms—relief payments

## 51-1 Amounts of ordinary income and statutory income that are exempt

The amounts of *ordinary income and *statutory income covered by the following tables are exempt from income tax. In some cases,

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the exemption is subject to exceptions or special conditions, or both.

Note 1: Ordinary and statutory income that is exempt from income tax is called exempt income: see section 6-20. The note to subsection 6-15(2) describes some of the other consequences of it being exempt income.

Note 2: Even if an exempt payment is made to you, the Commissioner can still require you to lodge an income tax return or information under section 161 of the *Income Tax Assessment Act 1936*.

## 51-5 Defence

| **Defence** | | | |
|---|---|---|---|
| **Item** | **If you are:** | **... the following amounts are exempt from income tax:** | **... subject to these exceptions and special conditions:** |
| 1.1 | a member of the Defence Force | (a) payments of allowances or bounty of a kind prescribed in the regulations; and<br>(b) the *market value of rations and quarters supplied to you without charge | none |
| 1.1A | a member of the Defence Force | compensation payments for loss of deployment allowance for warlike service | see section 51-32 |

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



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| **Defence** | | | |
|---|---|---|---|
| **Item** | **If you are:** | **... the following amounts are exempt from income tax:** | **... subject to these exceptions and special conditions:** |
| 1.2 | a recipient of a payment in respect of a member of the Defence Force | payments of allowances or bounty of a kind prescribed in the regulations | none |
| 1.4 | a member of:<br>(a) the Naval Reserve; or<br>(b) the Army Reserve; or<br>(c) the Air Force Reserve | pay and allowances as a member | except pay and allowances for continuous full time service |
| 1.5 | a former member of:<br>(a) the Naval Reserve; or<br>(b) the Army Reserve; or<br>(c) the Air Force Reserve | compensation payments for loss of pay and/or allowances as a member | see section 51-33 |
| 1.6 | a recipient of an ex-gratia payment from the Commonwealth known as the F-111 Deseal/Reseal Ex-gratia Lump Sum Payment | the ex-gratia payment | none |

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



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| **Defence** | | | |
|---|---|---|---|
| **Item** | **If you are:** | **... the following amounts are exempt from income tax:** | **... subject to these exceptions and special conditions:** |
| 1.7 | a recipient of a reparation payment or an additional payment from the Commonwealth in relation to a recommendation by the Defence Force Ombudsman performing a function conferred by a prescribed provision of regulations made under the *Ombudsman Act 1976* | the reparation payment or additional payment | none |

Note: Reparation payments referred to in item 1.7 relate to abuse in the Defence Force.

## 51-10 Education and training

| **Education and training** | | | |
|---|---|---|---|
| **Item** | **If you are:** | **... the following amounts are exempt from income tax:** | **... subject to these exceptions and special conditions:** |
| 2.1A | a full-time student at a school, college or university | a scholarship, bursary, educational allowance or educational assistance | see section 51-35 |

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



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| **Education and training** | | | |
|---|---|---|---|
| **Item** | **If you are:** | **... the following amounts are exempt from income tax:** | **... subject to these exceptions and special conditions:** |
| 2.1B | (a) a student; or<br>(b) a recipient of a payment in respect of a student | a payment under a Commonwealth scheme for assistance of:<br>(a) secondary education; or<br>(b) the education of isolated children | see section 51-40 |
| 2.1 | a recipient of a grant made by the Australian-American Educational Foundation | the grant | the grant is from funds made available to the Foundation under the agreement establishing it |
| 2.2 | an employer | payments under the CRAFT Scheme (the Commonwealth Rebate for Apprentice Full-Time Training Scheme) | each payment is for an apprentice who most recently started work with you before 1 January 1998 |
| 2.3 | a recipient of a scholarship known as a Commonwealth Trade Learning Scholarship | the scholarship | none |
| 2.4 | a recipient of a payment known as the Apprenticeship Wage Top-Up | the payment | none |

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



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| **Education and training** | | | |
|---|---|---|---|
| **Item** | **If you are:** | **... the following amounts are exempt from income tax:** | **... subject to these exceptions and special conditions:** |
| 2.5 | a recipient of:<br>(a) a research fellowship under the Endeavour Awards; or<br>(b) an Endeavour Executive Award | the fellowship or award | none |
| 2.6 | a recipient of a bonus for early completion of an apprenticeship | so much of the bonus as does not exceed $1,000 | see section 51-42 |
| 2.7 | a recipient of a payment under the program known as Skills for Sustainability for Australian Apprentices | the payment | none |
| 2.8 | a recipient of a payment under the program known as Tools for Your Trade (within the program known as the Australian Apprenticeships Incentives Program) | the payment | none |

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



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## 51-30 Welfare

| **Welfare** | | | |
|---|---|---|---|
| **Item** | **If you are:** | **... the following amounts are exempt from income tax:** | **... subject to these exceptions and special conditions:** |
| 5.1 | an individual in receipt of periodic payments in the nature of maintenance | the payments | see section 51-50 |
| 5.2 | an individual in receipt of an ex-gratia payment from the Commonwealth known as disaster recovery payment for special category visa (subclass 444) holders for a disaster:<br>(a) that occurred in Australia during the 2014-15 *financial year or a later financial year; and<br>(b) for which a determination under section 1061L of the *Social Security Act 1991* has been made | the payment | |

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



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| **Welfare** | | | |
|---|---|---|---|
| **Item** | **If you are:** | **... the following amounts are exempt from income tax:** | **... subject to these exceptions and special conditions:** |
| 5.5 | an individual in receipt of a payment under the program established by the Commonwealth and known as the Support for Australia's Thalidomide Survivors program | the payment | none |
| 5.6 | an individual in receipt of a payment from the Thalidomide Australia Fixed Trust | the payment | the payment must be:<br>(a) made to you, or applied for your benefit, as a beneficiary of the Trust; or<br>(b) made to you in respect of a beneficiary of the Trust |

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



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## 51-32 Compensation payments for loss of tax exempt payments

(1) A compensation payment for the loss of pay or an allowance for your warlike service is exempt from income tax if:

(a) the compensation payment is made under the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* in respect of an injury (as defined in that Act) you suffered; and

(b) you suffered your injury while covered by a certificate in force under paragraph 23AD(1)(a) of the *Income Tax Assessment Act 1936*; and

(c) your injury or disease caused the loss of your pay or allowance; and

(d) your pay or allowance was payable under the *Defence Act 1903* or under a determination under that Act.

(2) A compensation payment for the loss of pay or an allowance for your warlike service is exempt from income tax if:

(a) the compensation payment is made under the *Military Rehabilitation and Compensation Act 2004* in respect of a service injury or disease (as defined in that Act); and

(b) you sustained your service injury or contracted your service disease, or your service injury or disease was aggravated or materially contributed to, while covered by a certificate in force under paragraph 23AD(1)(a) of the *Income Tax Assessment Act 1936*; and

(c) your injury or disease caused the loss of your pay or allowance; and

(d) your pay or allowance was payable under the *Defence Act 1903* or under a determination under that Act.

(3) Subsections (4) and (5) apply to:

(a) a deployment allowance; or

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



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(b) some other allowance that is exempt from income tax specified in writing by the *Defence Minister for the purposes of this subsection;

that is payable under a determination under the *Defence Act 1903* for your non-warlike service.

(4) A compensation payment for the loss of the allowance is exempt from income tax if:

(a) the compensation payment is made under the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* in respect of an injury (as defined in that Act) you suffered; and

(b) your injury caused the loss of your allowance.

(5) A compensation payment for the loss of the allowance is exempt from income tax if:

(a) the compensation payment is made under the *Military Rehabilitation and Compensation Act 2004* in respect of a service injury or disease (as defined in that Act); and

(b) your injury or disease caused the loss of your allowance.

## 51-33 Compensation payments for loss of pay and/or allowances as a Defence reservist

(1) A compensation payment for the loss of your pay or an allowance is exempt from income tax if:

(a) the compensation payment is made under the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* in respect of an injury (as defined in that Act) you suffered; and

(b) you suffered your injury while serving as a member of the Naval Reserve, Army Reserve or Air Force Reserve (but not while on continuous full time service); and

(c) your pay or allowance was payable for service of a kind described in paragraph (b).

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



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(2) A compensation payment for the loss of your pay or an allowance is exempt from income tax if:

(a) the compensation payment is made under the *Military Rehabilitation and Compensation Act 2004* in respect of a service injury or disease (as defined in that Act); and

(b) you sustained your service injury or contracted your service disease, or your service injury or disease was aggravated or materially contributed to, while serving as a member of the Naval Reserve, Army Reserve or Air Force Reserve; and

(c) your pay or allowance was payable for service of a kind described in paragraph (b); and

(d) the compensation payment is worked out by reference to your normal earnings (as defined in that Act) as a part-time Reservist (as defined in that Act).

## 51-35 Payments to a full-time student at a school, college or university

The following payments made to or on behalf of a full-time student at a school, college or university are *not* exempt from income tax under item 2.1A of the table in section 51-10:

(a) a payment by the Commonwealth for assistance for secondary education or in connection with education of isolated children;

(b) a *Commonwealth education or training payment;

(c) a payment by an entity or authority on the condition that the student will (or will if required) become, or continue to be, an employee of the entity or authority;

(d) a payment by an entity or authority on the condition that the student will (or will if required) enter into, or continue to be a party to, a contract with the entity or authority that is wholly or principally for the labour of the student;

(e) a payment under a scholarship where the scholarship is not provided principally for educational purposes;

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



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(f) an education entry payment under Part 2.13A of the *Social Security Act 1991*.

Note: The whole or part of a Commonwealth education or training payment may be exempt under Subdivision 52-E or 52-F.

## 51-40 Payments to a secondary student

The following payments made to or on behalf of a student are *not* exempt from income tax under item 2.1B of the table in section 51-10:

(a) a *Commonwealth education or training payment;

(b) an education entry payment under Part 2.13A of the *Social Security Act 1991*.

Note: The whole or part of a Commonwealth education or training payment may be exempt under Subdivision 52-E or 52-F.

## 51-42 Bonuses for early completion of an apprenticeship

(1) The bonus must be provided under a scheme provided by a State or Territory, and the scheme must be specified in the regulations for the purposes of this section.

(2) The apprenticeship:

(a) must be for an occupation of a kind specified in the regulations; and

(b) must be completed within a time frame specified in the regulations for apprenticeships of that kind.

## 51-43 Income collected or derived by copyright collecting society

(1) This section applies to a *copyright collecting society if Division 6 of Part III of the *Income Tax Assessment Act 1936* applies to the income of the society.

(2) The following are exempt from income tax:

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



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(a) *royalties, and interest on royalties, collected or *derived by the society in an income year;

(b) any other amounts, relating to copyright, that are:

(i) derived by the society in an income year; and

(ii) prescribed by the regulations for the purposes of this paragraph;

(c) other *ordinary income and *statutory income derived by the society in an income year, to the extent that it does not exceed the lesser of:

(i) 5% of the total amount of the *ordinary income and *statutory income collected and derived by the society in the income year; and

(ii) $5 million or such other amount as is prescribed by the regulations for the purposes of this subparagraph.

## 51-45 Income collected or derived by resale royalty collecting society

(1) This section applies to the *resale royalty collecting society if Division 6 of Part III of the *Income Tax Assessment Act 1936* applies to the income of the society.

(2) The following are exempt from income tax:

(a) *resale royalties, and interest on resale royalties, collected or *derived by the society in an income year;

(b) any other amounts, relating to *resale royalty rights, that are:

(i) derived by the society in an income year; and

(ii) prescribed by the regulations for the purposes of this paragraph;

(c) other *ordinary income and *statutory income derived by the society in an income year, to the extent that it does not exceed the lesser of:

(i) 5% of the total amount of the ordinary income and statutory income collected and derived by the society in the income year; and

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



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(ii) $5 million or such other amount as is prescribed by the regulations for the purposes of this subparagraph.

## 51-50 Maintenance payments to a spouse or child

(1) This section sets out the conditions on which a periodic payment, in the nature of maintenance, that:

(a) is made by an individual (the ***maintenance payer***); or

(b) is attributable to a payment made by an individual (also the ***maintenance payer***);

is exempt from income tax under item 5.1 of the table in section 51-30.

(2) The maintenance payment is exempt from income tax only if it is made:

(a) to an individual who is or has been the maintenance payer's *spouse; or

(b) to or for the benefit of an individual who is or has been:

(i) a *child of the maintenance payer; or

(ii) a child who is or has been a child of an individual who is or has been a *spouse of the maintenance payer.

(3) The maintenance payment is *not* exempt if, in order to make it or a payment to which it is attributable, the maintenance payer:

(a) divested any income-producing assets; or

(b) diverted *ordinary income or *statutory income upon which the maintenance payer would otherwise have been liable to income tax.

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



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## 51-52 Income derived from eligible venture capital investments by ESVCLPs

*General*

(1) An entity's share of income derived from an *eligible venture capital investment is exempt from income tax if:

(a) the entity is a partner in a *limited partnership; and

(b) the partnership made the investment; and

(c) the investment meets all of the *additional investment requirements for ESVCLPs for the investment; and

(d) when the partnership made the investment, the partnership was an *early stage venture capital limited partnership that was *unconditionally registered; and

(e) when the income was derived, the partnership:

(i) owned the investment; and

(ii) was an early stage venture capital limited partnership that was unconditionally registered.

*Partners in AFOFs*

(2) An entity's share of income derived from an *eligible venture capital investment is exempt from income tax if:

(a) the entity is a partner in an *AFOF; and

(b) the AFOF is a partner in a partnership that made the investment; and

(c) when the partnership made the investment, the partnership was an *early stage venture capital limited partnership that was *unconditionally registered; and

(d) the investment meets all of the *additional investment requirements for ESVCLPs for the investment; and

(e) when the income was derived, the partnership:

(i) owned the investment; and

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



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(ii) was an early stage venture capital limited partnership that was unconditionally registered.

*Residency requirements for general partners*

(3) However, if the entity is a *general partner in the partnership, this section does not apply to the entity unless the entity is:

(a) an Australian resident; or

(b) a resident of a foreign country in respect of which a double tax agreement (as defined in Part X of the *Income Tax Assessment Act 1936*) is in force that is an agreement of a kind referred to in subparagraph (b)(i), (ia), (ii), (iii), (iv) or (v) of that definition.

(4) For the purposes of this section, the place of residence of a *general partner in a *limited partnership:

(a) that is a company or limited partnership; and

(b) that is not an Australian resident;

is the place in which the general partner has its central management and control.

*Beneficiaries' shares of capital gains made by unit trusts*

(5) For the purposes of this section, an entity's share of income derived from an *eligible venture capital investment that is an investment in a unit trust includes any present entitlement of the entity, as a beneficiary, to a share of an amount included in the assessable income of the unit trust under section 102-5.

*Carried interests*

(6) This section does not apply to an entity's share of income derived from an *eligible venture capital investment to the extent that the income is a payment of a *carried interest of a *general partner in an *ESVCLP or an *AFOF.

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



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## 51-54 Gain or profit from disposal of eligible venture capital investments

*Partners in VCLPs and ESVCLPs*

(1) An entity's share of any gain or profit made from the disposal or other realisation of an *eligible venture capital investment is exempt from income tax if:

(a) it is made by a *VCLP, or an *ESVCLP, that is *unconditionally registered; and

(b) were that disposal or other realisation to be a *disposal of a *CGT asset, the entity's share of any *capital gain or *capital loss would be disregarded under section 118-405 or 118-407.

(1A) An entity's share of any gain or profit made:

(a) by an *ESVCLP that is *unconditionally registered; and

(b) from the disposal or other realisation of an *eligible venture capital investment;

is exempt from income tax to the extent that, were that disposal or other realisation to be a *disposal of a *CGT asset, the equivalent *capital gain arising from the *CGT event would be disregarded because of a partial exemption from the CGT event under section 118-408.

*Partners in AFOFs*

(2) An entity's share of any gain or profit made from the disposal or other realisation of an *eligible venture capital investment is exempt from income tax if:

(a) it is made by:

(i) an *AFOF that is *unconditionally registered; or

(ii) a *VCLP, or an *ESVCLP, that is unconditionally registered and in which an AFOF that is *unconditionally registered is a partner; and

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



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(b) were that disposal or other realisation to be a *disposal of a *CGT asset, the entity's share of any *capital gain or *capital loss would be disregarded under section 118-410.

*Eligible venture capital investors*

(3) Any gain or profit made from the disposal or other realisation of an *eligible venture capital investment is exempt from income tax if:

(a) you are an *eligible venture capital investor; and

(b) were that disposal or other realisation to be a *disposal of a *CGT asset, any *capital gain or *capital loss would be disregarded under section 118-415.

## 51-55 Gain or profit from disposal of venture capital equity

Any gain or profit made from the disposal or other realisation of *venture capital equity in a *resident investment vehicle is exempt from income tax if:

(a) it is made by a *venture capital entity or a *limited partnership referred to in subsection 118-515(2); and

(b) if that disposal or other realisation were a *disposal of a *CGT asset, any *capital gain or *capital loss would be disregarded under Subdivision 118-G.

## 51-57 Interest on judgment debt relating to personal injury

(1) An amount paid by way of interest on a judgment debt, whether payable under an *Australian law, or otherwise, is exempt from income tax if:

(a) the judgment debt arose from a judgment (the ***original judgment***) given by, or entered in, a court for an award of damages for personal injury; and

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



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(b) the amount is in respect of the whole or any part of the period:

(i) beginning at the time of the original judgment, or, if the judgment debt is taken to have arisen at an earlier time, at that earlier time; and

(ii) ending when the original judgment is finalised.

(2) For the purposes of subsection (1), an original judgment is ***finalised*** at whichever of the following times is applicable:

(a) if the period for lodging an appeal against either the original judgment or a subsequent related judgment ends without an appeal being lodged—the end of the period;

(b) if an appeal from either the original judgment or a subsequent related judgment is lodged and final judgment on the appeal is given by, or entered in, a court—when the final judgment takes effect;

(c) if an appeal from either the original judgment or a subsequent related judgment is lodged but is settled or discontinued—when the settlement or discontinuance takes effect.

(3) For the purposes of paragraph (2)(b), a judgment is a ***final judgment*** if:

(a) no appeal lies against the judgment; or

(b) leave to appeal against the judgment has been refused.

## 51-60 Prime Minister's Prizes

(1) To the extent that the Prime Minister's Prize for Australian History would otherwise be assessable income, it is exempt from income tax.

(2) To the extent that the Prime Minister's Prize for Science would otherwise be assessable income, it is exempt from income tax.

(3) To the extent that a Prime Minister's Literary Award would otherwise be assessable income, it is exempt from income tax.

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



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## 51-100 Shipping

(1) An entity's *ordinary income *derived during an income year (the ***present year***), or *statutory income for the present year, is exempt from income tax to the extent that it is from *shipping activities that:

(a) relate to a vessel for which the entity has a *shipping exempt income certificate for the present year; and

(b) take place on a day (a ***certified day***) to which the certificate applies.

Note: For the days to which the certificate applies, see subsection 8(5) of the *Shipping Reform (Tax Incentives) Act 2012*.

(2) Subsection (1) does not apply to *ordinary income *derived from, or *statutory income from, *incidental shipping activities relating to the vessel if:

Total incidental shipping income > 0.25% of total core shipping income

where:

***total core shipping income*** means the sum of the entity's:

(a) *ordinary income *derived from *core shipping activities relating to the vessel on the certified days (see paragraph (1)(b)); and

(b) *statutory income from those activities on those days.

***total incidental shipping income*** means the sum of the entity's:

(a) *ordinary income *derived from *incidental shipping activities relating to the vessel on the certified days (see paragraph (1)(b)); and

(b) *statutory income from those activities on those days.

## 51-105 *Shipping activities*

***Shipping activities*** are *core shipping activities or *incidental shipping activities.

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



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## 51-110 *Core shipping activities*

(1) ***Core shipping activities*** are activities directly involved in operating a vessel to carry *shipping cargo or *shipping passengers for consideration.

(2) Without limiting subsection (1), ***core shipping activities*** include the following:

(a) carrying the *shipping cargo or *shipping passengers on the vessel;

(b) crewing the vessel;

(c) carrying goods on board for the operation of the vessel (including for the enjoyment of shipping passengers);

(d) providing the containers that carry shipping cargo on the vessel;

(e) loading shipping cargo onto, and unloading it from, the vessel;

(f) repacking shipping cargo to be carried on the vessel;

(g) providing temporary storage for shipping cargo just before or after its carriage on the vessel;

(h) providing space on board the vessel for carrying shipping cargo or shipping passengers;

(i) activities generating onboard income from shipping passengers of the vessel;

(j) providing shore excursions to shipping passengers of the vessel;

(k) transporting shipping cargo, or shipping passengers, between the vessel and the shore;

(l) providing administration and insurance services that are directly related to carrying shipping cargo or shipping passengers on the vessel;

(m) onboard selling of tickets on behalf of other entities to shipping passengers of the vessel;

(n) onboard advertising to shipping passengers of the vessel;

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(o) providing quay-side services to shipping passengers that:
  (i) are similar to those provided on the vessel; and
  (ii) are provided from a floor area that does not exceed that from which similar services are provided on the vessel;
(p) providing car parking to individuals while they are shipping passengers on the vessel;
(q) making contracts solely to reduce the risk of financial loss from currency exchange rate fluctuations that directly relate to the operation of the vessel;
(r) an activity specified in regulations made for the purposes of this paragraph.

(3) Despite subsections (1) and (2), ***core shipping activities*** do not include an activity specified in regulations made for the purposes of this subsection.

## 51-115 *Incidental shipping activities*

***Incidental shipping activities*** are activities incidental to *core shipping activities.

## 51-120 Interest on unclaimed money and property

The following amounts are exempt from income tax:

(a) an amount of interest paid under paragraph 69(7AA)(b) of the *Banking Act 1959*;

Note: An amount of interest paid under paragraph 69(7AA)(a) of the *Banking Act 1959* is not ordinary income or statutory income.

(b) an amount of interest paid under subsection 1341(3A) of the *Corporations Act 2001*;

(e) an amount of interest paid under paragraph 216(7A)(b) of the *Life Insurance Act 1995*.

Note: An amount of interest paid under paragraph 216(7A)(a) of the *Life Insurance Act 1995* is not ordinary income or statutory income.

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



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Note: For interest paid under the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, see subsections 307-142(3B) and (3C).

## 51-125 2018 storms—relief payments

(1) A payment is exempt from income tax if the payment:
  (a) is made to a primary producer for the purposes of an agreement covered by subsection (2); and
  (b) relates to storm damage sustained by the primary producer on or around 25 October 2018.

(2) An agreement is covered by this subsection if:
  (a) the parties to the agreement are the Commonwealth and the Foundation for Rural and Regional Renewal; and
  (b) the objective of the agreement is principally to assist primary producers affected by storms that occurred on or around 25 October 2018.

Note: Payments may be made to primary producers by the Foundation for Rural and Regional Renewal, or by other entities on behalf of the Foundation.

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



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# Division 52—Certain pensions, benefits and allowances are exempt from income tax

## Guide to Division 52

### 52-1 What this Division is about

Certain payments made under various Acts are wholly or partly exempt from income tax. This Division tells you if a payment is exempt and how much is exempt.

### Table of Subdivisions

52-A Exempt payments under the Social Security Act 1991
52-B Exempt payments under the Veterans' Entitlements Act 1986
52-C Exempt payments made because of the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986
52-CA Exempt payments under the Military Rehabilitation and Compensation Act 2004
52-CB Exempt payments under the Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006
52-CC Exempt payments under the Treatment Benefits (Special Access) Act 2019
52-E Exempt payments under the ABSTUDY scheme
52-F Exemption of Commonwealth education or training payments
52-G Exempt payments under the A New Tax System (Family Assistance) (Administration) Act 1999
52-H Other exempt payments

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



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# Subdivision 52-A—Exempt payments under the Social Security Act 1991

## Guide to Subdivision 52-A

### 52-5 What this Subdivision is about

This Subdivision tells you:

(a) the payments under the *Social Security Act 1991* that are wholly or partly exempt from income tax; and

(b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and

(c) how to work out how much of a payment is exempt.

## Table of sections

**Operative provisions**

52-10 How much of a social security payment is exempt?
52-15 Supplementary amounts of payments
52-20 Tax-free amount of an ordinary payment after the death of your partner
52-25 Tax-free amount of certain bereavement lump sum payments
52-30 Tax-free amount of certain other bereavement lump sum payments
52-35 Tax-free amount of a lump sum payment made because of the death of a person you are caring for
52-40 Provisions of the *Social Security Act 1991* under which payments are made

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



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## Operative provisions

### 52-10 How much of a social security payment is exempt?

(1) The table in this section tells you about the income tax treatment of social security payments, other than payments of:

(a) pension bonus and pension bonus bereavement payment; or

(aa) child disability assistance; or

(ab) carer supplement; or

(ac) one-off energy assistance payment under the *Social Security Act 1991*; or

(ad) first 2020 economic support payment under the *Social Security Act 1991*; or

(ae) second 2020 economic support payment under the *Social Security Act 1991*; or

(af) additional economic support payment 2020 under the *Social Security Act 1991*; or

(ag) additional economic support payment 2021 under the *Social Security Act 1991*; or

(bb) payments under a scheme referred to in subsection (1CB); or

(c) one-off payment to carers (carer payment related); or

(d) one-off payment to carers (carer allowance related); or

(e) 2005 one-off payment to carers (carer payment related); or

(f) 2005 one-off payment to carers (carer service pension related); or

(g) 2005 one-off payment to carers (carer allowance related); or

(h) 2006 one-off payment to carers (carer payment related); or

(i) 2006 one-off payment to carers (wife pension related); or

(j) 2006 one-off payment to carers (partner service pension related); or

(k) 2006 one-off payment to carers (carer service pension related); or

(l) 2006 one-off payment to carers (carer allowance related); or

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(m) 2007 one-off payment to carers (carer payment related); or
(n) 2007 one-off payment to carers (wife pension related); or
(o) 2007 one-off payment to carers (partner service pension related); or
(p) 2007 one-off payment to carers (carer service pension related); or
(q) 2007 one-off payment to carers (carer allowance related); or
(r) 2008 one-off payment to carers (carer payment related); or
(s) 2008 one-off payment to carers (wife pension related); or
(t) 2008 one-off payment to carers (partner service pension related); or
(u) 2008 one-off payment to carers (carer service pension related); or
(v) 2008 one-off payment to carers (carer allowance related); or
(w) payments under a scheme referred to in subsection (1E); or
(wa) payments under the *Social Security Act 1991* referred to in subsection (1EA); or
(x) economic security strategy payment under the *Social Security Act 1991*; or
(y) training and learning bonus under the *Social Security Act 1991*; or
(za) education entry payment supplement under the *Social Security Act 1991*; or
(zb) clean energy payments under the *Social Security Act 1991*; or
(zc) 2022 cost of living payment under the *Social Security Act 1991*.

Note: Section 52-40 sets out the provisions of the *Social Security Act 1991* under which the payments are made.

(1A) Payments of pension bonus and pension bonus bereavement payment under Part 2.2A of the *Social Security Act 1991* are exempt from income tax.

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



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(1AA) Child disability assistance under Part 2.19AA of the *Social Security Act 1991* is exempt from income tax.

(1AB) Carer supplement under Part 2.19B of the *Social Security Act 1991* is exempt from income tax.

(1AC) One-off energy assistance payments under Part 2.6 of the *Social Security Act 1991* are exempt from income tax.

(1AD) One-off energy assistance payments under Part 2.6A of the *Social Security Act 1991* are exempt from income tax.

(1B) The following payments are exempt from income tax:

(a) first 2020 economic support payments under Division 1 of Part 2.6B of the *Social Security Act 1991*;

(b) second 2020 economic support payments under Division 2 of Part 2.6B of the *Social Security Act 1991*.

(1C) The following payments are exempt from income tax:

(a) additional economic support payment 2020 under Division 1 of Part 2.6C of the *Social Security Act 1991*;

(b) additional economic support payment 2021 under Division 2 of Part 2.6C of the *Social Security Act 1991*.

(1CA) 2022 cost of living payment under Division 1 of Part 2.6D of the *Social Security Act 1991* is exempt from income tax.

(1CB) Payments to older Australians under the following schemes are exempt from income tax:

(a) a scheme determined under item 1 of Schedule 2 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Act 2006*;

(b) a scheme determined under item 1 of Schedule 2 to the *Social Security and Veterans' Affairs Legislation Amendment*

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*(One-off Payments and Other 2007 Budget Measures) Act 2007*;

(c) a scheme determined under item 1 of Schedule 2 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008*.

(1D) The following payments under the *Social Security Act 1991* are exempt from income tax:

(a) one-off payment to carers (carer payment related) (see Division 1 of Part 2.5A of that Act);

(b) one-off payment to carers (carer allowance related) (see Division 1 of Part 2.19A of that Act);

(c) 2005 one-off payment to carers (carer payment related) (see Division 2 of Part 2.5A of that Act);

(d) 2005 one-off payment to carers (carer service pension related) (see Division 3 of Part 2.5A of that Act);

(e) 2005 one-off payment to carers (carer allowance related) (see Division 2 of Part 2.19A of that Act);

(f) 2006 one-off payment to carers (carer payment related) (see Division 4 of Part 2.5A of that Act);

(g) 2006 one-off payment to carers (wife pension related) (see Division 5 of Part 2.5A of that Act);

(h) 2006 one-off payment to carers (partner service pension related) (see Division 6 of Part 2.5A of that Act);

(i) 2006 one-off payment to carers (carer service pension related) (see Division 7 of Part 2.5A of that Act); or

(j) 2006 one-off payment to carers (carer allowance related) (see Division 3 of Part 2.19A of that Act);

(k) 2007 one-off payment to carers (carer payment related) (see Division 8 of Part 2.5A of that Act);

(l) 2007 one-off payment to carers (wife pension related) (see Division 9 of Part 2.5A of that Act);

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(m) 2007 one-off payment to carers (partner service pension related) (see Division 10 of Part 2.5A of that Act);

(n) 2007 one-off payment to carers (carer service pension related) (see Division 11 of Part 2.5A of that Act);

(o) 2007 one-off payment to carers (carer allowance related) (see Division 4 of Part 2.19A of that Act);

(p) 2008 one-off payment to carers (carer payment related) (see Division 12 of Part 2.5A of that Act);

(q) 2008 one-off payment to carers (wife pension related) (see Division 13 of Part 2.5A of that Act);

(r) 2008 one-off payment to carers (partner service pension related) (see Division 14 of Part 2.5A of that Act);

(s) 2008 one-off payment to carers (carer service pension related) (see Division 15 of Part 2.5A of that Act);

(t) 2008 one-off payment to carers (carer allowance related) (see Division 5 of Part 2.19A of that Act).

(1E) Payments to carers under the following schemes are exempt from income tax:

(a) a scheme determined under Schedule 3 to the *Family Assistance Legislation Amendment (More Help for Families—One-off Payments) Act 2004*;

(b) a scheme determined under Schedule 2 to the *Social Security Legislation Amendment (One-off Payments for Carers) Act 2005*;

(c) a scheme determined under Schedule 4 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Act 2006*;

(d) a scheme determined under Schedule 4 to the *Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Act 2007*;

(e) a scheme determined under Schedule 4 to the *Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Act 2008*.

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



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Section 52-10

(1F) Economic security strategy payment under the *Social Security Act 1991* is exempt from income tax.

(1G) Training and learning bonus under the *Social Security Act 1991* is exempt from income tax.

(1J) Education entry payment supplement under the *Social Security Act 1991* is exempt from income tax.

(1K) Australian Victim of Terrorism Overseas Payment under Part 2.24AA the *Social Security Act 1991* is exempt from income tax.

(1L) Clean energy payments under the *Social Security Act 1991* are exempt from income tax.

(2) Expressions used in this Subdivision that are also used in the *Social Security Act 1991* have the same meaning as in that Act.

(3) ***Ordinary payment*** means a payment other than a payment made because of a person's death.

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



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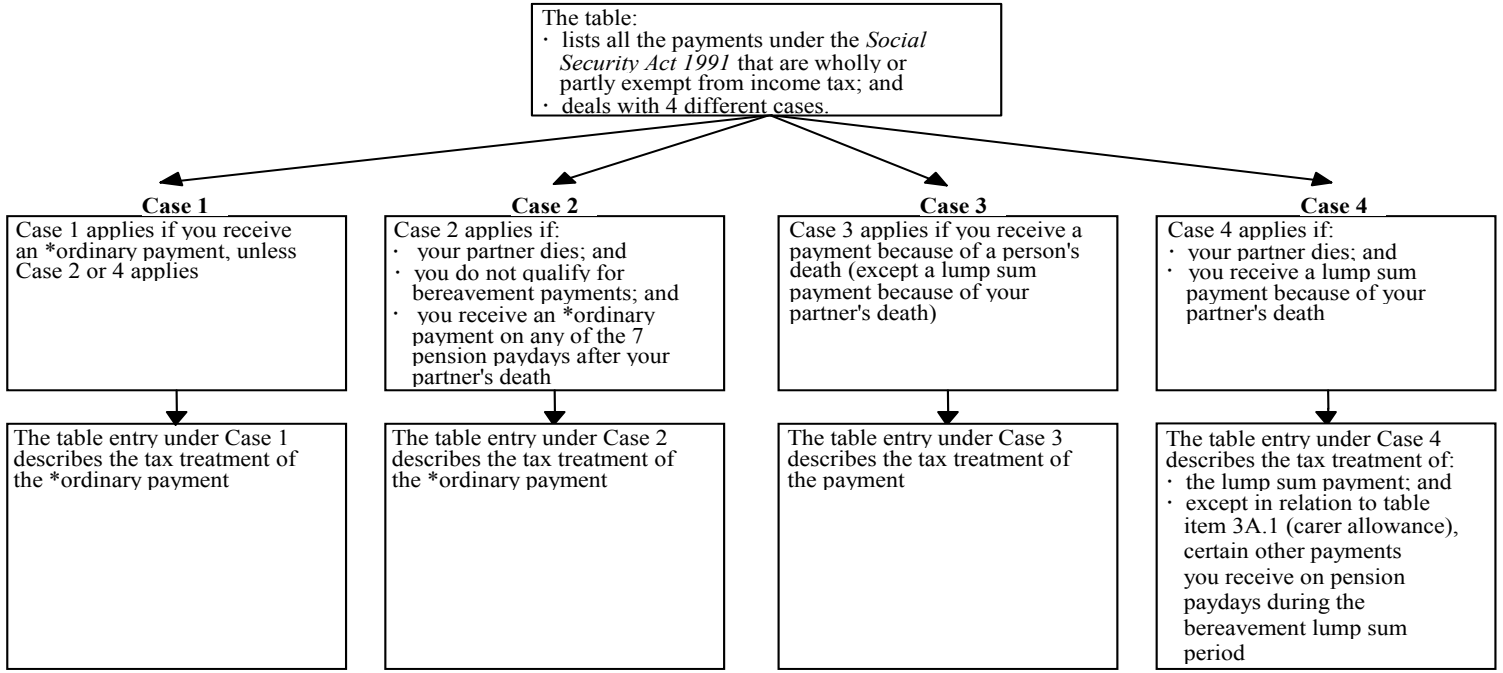
**Explanation of the table**




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



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Section 52-10

**Income tax treatment of social security payments**

| Item | Payment | Case 1 | Case 2 | Case 3 | Case 4 |
|---|---|---|---|---|---|
| 1.1 | **Advance pharmaceutical supplement** | Exempt | Exempt | Not applicable | Not applicable |
| 2.1 | **Age pension** | Supplementary amount is exempt (see section 52-15) | Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20) | Exempt | Exempt up to the tax-free amount (see section 52-25) |
| 2AA.1 | **Australian Government Disaster Recovery Payment** | Exempt | Exempt | Not applicable | Not applicable |
| 2A.1 | **Austudy payment** | Supplementary amount is exempt (see section 52-15) | Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20) | Exempt | Exempt up to the tax-free amount (see section 52-30) |
| 3A.1 | **Carer allowance** | Exempt | Exempt | Exempt | Exempt |

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



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**Income tax treatment of social security payments**

| Item | Payment | Case 1 | Case 2 | Case 3 | Case 4 |
|---|---|---|---|---|---|
| 4.1 | **Carer payment**: you are pension age or over | Supplementary amount is exempt (see section 52-15) | Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20) | Exempt, but if it is made under section 236A of the *Social Security Act 1991*, exempt only up to the tax-free amount (see section 52-35) | Exempt up to the tax-free amount if it is made under section 239 of the *Social Security Act 1991* (see section 52-25) |
| 4.2 | **Carer payment:** the care receiver or any of the care receivers is pension age or over | Supplementary amount is exempt (see section 52-15) | Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20) | Exempt, but if it is made under section 236A of the *Social Security Act 1991*, exempt only up to the tax-free amount (see section 52-35) | Exempt up to the tax-free amount if it is made under section 239 of the *Social Security Act 1991* (see section 52-25) |
| 4.3 | **Carer payment:** both you and the care receiver or all of the care receivers are under pension age | Exempt | Exempt | Exempt, but if it is made under section 236A of the *Social Security Act 1991*, exempt only up to the tax-free amount (see section 52-35) | Exempt up to the tax-free amount if it is made under section 239 of the *Social Security Act 1991* (see section 52-25) |

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



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Section 52-10

**Income tax treatment of social security payments**

| Item | Payment | Case 1 | Case 2 | Case 3 | Case 4 |
|---|---|---|---|---|---|
| 4.4 | **Carer payment:** you are under pension age and any of the care receivers has died | Exempt | Exempt | Exempt, but if it is made under section 236A of the *Social Security Act 1991*, exempt only up to the tax-free amount (see section 52-35) | Exempt up to the tax-free amount if it is made under section 239 of the *Social Security Act 1991* (see section 52-25) |
| 5.1 | **Crisis payment** | Exempt | Exempt | Not applicable | Not applicable |
| 6.1 | **Disability support pension**: you are pension age or over | Supplementary amount is exempt (see section 52-15) | Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20) | Exempt | Exempt up to the tax-free amount (see section 52-25) |
| 6.2 | **Disability support pension**: you are under pension age | Exempt | Exempt | Exempt | Exempt up to the tax-free amount (see section 52-25) |
| 9.1 | **Double orphan pension** | Exempt | Exempt | Exempt | Not applicable |
| 13A.1 | **Fares allowance** | Exempt | Exempt | Not applicable | Not applicable |

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



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**Income tax treatment of social security payments**

| Item | Payment | Case 1 | Case 2 | Case 3 | Case 4 |
|---|---|---|---|---|---|
| 14.1 | **Jobseeker payment** | Supplementary amount is exempt (see section 52-15) | Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20) | Exempt | Exempt up to the tax-free amount (see section 52-30) |
| 18.1 | **Mobility allowance** | Exempt | Exempt | Not applicable | Not applicable |
| 21A.1 | **Parenting payment (benefit PP (partnered))** | Supplementary amount is exempt (see section 52-15) | Supplementary amount is exempt (see section 52-15) | Exempt | Exempt up to the tax-free amount (see section 52-30) |
| 21A.3 | **Parenting payment (pension PP (single))** | Supplementary amount is exempt (see section 52-15) | Supplementary amount is exempt (see section 52-15) | Exempt | Not applicable |
| 22A.1 | **Pensioner education supplement** | Exempt | Exempt | Not applicable | Not applicable |
| 22B.1 | **Energy supplement under Part 2.25B of the *Social Security Act 1991*** | Exempt | Exempt | Not applicable | Not applicable |

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



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Section 52-10

**Income tax treatment of social security payments**

| Item | Payment | Case 1 | Case 2 | Case 3 | Case 4 |
|---|---|---|---|---|---|
| 22C.1 | **Quarterly pension supplement** | Exempt | Exempt | Not applicable | Not applicable |
| 25.1 | **Special benefit** | Supplementary amount is exempt (see section 52-15) | Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20) | Exempt | Exempt up to the tax-free amount (see section 52-30) |
| 26.1 | **Special needs age pension** | Supplementary amount is exempt (see section 52-15) | Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20) | Exempt | Exempt up to the tax-free amount (see section 52-25) |
| 27.1 | **Special needs disability support pension**: you are pension age or over | Supplementary amount is exempt (see section 52-15) | Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20) | Exempt | Exempt up to the tax-free amount (see section 52-25) |
| 27.2 | **Special needs disability support pension**: you are under pension age | Exempt | Exempt | Exempt | Exempt up to the tax-free amount (see section 52-25) |

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



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**Income tax treatment of social security payments**

| Item | Payment | Case 1 | Case 2 | Case 3 | Case 4 |
|---|---|---|---|---|---|
| 30.1 | **Special needs wife pension**: you are pension age or over | Supplementary amount is exempt (see section 52-15) | Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20) | Exempt | Exempt up to the tax-free amount (see section 52-25) |
| 30.2 | **Special needs wife pension**: your partner is pension age or over | Supplementary amount is exempt (see section 52-15) | Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20) | Exempt | Exempt up to the tax-free amount (see section 52-25) |
| 30.3 | **Special needs wife pension**: both you and your partner are under pension age | Exempt | Exempt | Exempt | Exempt up to the tax-free amount (see section 52-25) |
| 30.4 | **Special needs wife pension**: you are under pension age and your partner has died | Exempt | Exempt | Exempt | Exempt up to the tax-free amount (see section 52-25) |
| 31.1 | **Telephone allowance** | Exempt | Exempt | Not applicable | Not applicable |

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

Section 52-10

**Income tax treatment of social security payments**

| Item | Payment | Case 1 | Case 2 | Case 3 | Case 4 |
|---|---|---|---|---|---|
| 31A.1 | **Utilities allowance** | Exempt | Exempt | Not applicable | Not applicable |
| 35.1 | **Youth allowance** | Supplementary amount is exempt (see section 52-15) | Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20) | Exempt | Exempt up to the tax-free amount (see section 52-30) |

Note: A reference in this table to jobseeker payment or youth allowance includes a reference to farm household allowance under the *Farm Household Support Act 2014* (see Part 5 of that Act). Other payments referred to in this table (such as advance pharmaceutical supplement) might also be payable to a person who is receiving farm household allowance.

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



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## 52-15 Supplementary amounts of payments

You work out the ***supplementary amount*** of a social security payment using the following table:

**Supplementary amount of a social security payment**

| Item | For this category of social security payment: | the *supplementary amount* is the total of: |
|---|---|---|
| 1 | Age pension<br>Carer payment<br>Special benefit<br>Special needs age pension<br>Special needs disability support pension<br>Special needs wife pension | (a) so much of the payment as is included by way of rent assistance; and<br>(b) so much of the payment as is included by way of remote area allowance; and<br>(c) so much of the payment as is included by way of pharmaceutical allowance; and<br>(d) so much of the payment as is included by way of tax-exempt pension supplement; and<br>(e) so much of the payment as is included by way of energy supplement |

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



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| **Supplementary amount of a social security payment** | | |
|---|---|---|
| **Item** | **For this category of social security payment:** | **the *supplementary amount* is the total of:** |
| 2 | Disability support pension | (a) so much of the payment as is included by way of rent assistance; and<br>(b) so much of the payment as is included by way of remote area allowance; and<br>(c) so much of the payment as is included by way of pharmaceutical allowance; and<br>(d) so much of the payment as is included by way of incentive allowance; and<br>(e) so much of the payment as is included by way of language, literacy and numeracy supplement; and<br>(f) so much of the payment as is included by way of tax-exempt pension supplement; and<br>(g) so much of the payment as is included by way of energy supplement |

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



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| **Supplementary amount of a social security payment** | | |
|---|---|---|
| **Item** | **For this category of social security payment:** | **the *supplementary amount* is the total of:** |
| 3 | Jobseeker payment<br>Parenting payment (benefit (PP partnered))<br>Parenting payment (pension (PP single))<br>Youth allowance | (a) so much of the payment as is included by way of rent assistance; and<br>(b) so much of the payment as is included by way of remote area allowance; and<br>(c) so much of the payment as is included by way of pharmaceutical allowance; and<br>(d) so much of the payment as is included by way of language, literacy and numeracy supplement; and<br>(e) so much of the payment as is included by way of tax-exempt pension supplement; and<br>(f) so much of the payment as is included by way of energy supplement |

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



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| **Supplementary amount of a social security payment** | | |
|---|---|---|
| **Item** | **For this category of social security payment:** | **the *supplementary amount* is the total of:** |
| 4 | Austudy payment | (a) so much of the payment as is included by way of rent assistance; and<br>(b) so much of the payment as is included by way of remote area allowance; and<br>(c) so much of the payment as is included by way of pharmaceutical allowance; and<br>(d) so much of the payment as is included by way of tax-exempt pension supplement; and<br>(e) so much of the payment as is included by way of energy supplement |

Note: A reference in this table to jobseeker payment or youth allowance includes a reference to farm household allowance under the *Farm Household Support Act 2014* (see Part 5 of that Act).

## 52-20 Tax-free amount of an ordinary payment after the death of your partner

(1) You work out under this section the *tax-free amount of an *ordinary payment made under the *Social Security Act 1991* after the death of your partner if:

(a) you do not qualify for payments under a *bereavement Subdivision; and

(b) the ordinary payment became due to you during the bereavement period.

Note: For the provisions of the *Social Security Act 1991* that tell you if you qualify for payments under a bereavement Subdivision: see subsection (3).

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



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(2) This is how to work out the ***tax-free amount***:

*Method statement*

Step 1. Work out the *supplementary amount of the payment.

Note: The supplementary amount is also exempt and is worked out under section 52-15.

Step 2. Subtract the *supplementary amount from the amount of the payment.

Step 3. Work out what would have been the amount of the payment if your partner had not died.

Step 4. Work out what would have been the *supplementary amount of the payment if your partner had not died.

Step 5. Subtract the amount at Step 4 from the amount at Step 3.

Step 6. Subtract the amount at Step 5 from the amount at Step 2: the result is the ***tax-free amount***.

(3) This table sets out:

(a) the Subdivisions of the *Social Security Act 1991* that are ***bereavement Subdivisions***; and

(b) the provision of that Act that tells you if you qualify for payments under the relevant bereavement Subdivision.

**Bereavement Subdivisions**

| Item | For this bereavement Subdivision: | This provision tells you if you qualify for payments under it: |
|---|---|---|
| 1 | Subdivision A of Division 9 of Part 2.2 | paragraph 82(1)(e) |
| 2 | Subdivision A of Division 10 of Part 2.3 | paragraph 146F(1)(e) |
| 3 | Subdivision B of Division 9 of Part 2.5 | paragraph 237(1)(e) |
| 5A | Division 10 of Part 2.11 | subsection 567(1) or section 567FA |

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



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| **Bereavement Subdivisions** | | |
|---|---|---|
| **Item** | **For this bereavement Subdivision:** | **This provision tells you if you qualify for payments under it:** |
| 5B | Division 10 of Part 2.11A | paragraph 592(1)(f) |
| 6 | Division 9 of Part 2.12 | subsection 660LA(1) or section 660LH |
| 10 | Subdivision AA of Division 9 of Part 2.15 | paragraph 768A(1)(f) |
| 11 | Subdivision A of Division 10 of Part 2.16 | paragraph 822(1)(e) |

## 52-25 Tax-free amount of certain bereavement lump sum payments

(1) This section applies if a lump sum of any of these categories of social security payments becomes due to you because of your partner's death.

| **Category of social security payment** |
|---|
| Age pension |
| Carer payment |
| Disability support pension |
| Special needs age pension |
| Special needs disability support pension |
| Special needs wife pension |

(2) The total of the following are exempt up to the *tax-free amount:
(a) the lump sum payment;
(b) all other payments that become due to you under the *Social Security Act 1991* during the bereavement lump sum period.

(3) This is how to work out the ***tax-free amount***:

*Method statement*

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



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| | |
|---|---|
| Step 1. | Work out the payments under the *Social Security Act 1991* that would have become due to you during the bereavement lump sum period if:<br>(a) your partner had not died; and<br>(b) your partner had been under *pension age; and<br>(c) immediately before your partner died, you and your partner had been neither an illness separated couple nor a respite care couple. |
| Step 2. | Work out how much of those payments would have been exempt in those circumstances. |
| Step 3. | Work out the payments under the *Social Security Act 1991* or Part III of the *Veterans' Entitlements Act 1986* that would have become due to your partner during the bereavement lump sum period if:<br>(a) your partner had not died; and<br>(b) immediately before your partner died, you and your partner were neither an illness separated couple nor a respite care couple;<br>even if the payments would not have been exempt. |
| Step 4. | Total the payments worked out at Steps 2 and 3: the result is the ***tax-free amount***. |

Example: You are receiving a disability support pension of $300 a fortnight and a pharmaceutical allowance of $5 a fortnight. You are over pension age. Your partner is receiving a jobseeker payment of $250 a fortnight and rent assistance of $75 a fortnight.

Your partner dies. Seven instalments are due to you during the bereavement lump sum period. You work out the tax-free amount as follows:

Step 1: The instalments that would have become due to you during the bereavement lump sum period are:

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



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$300 + $5 = $305

The total for the period is $2,135.

Step 2: The exempt component of each instalment is $5. The total for the 7 instalments is $35.

Step 3: The instalments that would have become due to your partner during the same period are:

$250 + $75 =$325

The total for the period is $2,275.

Step 4: The tax-free amount is:

$35 + $2,275 = $2,310

## 52-30 Tax-free amount of certain other bereavement lump sum payments

(1) This section applies if a lump sum of any of these categories of social security payments becomes due to you because of your partner's death.

| Category of social security payment |
|---|
| Austudy payment |
| Jobseeker payment |
| Parenting payment (benefit PP (partnered)) |
| Special benefit |
| Youth allowance |

Note: A reference in this table to jobseeker payment or youth allowance includes a reference to farm household allowance under the *Farm Household Support Act 2014* (see Part 5 of that Act).

(2) The total of the following are exempt up to the *tax-free amount:

(a) the lump sum payment;

(b) all other payments that become due to you under the *Social Security Act 1991* during the bereavement lump sum period.

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



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(3) This is how to work out the ***tax-free amount***:

*Method statement*

Step 1. Work out the payments under the *Social Security Act 1991* that would have become due to you during the bereavement lump sum period if:

(a) your partner had not died; and

(b) your partner had been under *pension age; and

(c) immediately before your partner died, you and your partner had been neither an illness separated couple nor a respite care couple.

Step 2. Work out how much of those payments would have been exempt in those circumstances.

Step 3. Work out the payments under the *Social Security Act 1991* that would have become due to your partner during the bereavement lump sum period if your partner had not died, even if the payments would not have been exempt.

Step 4. Total the payments worked out at Steps 2 and 3: the result is the ***tax-free amount***.

## 52-35 Tax-free amount of a lump sum payment made because of the death of a person you are caring for

(1) This section applies if a lump sum payment becomes due to you under section 236A of the *Social Security Act 1991* because of the death of the care receiver or any of the care receivers.

(2) The total of the following are exempt up to the *tax-free amount:

(a) the lump sum payment;

(b) all other payments that become due to you under the *Social Security Act 1991* during the bereavement lump sum period.

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



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(3) This is how to work out the ***tax-free amount***:

*Method statement*

Step 1. Work out the payments under the *Social Security Act 1991* that would have become due to you during the bereavement lump sum period if:

(a) the care receiver had not died; and

(b) the care receiver had been under *pension age.

Step 2. Work out how much of those payments would have been exempt in those circumstances.

Step 3. Work out the payments under the *Social Security Act 1991* that would have become due to the care receiver during the bereavement lump sum period if the care receiver had not died, even if the payments would not have been exempt.

Step 4. Total the payments worked out at Steps 2 and 3: the result is the ***tax-free amount***.

## 52-40 Provisions of the *Social Security Act 1991* under which payments are made

This table lists the provisions of the *Social Security Act 1991* under which social security payments are made that are wholly or partly exempt from income tax under this Subdivision.

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



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| Provisions under which social security payments are made | | | | |
|---|---|---|---|---|
| **Item** | **Category of social security payment** | **Ordinary payment** | **Payment made because of a person's death (unless covered by next column)** | **Lump sum payment made because of your partner's death** |
| 1A | 2020 economic support payment | Part 2.6B | Not applicable | Not applicable |
| 1AA | 2022 cost of living payment | Part 2.6D | Not applicable | Not applicable |
| 1B | Additional economic support payment 2020 or additional economic support payment 2021 | Part 2.6C | Not applicable | Not applicable |
| 1 | Advance pharmaceutical supplement | Part 2.23 | Not applicable | Not applicable |
| 2 | Age pension | Part 2.2 | Sections 83, 86 and 91 | Section 84 |
| 2AA | Australian Government Disaster Recovery Payment | Part 2.24 | Not applicable | Not applicable |
| 2AB | Australian Victim of Terrorism Overseas Payment | Part 2.24AA | Not applicable | Not applicable |

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



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Section 52-40

| Provisions under which social security payments are made | | | | |
|---|---|---|---|---|
| **Item** | **Category of social security payment** | **Ordinary payment** | **Payment made because of a person's death (unless covered by next column)** | **Lump sum payment made because of your partner's death** |
| 2A | Austudy payment | Part 2.11A | Section 592A | Section 592B |
| 3A | Carer allowance | Part 2.19 | Sections 992K and 992M | Not applicable |
| 4 | Carer payment | Part 2.5 | Sections 236A, 238, 241 and 246 | Section 239 |
| 4A | Clean energy payment | Part 2.18A | Not applicable | Not applicable |
| 5 | Crisis payment | Part 2.23A | Not applicable | Not applicable |
| 6 | Disability support pension | Part 2.3 | Sections 146G, 146K and 146Q | Section 146H |
| 9 | Double orphan pension | Part 2.20 | Sections 1034 and 1034A | Not applicable |
| 13A | Fares allowance | Part 2.26 | Not applicable | Not applicable |
| 14 | Jobseeker payment | Part 2.12 | Section 660LB | Sections 660LC and 660LH |
| 18 | Mobility allowance | Part 2.21 | Not applicable | Not applicable |
| 20 | One-off energy assistance payment | Part 2.6 or 2.6A | Not applicable | Not applicable |
| 21A | Parenting payment (benefit PP (partnered)) | Part 2.10 | Sections 513A and 514B | Section 514C |

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



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| Provisions under which social security payments are made | | | | |
|---|---|---|---|---|
| **Item** | **Category of social security payment** | **Ordinary payment** | **Payment made because of a person's death (unless covered by next column)** | **Lump sum payment made because of your partner's death** |
| 21C | Parenting payment (pension PP (single)) | Part 2.10 | Section 513 | Not applicable |
| 22A | Pensioner education supplement | Part 2.24A | Not applicable | Not applicable |
| 22B | Energy supplement | Part 2.25B | Not applicable | Not applicable |
| 22C | Quarterly pension supplement | Part 2.25C | Not applicable | Not applicable |
| 25 | Special benefit | Part 2.15 | Section 768B | Section 768C |
| 26 | Special needs age pension | Section 772 | Sections 823, 826 and 830 | Section 824 |
| 27 | Special needs disability support pension | Section 773 | Sections 823, 826 and 830 | Section 824 |
| 30 | Special needs wife pension | Section 774 | Sections 823, 826 and 830 | Section 824 |
| 31 | Telephone allowance | Part 2.25 | Not applicable | Not applicable |
| 31A | Utilities allowance | Part 2.25A | Not applicable | Not applicable |
| 35 | Youth allowance | Part 2.11 | Section 567A | Sections 567B and 567FA |

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



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# Subdivision 52-B—Exempt payments under the Veterans' Entitlements Act 1986

## Guide to Subdivision 52-B

### 52-60 What this Subdivision is about

This Subdivision tells you:

(a) the payments under the *Veterans' Entitlements Act 1986* that are wholly or partly exempt from income tax; and

(b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and

(c) how to work out how much of a payment is exempt.

## Table of sections

**Operative provisions**

52-65 How much of a veterans' affairs payment is exempt?
52-70 Supplementary amounts of payments
52-75 Provisions of the *Veterans' Entitlements Act 1986* under which payments are made

## Operative provisions

### 52-65 How much of a veterans' affairs payment is exempt?

(1) The table in this section tells you about the income tax treatment of veterans' affairs payments, other than:

(a) payments of pension bonus or pension bonus bereavement payment; or

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



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(b) clean energy payments; or

(ba) clean energy payments under the scheme prepared under Part VII (about educating veterans' children) of the *Veterans' Entitlements Act 1986*; or

(c) one-off energy assistance payments under the *Veterans' Entitlements Act 1986*; or

(d) first 2020 economic support payments under the *Veterans' Entitlements Act 1986*; or

(da) second 2020 economic support payments under the *Veterans' Entitlements Act 1986*; or

(db) payments of additional economic support payment 2020 under the *Veterans' Entitlements Act 1986*; or

(dc) payments of additional economic support payment 2021 under the *Veterans' Entitlements Act 1986*; or

(e) a prisoner of war recognition supplement under Part VIB of the *Veterans' Entitlements Act 1986*; or

(f) a 2022 cost of living payment under the *Veterans' Entitlements Act 1986*.

Note: Section 52-75 sets out the provisions of the *Veterans' Entitlements Act 1986* under which the payments are made.

(1A) Payments of pension bonus and pension bonus bereavement payment under Part IIIAB of the *Veterans' Entitlements Act 1986* are exempt from income tax.

(1E) A lump sum payment under section 198N of the *Veterans' Entitlements Act 1986* is exempt from income tax.

(1F) A prisoner of war recognition supplement under Part VIB of the *Veterans' Entitlements Act 1986* is exempt from income tax.

(1G) The following are exempt from income tax:

(a) clean energy payments under the *Veterans' Entitlements Act 1986*;

(b) clean energy payments under the scheme prepared under Part VII (about educating veterans' children) of that Act.

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



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Note: The supplementary amount of each other payment under the scheme mentioned in paragraph (b) is also exempt from income tax (see section 52-140).

(1GA) One-off energy assistance payments under Part IIIF of the *Veterans' Entitlements Act 1986* are exempt from income tax.

(1H) One-off energy assistance payments under Part IIIG of the *Veterans' Entitlements Act 1986* are exempt from income tax.

(1J) The following payments are exempt from income tax:

(a) first 2020 economic support payments under Division 1 of Part IIIH of the *Veterans' Entitlements Act 1986*;

(b) second 2020 economic support payments under Division 2 of Part IIIH of the *Veterans' Entitlements Act 1986*.

(1K) The following payments are exempt from income tax:

(a) additional economic support payment 2020 under Division 1 of Part IIIJ of the *Veterans' Entitlements Act 1986*;

(b) additional economic support payment 2021 under Division 2 of Part IIIJ of the *Veterans' Entitlements Act 1986*.

(1L) 2022 cost of living payment under Division 1 of Part IIIK of the *Veterans' Entitlements Act 1986* is exempt from income tax.

(2) Expressions (except "pension age") used in this Subdivision that are also used in the *Veterans' Entitlements Act 1986* have the same meaning as in that Act.

Note: ***Pension age*** has the meaning given by subsection 23(1) of the *Social Security Act 1991*: see subsection 995-1(1).

(4) ***Ordinary payment*** means a payment other than a payment made because of a person's death.

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



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**Income tax treatment of veterans' affairs payments**

| Item | Category of veterans' affairs payment | Ordinary payment | Payment made because of a person's death |
|---|---|---|---|
| 1.1 | **Age service pension** | Supplementary amount is exempt (see section 52-70) | Exempt |
| 2.1 | **Attendant allowance** | Exempt | Not applicable |
| 3.1 | **Carer service pension**: unless covered by item 3.2 or 3.3 | Supplementary amount is exempt (see section 52-70) | Exempt |
| 3.2 | **Carer service pension**: both you and your partner are under pension age and your partner is receiving an invalidity service pension | Exempt | Exempt |
| 3.3 | **Carer service pension**: you are under pension age, your partner has died and was receiving an invalidity service pension at death | Exempt | Exempt |
| 4.1 | **Clothing allowance** | Exempt | Not applicable |
| 5.1 | **Decoration allowance** | Exempt | Not applicable |
| 6.1 | **Income support supplement**: unless covered by item 6.2, 6.3, 6.4 or 6.5 | Supplementary amount is exempt (see section 52-70) | Exempt |
| 6.2 | **Income support supplement**: you are under pension age and receiving the supplement on the grounds of permanent incapacity | Exempt | Exempt |

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



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**Income tax treatment of veterans' affairs payments**

| Item | Category of veterans' affairs payment | Ordinary payment | Payment made because of a person's death |
|---|---|---|---|
| 6.3 | **Income support supplement**: both you and the severely handicapped person you are caring for are under pension age and you are receiving the supplement for providing constant care for that person | Exempt | Exempt |
| 6.4 | **Income support supplement**: both you and your partner are under pension age and your partner is an invalidity service pensioner or a disability support pensioner | Exempt | Exempt |
| 6.5 | **Income support supplement**: both you and your partner are under pension age and your partner is receiving the supplement on the grounds of permanent incapacity | Exempt | Exempt |
| 7.1 | **Invalidity service pension**: you are pension age or over | Supplementary amount is exempt (see section 52-70) | Exempt |
| 7.2 | **Invalidity service pension**: you are under pension age | Exempt | Exempt |
| 8.1 | **Loss of earnings allowance** | Exempt | Not applicable |
| 9.1 | **Partner service pension**: unless covered by item 9.2 or 9.3 | Supplementary amount is exempt (see section 52-70) | Exempt |

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



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**Income tax treatment of veterans' affairs payments**

| Item | Category of veterans' affairs payment | Ordinary payment | Payment made because of a person's death |
|---|---|---|---|
| 9.2 | **Partner service pension**: both you and your partner are under pension age and your partner is receiving an invalidity service pension | Exempt | Exempt |
| 9.3 | **Partner service pension**: you are under pension age, your partner has died and was receiving an invalidity service pension at death | Exempt | Exempt |
| 10.1 | **Pension for defence-caused death or incapacity** | Exempt | Not applicable |
| 11.1 | **Pension for war-caused death or incapacity** | Exempt | Not applicable |
| 12.1 | **Quarterly pension supplement** | Exempt | Not applicable |
| 13.1 | **Recreation transport allowance** | Exempt | Not applicable |
| 14.1 | **Section 98A Bereavement payment** | Not applicable | Exempt |
| 14.2 | **Section 98AA Bereavement payment** | Not applicable | Exempt |
| 15.1 | **Section 99 funeral benefit** | Not applicable | Exempt |
| 16.1 | **Section 100 funeral benefit** | Not applicable | Exempt |
| 16A.1 | **Energy supplement under Part VIIAD of the *Veterans' Entitlements Act 1986*** | Exempt | Not applicable |
| 17.1 | **Special assistance** | Exempt | Not applicable |
| 20.1 | **Travelling expenses** | Exempt | Not applicable |

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



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**Income tax treatment of veterans' affairs payments**

| Item | Category of veterans' affairs payment | Ordinary payment | Payment made because of a person's death |
|---|---|---|---|
| 21.1 | **Vehicle Assistance Scheme** | Exempt | Not applicable |
| 21AA.1 | **Veteran payment** | Supplementary amount is exempt (see section 52-70) | Exempt |
| 21A.1 | **Veterans supplement** | Exempt | Not applicable |
| 22.1 | **Victoria Cross allowance** | Exempt | Not applicable |

## 52-70 Supplementary amounts of payments

The ***supplementary amount*** of a veterans' affairs payment is the total of:

(a) so much of the payment as is included by way of rent assistance; and

(b) so much of the payment as is included by way of an additional amount for each of your dependent *children; and

(c) so much of the payment as is included by way of remote area allowance; and

(d) so much of the payment as is equal to the tax-exempt pension supplement for the payment; and

(e) so much of the payment as is included by way of energy supplement.

## 52-75 Provisions of the *Veterans' Entitlements Act 1986* under which payments are made

This table lists the provisions of the *Veterans' Entitlements Act 1986* under which veterans' affairs payments are made that are wholly or partly exempt from income tax under this Subdivision.

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



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**Provisions under which veterans' affairs payments are made**

| Item | Category of veterans' affairs payment | Ordinary payment | Payment made because of a person's death |
|---|---|---|---|
| 1A | 2020 economic support payment | Part IIIH | Not applicable |
| 1AA | 2022 cost of living payment | Part IIIK | Not applicable |
| 1B | Additional economic support payment 2020 or additional economic support payment 2021 | Part IIIJ | Not applicable |
| 1 | Age service pension | Division 3 of Part III | Division 12A of Part IIIB |
| 2 | Attendant allowance | Section 98 | Not applicable |
| 3 | Carer service pension | Division 6 of Part III | Division 12A of Part IIIB |
| 3A | Clean energy payment | Part IIIE | Not applicable |
| 3B | Clean energy payment under Veterans' Children Education Scheme | Part VII | Not applicable |
| 4 | Clothing allowance | Section 97 | Not applicable |
| 5 | Decoration allowance | Section 102 | Not applicable |
| 6 | Income support supplement | Part IIIA | Division 12A of Part IIIB |
| 7 | Invalidity service pension | Division 4 of Part III | Division 12A of Part IIIB |
| 8 | Loss of earnings allowance | Section 108 | Not applicable |
| 8A | One-off energy assistance payment | Part IIIF or IIIG | Not applicable |
| 9 | Partner service pension | Division 5 of Part III | Division 12A of Part IIIB |
| 10 | Pension for defence-caused death or incapacity | Part IV | Not applicable |

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



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| Provisions under which veterans' affairs payments are made | | | |
|---|---|---|---|
| **Item** | **Category of veterans' affairs payment** | **Ordinary payment** | **Payment made because of a person's death** |
| 11 | Pension for war-caused death or incapacity | Part II | Not applicable |
| 12 | Quarterly pension supplement | Part IIID | Not applicable |
| 12A | Prisoner of war recognition supplement | Part VIB | Not applicable |
| 13 | Recreation transport allowance | Section 104 | Not applicable |
| 14 | Section 98A Bereavement payment | Not applicable | Section 98A |
| 14A | Section 98AA Bereavement payment | Not applicable | Section 98AA |
| 15 | Section 99 funeral benefit | Not applicable | Section 99 |
| 16 | Section 100 funeral benefit | Not applicable | Section 100 |
| 16A | Energy supplement | Part VIIAD | Not applicable |
| 17 | Special assistance | Section 106 | Not applicable |
| 20 | Travelling expenses | Section 110 | Not applicable |
| 21 | Vehicle Assistance Scheme | Section 105 | Not applicable |
| 21AA | Veteran payment | Section 45SB | Section 45SB |
| 21A | Veterans supplement | Part VIIA | Not applicable |
| 22 | Victoria Cross allowance | Section 103 | Not applicable |

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



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# Subdivision 52-C—Exempt payments made because of the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986

## Guide to Subdivision 52-C

### 52-100 What this Subdivision is about

This Subdivision tells you:

(a) the payments made because of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* that are wholly or partly exempt from income tax; and

(b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and

(c) how to work out how much of a payment is exempt.

## Table of sections

**Operative provisions**

52-105 Supplementary amount of a payment made under the *Repatriation Act 1920* is exempt
52-110 Other exempt payments

## Operative provisions

### 52-105 Supplementary amount of a payment made under the *Repatriation Act 1920* is exempt

(1) The *supplementary amount of a payment made to you is exempt from income tax if:

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



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(a) you are a *parent of a *member of the Forces who has died (but you are neither a widow nor a woman divorced or deserted by her husband) and you are of *pension age or over; or

(b) you are the mother of a *member of the Forces who has died and you are also a widow, or divorced or deserted by your husband;

and the payment is covered by subsection (2).

(2) The payment must be made in circumstances that are a prescribed case under:

(a) Table A in Schedule 3 to the *Repatriation Act 1920*; or

(b) that Table as applying because of the *Repatriation (Far East Strategic Reserve) Act 1956*; or

(c) that Table as applying because of the *Repatriation (Special Overseas Service) Act 1962*; or

(d) that Table as applying because of the *Interim Forces Benefits Act 1947*;

as in force because of subsection 4(6) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*.

(3) The ***supplementary amount*** is the total of:

(a) so much of the payment as is included by way of rental assistance; and

(b) so much of the payment as is included by way of an additional amount for each of your dependent *children; and

(c) so much of the payment as is included by way of remote area allowance.

(4) ***Member of the Forces*** has the same meaning as in the Act referred to in the relevant paragraph of subsection (2).

(5) Expressions (except ***pension age***) used in this Subdivision that are also used in the *Veterans' Entitlements Act 1986* have the same meaning as in that Act.

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



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Note: ***Pension age*** has the meaning given by subsection 23(1) of the *Social Security Act 1991*: see subsection 995-1(1).

### 52-110 Other exempt payments

Payments (except those covered by section 52-105) made because of subsection 4(6) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* are exempt from income tax.

## Subdivision 52-CA—Exempt payments under the Military Rehabilitation and Compensation Act 2004

## Guide to Subdivision 52-CA

### 52-112 What this Subdivision is about

This Subdivision tells you:

(a) the payments under the *Military Rehabilitation and Compensation Act 2004* that are wholly or partly exempt from income tax; and

(b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and

(c) how to work out how much of a payment is exempt.

## Table of sections

**Operative provisions**

52-114 How much of a payment under the Military Rehabilitation and Compensation Act is exempt?

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



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## Operative provisions

### 52-114 How much of a payment under the Military Rehabilitation and Compensation Act is exempt?

(1) The table in this section tells you about the income tax treatment of payments under the *Military Rehabilitation and Compensation Act 2004*. References in the table to provisions are to provisions of that Act.

(2) Expressions used in this Subdivision that are also used in the *Military Rehabilitation and Compensation Act 2004* have the same meanings as in that Act.

(3) ***Ordinary payment*** means a payment other than a payment made because of a person's death.

**Income tax treatment of Military Rehabilitation and Compensation Act payments**

| Item | Category of payment and provision under which it is paid | Ordinary payment | Payment because of a person's death |
|---|---|---|---|
| 1 | Alterations to aids and appliances relating to rehabilitation (section 57) | Exempt | Not applicable |
| 2 | Compensation for journey and accommodation costs (sections 47, 290, 291 and 297 and subsection 328(4)) | Exempt | Not applicable |
| 3 | Compensation for permanent impairment (sections 68, 71, 75 and 80) | Exempt | Exempt |
| 4 | Compensation for financial advice or legal advice (sections 81, 205 and 239) | Exempt | Not applicable |

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



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**Income tax treatment of Military Rehabilitation and Compensation Act payments**

| Item | Category of payment and provision under which it is paid | Ordinary payment | Payment because of a person's death |
|---|---|---|---|
| 5 | Compensation for incapacity for Permanent Forces member or continuous full-time Reservist (section 85) | See section 51-32 | Exempt |
| 6 | Compensation for incapacity for part-time Reservists (section 86) | See section 51-33 | Exempt |
| 7 | Compensation by way of Special Rate Disability Pension (section 200) | Exempt | Not applicable |
| 8 | Compensation under the Motor Vehicle Compensation Scheme (section 212) | Exempt | Not applicable |
| 9 | Compensation for household services and attendant care services (sections 214 and 217) | Exempt | Not applicable |
| 10 | MRCA supplement (sections 221, 245 and 300) | Exempt | Not applicable |
| 11 | Compensation for loss or damage to medical aids (section 226) | Exempt | Not applicable |
| 12 | Compensation for a wholly dependent partner for a member's death (section 233) | Not applicable | Exempt |

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



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**Income tax treatment of Military Rehabilitation and Compensation Act payments**

| Item | Category of payment and provision under which it is paid | Ordinary payment | Payment because of a person's death |
|---|---|---|---|
| 13 | Continuing permanent impairment and incapacity etc. compensation for a wholly dependent partner (subparagraphs 242(1)(a)(i) and (iii)) | Not applicable | Exempt |
| 14 | Compensation for eligible young persons who were dependent on deceased member (section 253) | Not applicable | Exempt |
| 15 | Continuing permanent impairment and incapacity etc. compensation for eligible young persons (subparagraphs 255(1)(c)(i) and (iii)) | Not applicable | Exempt |
| 16 | Education and training, or a payment, under the education scheme for certain eligible young persons (section 258) | Exempt if:<br>(a) provided for or made to a person under 16; or<br>(b) a clean energy payment | Exempt |
| 17 | Compensation for other persons who were dependent on deceased member (section 262) | Not applicable | Exempt |

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



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| **Income tax treatment of Military Rehabilitation and Compensation Act payments** | | | |
|---|---|---|---|
| **Item** | **Category of payment and provision under which it is paid** | **Ordinary payment** | **Payment because of a person's death** |
| 18 | Compensation for cost of a funeral (section 266) | Not applicable | Exempt |
| 19 | Compensation for treatment costs (sections 288A, 288B and 288C) | Exempt | Not applicable |
| 21 | Special assistance (section 424) | Exempt | Exempt |
| 22 | Clean energy payment (sections 83A, 209A and 238A) | Exempt | Not applicable |

Note: The supplementary amount of a payment covered by item 16 of the table made to a person aged 16 or over is also exempt from income tax (see section 52-140).

## Subdivision 52-CB—Exempt payments under the Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006

### 52-117 Payments of travelling expenses and pharmaceutical supplement are exempt

(1) A payment made to you under Part 3 (travelling expenses) of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006* is exempt from income tax.

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



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(2) A payment of pharmaceutical supplement made to you under Part 3A of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006* is exempt from income tax.

## Subdivision 52-CC—Exempt payments under the Treatment Benefits (Special Access) Act 2019

### 52-120 Payments of travelling expenses and pharmaceutical supplement are exempt

(1) A payment made to you under Part 3 (travelling expenses) of the *Treatment Benefits (Special Access) Act 2019* is exempt from income tax.

(2) A payment of pharmaceutical supplement made to you under Part 4 of the *Treatment Benefits (Special Access) Act 2019* is exempt from income tax.

## Subdivision 52-E—Exempt payments under the ABSTUDY scheme

## Guide to Subdivision 52-E

### 52-130 What this Subdivision is about

This Subdivision tells you:

(a) the payments under the ABSTUDY scheme that are wholly or partly exempt from income tax; and

(b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and

(c) how to work out how much of a payment is exempt.

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



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## Table of sections

**Operative provisions**

52-131 Payments under ABSTUDY scheme
52-132 Supplementary amounts of payments
52-133 Tax-free amount of ordinary payment on death of partner if no bereavement payment payable
52-134 Tax-free amount if you receive a bereavement lump sum payment

# Operative provisions

## 52-131 Payments under ABSTUDY scheme

(1) This section tells you about the income tax treatment of a payment under the ABSTUDY scheme made in respect of a period commencing at a time when you were at least 16 years old.

Note: The whole of a payment made under the ABSTUDY scheme in respect of a period commencing at a time when you are under 16 years old may be exempt under section 51-10.

(2) The following payments made to you under the ABSTUDY scheme are exempt from income tax:

(a) a crisis payment;
(b) a clean energy payment;
(c) a first 2020 economic support payment;
(d) a second 2020 economic support payment;
(e) a 2022 cost of living payment.

(3) If:

(a) an *ordinary payment becomes due to you; and
(b) the payment is not covered by subsection (4) or (6);

the *supplementary amount of the ordinary payment is exempt from income tax.

Note: To work out the supplementary amount of the ordinary payment, see section 52-132.

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



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(4) If:

(a) your partner dies; and

(b) you do not qualify for a payment under the ABSTUDY scheme in respect of that death; and

(c) an *ordinary payment becomes due to you during the bereavement period;

the *supplementary amount and the *tax-free amount of the ordinary payment are exempt from income tax.

Note 1: To work out the supplementary amount of the ordinary payment, see section 52-132.

Note 2: To work out the tax-free amount of the ordinary payment, see section 52-133.

(5) If a payment becomes due to you under the ABSTUDY scheme because of a person's death (except a lump sum payment because of your partner's death), the payment is exempt from income tax.

(6) If:

(a) your partner dies; and

(b) a lump sum payment under the ABSTUDY scheme becomes due to you because of your partner's death;

the total of the following are exempt from income tax up to the *tax free amount:

(c) the lump sum payment; and

(d) all other payments that become due to you under the ABSTUDY scheme during the bereavement lump sum period.

Note: To work out the tax-free amount, see section 52-134.

(7) ***ABSTUDY scheme*** means the scheme known as ABSTUDY.

(8) ***Ordinary payment*** means a payment under the ABSTUDY scheme, other than:

(a) a crisis payment; or

(aa) a clean energy payment; or

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



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(ab) a first 2020 economic support payment; or
(ac) a second 2020 economic support payment; or
(ad) a 2022 cost of living payment; or
(b) a payment made because of a person's death.

(9) The following expressions used in this Subdivision have the same meaning as in the ABSTUDY Policy Manual:
(a) bereavement lump sum period;
(b) bereavement period;
(c) illness separated couple;
(d) lump sum payment;
(e) partner;
(f) pension age;
(g) respite care couple.

Note: In 2009, the ABSTUDY Policy Manual was accessible through the website of the Department administered by the Student Assistance Minister.

## 52-132 Supplementary amount of payment

The *supplementary amount of a payment is the total of:
(a) so much of the payment as is included to assist you with, or to reimburse you for, the costs of any one or more of the following:
(i) rent;
(ii) living in a remote area;
(iii) commencing employment;
(iv) travel to, or participation in, courses, interviews, education or training;
(v) a child or children wholly or substantially dependent on you;
(vi) telephone bills;
(vii) living away from your usual residence;

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



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(viii) maintaining your usual residence while living away from that residence;

(ix) accommodation, books or equipment;

(xi) discharging a compulsory repayment amount (within the meaning of the *Higher Education Support Act 2003*);

(xia) discharging a compulsory VETSL repayment amount (within the meaning of the *VET Student Loans Act 2016*);

(xii) transport in travelling to undertake education or training, or to visit your usual residence when undertaking education or training away from that residence;

(xiii) if you are disabled—acquiring any special equipment, services or transport as a result of the disability;

(xiv) anything that would otherwise prevent you from beginning, continuing or completing any education or training; and

(b) so much of the payment as is included by way of pharmaceutical allowance; and

(c) so much of the payment as is included by way of energy supplement.

## 52-133 Tax-free amount of ordinary payment on death of partner if no bereavement payment payable

This is how to work out the ***tax-free amount*** of an *ordinary payment for the purposes of subsection 52-131(4):

*Method statement*

Step 1. Work out the *supplementary amount of the payment.

Note: The supplementary amount is also exempt and is worked out under section 52-132.

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



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| | |
|---|---|
| Step 2. | Subtract the *supplementary amount from the amount of the payment. |
| Step 3. | Work out what would have been the amount of the payment if your partner had not died. |
| Step 4. | Work out what would have been the *supplementary amount of the payment if your partner had not died. |
| Step 5. | Subtract the amount at Step 4 from the amount at Step 3. |
| Step 6. | Subtract the amount at Step 5 from the amount at Step 2: the result is the ***tax-free amount***. |

## 52-134 Tax-free amount if you receive a bereavement lump sum payment

This is how to work out the ***tax-free amount*** for the purposes of subsection 52-131(6):

*Method statement*

Step 1. Work out the payments under the ABSTUDY scheme that would have become due to you during the bereavement lump sum period if:

(a) your partner had not died; and

(b) your partner had been under pension age; and

(c) immediately before your partner died, you and your partner had been neither an illness separated couple nor a respite care couple.

Step 2. Work out how much of those payments would have been exempt in those circumstances.

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



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| | |
|---|---|
| Step 3. | Work out the payments under the ABSTUDY scheme or the *Social Security Act 1991* that would have become due to your partner during the bereavement lump sum period if your partner had not died, even if the payments would not have been exempt. |
| Step 4. | Total the payments worked out at Steps 2 and 3: the result is the ***tax-free amount***. |

## Subdivision 52-F—Exemption of Commonwealth education or training payments

### Table of sections

52-140 Supplementary amount of a Commonwealth education or training payment is exempt
52-145 Meaning of Commonwealth education or training payment

### 52-140 Supplementary amount of a Commonwealth education or training payment is exempt

(1) This section tells you about the income tax treatment of a *Commonwealth education or training payment (other than a payment to or on behalf of a student under the scheme known as ABSTUDY).

Note: The income tax treatment of payments under the scheme known as ABSTUDY is dealt with in Subdivision 52-E.

(2) The *supplementary amount of the payment is exempt from income tax.

(3) The ***supplementary amount*** is the total of:

(a) so much of the payment as is included to assist you with, or to reimburse you for, the costs of any one or more of the following:

(i) rent;

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



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(ii) living in a remote area;
(iii) commencing employment;
(iv) travel to, or participation in, courses, interviews, education or training;
(v) a child or children wholly or substantially dependent on you;
(vi) telephone bills;
(vii) living away from your usual residence;
(viii) maintaining your usual residence while living away from that residence;
(ix) accommodation, books or equipment;
(xa) discharging a compulsory repayment amount (within the meaning of the *Higher Education Support Act 2003*);
(xb) discharging a compulsory VETSL repayment amount (within the meaning of the *VET Student Loans Act 2016*);
(xi) transport in travelling to undertake education or training, or to visit your usual residence when undertaking education or training away from that residence;
(xii) if you are disabled—acquiring any special equipment, services or transport as a result of the disability;
(xiii) anything that would otherwise prevent you from beginning, continuing or completing any education or training; and

(b) so much of the payment as is included by way of pharmaceutical allowance; and
(c) so much of the payment as is included by way of energy supplement.

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



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## 52-145 Meaning of Commonwealth education or training payment

(1) A ***Commonwealth education or training payment*** is a payment by the Commonwealth, or in connection with a payment by the Commonwealth, of an allowance or reimbursement:

(a) to or on behalf of a participant in a *Commonwealth labour market program; or

(b) to or on behalf of a student under:

(i) the scheme known as ABSTUDY; or

(ii) the scheme known as the Assistance for Isolated Children Scheme; or

(iii) the scheme known as the Veterans' Children Education Scheme; or

(iiia) the scheme under section 258 of the *Military Rehabilitation and Compensation Act 2004* to provide education and training; or

(iv) the scheme known as youth allowance; or

(v) the scheme known as austudy payment;

in respect of a period commencing at a time when the student was at least 16 years old.

(2) A ***Commonwealth labour market program*** is a program administered by the Commonwealth under which:

(a) unemployed persons are given training in skills to improve their employment prospects; or

(b) unemployed persons are assisted in obtaining employment or to become self-employed; or

(c) employed persons are given training in skills and other assistance to aid them in continuing to be employed by their current employer or in obtaining other employment.

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



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## Subdivision 52-G—Exempt payments under the A New Tax System (Family Assistance) (Administration) Act 1999

### 52-150 Family assistance payments are exempt

A payment of child care subsidy, additional child care subsidy, family tax benefit, stillborn baby payment, economic security strategy payment to families, back to school bonus, single income family bonus, clean energy advance, single income family supplement, ETR payment, first 2020 economic support payment, second 2020 economic support payment, additional economic support payment 2020 or additional economic support payment 2021 made to you under the *A New Tax System (Family Assistance) (Administration) Act 1999* is exempt from income tax.

## Subdivision 52-H—Other exempt payments

### 52-160 Economic security strategy payments are exempt

Payments under the scheme determined under Schedule 4 to the *Social Security and Other Legislation Amendment (Economic Security Strategy) Act 2008* are exempt from income tax.

### 52-162 ETR payments are exempt

Payments under the scheme determined under Part 2 of Schedule 1 to the *Family Assistance and Other Legislation Amendment (Schoolkids Bonus Budget Measures) Act 2012* are exempt from income tax.

### 52-165 Household stimulus payments are exempt

Payments under the scheme determined under Schedule 4 to the *Household Stimulus Package Act (No. 2) 2009* are exempt from income tax.

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



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### 52-170 Outer Regional and Remote payments under the Helping Children with Autism package are exempt

Payments known as Outer Regional and Remote payments under the Helping Children with Autism package are exempt from income tax.

### 52-172 Outer Regional and Remote payments under the Better Start for Children with Disability initiative are exempt

Payments known as Outer Regional and Remote payments under the Better Start for Children with Disability initiative are exempt from income tax.

### 52-175 Continence aids payments are exempt

Payments under the scheme known as the Continence Aids Payment Scheme are exempt from income tax.

### 52-180 National Disability Insurance Scheme amounts are exempt

An *NDIS amount *derived by a participant (within the meaning of the *National Disability Insurance Scheme Act 2013*) is exempt from income tax.

### 52-185 Acute support packages are exempt

Payments under an instrument made under any of the following are exempt from income tax:

(a) section 268B of the *Military Rehabilitation and Compensation Act 2004*;

(b) section 41B of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*;

(c) section 115S of the *Veterans' Entitlements Act 1986*.

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



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# Division 53—Various exempt payments

## Guide to Division 53

### 53-1 What this Division is about

This Division tells you:

(a) about various payments that are wholly or partly exempt from income tax; and

(b) any special conditions that apply to a payment in order for it to be exempt; and

(c) how to work out how much of a payment is exempt.

### Table of sections

**Operative provisions**

53-10 Exemption of various types of payments
53-20 Exemption of similar Australian and United Kingdom veterans' payments
53-25 Coronavirus economic response payment
53-30 Territories Stolen Generations Redress Scheme payments are exempt

## Operative provisions

### 53-10 Exemption of various types of payments

This table tells you about the income tax treatment of various types of payments.

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



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**Exemption of various payments**

| Item | This type of payment: | ... made under: | ... is exempt subject to these exceptions and special conditions: |
|---|---|---|---|
| 1 | **Carer adjustment payment** | The power of the Commonwealth to make ex-gratia payments | None |
| 2 | **Disability services payment** | Part III of the *Disability Services Act 1986* | None |
| 4C | **Tobacco industry exit grant** | The program known as the Tobacco Growers Adjustment Assistance Programme 2006 | As a condition of receiving the grant, you entered into an undertaking not to become the owner or operator of any agricultural *enterprise within 5 years after receiving the grant |
| 5 | Wounds and disability pension | Not applicable | The payment must be:<br>(a) of a kind specified in section 641 of the Income Tax (Earnings and Pensions) Act 2003 of the United Kingdom; and<br>(b) similar in nature to payments that are exempt under Division 52 or this Division |

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



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## 53-20 Exemption of similar Australian and United Kingdom veterans' payments

The following payments made by the Government of Australia, or the Government of the United Kingdom, are exempt from income tax:

(a) payments similar to payments under the *Veterans' Entitlements Act 1986* that are exempt under Subdivision 52-B;

(b) payments similar to payments that are made because of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* and are exempt under Subdivision 52-C.

## 53-25 Coronavirus economic response payment

A payment is exempt from income tax if:

(a) the payment is paid in accordance with rules made under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*; and

(b) those rules state that the payment is exempt from income tax.

## 53-30 Territories Stolen Generations Redress Scheme payments are exempt

Payments under the scheme known as the Territories Stolen Generations Redress Scheme are exempt from income tax.

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



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# Division 54—Exemption for certain payments made under structured settlements and structured orders

## Table of Subdivisions

Guide to Division 54
54-A Definitions
54-B Tax exemption for personal injury annuities
54-C Tax exemption for personal injury lump sums
54-D Miscellaneous

## Guide to Division 54

### 54-1 What this Division is about

Certain annuities and lump sums provided under structured settlements and structured orders are exempt from income tax. This Division tells you what a structured settlement is and what a structured order is, and when such an annuity or lump sum is exempt.

## Subdivision 54-A—Definitions

## Table of sections

**Operative provisions**

54-5 Definitions
54-10 Meaning of ***structured settlement*** and ***structured order***

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



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## Operative provisions

### 54-5 Definitions

In this Division:

***date of the settlement or order***:

(a) for a *structured settlement, means:

(i) the date on which the agreement that is the structured settlement was entered into; or

(ii) if that agreement depends, for its effectiveness, on being approved (however described) by an order of a court, or on being embodied in a consent order made by a court, the date on which that order was made; and

(b) for a *structured order, means the date on which the order was made.

***personal injury annuity*** means an *annuity:

(a) that is purchased under the terms of a *structured settlement as mentioned in paragraph 54-10(1)(e); or

(b) that is purchased under the terms of a *structured order as mentioned in paragraph 54-10(1A)(e).

***personal injury lump sum*** means a lump sum:

(a) that is purchased under the terms of a *structured settlement as mentioned in paragraph 54-10(1)(e); or

(b) that is purchased under the terms of a *structured order as mentioned in paragraph 54-10(1A)(e).

### 54-10 Meaning of *structured settlement* and *structured order*

(1) A ***structured settlement*** is a settlement of a claim that satisfies the following conditions:

(a) the claim:

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



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(i) is for compensation or damages for, or in respect of, personal injury suffered by a person (the ***injured person***); and

(ii) is made by the injured person or by his or her *legal personal representative;

(b) the claim is based on the commission of a wrong, or on a right created by statute;

(c) the claim is made against a person (the ***defendant***) and satisfies the following conditions:

(i) the claim is not made against the defendant in his or her capacity as an employer, or *associate of an employer, of the injured person;

(ii) the claim is not made under a *workers' compensation law, and is not made as an alternative to a claim under such a law;

(d) the settlement takes the form of a written agreement between the parties to the claim (whether or not that agreement is approved by an order of a court, or is embodied in a consent order made by a court);

(e) under the terms of the settlement, some or all of the compensation or damages is to be used by the defendant (or by a person with whom the defendant has insurance against the liability to which the claim relates) to purchase from one or more *life insurance companies or *State insurers:

(i) an *annuity or annuities to be paid to the injured person, or to a trustee for the benefit of the injured person; or

(ii) such an annuity or annuities, together with one or more lump sums that are also to be paid to the injured person, or to a trustee for the benefit of the injured person.

(1A) A ***structured order*** is an order of a court that satisfies the following conditions:

(a) the order is made in respect of a claim that:

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



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(i) is for compensation or damages for, or in respect of, personal injury suffered by a person (the ***injured person***); and

(ii) is made by the injured person or by his or her *legal personal representative;

(b) the order is not an order approving or endorsing an agreement as mentioned in paragraph (1)(d);

(c) the claim is based on the commission of a wrong, or on a right created by statute;

(d) the claim is made against a person (the ***defendant***) and satisfies the following conditions:

(i) the claim is not made against the defendant in his or her capacity as an *employer, or *associate of an employer, of the injured person;

(ii) the claim is not made under a *workers' compensation law, and is not made as an alternative to a claim under such a law;

(e) under the terms of the order, some or all of the compensation or damages is to be used by the defendant (or by a person with whom the defendant has insurance against the liability to which the claim relates) to purchase from one or more *life insurance companies or *State insurers:

(i) an *annuity or annuities to be paid to the injured person, or to a trustee for the benefit of the injured person; or

(ii) such an annuity or annuities, together with one or more lump sums that are also to be paid to the injured person, or to a trustee for the benefit of the injured person.

(3) If a claim is both:

(a) for compensation or damages for personal injury suffered by a person; and

(b) for some other remedy (for example, compensation or damages for loss of, or damage to, property);

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



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this section applies to the claim, but only to the extent that it relates to the compensation or damages referred to in paragraph (a), and only to annuities or lump sums that, in the settlement agreement, or in the order, are identified as being solely in payment of that compensation or those damages.

## Subdivision 54-B—Tax exemption for personal injury annuities

### Table of sections

**Operative provisions**

54-15 Personal injury annuity exemption for injured person
54-20 Lump sum compensation etc. would not have been assessable
54-25 Requirements of the annuity instrument
54-30 Requirements for payments of the annuity
54-35 Payments during the guarantee period on the death of the injured person
54-40 Requirement for minimum monthly level of support

## Operative provisions

### 54-15 Personal injury annuity exemption for injured person

A payment of a *personal injury annuity that is made to the *injured person is exempt from income tax if the conditions in this Subdivision are satisfied.

Note: Section 54-70 provides a tax exemption if the payment is instead made to the trustee of a trust.

### 54-20 Lump sum compensation etc. would not have been assessable

If the compensation or damages that were used to purchase the *annuity had instead been paid to the *injured person in a single lump sum on the *date of the settlement or order, the compensation or damages would not have been assessable income.

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



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Note: Paragraph 118-37(1)(b) disregards a capital gain or capital loss that arises from compensation or damages the injured person receives for any wrong he or she suffers personally.

## 54-25 Requirements of the annuity instrument

The *annuity instrument must:

(a) identify the *structured settlement or *structured order under which the *annuity is provided; and

(b) only allow for payments of the annuity to be made to:

(i) the injured person; or

(ii) a trustee of a trust of which the injured person is the beneficiary; or

(iii) a reversionary beneficiary, or the injured person's estate, in accordance with section 54-35; and

(c) contain a statement to the effect that the annuity cannot be assigned, and cannot be commuted except as mentioned in section 54-35.

Note: Division 2A of Part 10 of the *Life Insurance Act 1995* makes a purported assignment or commutation that is contrary to paragraph (c) ineffective.

## 54-30 Requirements for payments of the annuity

(1) The *annuity instrument must provide that payments of the *annuity are to be made at least annually:

(a) over a period of at least 10 years during the life of the *injured person; or

(b) for the life of the injured person.

(2) The *annuity instrument must specify:

(a) the date of the first payment of the *annuity; and

(b) if the annuity instrument specifies a period of years—the date of the last payment in that period; and

(c) the amount of each periodic payment of the annuity.

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



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(3) The *annuity instrument may only allow the amount of a payment to be varied by increasing the amount:

(a) in order to maintain its real value:

(i) by indexation by reference to increases in the *All Groups Consumer Price Index number; or

(ii) by indexation by reference to increases in the full-time adult average weekly ordinary time earnings, published by the Australian Statistician; or

(b) by a percentage specified in the annuity instrument.

(4) The *annuity instrument may only allow the amount of a particular payment to be varied:

(a) by only one of the methods referred to in subsection (3); or

(b) by whichever of 2 or more of those methods would result in the biggest or smallest increase.

(5) A reference in this section to specifying a date or percentage requires an actual date or figure to be specified, not merely a method of determining a date or figure.

Example: Under subsection (2), "13 September 2002" would be allowed, but "The date on which the annuitant finishes university" would not be allowed.

## 54-35 Payments during the guarantee period on the death of the injured person

(1) This section applies if the *annuity instrument provides for payments to be made to the *injured person during any part of the period ending 10 years after the *date of the settlement or order (whether the *annuity is expressed to be for the life of the person or for a period of years).

(2) The *annuity instrument may specify a period (the ***guarantee period***) of up to 10 years after the *date of the settlement or order, during which, if the *injured person dies, the payments (the ***remaining payments***) for the remainder of the guarantee period

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



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that would have been paid to the injured person are to be paid instead to:

(a) the injured person's estate; or

(b) a reversionary beneficiary.

Note: For tax exemptions in this situation, see sections 54-65 and 54-70.

(3) If the *annuity instrument provides for the remaining payments to be made to a reversionary beneficiary, the instrument must:

(a) name the beneficiary; and

(b) allow the beneficiary to choose either:

(i) to be paid the amounts of the remaining payments when the injured person would have received them; or

(ii) to commute those payments into a lump sum worked out under subsection (5).

(4) The *injured person's estate may only be paid the lump sum worked out under subsection (5) (and not the periodic payments).

(5) The amount of the lump sum under subparagraph (3)(b)(ii) or subsection (4) is the *policy termination value of the *life insurance policy that is the *annuity instrument, as calculated by an *actuary as at the date of the injured person's death. In making this calculation, the following are to be disregarded:

(a) any payments of the annuity due to be made after the end of the guarantee period;

(b) any *structured settlement lump sums that are also provided for by that policy.

(6) In this section:

***pay to a person*** includes pay to the trustee of a trust of which the person is the beneficiary.

***pay to the injured person's estate*** includes pay to the trustee of a trust established by the *injured person's will.

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



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Section 54-40

## 54-40 Requirement for minimum monthly level of support

(1) Either:

(a) the *annuity instrument must provide; or

(b) if there is more than one *annuity provided under the *structured settlement or *structured order—the annuity instruments for all of those annuities that satisfy the other conditions in this Subdivision, taken as a whole, must provide;

that at least once a month for the life of the *injured person, he or she is to be paid an amount that equals or exceeds the minimum monthly level of support.

(2) The ***minimum monthly level of support*** means:

(a) for the year starting on the *date of the settlement or order—one twelfth of the amount that is, on that date, the sum of:

(i) the maximum basic rate of age pension payable to a person in accordance with item 1 of Table B in point 1064-B1 of Pension Rate Calculator A in section 1064 of the *Social Security Act 1991*; and

(ii) the amount of a person's pension supplement, worked out (using that maximum basic rate) in accordance with Module BA of that Pension Rate Calculator; and

(b) for any subsequent year starting on an anniversary of the date of the settlement or order:

(i) if the indexation factor for the year (see subsection (3)) is greater than 1—the amount worked out under subsection (4); or

(ii) otherwise—the minimum monthly level of support for the previous year.

Note: In working out the rate and amount that count for the purposes of paragraph (a), the effect of the indexation provisions in sections 1191 to 1195 of the *Social Security Act 1991* must be taken into account. The indexed figures are available from the Department administered

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



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by the Minister administering the *Human Services (Centrelink) Act 1997*.

(3) The ***indexation factor*** for a year is to be worked out on the anniversary of the *date of the settlement or order in accordance with the formula:

$$\frac{\text{Most recently published *All Groups Consumer Price Index number for a *quarter}}{\text{*All Groups Consumer Price Index number for the same *quarter in the base year}}$$

where:

***base year*** means:

(a) if there have been one or more previous years for which the indexation factor was greater than 1—the year ending immediately before the most recent year for which the indexation factor was greater than 1; or

(b) otherwise—the year ending immediately before the *date of the settlement or order.

Note: This has effect subject to subsection (6).

(4) If the indexation factor for a year is greater than 1, then the minimum monthly level of support for the year is the amount worked out in accordance with the following formula:

$$\text{Indexation factor for the year} \times \text{Minimum monthly level of support for the previous year}$$

(5) The results under subsections (3) and (4) must be rounded to 3 decimal places (rounding up if the fourth decimal place is 5 or more).

(6) The indexation factor for a year must be worked out by reference to figures for the same *quarter (for example, the March quarter) as has been used in previous years, even if, on the anniversary of the *date of the settlement or order, the *All Groups Consumer Price

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



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Index number for that quarter has not yet been published. If this happens, the calculation must be made as soon as practicable after the number for that quarter is published.

(7) In this section:

***pay to a person*** includes pay to the trustee of a trust of which the person is the beneficiary.

## Subdivision 54-C—Tax exemption for personal injury lump sums

### Table of sections

**Operative provisions**

54-45 Personal injury lump sum exemption for injured person
54-50 Lump sum compensation would not have been assessable
54-55 Requirements of the instrument under which the lump sum is paid
54-60 Requirements for payments of the lump sum

## Operative provisions

### 54-45 Personal injury lump sum exemption for injured person

A payment of a *personal injury lump sum that is made to the *injured person is exempt from income tax if:

(a) there is at least one *personal injury annuity (provided under the same *structured settlement or *structured order) that satisfies the conditions in Subdivision 54-B; and

(b) the other conditions in this Subdivision are satisfied.

Note: Section 54-70 provides a tax exemption if the payment is instead made to the trustee of a trust.

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



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## 54-50 Lump sum compensation would not have been assessable

If the compensation or damages that were used to purchase the *personal injury lump sum had instead been paid to the *injured person on the *date of the settlement or order, the compensation or damages would not have been assessable income.

Note: Paragraph 118-37(1)(b) disregards a capital gain or capital loss that arises from compensation or damages the injured person receives for any wrong he or she suffers personally.

## 54-55 Requirements of the instrument under which the lump sum is paid

The instrument under which the *personal injury lump sum is paid must:

(a) identify the *structured settlement or *structured order under which the lump sum is provided; and

(b) only allow for the payment of the lump sum to be made to:

(i) the *injured person; or

(ii) a trustee of a trust of which the injured person is the beneficiary; and

(c) contain a statement to the effect that the right to receive the lump sum cannot be assigned, and cannot be commuted or otherwise cashed-out early.

Note: Division 2A of Part 10 of the *Life Insurance Act 1995* makes a purported assignment or commutation (or cashing-out) that is contrary to paragraph (c) ineffective.

## 54-60 Requirements for payments of the lump sum

(1) The instrument under which the *personal injury lump sum is paid must specify the date and amount of the payment of the lump sum.

(2) The instrument may only allow the amount of the payment to be varied by increasing the amount:

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



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(a) in order to maintain its real value:
(i) by indexation by reference to increases in the *All Groups Consumer Price Index number; or
(ii) by indexation by reference to increases in the full-time adult average weekly ordinary time earnings, published by the Australian Statistician; or
(b) by a percentage specified in the instrument.

(3) The instrument may only allow the amount of the payment to be varied:
(a) by only one of the methods referred to in subsection (2); or
(b) by whichever of 2 or more of those methods would result in the biggest or smallest increase.

(4) A reference in this section to specifying a date or percentage requires an actual date or figure to be specified, not merely a method of determining a date or figure.

Example: Under subsection (1), "13 September 2002" would be allowed, but "The date on which the annuitant finishes university" would not be allowed.

## Subdivision 54-D—Miscellaneous

### Table of sections

**Operative provisions**

54-65 Exemption for certain payments to reversionary beneficiaries
54-70 Special provisions about trusts
54-75 Minister to arrange for review and report

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



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## Operative provisions

### 54-65 Exemption for certain payments to reversionary beneficiaries

A payment that is made to the reversionary beneficiary of a *personal injury annuity for which there is a *guarantee period is exempt from income tax if:

(a) the payment is a periodic or lump sum payment made in accordance with subsection 54-35(3); and

(b) either:

(i) if subparagraph 54-35(3)(b)(i) applies—the payment; or

(ii) if subparagraph 54-35(3)(b)(ii) applies—each of the payments taken into account in working out the amount of the lump sum under subsection 54-35(5);

would be exempt from income tax under this Division if the *injured person were still alive and the payment, or each of the payments, were instead made to the injured person.

### 54-70 Special provisions about trusts

(1) A payment of a *personal injury annuity or a *personal injury lump sum to the trustee of a trust is exempt from income tax for the trustee if:

(a) the beneficiary of the trust is the *injured person; and

(b) because of Subdivision 54-B or 54-C, the payment would have been exempt from income tax if it had been made directly to the beneficiary.

(2) A payment made in accordance with paragraph 54-35(3)(b) to the trustee of a trust is exempt from income tax for the trustee if:

(a) the beneficiary of the trust is the reversionary beneficiary; and

(b) because of section 54-65, the payment would have been exempt from income tax if it had been made directly to the beneficiary.

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(3) A payment of a lump sum in accordance with subsection 54-35(4) to the trustee of a trust is exempt from income tax for the trustee.

(4) If a payment is exempt from income tax for a trustee because of this section, the payment is also exempt from income tax for a beneficiary, or the beneficiary, of the trust, even if the trustee:
  (a) pays all or part of the payment to the beneficiary; or
  (b) applies all or part of the payment for the benefit of the beneficiary.

## 54-75 Minister to arrange for review and report

(1) The Minister must cause a person to review, and to report to the Minister in writing about, the operation of the following provisions (the ***structured settlements and orders provisions***):
  (a) the other provisions of this Division;
  (b) Division 2A of Part 10 of the *Life Insurance Act 1995*.

(2) The person must be someone who, in the Minister's opinion, is suitably qualified and appropriate to conduct the review.

(3) The review and report must relate to the period beginning when this Division commences and ending after 4 years and 6 months.

(4) The person must give the report to the Minister as soon as practicable, and in any event within 6 months, after the end of that period.

(5) The report may include suggestions for changes to the structured settlements and orders provisions that, in the person's opinion, are needed to overcome, or would help overcome, problems identified during the review and set out in the report.

(6) The person must provide a reasonable opportunity for members of the public to make submissions to him or her about matters to which the review relates.

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



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(7) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

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



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# Division 55—Payments that are not exempt from income tax

## Guide to Division 55

### 55-1 What this Division is about

A variety of payments are not exempt from income tax even though they are similar in nature to payments that are wholly or partly exempt under this Part.

### Table of sections

**Operative provisions**

55-5 Occupational superannuation payments
55-10 Education entry payments

## Operative provisions

### 55-5 Occupational superannuation payments

(1) This Part does not exempt from income tax any amount or pension paid under the following provisions or Acts, or under schemes established under any of them:

(a) *Defence Force Retirement and Death Benefits Act 1973*;
(b) *Defence Forces Retirement Benefits Act 1948*;
(c) *Military Superannuation and Benefits Act 1991*;
(ca) *Australian Defence Force Superannuation Act 2015*;
(cb) *Australian Defence Force Cover Act 2015*;
(d) *Papua New Guinea (Staffing Assistance) Act 1973*;
(e) *Parliamentary Contributory Superannuation Act 1948*;
(f) section 10 of the *Superannuation (Pension Increases) Act 1971*;

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



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(g) section 9 or 14 of the *Superannuation Act (No. 2) 1956*;
(h) subsection 8(1) of the *Superannuation Act 1948*;
(i) *Superannuation Act 1922*;
(j) *Superannuation Act 1976*;
(k) *Superannuation Act 1990*;
(l) *Superannuation Act 2005*.

(2) This section operates despite anything contained in any other provision of this Part.

## 55-10 Education entry payments

This Part does not exempt from income tax an education entry payment under Part 2.13A of the *Social Security Act 1991*.

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



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# Division 58—Capital allowances for depreciating assets previously owned by an exempt entity

## Table of Subdivisions

Guide to Division 58
58-A Application
58-B Calculating decline in value of privatised assets under Division 40

## Guide to Division 58

### 58-1 What this Division is about

This Division sets out special rules that apply in calculating deductions for the decline in value of depreciating assets and balancing adjustments for assets previously owned by an exempt entity if the assets:

- continue to be owned by that entity after the entity becomes taxable; or
- are acquired from that entity, in connection with the acquisition of a business, by a purchaser that is a taxable entity.

There is a choice of 2 methods for each depreciating asset:

- the notional written down value method; and
- the undeducted pre-existing audited book value method.

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



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## Subdivision 58-A—Application

### Table of sections

58-5 Application of Division
58-10 When an asset is acquired in connection with the acquisition of a business

### 58-5 Application of Division

(1) This Division applies in 2 situations.

*Entity sale*

(2) The first (an ***entity sale situation***) is where:

(a) at a particular time on or after 1 July 2001, an entity is an *exempt entity; and

(b) just after that time, the entity's *ordinary income or *statutory income becomes to any extent assessable income.

(3) In an entity sale situation:

(a) the entity is a ***transition entity***; and

(b) the time when the entity's *ordinary income or *statutory income becomes to that extent assessable is the ***transition time***; and

(c) the income year in which the *transition time occurs is the ***transition year*** for the entity; and

(d) the *depreciating assets the *transition entity *held just before the transition time are ***privatised assets***.

*Asset sale*

(4) The second (an ***asset sale situation***) is where:

(a) at a particular time on or after 1 July 2001, an entity (the ***purchaser***) whose *ordinary income or statutory income is to any extent assessable acquires a *depreciating asset from the Commonwealth, a State, a Territory or an *exempt entity; and

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(b) the asset is acquired in connection with the acquisition of a *business from the Commonwealth, the State, the Territory or the exempt entity.

(5) In an asset sale situation:

(a) the Commonwealth, the State, the Territory or the *exempt entity is the ***tax exempt vendor***; and

(b) the time when the *depreciating asset is acquired is the ***acquisition time***; and

(c) the income year in which the *acquisition time occurs is the ***acquisition year***; and

(d) each *depreciating asset the purchaser acquires from the *tax exempt vendor at the acquisition time is a ***privatised asset***.

## 58-10 When an asset is acquired in connection with the acquisition of a business

(1) A *depreciating asset is taken to be acquired in connection with the acquisition of a *business from the Commonwealth, the State, the Territory or the *exempt entity if and only if:

(a) the asset was used by the Commonwealth, the State, the Territory or the exempt entity in carrying on a business and the purchaser or another entity uses the asset in carrying on the business; or

(b) subsection (2) applies.

(2) This subsection applies if:

(a) the asset was used by the Commonwealth, the State, the Territory or the *exempt entity in performing functions, or engaging in activities, that did not constitute the carrying on of a *business by the Commonwealth, the State, the Territory or the exempt entity and the asset is used by the purchaser or another entity in performing those functions or engaging in those activities as part of carrying on a business; or

(b) all of these subparagraphs apply:

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(i) the acquisition by the purchaser of the asset was connected with the acquisition of another asset by the purchaser or another entity from the Commonwealth, the State, the Territory or the exempt entity or from an *associate of the Commonwealth, the State, the Territory or the exempt entity;

(ii) ownership of the other asset gives the purchaser or other entity a right, or imposes on the purchaser or other entity an obligation, to perform functions or engage in activities as part of the carrying on of a business or confers on the purchaser or other entity a commercial advantage or opportunity in connection with performing functions or engaging in activities as part of the carrying on of a business;

(iii) the asset is used by the purchaser or other entity in performing those functions or engaging in those activities under the right or obligation or in taking the benefit of the advantage or opportunity; or

(c) the asset was acquired by the purchaser under an *arrangement under which the purchaser or another entity acquired another asset from the Commonwealth, the State, the Territory or the exempt entity or from an associate of the Commonwealth, the State, the Territory or the exempt entity and:

(i) the other asset is taken by paragraph (1)(a), or by paragraph (a) or (b) of this subsection; or

(ii) where the other asset is not a depreciating asset, it would, if it were a depreciating asset, be taken by paragraph (1)(a), or by paragraph (a) or (b) of this subsection;

to be acquired in connection with the acquisition of a business from the Commonwealth, the State, the Territory or the exempt entity.

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(3) Paragraphs (2)(a), (b) and (c) do not apply if the asset is used by the purchaser solely to *derive assessable income from the provision of office or residential accommodation.

## Subdivision 58-B—Calculating decline in value of privatised assets under Division 40

### Table of sections

58-60 Purpose of rules in this Subdivision
58-65 Choice of method to work out cost of privatised asset
58-70 Application of Division 40
58-75 Meaning of *notional written down value*
58-80 Meaning of *undeducted pre-existing audited book value*
58-85 Pre-existing audited book value of depreciating asset
58-90 Method and effective life for transition entity

### 58-60 Purpose of rules in this Subdivision

This Subdivision sets out rules that affect the way in which the *transition entity or the purchaser work out the decline in value of, and balancing adjustments for, *privatised assets under Division 40 after the *transition time or the *acquisition time.

### 58-65 Choice of method to work out cost of privatised asset

(1) The *transition entity or the purchaser has a choice to work out the first element of the *cost of each *privatised asset.

(2) The choice is to use either:
  (a) the *notional written down value of the asset; or
  (b) the *undeducted pre-existing audited book value (if any) of the asset.

(3) The choice must be made:

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(a) for the *transition entity—by the day on which the transition entity lodges its *income tax return for the *transition year; or

(b) for the purchaser—by the day on which the purchaser lodges the purchaser's income tax return for the *acquisition year;

or within a further period allowed by the Commissioner.

(4) The choice, once made, cannot be changed.

## 58-70 Application of Division 40

*Application of Division 40*

(1) The *transition entity and the purchaser work out the decline in value of, and the effect of a *balancing adjustment event occurring for, each *privatised asset using Division 40 (Capital allowances) as if the asset had been acquired under a contract entered into on or after 1 July 2001.

*Entity sale situation*

(2) Division 40 applies to a *privatised asset *held by the *transition entity as if the asset had not been used, or *installed ready for use, for any purpose before the *transition time.

(3) The first element of the *cost to the *transition entity at the *transition time is the *notional written down value of the asset or the *undeducted pre-existing audited book value of the asset (depending on the choice made for the asset).

(4) No amount incurred before the *transition time is included in the second element of the *cost of a *privatised asset.

*Asset sale situation*

(5) The first element of the *cost of a *privatised asset to the purchaser at the *acquisition time is the sum of:

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(a) the *notional written down value of the asset or the *undeducted pre-existing audited book value of the asset (depending on the choice made for the asset); and

(b) the amount of any incidental costs to the purchaser in acquiring the asset.

## 58-75 Meaning of *notional written down value*

(1) The ***notional written down value*** of a *privatised asset is its *adjustable value in the hands of:

(a) the *transition entity just before the *transition time; or

(b) the *tax exempt vendor just before the *acquisition time;

worked out using the assumptions in this section.

*Application of Division 40*

(2) Assume that Division 40 had always applied to work out the decline in value of the *privatised asset.

*Use for taxable purposes*

(3) Assume that, in applying Division 40 to the *privatised asset, it had always been used by the *transition entity or the *tax exempt vendor wholly for *taxable purposes.

*Cost and acquisition time: exempt Australian government agency*

(4) If the *transition entity or the *tax exempt vendor was an *exempt Australian government agency just before the *transition time and had acquired the *privatised asset from another exempt Australian government agency:

(a) assume that the transition entity or tax exempt vendor acquired it at the time when it was acquired or constructed by the other exempt Australian government agency and that the first element of its *cost to the transition entity or tax exempt

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vendor is the amount that was its cost to the other exempt Australian government agency; or

(b) if it had, before its acquisition by the transition entity or tax exempt vendor, been successively *held by 2 or more exempt Australian government agencies—assume that:

(i) the transition entity or tax exempt vendor acquired it at the time when it was acquired or constructed by the first of those exempt Australian government agencies that owned it; and

(ii) the first element of its cost to the transition entity or tax exempt vendor is the sum of the amount that was the first element of its cost to the first of those exempt Australian government agencies that owned it and any amount included in the second element of its cost for that first agency or a later successive agency.

*Effective life*

(5) Assume that:

(a) the *transition entity or the *tax exempt vendor had chosen to use an *effective life determined by the Commissioner for the *privatised asset as in force at the *transition time or the *acquisition time; and

(b) subsection 40-95(2) did not apply.

(5A) Assume that section 40-102 did not apply to a *privatised asset unless all of the following are satisfied:

(a) it is an entity sale situation within the meaning of section 58-5;

(b) a *capped life applies to the asset under subsection 40-102(4) or (5) at both the asset's *start time and the *transition time;

(c) the *transition entity chooses, for the purposes of this section, to have section 40-102 apply to the asset.

If section 40-102 is to be applied to the asset, disregard paragraphs 40-102(2)(a) and (b) and assume that the relevant time for the

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purposes of the application of that section to the asset were the transition time.

(6) Assume also that section 40-110 (about recalculating effective life) did not apply.

## 58-80 Meaning of *undeducted pre-existing audited book value*

(1) The ***undeducted pre-existing audited book value*** of a *privatised asset is its *adjustable value in the hands of:

(a) the *transition entity just before the *transition time; or

(b) the *tax exempt vendor just before the *acquisition time;

worked out using the assumptions in this section.

*Application of Division 40*

(2) Assume that Division 40 had always applied to work out the decline in value of the *privatised asset.

*Use for taxable purposes*

(3) Assume that, in applying Division 40 to the *privatised asset, it had always been used by the *transition entity or the *tax exempt vendor wholly for *taxable purposes.

*Cost*

(4) Assume that:

(a) the first element of the *privatised asset's *cost to the *transition entity or the *tax exempt vendor is its *pre-existing audited book value as at the latest time (the ***test time***) at which it had a pre-existing audited book value; and

(b) no amount was included in the second element of the asset's cost before the test time; and

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(c) any amount included in the second element of the asset's cost after the test time had been incurred by the transition entity or the tax exempt vendor.

*Acquisition time*

(5) Assume that the *transition entity or the *tax exempt vendor had acquired the *privatised asset at the test time.

*Effective life*

(6) Assume that:
(a) the *transition entity or the *tax exempt vendor had chosen to use an *effective life determined by the Commissioner for the *privatised asset as in force at the *transition time or the *acquisition time; and
(b) subsection 40-95(2) did not apply.

Note: Section 40-102 does not apply to a privatised asset for the purposes of this section.

(7) Assume also that section 40-110 (about recalculating effective life) did not apply.

## 58-85 Pre-existing audited book value of depreciating asset

(1) A *privatised asset has a ***pre-existing audited book value*** if:
(a) a balance sheet, as at the end of an annual accounting period (the ***balance date***), that was prepared as part of the final accounts of the Commonwealth, a State, a Territory or an *exempt entity for that period showed the asset as an asset of the relevant entity and specified a value for it; and
(b) a qualified independent auditor who was engaged, or was required by law, to undertake an audit of those accounts had prepared and signed, before 4 August 1997, a final audit report on those accounts; and

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(c) the report did not state that the auditor was not satisfied that the specified value fairly represented the value of the asset.

The asset is taken to have had a ***pre-existing audited book value*** at the balance date of an amount equal to the specified value.

(2) If a balance sheet did not specify a value for the asset but specified a total value for 2 or more assets including the asset, the balance sheet is taken to have specified as the value of the asset so much of that total value as is reasonably attributable to the asset.

## 58-90 Method and effective life for transition entity

(1) The *transition entity must, in working out the decline in value of a *privatised asset, use the *diminishing value method or the *prime cost method for the asset that it used to work out the *notional written down value, or the *undeducted pre-existing audited book value, of the asset.

(2) In working out the decline in value of a *privatised asset held by a *transition entity:

(a) if section 40-102 applied to the asset for the purposes of subsection 58-75(5A)—section 40-102 applies to the asset and applies as if the relevant time for the asset for the purposes of that section were the *transition time; or

(b) if section 40-102 did not apply to the asset for the purposes of subsection 58-75(5A) or section 58-80—section 40-102 does not apply to the asset.

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



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# Division 59—Particular amounts of non-assessable non-exempt income

## Guide to Division 59

### 59-1 What this Division is about

This Division details particular amounts that are non-assessable non-exempt income.

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## Operative provisions

### 59-10 Compensation under firearms surrender arrangements

A payment made to you by way of compensation under *firearms surrender arrangements for any loss of business is not assessable income and is not *exempt income.

### 59-15 Mining payments

(1) These are not assessable income and are not *exempt income:
  (a) a *mining payment made to a *distributing body;
  (b) a mining payment made to one or more *Indigenous persons, or applied for their benefit.

(2) A payment:
  (a) made to a *distributing body; or
  (b) made to one or more *Indigenous persons, or applied for their benefit;

is not assessable income and is not *exempt income if the payment is made by a *distributing body out of a *mining payment that it has received.

(3) A payment made to a *distributing body by another distributing body, out of a *mining payment received by the other distributing body, is taken to be a mining payment for the purposes of:

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(a) any further applications of subsection (2); and
(b) any further applications of this subsection.

(4) Subsection (2) does not apply to a payment by a *distributing body for the purposes of meeting its administrative costs.

(5) This section does not apply to an amount paid to or applied for the benefit of a person if it is remuneration or consideration for goods or services provided by that person.

### 59-20 Taxable amounts relating to franchise fees windfall tax

Taxable amounts on which tax is imposed by the *Franchise Fees Windfall Tax (Imposition) Act 1997* are not assessable income and are not *exempt income.

### 59-25 Taxable amounts relating to Commonwealth places windfall tax

Taxable amounts on which tax is imposed by the *Commonwealth Places Windfall Tax (Imposition) Act 1998* are not assessable income and are not *exempt income.

### 59-30 Amounts you must repay

(1) An amount you receive is not assessable income and is not *exempt income for an income year if:
(a) you must repay it; and
(b) you repay it in a later income year; and
(c) you cannot deduct the repayment for any income year.

(2) It does not matter if:
(a) you received the amount as part of a larger amount; or
(b) the obligation to repay existed when you received the amount or it came into existence later.

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(3) This section does not apply to an amount you must repay because you received a lump sum as compensation or damages for a wrong or injury you suffered in your occupation.

## 59-35 Amounts that would be mutual receipts but for prohibition on distributions to members or issue of MCIs

An amount of *ordinary income of an entity is not assessable income and not *exempt income if:

(a) the amount would be a mutual receipt, but for:

(i) the entity's constituent document preventing the entity from making any *distribution, whether in money, property or otherwise, to its members; or

(ii) the entity's constituent document providing for the entity to issue MCIs (within the meaning of the *Corporations Act 2001*) or to pay *dividends in respect of MCIs; or

(iii) the entity having issued one or more MCIs (within the meaning of the *Corporations Act 2001*) or having paid dividends in respect of one or more MCIs; and

(b) apart from this section, the amount would be assessable income only because of section 6-5.

## 59-40 Issue of rights

(1) The *market value, as at the time of issue (the ***issue time***), of rights issued to you:

(a) by a company to *acquire *shares in that company; or

(b) by a trustee of a unit trust to acquire units in that trust;

is not assessable income and is not *exempt income as at the issue time if the conditions in subsection (2) are satisfied.

(2) The conditions are as follows:

(a) at the issue time, you must already own *shares in the company or units in the unit trust (the ***original interests***);

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(b) the rights must be issued to you because of your ownership of the original interests;
(c) the original interests and the rights must not be *revenue assets or *trading stock at the issue time;
(d) if you acquired a beneficial interest in the rights under an *employee share scheme—neither Subdivision 83A-B nor 83A-C (about employee share schemes) applies to the beneficial interest;
(e) the original interests and the rights must not be *traditional securities;
(f) the original interests must not be *convertible interests.

## 59-50 Native title benefits

(1) To the extent that a *native title benefit would otherwise be included in your assessable income, it is not assessable income and is not *exempt income if you are an *Indigenous person or an *Indigenous holding entity.

(2) To the extent that an amount, or other benefit, arising directly or indirectly from a *native title benefit would otherwise be included in your assessable income, it is not assessable income and is not *exempt income if you are an *Indigenous person or an *Indigenous holding entity.

(3) Neither subsection (1) nor (2) applies to an amount, or benefit, to the extent that it:
(a) is for the purposes of meeting the provider's administrative costs; or
(b) is remuneration or consideration for the provision of goods or services.

(4) Subsection (2) does not apply to an amount, or benefit, to the extent that it arises directly or indirectly:
(a) from so much of:
(i) the *native title benefit; or

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(ii) an amount, or benefit, arising directly or indirectly from the native title benefit;

as is not *non-assessable non-exempt income of an entity because of this section; or

(b) from an entity investing any or all of:

(i) the native title benefit; or

(ii) an amount, or benefit, arising directly or indirectly from the native title benefit.

(5) A ***native title benefit*** is an amount, or *non-cash benefit, that:

(a) arises under:

(i) an agreement made under an Act of the Commonwealth, a State or a Territory, or under an instrument made under such an Act; or

(ii) an ancillary agreement to such an agreement;

to the extent that the amount or benefit relates to an act that would extinguish *native title or that would otherwise be wholly or partly inconsistent with the continued existence, enjoyment or exercise of native title; or

(b) is compensation determined in accordance with Division 5 of Part 2 of the *Native Title Act 1993*.

Note 1: Agreements that can be covered by paragraph (a) include:

(a) indigenous land use agreements (within the meaning of the *Native Title Act 1993*); and

(b) an agreement of the kind mentioned in paragraph 31(1)(b) of that Act; and

(c) recognition and settlement agreements (within the meaning of the *Traditional Owner Settlement Act 2010* (Vic.)).

Note 2: Paragraph (a) does not require a determination of native title under the *Native Title Act 1993*.

(6) An ***Indigenous holding entity*** is:

(a) a *distributing body; or

(b) a trust, if the beneficiaries of the trust can only be *Indigenous persons or Indigenous holding entities; or

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(c) a *registered charity.

## 59-55 2019-20 bushfires—payments for volunteer work with fire services

(1) A payment to an individual is not assessable income and is not *exempt income if:

(a) the purpose of the payment is to compensate the individual for the loss of income as a result of the individual performing volunteer work with a fire service (however described) of a State or Territory; and

(b) the work is performed during the 2019-20 income year; and

(c) the payment is made by a State or Territory and is covered by an agreement between the Commonwealth and that State or Territory; and

(d) the payment is made on or after 1 January 2020.

(2) However, this section does not apply to:

(a) a payment received in the individual's capacity as an employee or contractor (including a payment of an entitlement to paid leave); or

(b) a workers' compensation payment.

## 59-60 2019-20 bushfires—disaster relief payments and non-cash benefits

(1) A payment made to an entity, or a *non-cash benefit provided to an entity, to the extent it would otherwise be assessable income of the entity, is not assessable income and is not *exempt income if:

(a) the payment has been made or the benefit provided directly as a result of the bushfires commencing in Australia in the 2019-20 financial year; and

(b) the purpose of the payment or benefit is to provide the entity with relief from, or assist the entity in recovering from, the effects of the bushfires; and

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(c) the payment is made, or the benefit is provided, by:
(i) the Commonwealth; or
(ii) a State or Territory; or
(iii) a municipal corporation; or
(iv) a *local governing body.

Note: Payments covered by this subsection would include Disaster Recovery Allowance paid under the *Social Security Act 1991* and payments made under disaster recovery funding arrangements made by or on behalf of the Commonwealth.

(2) A payment made to an entity, or a *non-cash benefit provided to an entity, to the extent it would otherwise be assessable income of the entity, is also not assessable income and is not *exempt income if:
(a) the payment or benefit relates to the bushfires commencing in Australia in the 2019-20 financial year; and
(b) the payment or benefit is of a kind prescribed by the regulations for the purposes of this subsection.

(3) However, this section does not apply to:
(a) a payment or benefit received in an individual's capacity as an employee or contractor (including a payment of an entitlement to paid leave); or
(b) a workers' compensation payment; or
(c) a payment of compensation or damages made to an entity as a result of an order of a court or tribunal or settlement of a claim.

## 59-65 Water infrastructure improvement payments

(1) A *SRWUIP payment, in respect of a *SRWUIP program, to an entity that is a participant in the program is not assessable income and is not *exempt income if:
(a) the entity has made a choice under subsection (2) for the program; and

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



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(b) if the payment is an *indirect SRWUIP payment—the entity *derives the payment because it owns an asset (otherwise than under a *financial arrangement) to which the program relates.

Note: One of the requirements for a SRWUIP payment is for the SRWUIP program to be on the published list of SRWUIP programs for the day the payment is made (see subsection 59-67(5)).

(2) An entity may make a choice for a *SRWUIP program under this subsection if, in an income year:

(a) the entity *derives a *SRWUIP payment in respect of the program but has *not*, in an earlier income year:

(i) derived a SRWUIP payment in respect of the program; or

(ii) incurred *SRWUIP expenditure in respect of the program; or

(b) the entity incurs SRWUIP expenditure in respect of the program but has *not*, in an earlier income year:

(i) derived a SRWUIP payment in respect of the program; or

(ii) incurred SRWUIP expenditure in respect of the program.

Disregard subsection 26-100(3) (about expenditure that is never SRWUIP expenditure) for the purposes of this subsection.

(3) The choice must be:

(a) made in the *approved form; and

(b) made:

(i) unless subparagraph (ii) or (iii) applies—on or before the day the entity lodges its *income tax return for the income year; or

(ii) if the Commissioner makes an assessment of the entity's taxable income for the income year before the entity lodges its income tax return for the income year, and

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subparagraph (iii) does not apply—on or before the day the Commissioner makes that assessment; or

(iii) within such further time as the Commissioner allows.

The choice cannot be revoked.

*Integrity rule*

(4) Subsection (1) does not apply if, at the time the entity *derives the *SRWUIP payment in respect of a *SRWUIP program, it is reasonable to conclude that:

(a) the entity will not incur expenditure at least equal to the payment on works required by the program; and

(b) despite not incurring such expenditure, the entity will comply with the program because an *associate of the entity will incur expenditure on those works; and

(c) the associate has not made, and will not make, a choice under subsection (2) for the program.

## 59-67 Meaning of *SRWUIP program*, *SRWUIP payment*, *direct SRWUIP payment* and *indirect SRWUIP payment*

(1) A ***SRWUIP program*** is a program under the program administered by the Commonwealth known as the Sustainable Rural Water Use and Infrastructure program.

(2) A ***SRWUIP payment***, in respect of a *SRWUIP program, is:

(a) a *direct SRWUIP payment in respect of the program; or

(b) an *indirect SRWUIP payment in respect of the program.

(3) A ***direct SRWUIP payment*** is a payment by the Commonwealth to a participant in a *SRWUIP program to the extent that it is made under that program.

(4) An ***indirect SRWUIP payment*** is a payment to a participant in a *SRWUIP program to the extent that it is reasonably attributable to a payment by the Commonwealth under that program.

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



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(5) For the purposes of subsections (3) and (4), treat a payment as being made under a *SRWUIP program only if that SRWUIP program is on the published list of SRWUIP programs (see section 59-70) for the day the payment is made.

(6) However, treat a payment as if it had never been made under a *SRWUIP program to the extent that the Commonwealth seeks to recover the payment.

Example: The Commonwealth seeks to recover half of a payment made under a SRWUIP program. The remaining half is still a payment made under the SRWUIP program.

## 59-70 List of SRWUIP programs

(1) The *Water Secretary must keep a list of *SRWUIP programs. The list must:

(a) specify the days for which each program is on the list; and

(b) be published on the *Water Department's website.

Example: A program could be listed for each day on or after 1 July 2011.

*Entering SRWUIP programs on the list*

(2) The *Water Secretary must enter on the list each *SRWUIP program (and its days) in accordance with a direction under subsection (3).

(3) The Minister and the *Water Minister may jointly direct the *Water Secretary to enter a program (and its days) on the list only if the Water Minister has notified the Minister in writing that the Water Minister is satisfied that the program:

(a) is a *SRWUIP program; and

(b) will generate efficiencies in water use through infrastructure improvements.

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



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(4) A direction under subsection (3) must be in writing and specify the days for which the *SRWUIP program is to be on the list. Some or all of those days may be before the day the direction is given.

*Changing the days for which a SRWUIP program is listed*

(5) The Minister and the *Water Minister may jointly direct the *Water Secretary to change the list to specify:

(a) additional days (including days before the day the direction is given) for which a *SRWUIP program is on the list; or

(b) the final day (which must be after the day the direction is given) for which a SRWUIP program is on the list.

The *Water Secretary must change the list accordingly.

(6) A direction under subsection (5) must be in writing.

*Giving directions*

(7) The Minister and the *Water Minister must have regard to the policies and budgetary priorities of the Commonwealth Government in deciding whether to give a direction under subsection (3) or (5).

## 59-75 Commissioner to be kept informed

The *Water Secretary must notify the Commissioner about each payment described in subsection 59-67(6) that the Commonwealth seeks to recover.

## 59-80 Amending assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purpose of giving effect to an outcome that is consequential on any or all of the following events:

(a) the inclusion of a *SRWUIP program on the published list of SRWUIP programs (see section 59-70);

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



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(b) the publication of a change to a SRWUIP program's listing on the published list of SRWUIP programs;
(c) the Commonwealth seeking to recover a payment described in subsection 59-67(6);
(d) the making of a choice under subsection 59-65(2);
(e) the event that causes subsection 26-100(3) to treat expenditure as if it had never been *SRWUIP expenditure;

if the amendment is made at any time during the period of 2 years starting immediately after that event.

Note: Section 170 of the *Income Tax Assessment Act 1936* specifies the usual period within which assessments may be amended.

## 59-85 2019 floods—recovery grants for small businesses, primary producers and non-profit organisations

A payment is not assessable income and is not *exempt income if:

(a) for the purposes of the Disaster Recovery Funding Arrangements 2018 (set out in a determination made by the Minister for Law Enforcement and Cyber Security on 5 June 2018), the payment is a recovery grant made to a small business, primary producer or non-profit organisation as part of a Category C or Category D measure; and
(b) the payment relates to floods commencing in Australia in the period between 25 January 2019 and 28 February 2019.

## 59-86 2019 floods—on-farm grant program for primary producers

(1) A payment is not assessable income and is not *exempt income if:
(a) for the purposes of an agreement covered by subsection (2), the payment is a grant made to a primary producer; and
(b) the grant is for replacing or repairing farm infrastructure, restocking, replanting, or a similar purpose.

(2) An agreement is covered by this subsection if:

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



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(a) the agreement is entered into in the period between 1 February 2019 and 1 July 2019; and
(b) the parties to the agreement are the Commonwealth and a State or Territory; and
(c) the objective of the agreement is principally to assist primary producers impacted by floods commencing in Australia in the period between 25 January 2019 and 28 February 2019.

### 59-90 Cash flow boost

A cash flow boost paid in accordance with the *Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020* is not assessable income and is not *exempt income.

### 59-95 Coronavirus economic response payment

A payment is not assessable income and is not *exempt income if:
(a) the payment is paid in accordance with rules made under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*; and
(b) those rules state that the payment is not assessable income and is not exempt income.

### 59-96 COVID-19 disaster payment

A payment an individual receives is not assessable income and is not *exempt income if it is a COVID-19 disaster payment (within the meaning of the *COVID-19 Disaster Payment (Funding Arrangements) Act 2021*).

### 59-97 State and Territory grants to small business relating to the recovery from the coronavirus known as COVID-19

(1) A payment an entity receives is not assessable income and is not *exempt income if:

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



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(a) the entity receives the payment under a grant program administered by:
  (i) a State or a Territory; or
  (ii) an authority of a State or a Territory; and
(b) the grant program is declared under subsection (3) to be an eligible program (whether this declaration is made before, on or after the day the entity receives the payment); and
(c) the entity receives the payment in the 2020-21 or 2021-22 *financial year; and
(d) the entity is a *small business entity, or an entity covered by subsection (2), for the income year in which the entity receives the payment.

(2) An entity is covered by this subsection for an income year if:
(a) the entity is not a *small business entity for the income year; and
(b) the entity would be a small business entity for the income year if:
  (i) each reference in Subdivision 328-C (about what is a small business entity) to $10 million were instead a reference to $50 million; and
  (ii) the reference in paragraph 328-110(5)(b) to a small business entity were instead a reference to an entity covered by this subsection.

(3) The Minister must, by legislative instrument, declare a grant program to be an eligible program if the Minister is satisfied that:
(a) the program was first publicly announced on or after 13 September 2020 by the State, Territory or authority that is administering it; and
(b) the program is, in effect, responding to economic impacts of the coronavirus known as COVID-19; and
(c) the program is, in effect, directed at supporting businesses:

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



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(i) who are the subject of a public health directive applying to a geographical area in which the businesses operate; and

(ii) whose operations have been significantly disrupted as a result of the public health directive; and

(d) the State, Territory or authority has requested the program to be declared to be an eligible program under this subsection.

## 59-98 Commonwealth small business support payments relating to the coronavirus known as COVID-19

(1) A payment an entity receives is not assessable income and is not *exempt income if:

(a) the entity receives the payment under a program administered by the Commonwealth or an authority of the Commonwealth; and

(b) the program is declared under subsection (2) to be an eligible program (whether this declaration is made before, on or after the day the entity receives the payment); and

(c) the entity receives the payment in the 2021-22 *financial year; and

(d) the entity is a *small business entity, or an entity covered by subsection 59-97(2), for the income year in which the entity receives the payment.

(2) For the purposes of paragraph (1)(b), the Minister may, by legislative instrument, declare a program to be an eligible program if the Minister is satisfied that the program is, in effect:

(a) responding to economic impacts of the coronavirus known as COVID-19; and

(b) directed at supporting *businesses the operations of which have been significantly disrupted as a result of a public health directive.

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



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## 59-99 2021 floods and storms—recovery grants

A payment is not assessable income and is not *exempt income if:

(a) for the purposes of the Disaster Recovery Funding Arrangements 2018 (set out in a determination made by the Minister for Law Enforcement and Cyber Security on 5 June 2018), the payment is a recovery grant made to a small business or primary producer as part of a Category D measure; and

(b) the payment relates to:

(i) floods commencing in Australia as a consequence of rainfall events occurring in the period between 19 February 2021 and 31 March 2021; or

(ii) storms occurring in Australia in that period.

## 59-100 Refund of large-scale generation shortfall charge

(1) A payment to an entity under section 98 of the *Renewable Energy (Electricity) Act 2000* is not assessable income and is not *exempt income.

(2) Disregard subsection (1) for the purposes of determining whether an entity can deduct expenditure that it incurs in relation to large-scale generation certificates (within the meaning of the *Renewable Energy (Electricity) Act 2000*).

## 59-105 Cyclone Seroja—recovery grants

A payment is not assessable income and is not *exempt income if:

(a) for the purposes of the Disaster Recovery Funding Arrangements 2018 (set out in a determination made by the Minister for Law Enforcement and Cyber Security on 5 June 2018), the payment is a recovery grant made to a small business or primary producer as part of a Category C measure; and

(b) the payment relates to Cyclone Seroja.

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



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# Part 2-20—Tax offsets

## Division 61—Generally applicable tax offsets

### Table of Subdivisions

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61-D Low Income tax offset
61-G Private health insurance offset complementary to Part 2-2 of the Private Health Insurance Act 2007
61-L Tax offset for Medicare levy surcharge (lump sum payments in arrears)
61-N Seafarer tax offset
61-P ESVCLP tax offset

## Subdivision 61-A—Dependant (invalid and carer) tax offset

## Guide to Subdivision 61-A

### 61-1 What this Subdivision is about

You are entitled to a tax offset for an income year if you maintain certain dependants who are unable to work.

### Table of sections

**Object of this Subdivision**

61-5 Object of this Subdivision

**Entitlement to the dependant (invalid and carer) tax offset**

61-10 Who is entitled to the tax offset
61-15 Cases involving more than one spouse

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



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61-20 Exceeding the income limit for family tax benefit (Part B)
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**Amount of the dependant (invalid and carer) tax offset**

61-30 Amount of the dependant (invalid and carer) tax offset
61-35 Families with shared care percentages
61-40 Reduced amounts of dependant (invalid and carer) tax offset
61-45 Reductions to take account of the other individual's income

## Object of this Subdivision

### 61-5 Object of this Subdivision

The object of this Subdivision is to provide a *tax offset to assist with the maintenance of certain types of dependants who are genuinely unable to work because of invalidity, or because of their care obligations.

## Entitlement to the dependant (invalid and carer) tax offset

### 61-10 Who is entitled to the tax offset

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

(a) during the year you contribute to the maintenance of another individual who:

(i) is your *spouse; or

(ii) is your *parent or your spouse's parent; or

(iii) is aged 16 years or over, and is your *child, brother or sister or a brother or sister of your spouse; and

(b) during the year, the other individual meets the requirements of one or more of subsections (2), (3) and (4); and

(c) during the year:

(i) the other individual is an Australian resident; or

(ii) if the other individual is your spouse or your child—you had a domicile in Australia.

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



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(2) The other individual meets the requirements of this subsection if he or she is being paid:

(a) a disability support pension or a special needs disability support pension under the *Social Security Act 1991*; or

(b) an invalidity service pension under the *Veterans' Entitlements Act 1986*.

(3) The other individual meets the requirements of this subsection if he or she:

(a) is your *spouse or parent, or your spouse's parent; and

(b) is being paid a carer allowance or carer payment under the *Social Security Act 1991* in relation to provision of care to a person who:

(i) is your *child, brother or sister, or the brother or sister of your spouse; and

(ii) is aged 16 years or over.

(4) The other individual meets the requirements of this subsection if he or she is your *spouse or parent, or your spouse's parent, and is wholly engaged in providing care to an individual who:

(a) is your *child, brother or sister, or the brother or sister of your spouse; and

(b) is aged 16 years or over; and

(c) is being paid:

(i) a disability support pension or a special needs disability support pension under the *Social Security Act 1991*; or

(ii) an invalidity service pension under the *Veterans' Entitlements Act 1986*.

(5) You may be entitled to more than one *tax offset for the year under subsection (1) if:

(a) you contributed to the maintenance of more than one other individual (none of whom are your *spouse) during the year; or

(b) you had different *spouses at different times during the year.

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



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Note 1: If paragraph (b) applies, the amount of the tax offset in relation to each spouse would be only part of the full amount: see section 61-40.

Note 2: Section 960-255 may be relevant to determining relationships for the purposes of this section.

## 61-15 Cases involving more than one spouse

(1) Despite paragraph 61-10(1)(a), if, during a period comprising some or all of the year, there are 2 or more individuals who are your *spouse, you are taken, for the purposes of section 61-10, only to contribute to the maintenance of the spouse with whom you reside during that period.

(2) Despite paragraph 61-10(1)(a) and subsection (1) of this section, if, during a period comprising some or all of the year:

(a) you reside with 2 or more individuals who are your *spouse; or

(b) 2 or more individuals are your *spouse but you reside with none of them;

you are taken, for the purposes of section 61-10, only to contribute to the maintenance of whichever of those individuals in relation to whom you are entitled to the smaller, or smallest, amount (including a nil amount) of tax offset under this Subdivision in relation to that period.

## 61-20 Exceeding the income limit for family tax benefit (Part B)

(1) Despite section 61-10, you are not entitled to a *tax offset for an income year if the sum of:

(a) your *adjusted taxable income for offsets for the year; and

(b) if you had a *spouse for the whole or part of the year, and your spouse was not the other individual referred to in subsection 61-10(1)—the spouse's adjusted taxable income for offsets for the year;

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



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is more than the amount specified in subclause 28B(1) of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*, as indexed under Part 2 of Schedule 4 to that Act.

(2) However, if you had a *spouse for only part of the year, the spouse's *adjusted taxable income for offsets for the year is taken, for the purposes of paragraph (1)(b), to be this amount:

$$\text{Spouse's adjusted taxable income for offsets} \times \frac{\text{Number of days on which you had a spouse during the year}}{\text{Number of days in the year}}$$

(3) If you had a different *spouse during different parts of the year, include the *adjusted taxable income for offsets of each spouse under paragraph (1)(b) and subsection (2).

## 61-25 Eligibility for family tax benefit (Part B) without shared care

Despite section 61-10, you are not entitled to a *tax offset in relation to another individual for an income year if:

(a) your entitlement to the tax offset would, apart from this section, be based on the other individual being your spouse during the year; and

(b) during the whole of the year:

(i) you, or your *spouse while being your partner (within the meaning of the *A New Tax System (Family Assistance) Act 1999*), is eligible for family tax benefit at the Part B rate (within the meaning of that Act); and

(ii) clause 31 of Schedule 1 to that Act does not apply in respect of the Part B rate.

Note: Clause 31 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* reduces the standard rate for the family tax benefit to take account of shared care percentages.

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



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## Amount of the dependant (invalid and carer) tax offset

### 61-30 Amount of the dependant (invalid and carer) tax offset

The amount of the *tax offset to which you are entitled in relation to another individual under section 61-10 for an income year is $2,423. The amount is indexed annually.

Note 1: Subdivision 960-M shows you how to index amounts.

Note 2: The amount of the tax offset may be reduced by the application, in order, of sections 61-35 to 61-45.

### 61-35 Families with shared care percentages

(1) The amount of the *tax offset under section 61-30 in relation to the other individual for the year is reduced by the amount worked out under subsection (2) of this section if:

(a) your entitlement to the tax offset is based on the other individual being your spouse during the year; and

(b) during a period (the ***shared care period***) comprising the whole or part of the year:

(i) you, or your *spouse while being your partner (within the meaning of the *A New Tax System (Family Assistance) Act 1999*), was eligible for family tax benefit at the Part B rate within the meaning of that Act; and

(ii) clause 31 of Schedule 1 to that Act applied in respect of that Part B rate because you, or your spouse, had a shared care percentage for an FTB child (within the meaning of that Act).

(2) The reduction is worked out as follows:

$$\frac{\text{Shared care rate}}{\text{Non-shared care rate}} \times \text{Unaltered offset amount} \times \frac{\text{Number of days in the shared care period}}{\text{Number of days in the year}}$$

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where:

***non-shared care rate*** is the rate that would be the standard rate in relation to you or your *spouse under clause 30 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* if:

(a) clause 31 of that Schedule did not apply; and

(b) the FTB child in relation to whom the standard rate was determined under clause 31 of that Schedule was the only FTB child of you or your spouse, as the case requires.

***shared care rate*** is the standard rate in relation to you or your *spouse worked out under clause 31 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*.

***unaltered offset amount*** is what would, but for this section, be the amount of your *tax offset in relation to the other individual under section 61-10 for the year.

## 61-40 Reduced amounts of dependant (invalid and carer) tax offset

(1) The amount of the *tax offset under sections 61-30 and 61-35 in relation to the other individual for the year is reduced by the amount in accordance with subsection (2) of this section if one or more of the following applies:

(a) you contribute to the maintenance of the other individual during part only of the year;

(b) during the whole or part of the year, 2 or more individuals contribute to the maintenance of the other individual;

(c) the other individual is an individual of a kind referred to in subparagraph 61-10(1)(a)(i), (ii) or (iii) during part only of the year;

(d) paragraph 61-10(1)(b) applies to the other individual during part only of the year;

(e) paragraph 61-10(1)(c) applies during part only of the year;

(f) the other individual is your spouse, and, during part of the year:

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(i) you, or your *spouse while being your partner (within the meaning of the *A New Tax System (Family Assistance) Act 1999*), is eligible for family tax benefit at the Part B rate (within the meaning of that Act); and

(ii) clause 31 of Schedule 1 to that Act does not apply in respect of the Part B rate;

(g) the other individual is your spouse, and, during part of the year, parental leave pay is payable under the *Paid Parental Leave Act 2010* to you, or to your spouse while being your partner (within the meaning of that Act).

(2) The amount of the tax offset under sections 61-30 and 61-35 is reduced to an amount that, in the Commissioner's opinion, is a reasonable apportionment in the circumstances, having regard to the applicable matters referred to in paragraphs (1)(a) to (g).

(3) If paragraph (1)(f) or (g) applies, the Commissioner is not to consider the part of the year covered by that paragraph.

## 61-45 Reductions to take account of the other individual's income

The amount of the *tax offset under sections 61-30 to 61-40 in relation to the other individual for the year is reduced by $1 for every $4 by which the following exceeds $282:

(a) if you contribute to the maintenance of the other individual for the whole of the year—the other individual's *adjusted taxable income for offsets for the year;

(b) if paragraph (a) does not apply—the other individual's *adjusted taxable income for offsets for that part of the year during which you contribute to the maintenance of the other individual.

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



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# Subdivision 61-D—Low Income tax offset

## Guide to Subdivision 61-D

### 61-100 What this Subdivision is about

You may be entitled to a tax offset if you:

(a) are a lower-income earner; or

(b) are the trustee of a trust who is liable to be assessed in respect of a share of the trust's net income to which a beneficiary is presently entitled.

## Table of sections

**Operative provisions**

61-110 Entitlement to the Low Income tax offset

61-115 Amount of the Low Income tax offset

## Operative provisions

### 61-110 Entitlement to the Low Income tax offset

(1) You are entitled to a *tax offset for the 2020-21 income year or a later income year if:

(a) you are an individual who is an Australian resident at any time during the income year; and

(b) your taxable income for the income year does not exceed $66,667.

(2) You are entitled to a *tax offset for the 2020-21 income year or a later income year if:

(a) for the income year, you are a trustee who is liable to be assessed under section 98 of the *Income Tax Assessment Act 1936* in respect of a share of the *net income of a trust; and

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



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(b) the beneficiary who is presently entitled to that share is an individual who is an Australian resident at any time during the income year; and

(c) that share does not exceed $66,667.

(3) If you are entitled to a *tax offset under subsection (2), you are entitled to a separate tax offset for each beneficiary who is presently entitled to a share for which subsection (2) is satisfied.

## 61-115 Amount of the Low Income tax offset

*General rule*

(1) The amount of your *tax offset is set out in the following table in respect of the following income (your ***relevant income***):

(a) if you are an individual—your taxable income for the income year;

(b) if you are a trustee—the amount of the share of *net income referred to in subsection 61-110(2).

**Amount of your tax offset**

| Item | If your relevant income: | The amount of your tax offset is: |
|---|---|---|
| 1 | does not exceed $37,500 | $700 |
| 2 | exceeds $37,500 but is not more than $45,000 | $700, less an amount equal to 5% of the excess |
| 3 | exceeds $45,000 but is not more than $66,667 | $325, less an amount equal to 1.5% of the excess |

*If you are less than 18 years of age*

(2) Despite subsection (1), the amount of your *tax offset for the income year cannot exceed a cap if:

(a) you are an individual who is a prescribed person in relation to the income year for the purposes of Division 6AA of Part III of the *Income Tax Assessment Act 1936*; and

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



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(b) part (the ***excluded part***) of your basic income tax liability for the income year is attributable to your eligible taxable income (within the meaning of section 102AD of that Act).

The cap is an amount equal to the remaining part of your basic income tax liability for the income year.

Note: Division 6AA (including section 102AD) is about income that particular kinds of children derive from particular sources.

(3) When working out the remaining part of your basic income tax liability, if you are also entitled to a *tax offset under section 160AAA of the *Income Tax Assessment Act 1936*, treat that tax offset as having been applied, to the extent possible, against the excluded part of your basic income tax liability.

Note: That tax offset is for individuals eligible for certain benefits.

*If you are a trustee and the beneficiary is less than 18 years of age*

(4) Despite subsection (1), the amount of your *tax offset for the income year cannot exceed a cap if:

(a) you are a trustee; and

(b) the beneficiary who is presently entitled to the share of *net income to which the tax offset relates is a prescribed person in relation to the income year for the purposes of Division 6AA of Part III of the *Income Tax Assessment Act 1936*; and

(c) part of your basic income tax liability for the income year is attributable to the portion of that share to which that Division applies.

The cap is an amount equal to the part of your basic income tax liability attributable to the remaining portion of that share.

Note 1: Division 6AA is about income that particular kinds of children derive from particular sources.

Note 2: To work out the portion of that share to which Division 6AA applies, see section 102AG 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 61-G—Private health insurance offset complementary to Part 2-2 of the Private Health Insurance Act 2007

## Guide to Subdivision 61-G

### 61-200 What this Subdivision is about

You can choose to claim a tax offset for a premium, or an amount in respect of a premium, paid under a private health insurance policy instead of having the premium reduced under Division 23 of the *Private Health Insurance Act 2007*.

## Table of sections

**Operative provisions**

61-205 Entitlement to the private health insurance tax offset
61-210 Amount of the private health insurance tax offset
61-215 Reallocation of the private health insurance tax offset between spouses

## Operative provisions

### 61-205 Entitlement to the private health insurance tax offset

(1) You are entitled to a *tax offset for the 2012-13 income year or a later income year if:

(a) a premium, or an amount in respect of a premium, was paid by you or another entity during the income year under a *complying health insurance policy in respect of a period (the ***premium period***); and

(b) you are a *PHIIB in respect of the premium or amount; and

(c) each person insured under the policy during the premium period is, for the whole of the time that he or she is insured under the policy during the premium period:

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



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(i) an eligible person (within the meaning of section 3 of the *Health Insurance Act 1973*); or

(ii) treated as such because of section 6, 6A or 7 of that Act.

(2) You are also entitled to the *tax offset if:

(a) you are a trustee who is liable to be assessed under section 98 of the *Income Tax Assessment Act 1936* in respect of a share of the net income of a trust estate; and

(b) the beneficiary who is presently entitled to the share of the income of the trust estate would be entitled to the tax offset because of subsection (1).

## 61-210 Amount of the private health insurance tax offset

(1) The amount of the *tax offset is your *share of the PHII benefit in respect of the premium or amount.

*Reduction because PHII benefit received in another form*

(2) Subsections (3), (4) and (5) apply if the amount of the premium was reduced because of the operation or purported operation of Division 23 of the *Private Health Insurance Act 2007*.

(3) Divide the total of the reduction by the number of persons who are *PHIIBs in respect of the premium or amount.

(4) Reduce your *tax offset under subsection (1) to nil if the amount worked out under subsection (3) equals or exceeds your *share of the PHII benefit in respect of the premium or amount.

Note: If the amount worked out under subsection (3) exceeds your share of the PHII benefit, you are liable to pay the excess to the Commonwealth. See section 282-18 of the *Private Health Insurance Act 2007* (Liability for excess private health insurance premium reduction or refund).

(5) Otherwise, reduce your *tax offset under subsection (1) by the amount worked out under subsection (3).

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



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## 61-215 Reallocation of the private health insurance tax offset between spouses

(1) You can make a choice under this section in relation to the income year if:

(a) you are a *PHIIB in respect of the premium or amount; and

(b) on the last day of the income year, you are married (within the meaning of the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*; and

(c) the individual to whom you are married is also a PHIIB in respect of the premium or amount; and

(d) the individual to whom you are married has *not* made a choice under this section in relation to the income year.

Note: If you make a choice under this section, you might be liable to pay an amount under section 282-18 of the *Private Health Insurance Act 2007* (Liability for excess private health insurance premium reduction or refund).

(2) If you make a choice under this section in relation to the income year:

(a) the amount (if any) of the *tax offset for the income year under section 61-205 in respect of the premium or amount of the individual to whom you are married is reduced to nil; and

(b) your tax offset for the income year under that section in respect of the premium or amount is increased by that amount.

(3) A choice under this section in relation to the income year can only be made in your *income tax return for the income year.

(4) A choice under this section in relation to an income year has effect for all premiums, or amounts in respect of premiums, paid during the income year.

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



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# Subdivision 61-L—Tax offset for Medicare levy surcharge (lump sum payments in arrears)

## Guide to Subdivision 61-L

### 61-575 What this Subdivision is about

You may get a tax offset under this Subdivision if:

(a) Medicare levy surcharge is payable by you for the current year; and

(b) a substantial lump sum was paid to you in the current year; and

(c) the lump sum accrued in whole or in part in a previous year.

The amount of the offset is the amount of additional Medicare levy surcharge payable by you for the current year because of your lump sums and your spouse's lump sums.

Alternatively, you may get a tax offset under this Subdivision if your spouse gets a tax offset under this Subdivision. The amount of the offset is the amount of additional Medicare levy surcharge payable by you for the current year because of your spouse's lump sums.

## Table of sections

**Operative provisions**

61-580 Entitlement to a tax offset
61-585 The amount of a tax offset
61-590 Definition of ***MLS lump sums***

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



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## Operative provisions

### 61-580 Entitlement to a tax offset

*Tax offset for MLS lump sums paid to you*

(1) You are entitled to a *tax offset for the *current year if:

(a) you are an individual; and

(b) *Medicare levy surcharge is payable by you for the current year because of:

(i) section 8B, 8C or 8D of the *Medicare Levy Act 1986*; or

(ii) the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*; and

(c) your assessable income or *exempt foreign employment income for the current year includes one or more *MLS lump sums paid to you; and

(d) the total of the MLS lump sums paid to you is greater than or equal to one-eleventh of the total of the following amounts:

(i) your normal taxable income (within the meaning of section 159ZR of the *Income Tax Assessment Act 1936*) for the current year, disregarding your *assessable FHSS released amount for the current year;

(ii) your exempt foreign employment income for the current year;

(iii) your *reportable fringe benefits total for the current year;

(iv) the amounts that would be included in your assessable income for the current year if, and only if, subsection 271-105(1) (family trust distribution tax) in Schedule 2F to the *Income Tax Assessment Act 1936* were ignored;

(v) your *reportable superannuation contributions for the current year;

(vi) your *total net investment loss for the current year.

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



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Note: The test in paragraph (d) is similar to the 10% test in paragraph 159ZRA(1)(b) of the *Income Tax Assessment Act 1936*, which also deals with a tax offset for lump sum payments in arrears.

*Tax offset for MLS lump sums paid to your spouse*

(2) You are also entitled to a *tax offset for the *current year if:

(a) during all or part of the current year, you were married to an individual (within the meaning of section 3 of the *Medicare Levy Act 1986* or section 7 of the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*); and

(b) the individual is entitled to a tax offset for the current year under subsection (1); and

(c) *Medicare levy surcharge is payable by you for the current year because of:

(i) section 8D of the *Medicare Levy Act 1986*; or

(ii) Division 4 of Part 3 of the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*;

(which are about Medicare Levy surcharge for individuals who are married); and

(d) you are not entitled to a tax offset for the current year under subsection (1); and

(e) less of the Medicare levy surcharge referred to in paragraph (c) would be payable by you for the current year if the *MLS lump sums paid to the individual referred to in paragraph (a) were disregarded.

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



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## 61-585 The amount of a tax offset

(1) The amount of a *tax offset under subsection 61-580(1) is the amount worked out using the following formula:

$$\text{Total Medicare levy surcharge} - \begin{array}{c}\text{Total non-arrears}\\ \text{Medicare levy surcharge}\end{array}$$

where:

***total Medicare levy surcharge*** means the total of the *Medicare levy surcharge referred to in paragraph 61-580(1)(b) that is payable by you for the *current year.

***total non-arrears Medicare levy surcharge*** means the amount that would be the total Medicare levy surcharge if the *MLS lump sums paid to you (and the MLS lump sums paid to the individual referred to in paragraph 61-580(2)(a)) were disregarded.

(2) The amount of a *tax offset under subsection 61-580(2) is the amount worked out using the following formula:

$$\begin{array}{c}\text{Total family}\\ \text{Medicare levy surcharge}\end{array} - \begin{array}{c}\text{Total non-arrears family}\\ \text{Medicare levy surcharge}\end{array}$$

where:

***total family Medicare levy surcharge*** means the total of the *Medicare levy surcharge referred to in paragraph 61-580(2)(c) that is payable by you for the *current year.

***total non-arrears family Medicare levy surcharge*** means the amount that would be the total family Medicare levy surcharge if the *MLS lump sums referred to in paragraph 61-580(2)(e) were disregarded.

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



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### 61-590 Definition of *MLS lump sums*

Both of the following are ***MLS lump sums*** paid to an individual:

(a) a lump sum payment of eligible income (within the meaning of section 159ZR of the *Income Tax Assessment Act 1936*) that is included in the individual's assessable income for the *current year (but only to the extent that it accrued in an earlier income year);

(b) a lump sum payment that is included in the individual's *exempt foreign employment income for the current year (but only to the extent that it accrued during a period ending more than 12 months before the date on which it was paid).

## Subdivision 61-N—Seafarer tax offset

## Guide to Subdivision 61-N

### 61-695 What this Subdivision is about

A company may get a refundable tax offset for withholding payments made to Australian seafarers for overseas voyages if:

(a) the voyage is made by a vessel for which the company, or another entity, has a certificate under the *Shipping Reform (Tax Incentives) Act 2012*; and

(b) the company employs or engages the seafarer on such voyages for at least 91 days in the income year.

## Table of sections

**Operative provisions**

61-700 Object of this Subdivision

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



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61-705 Who is entitled to the seafarer tax offset
61-710 Amount of the seafarer tax offset

## Operative provisions

### 61-700 Object of this Subdivision

The object of this Subdivision is to stimulate opportunities for Australian seafarers to:

(a) be employed or engaged on overseas voyages; and

(b) acquire maritime skills.

### 61-705 Who is entitled to the seafarer tax offset

(1) A company is entitled to a *tax offset for an income year if:

(a) the company is a corporation to which paragraph 51(xx) of the Constitution applies; and

(b) there is at least one individual in respect of whom the company has 91 days or more in the income year that qualify for the tax offset as mentioned in subsection (2).

(2) A particular day qualifies for the *tax offset under this Subdivision for a company for an individual if:

(a) on the day, the individual is an Australian resident who:

(i) is employed by the company; or

(ii) performs work or services under an *arrangement under which the company makes, at any time, a payment that is a *withholding payment covered by subsection 12-60(1) in Schedule 1 to the *Taxation Administration Act 1953* (about labour hire arrangements); and

(b) on the day, the individual is so employed, or performs the work or services, on a voyage of a vessel as master, deck officer, integrated rating, steward or engineer; and

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



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(c) the company, or another entity, has a certificate for the vessel that applies to the day under Part 2 of the *Shipping Reform (Tax Incentives) Act 2012*; and

(d) in the course of the voyage, the vessel travels between:

(i) a port in Australia and a port outside Australia; or

(ii) a port in Australia and a place in the waters of the sea above the continental shelf of a country other than Australia; or

(iii) a port outside Australia and a place in the waters of the sea above the continental shelf of Australia; or

(iv) a place in the waters of the sea above the continental shelf of Australia and a place in the waters of the sea above the continental shelf of a country other than Australia; or

(v) ports outside Australia; or

(vi) places beyond the continental shelf of Australia;

whether or not the ship travels between 2 or more ports in Australia in the course of the voyage.

Note 1: An entity may be entitled to a certificate for a vessel under Part 2 of the *Shipping Reform (Tax Incentives) Act 2012* if it meets the requirements (relating to such things as tonnage, registration and usage) in that Act.

Note 2: An entity cannot be entitled to a certificate for a vessel under Part 2 of that Act for a day before 1 July 2012: see paragraph 8(4)(b) of that Act.

(3) For the purposes of paragraph (2)(b), the voyage of a vessel is taken to:

(a) start on the earliest day on which one or more of the following occurs:

(i) *shipping cargo to be carried on the voyage, or any part of the voyage, is first loaded into the vessel;

(ii) *shipping passengers to be carried on the voyage, or any part of the voyage, first board the vessel;

(iii) the voyage begins; and

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



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(b) end on the latest day on which any of the following occurs:
  (i) all shipping cargo carried on the voyage, or any part of the voyage, is completely unloaded from the vessel;
  (ii) all shipping passengers carried on the voyage, or any part of the voyage, finally disembark from the vessel;
  (iii) the voyage ends.

## 61-710 Amount of the seafarer tax offset

The amount of the company's *tax offset for the income year is the amount (rounded up to the nearest whole dollar) worked out using the formula:

Gross payment amounts × 30%

where:

***gross payment amounts*** means the total amount of *withholding payments covered by section 12-35 or subsection 12-60(1) in Schedule 1 to the *Taxation Administration Act 1953* payable by the company in the income year:

(a) to individuals in respect of whom the company has 91 days or more in the income year that qualify for the offset as mentioned in subsection 61-705(2); and

(b) in respect of any of the following:
  (i) the employment of, or the work or services performed by, such individuals in relation to which the company so qualifies for the offset;
  (ii) leave accrued by such individuals during such employment, work or services;
  (iii) training of such individuals that relates to such employment, work or services.

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



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# Subdivision 61-P—ESVCLP tax offset

## Guide to Subdivision 61-P

### 61-750 What this Subdivision is about

A limited partner in an ESVCLP may be entitled to a tax offset for investing in the ESVCLP.

## Table of sections

**Operative provisions**

61-755 Object of this Subdivision
61-760 Who is entitled to the ESVCLP tax offset
61-765 Amount of the ESVCLP tax offset—general case
61-770 Amount of the ESVCLP tax offset—members of trusts or partnerships
61-775 Amount of the ESVCLP tax offset—trustees

## Operative provisions

### 61-755 Object of this Subdivision

The object of this Subdivision is to encourage new investment in early stage venture capital by providing investors with a *tax offset to reduce the effective cost of such investments.

### 61-760 Who is entitled to the ESVCLP tax offset

*General case*

(1) A *limited partner of an *ESVCLP is entitled to a *tax offset for an income year if:

(a) the partner contributes to the ESVCLP during the income year; and

(b) the partner is not a trust or partnership.

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



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*Members of trusts or partnerships*

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

*Trustees*

(3) A trustee of a trust is entitled to a *tax offset for an income year if:
  (a) the trust would be entitled to a tax offset, under this section, for the income year if it were an individual; and
  (b) in a case where the trustee has determined percentages under subsection 61-770(2) in relation to the *members of the trust—the sum of those percentages is not 100%; and
  (c) 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 that income year.

## 61-765 Amount of the ESVCLP tax offset—general case

(1) If subsection 61-760(1) applies, the amount of the *tax offset for the income year is 10% of the lesser of:
  (a) the sum of the amounts the partner contributes to the *ESVCLP during the income year, reduced by any amounts excluded under subsection (2); and
  (b) the amount (the ***investment related amount***) worked out under subsection (3).

(2) The following amounts are excluded for the purposes of paragraph (1)(a) in relation to the income year:
  (a) any parts of a contribution the partner made to the *ESVCLP that the ESVCLP is, or will become, obliged to repay to the partner, whether or not:
    (i) the obligation arises during the income year; or

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



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(ii) the obligation arises only when the partner requests repayment;

(b) any parts of a contribution the partner made to the ESVCLP that, during the income year, are repaid to the partner within 12 months after the contribution was made;

(c) any parts of a contribution the partner made to the ESVCLP to the extent that they comprise a commitment to provide money or property in the future.

(3) Work out the investment related amount as follows:

Partner's share × Sum of eligible venture capital investments

where:

***partner's share*** is the partner's share of the capital of the *ESVCLP at the end of the income year, expressed as a percentage of the entire capital of the ESVCLP.

***sum of eligible venture capital investments*** is the sum of:

(a) all the amounts of the *eligible venture capital investments made by the *ESVCLP during the period starting at the start of the income year and ending 2 months after the end of the income year; and

(b) all the incidental costs, incurred during that period, of making those investments; and

(c) all the administrative expenses, incurred during that period, associated with those investments.

(4) For the purposes of paragraph (a) of the definition of ***sum of eligible venture capital investments*** in subsection (3), disregard the amounts of any *eligible venture capital investments that were taken into account in working out the amount of a *tax offset under this Subdivision for a preceding income year.

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



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## 61-770 Amount of the ESVCLP tax offset—members of trusts or partnerships

(1) If subsection 61-760(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 61-765, 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, under the terms and conditions under which the trust or partnership operates, the *member would be entitled to a fixed proportion of any *capital gain from a *disposal:

(a) relating to the trust or partnership; and

(b) of investments made as a result of the contributions that gave rise to the notional tax offset; and

(c) happening at the end of the income year to which the notional tax offset relates;

the percentage determined under subsection (2) must be equivalent to that fixed proportion, and a determination of any other percentage has no effect.

(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

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



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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%.

## 61-775 Amount of the ESVCLP tax offset—trustees

If subsection 61-760(3) applies, the amount of the *tax offset for the income year is the difference between:

(a) what would, under section 61-765, have been the amount of the tax offset to which the trust would have been entitled if it had been an individual; and

(b) if *members of the trust are entitled to tax offsets under subsection 61-760(2) arising from the same contributions from which the trustee's entitlement arises under subsection 61-760(3)—the sum of the amounts, under section 61-770, of those tax offsets.

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



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# Division 63—Common rules for tax offsets

## Guide to Division 63

### 63-1 What this Division is about

This Division sets out some rules that are common to all tax offsets.

### Table of sections

63-10 Priority rules

### 63-10 Priority rules

(1) If you have one or more *tax offsets for an income year, apply them against your basic income tax liability in the order shown in the table. To the extent that an amount of a tax offset remains, the table tells you what happens to it.

**Order of applying tax offsets**

| Item | Tax offset | What happens to any excess |
|---|---|---|
| 5 | *Tax offset under section 160AAAA of the *Income Tax Assessment Act 1936* (tax offset for low income aged persons and pensioners) | Your entitlement to it is transferred in accordance with regulations made under that Act |
| 10 | *Tax offset under section 160AAAB of the *Income Tax Assessment Act 1936* (tax offset for low income aged persons and pensioners —trustee assessed under section 98) | Your entitlement to it is transferred in accordance with regulations made under that Act |

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



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## Section 63-10

**Order of applying tax offsets**

| Item | Tax offset | What happens to any excess |
|---|---|---|
| 15 | *Tax offset under section 160AAA of the *Income Tax Assessment Act 1936* (tax offset in respect of certain benefits) | Your entitlement to it is transferred in accordance with regulations made under that Act |
| 20 | Any *tax offset not covered by another item in this table | You cannot get a refund of it, you cannot transfer it and you cannot carry it forward to a later income year |
| 22 | *Tax offset for *foreign income tax under Division 770 | Apply it against your liability (if any) to pay *Medicare levy for the income year.<br>To the extent that an amount of it remains, apply it against your liability (if any) to pay *Medicare levy (fringe benefits) surcharge for the income year.<br>To the extent that an amount of it remains, you cannot get a refund of it, you cannot transfer it and you cannot carry it forward to a later income year |
| 30 | Landcare and water facility *tax offset under the former Subdivision 388-A | You may carry it forward to a later income year (under Division 65) |
| 32 | ESVCLP *tax offset under Subdivision 61-P | You may carry it forward to a later income year (under Division 65) |
| 33 | *Tax offset under Subdivision 360-A (about early stage investors in innovation companies) | You may carry it forward to a later income year (under Division 65) |
| 35 | A *tax offset under Division 355 (about R&D) that is not covered by section 67-30 | You may carry it forward to a later income year (under Division 65) |

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



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**Order of applying tax offsets**

| Item | Tax offset | What happens to any excess |
|---|---|---|
| 40 | *Tax offset that is subject to the refundable tax offset rules (see Division 67) | You can get a refund of the remaining amount |
| 45 | *Tax offset arising from payment of *franking deficit tax (see section 205-70) | You may carry it forward to a later income year (under section 205-70) |

Note 1: Section 13-1 lists tax offsets.

Note 2: Former Division 388 was repealed by the *New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001*.

Note 4: The remaining amount of a carry forward tax offset may be reduced by section 65-30 or 65-35 to take account of net exempt income.

Note 5: Tax offsets mentioned in items 5 and 10 are more commonly referred to as the Senior Australians Tax Offset.

(2) Within each item, apply the tax offsets in the order in which they arose.

Note: This would be relevant if you have carry forward tax offsets of the same category for different income years.

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



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# Division 65—Tax offset carry forward rules

## Guide to Division 65

### 65-10 What this Division is about

This Division sets out the rules about carrying forward excess tax offsets to later income years.

You can only carry forward certain tax offsets.

Before you can apply a tax offset to reduce the amount of income tax that you will pay in a later year, you must apply it to reduce certain amounts of net exempt income.

The same rules that prevent companies from utilising certain losses of earlier income years prevent companies from applying tax offsets that they have carried forward.

### Table of sections

**Operative provisions**

65-30 Amount carried forward
65-35 How to apply carried forward tax offsets
65-40 When a company cannot apply a tax offset
65-50 Effect of bankruptcy
65-55 Deduction for amounts paid for debts incurred before bankruptcy

## Operative provisions

### 65-30 Amount carried forward

(1) The amount of the *tax offset that is carried forward is the amount of the excess worked out under Division 63.

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



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(2) However, reduce the *tax offset by the amount worked out by multiplying your *net exempt income by:

(a) if you are a base rate entity (within the meaning of the *Income Tax Rates Act 1986*) for the income year—0.25; or

(b) otherwise—0.3;

if you have a taxable income for the income year.

## 65-35 How to apply carried forward tax offsets

(1) A *tax offset that you have carried forward decreases the amount of income tax that you would otherwise have to pay under section 4-10 in a later income year.

(2) You apply a *tax offset that is carried forward to a later year in accordance with the priorities set out in Division 63 as if it were a tax offset for that later year.

(3) Before you apply a *tax offset to reduce the amount of income tax that you pay in a later income year in which you have a taxable income, you must apply it to reduce to nil any *net exempt income for:

(a) that later income year; or

(b) any income year after the year in which the tax offset arose and before the later income year in which you had a taxable income but did not apply the tax offset to reduce the amount of income tax you had to pay.

Note: Paragraph (b) would apply to cases such as where your taxable income was below your tax-free threshold or where you had other tax offsets that reduced your income tax to nil.

(3A) In reducing *net exempt income for an income year under subsection (3):

(a) if you were a base rate entity (within the meaning of the *Income Tax Rates Act 1986*) for the year—each 25 cents of *tax offset reduces the net exempt income by $1; or

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(b) otherwise—each 30 cents of tax offset reduces the net exempt income by $1.

(4) You can only apply a *tax offset that you have carried forward to the extent that it has not already been applied.

Note: Section 65-40 contains special restrictions on applying carried forward tax offsets.

## 65-40 When a company cannot apply a tax offset

(1) In working out its *tax offset for the *current year, a company cannot apply a *tax offset it has carried forward if, assuming:

(a) the tax offset were a *tax loss of the company for the income year in which it became entitled to the tax offset; and

(b) section 165-20 (deducting part of a tax loss) were disregarded;

Subdivision 165-A would prevent the company from deducting it for the current year.

Note: Subdivision 165-A deals with the deductibility of a company's tax loss for an earlier income year if there has been a change in the ownership or control of the company in the loss year or the income year.

(2) If subsection (1) prevents the company from applying the *tax offset, it can apply the *part* of the tax offset that it is reasonable to consider relates to a *part* of the income year in which it became entitled to the tax offset, but only if, assuming that part of that income year had been treated as the whole of it, the company would have been entitled to apply the tax offset.

## 65-50 Effect of bankruptcy

(1) If during the *current year:

(a) you became bankrupt; or

(b) you were released from debts under a law relating to bankruptcy;

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



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you cannot apply a *tax offset that you have carried forward from an earlier income year in working out the tax offset for the current year or a later income year.

(2) Subsection (1) applies even though your bankruptcy is annulled if:

(a) the annulment happens under section 74 of the *Bankruptcy Act 1966* because your creditors have accepted your proposal for a composition or scheme of arrangement; and

(b) under the composition or scheme of arrangement concerned, you were, will be or may be released from debts from which you would have been released if instead you had been discharged from the bankruptcy.

## 65-55 Deduction for amounts paid for debts incurred before bankruptcy

(1) If:

(a) you pay an amount in the *current year for a debt that you incurred in an earlier income year; and

(b) you have a *tax offset referred to in section 65-50 for that earlier income year;

you can deduct the amount paid, but only to the extent that it does not exceed so much of the debt as the Commissioner is satisfied was taken into account in calculating the amount of the tax offset.

(2) The total of the following amounts cannot exceed the total of the expenditure that the Commissioner is satisfied was taken into account in calculating the amount of the *tax offset that you are unable to apply because of section 66-50:

(a) your deductions under subsection (1) for amounts paid in the *current year or an earlier income year for debts incurred in the income year for which you have the tax offset; and

(b) the expenditure that the Commissioner is satisfied was taken into account in calculating any amounts of the tax offset that, apart from section 65-50, would have been applied in

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



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reducing your *net exempt income for the current year or earlier income years.

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# Division 67—Refundable tax offset rules

## Guide to Division 67

### 67-10 What this Division is about

If your total tax offsets exceed your basic income tax liability, and some of those offsets are subject to the refundable tax offset rules, you may get a refund instead of paying income tax (see section 63-10). This Division tells you which tax offsets are subject to the refundable tax offset rules.

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## Operative provisions

### 67-20 Which tax offsets this Division applies to

This Division only applies to a *tax offset if it is stated to be subject to the refundable tax offset rules.

### 67-23 Refundable tax offsets

The following *tax offsets are subject to the refundable tax offset rules:

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**Refundable tax offsets**

| Item | Subject matter | Tax offset |
|---|---|---|
| 3 | *principal beneficiary of a *special disability trust | the *tax offset available under subsection 95AB(5) of the *Income Tax Assessment Act 1936* |
| 5 | private health insurance | private health insurance tax offsets under Subdivision 61-G, other than those arising under subsection 61-205(2) |
| 13 | seafarers | the *tax offset available under Subdivision 61-N |
| 14 | corporate losses | *loss carry back tax offset under Division 160 |
| 14A | attribution managed investment trusts—foreign resident member | the *tax offset available under section 276-110 |
| 15 | no-TFN contributions income | the *tax offset available under Subdivision 295-J |
| 20 | films | the *tax offsets available under Division 376 |
| 23 | National Rental Affordability Scheme | the *tax offsets available under Division 380 |
| 27 | junior minerals exploration incentive | the *tax offset available under Subdivision 418-B |
| 30 | life insurance company's subsidiary joining consolidated group | the *tax offset available under subsection 713-545(5) |

Note 1: Subsection 61-205(2) of this Act deals with tax offsets for trustees who are assessed and liable to pay tax under section 98 of the *Income Tax Assessment Act 1936*.

Note 2: For the tax offsets available under Division 207 and Subdivision 210-H (franked distributions), see section 67-25.

Note 3: For the tax offsets available under Division 355 (about R&D), see section 67-30.

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## 67-25 Refundable tax offsets—franked distributions

(1) *Tax offsets available under Division 207 (which sets out the effects of receiving a *franked distribution) or Subdivision 210-H (which sets out the effects of receiving a *distribution *franked with a venture capital credit) are subject to the refundable tax offset rules, unless otherwise stated in this section.

(1A) Where the trustee of a *non-complying superannuation fund or a *non-complying approved deposit fund is entitled to a *tax offset under Division 207 because a *franked distribution is made to, or *flows indirectly to, the trustee, the tax offset is not subject to the refundable tax offset rules.

(1B) If:

(a) the trustee of a trust to whom a *franked distribution *flows indirectly under subsection 207-50(4) is entitled to a *tax offset under Division 207 for an income year because of the distribution; and

(b) the trustee is liable to be assessed under section 98 or 99A of the *Income Tax Assessment Act 1936* on a share of, or all or a part of, the trust's *net income for that income year;

the tax offset is not subject to the refundable tax offset rules.

(1C) Where a *corporate tax entity is entitled to a *tax offset under Division 207 because a *franked distribution is made to the entity, the tax offset is not subject to the refundable tax offset rules unless:

(a) the entity is an *exempt institution that is eligible for a refund; or

(b) the entity is a *life insurance company and the *membership interest on which the distribution was made was not held by the company on behalf of its shareholders at any time during the period:

(i) starting at the beginning of the income year of the company in which the distribution is made; and

(ii) ending when the distribution is made.

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(1D) Where a *corporate tax entity is entitled to a *tax offset under Division 207 because a *franked distribution *flows indirectly to the entity, the tax offset is not subject to the refundable tax offset rules unless:

(a) the entity is an *exempt institution that is eligible for a refund; or

(b) the entity is a *life insurance company and the company's interest in the *membership interest on which the distribution was made was not held by the company on behalf of its shareholders at any time during the period:

(i) starting at the beginning of the income year of the company in which the distribution is made; and

(ii) ending when the distribution is made.

(1DA) A *tax offset is not subject to the refundable tax offset rules if:

(a) an entity is entitled to the tax offset under Division 207 because a *franked distribution is made, or *flows indirectly, to the entity; and

(b) the entity is a foreign resident and carries on business in Australia at or through a permanent establishment of the entity in Australia, being a permanent establishment within the meaning of:

(i) a double tax agreement (as defined in Part X of the *Income Tax Assessment Act 1936*) that relates to a foreign country and affects the entity; or

(ii) subsection 6(1) of that Act, if there is no such agreement; and

(c) the distribution is attributable to the permanent establishment.

(1E) Where a *corporate tax entity is entitled to a *tax offset under Subdivision 210-H because a *distribution *franked with a venture capital credit is made to the entity, the tax offset is not subject to the refundable tax offset rules unless:

(a) the entity is a *life insurance company; and

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(b) the *membership interest on which the distribution was made was not held by the company on behalf of its shareholders at any time during the period:

(i) starting at the beginning of the income year of the company in which the distribution is made; and

(ii) ending when the distribution is made.

## 67-30 Refundable tax offsets—R&D

(1) A *tax offset to which an *R&D entity is entitled under section 355-100 (about R&D) for an income year is subject to the refundable tax offset rules if the amount of the tax offset is worked out in accordance with item 1 of the table in subsection 355-100(1) (disregarding subsection 355-100(3)).

Note: Otherwise, the tax offset will be a non-refundable tax offset (see item 35 of the table in subsection 63-10(1)).

(2) Without limiting its effect apart from this subsection, subsection (1) also has the effect it would have if:

(a) subsection (3) had not been enacted; and

(b) the reference in subsection (1) to an *R&D entity were, by express provision, confined to an R&D entity that:

(i) is a *constitutional corporation; or

(ii) has its registered office (within the meaning of the *Corporations Act 2001*) or principal place of business (within the meaning of that Act) located in a Territory.

(3) Without limiting its effect apart from this subsection, subsection (1) also has the effect it would have if:

(a) subsection (2) had not been enacted; and

(b) this Act applied so that *tax offsets under section 355-100 could only be worked out in respect of *R&D activities conducted or to be conducted:

(i) solely in a Territory; or

(ii) solely outside of Australia; or

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(iii) solely in a Territory and outside of Australia; or

(iv) for the dominant purpose of supporting *core R&D activities conducted, or to be conducted, solely in a Territory.

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