# Income Tax Assessment Act 1997

**No. 38, 1997**

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This compilation is in 12 volumes

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|---|---|
| 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** |
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| Volume 7: | sections 315-1 to 420-70 |
| Volume 8: | sections 615-1 to 721-40 |
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| Volume 10: | sections 900-1 to 995-1 |
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Each volume has its own contents

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# About this compilation

### This compilation

This is a compilation of the *Income Tax Assessment Act 1997* that shows the text of the law as amended and in force on 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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 3—Specialist liability rules

## Part 3-6—The imputation system

### Division 200—Guide to Part 3-6

#### Guide to Division 200

#### 200-1 What this Division is about

This Division provides an overview of the imputation system.

#### Table of sections

200-5 The imputation system
200-10 Franking a distribution
200-15 The franking account
200-20 How a distribution is franked
200-25 A corporate tax entity must not give its members credit for more tax than the entity has paid
200-30 Benchmark rule
200-35 Effect of receiving a franked distribution
200-40 An Australian corporate tax entity can pass the benefit of having received a franked distribution on to its members
200-45 Special rules for franking by some entities

#### 200-5 The imputation system

The *imputation system partially integrates the income tax liabilities of an Australian corporate tax entity and its members by:

(a) allowing the entity, when distributing profits to its members, to pass to those members credit for income tax paid by the entity on those profits; and

(b) allowing the entity's Australian members to claim a tax offset for that credit; and

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



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(c) allowing the entity's Australian members to claim a refund if they are unable to fully utilise the tax offset in reducing their income tax.

## 200-10 Franking a distribution

When an Australian corporate tax entity distributes profits to its members, the entity has the option of passing to those members credit for income tax paid by the entity on the profits. This is done by franking the distribution.

## 200-15 The franking account

(1) A franking account is used to keep track of income tax paid by the entity, so that the entity can pass to its members the benefit of having paid that tax when a distribution is made.

(2) Each corporate tax entity has a franking account.

(3) Typically, a corporate tax entity receives a credit in the account if the entity pays income tax or receives a franked distribution. A credit in the franking account is called a franking credit.

(4) Typically, a corporate tax entity receives a debit in the account if the entity receives a refund of tax or franks a distribution to its members. A debit in the franking account is called a franking debit.

## 200-20 How a distribution is franked

(1) A corporate tax entity franks a distribution by allocating a franking credit to it.

(2) The amount of the franking credit on the distribution is the amount specified in a statement that accompanies the distribution.

(3) Only some kinds of distribution can be franked. These are called frankable distributions.

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



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### 200-25 A corporate tax entity must not give its members credit for more tax than the entity has paid

(1) A corporate tax entity must not frank a distribution from profits with a franking credit that exceeds the maximum amount of income tax that could have been paid, at the entity's corporate tax rate for imputation purposes for the income year in which the distribution is made, on the profits distributed.

(2) If a distribution is franked in excess of this limit, the entity will be taken to have franked the distribution with the maximum franking credit for the distribution.

### 200-30 Benchmark rule

(1) All frankable distributions made within a particular period must be franked to the same extent. This is the benchmark rule.

(2) It is designed to ensure that one member of a corporate tax entity is not preferred over another by the manner in which distributions are franked.

### 200-35 Effect of receiving a franked distribution

(1) Under Division 207, if an Australian member of a corporate tax entity receives a franked distribution, the member can usually offset, against the member's own income tax liability, income tax paid by the entity on the profits underlying the distribution.

(2) The tax offset to which the member is entitled is equal to the franking credit on the distribution.

Note 1: A member may be entitled to a refund under Division 67 if the sum of the tax offset and certain other tax offsets exceeds the amount of income tax that the member would have to pay if the member had not got those tax offsets.

Note 2: If the member is not a resident, the tax effects of receiving a distribution will be dealt with under Division 11A of Part III of the *Income Tax Assessment Act 1936*, and Subdivision 207-D of this Part.

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



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## 200-40 An Australian corporate tax entity can pass the benefit of having received a franked distribution on to its members

If an Australian corporate tax entity receives a franked distribution, it can pass the benefit of having received a franking credit on the distribution to its own members by franking distributions to those members.

## 200-45 Special rules for franking by some entities

There are special rules to deal with:

(a) venture capital franking by a pooled development fund; and
(b) franking by life insurance companies; and
(c) franking by exempting companies and former exempting companies; and
(d) franking by co-operative companies; and
(e) franking by companies that are NZ residents or members of the same wholly-owned group as one or more companies that are NZ residents.

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



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# Division 201—Objects and application of Part 3-6

## Table of sections

201-1 Objects
201-5 Application of this Part

## 201-1 Objects

(1) The main object of this Part is to allow certain *corporate tax entities to pass to their *members the benefit of having paid income tax on the profits underlying certain *distributions.

(2) The other objects of this Part are to ensure that:

(a) the imputation system is not used to give the benefit of income tax paid by a *corporate tax entity to *members who do not have a sufficient economic interest in the entity; and

(b) the imputation system is not used to prefer some members over others when passing on the benefits of having paid income tax; and

(c) the *membership of a corporate tax entity is not manipulated to create either of the outcomes mentioned in paragraphs (a) and (b).

## 201-5 Application of this Part

Subject to the rules on the application of this Part set out in the *Income Tax (Transitional Provisions) Act 1997*, this Part applies to events that occur on or after 1 July 2002.

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



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# Division 202—Franking a distribution

## Table of Subdivisions

202-A Franking a distribution
202-B Who can frank a distribution?
202-C Which distributions can be franked?
202-D Amount of the franking credit on a distribution
202-E Distribution statements

## Subdivision 202-A—Franking a distribution

## Guide to Subdivision 202-A

### 202-1 What this Subdivision is about

An entity can only frank a distribution if certain conditions are met. These conditions are set out in this Subdivision.

## Table of sections

**Operative provisions**

202-5 Franking a distribution

## Operative provisions

### 202-5 Franking a distribution

An entity ***franks*** a *distribution if:

(a) the entity is a *franking entity that satisfies the *residency requirement when the distribution is made; and
(b) the distribution is a *frankable distribution; and
(c) the entity allocates a *franking credit to the distribution.

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



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Note 1: Division 205 deals with a corporate tax entity's franking account and sets out when credits, known as franking credits, and debits, known as franking debits, arise in that account.

Note 2: The mechanism by which an entity allocates a franking credit to a distribution (for example, whether it is done by resolution or some other means) is determined by the entity.

## Subdivision 202-B—Who can frank a distribution?

## Guide to Subdivision 202-B

### 202-10 What this Subdivision is about

Generally, a corporate tax entity that is an Australian resident at the time a distribution is made, can frank the distribution.

There are some exceptions.

### Table of sections

**Operative provisions**

202-15 Franking entities
202-20 Residency requirement when making a distribution

## Operative provisions

### 202-15 Franking entities

An entity is a ***franking entity*** at a particular time if:

(a) it is a *corporate tax entity at that time; and

(b) it is not a *life insurance company that is a *mutual insurance company at that time; and

(c) in a case where the entity is a company that is a trustee of a trust—it is not acting in its capacity as trustee of the trust at that time.

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



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### 202-20 Residency requirement when making a distribution

An entity satisfies the ***residency requirement*** when making a *distribution if:

(a) in the case of a company—the company is an Australian resident at that time; and

(b) in the case of a *corporate limited partnership—the corporate limited partnership is an Australian resident at that time; and

(d) in the case of a *public trading trust—the public trading trust is a resident unit trust for the income year in which that time occurs.

## Subdivision 202-C—Which distributions can be franked?

## Guide to Subdivision 202-C

### 202-25 What this Subdivision is about

Generally, distributions that are made out of realised profits can be franked.

Those distributions that are not frankable are identified.

### Table of sections

202-30 Frankable distributions

**Operative provisions**

202-35 Object
202-40 Frankable distributions
202-45 Unfrankable distributions
202-47 Distributions of certain ADI profits following restructure

### 202-30 Frankable distributions

Distributions and non-share dividends are frankable unless it is specified that they are unfrankable.

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



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## Operative provisions

### 202-35 Object

The object of this Subdivision is to ensure that only distributions equivalent to realised taxed profits can be franked.

### 202-40 Frankable distributions

(1) A *distribution is a ***frankable distribution***, to the extent that it is not unfrankable under section 202-45.

(2) A *non-share dividend is a ***frankable distribution***, to the extent that it is not unfrankable under section 202-45.

### 202-45 Unfrankable distributions

The following are ***unfrankable***:

(c) where the purchase price on the buy-back of a *share by a *company from one of its *members is taken to be a dividend under section 159GZZZP of that Act—so much of that purchase price as exceeds what would be the market value (as normally understood) of the share at the time of the buy-back if the buy-back did not take place and were never proposed to take place;

(d) a distribution in respect of a *non-equity share;

(e) a distribution that is sourced, directly or indirectly, from a company's *share capital account;

(f) an amount that is taken to be an unfrankable distribution under section 215-10 or 215-15;

(g) an amount that is taken to be a dividend for any purpose under any of the following provisions:

(i) unless subsection 109RB(6) or 109RC(2) applies in relation to the amount—Division 7A of Part III of that Act (distributions to entities connected with a *private company);

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



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(iii) section 109 of that Act (excessive payments to shareholders, directors and associates);

(iv) section 47A of that Act (distribution benefits—CFCs);

(h) an amount that is taken to be an unfranked dividend for any purpose:

(i) under section 45 of that Act (streaming bonus shares and unfranked dividends);

(ii) because of a determination of the Commissioner under section 45C of that Act (streaming dividends and capital benefits);

(i) a *demerger dividend;

(j) a distribution that section 152-125 or 220-105 says is unfrankable.

## 202-47 Distributions of certain ADI profits following restructure

(1) This section applies to an amount paid by a body corporate if:

(a) the body corporate is a non-operating holding company within the meaning of the *Financial Sector (Transfer and Restructure) Act 1999*; and

(b) a restructure instrument under Part 4A of that Act is in force in relation to the body; and

(c) because of the restructure to which the instrument relates, an *ADI becomes a subsidiary (within the meaning of that Act) of the body; and

(d) the amount is sourced, directly or indirectly, from the profits of the ADI before the restructure instrument came into force; and

(e) the amount would have been a *frankable distribution if it had been distributed by the ADI before the restructure instrument came into force.

(2) The amount:

(a) is taken to be a ***dividend*** paid by the body, for the purposes of this Act (and so is a *distribution by the body); and

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



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(b) is not taken to be an *unfrankable distribution by the body just because of paragraph 202-45(e) (which makes distributions from *share capital accounts unfrankable).

## Subdivision 202-D—Amount of the franking credit on a distribution

## Guide to Subdivision 202-D

### 202-50 What this Subdivision is about

The amount of the franking credit on a distribution is that stated in the distribution statement, unless the amount stated exceeds the maximum franking credit for the distribution.

In that case, the amount of the franking credit on the distribution is taken to be the maximum franking credit for the distribution, worked out under this Subdivision.

### Table of sections

202-55 What is the maximum franking credit for a frankable distribution?

**Operative provisions**

202-60 Amount of the franking credit on a distribution
202-65 Where the franking credit stated in the distribution statement exceeds the maximum franking credit for the distribution

### 202-55 What is the maximum franking credit for a frankable distribution?

The maximum franking credit for a distribution is equivalent to the maximum amount of income tax that the entity making the distribution could have paid, at the entity's corporate tax rate for imputation purposes for the income year in which the distribution is made, on the profits underlying the distribution.

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



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## Operative provisions

### 202-60 Amount of the franking credit on a distribution

(1) The amount of the *franking credit on a *distribution is that stated in the *distribution statement for the distribution, unless that amount exceeds the *maximum franking credit for the distribution.

(2) The ***maximum franking credit*** for a *distribution is worked out using the formula:

$$\text{Amount of the *frankable distribution} \times \frac{1}{\text{Applicable gross-up rate}}$$

where:

***applicable gross-up rate*** means the *corporate tax gross-up rate of the entity making the distribution for the income year in which the distribution is made.

### 202-65 Where the franking credit stated in the distribution statement exceeds the maximum franking credit for the distribution

If the amount of a *franking credit stated in a *distribution statement for a *distribution exceeds the *maximum franking credit for the distribution, the amount of the franking credit on the distribution is taken to be the amount of the maximum franking credit for the distribution, and not the amount stated in the distribution statement.

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



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# Subdivision 202-E—Distribution statements

## Guide to Subdivision 202-E

### 202-70 What this Subdivision is about

An entity that makes a frankable distribution must give the recipient a statement setting out details of the distribution.

## Table of sections

**Operative provisions**

202-75 Obligation to give a distribution statement
202-80 Distribution statement
202-85 Changing the franking credit on a distribution by amending the distribution statement

## Operative provisions

### 202-75 Obligation to give a distribution statement

(1) An entity that makes a *frankable distribution must give the recipient a *distribution statement.

(2) The statement must be given on or before the day on which the *distribution is made, unless the entity is allowed to give the statement at a later time under subsection (3).

(3) If the entity is a *private company for the income year in which the *distribution is made, the statement must be given:

(a) before the end of 4 months after the end of the income year in which the distribution is made; or

(b) before the time determined by the Commissioner under subsection (5);

whichever is later.

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



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(4) However, the entity is not allowed to give the statement at a later time under subsection (3) if the statement indicates that a *franking credit has been allocated to the *distribution and the franking credit would, either alone or when added to other franking credits allocated to other distributions made by the entity during the income year, result in the entity having a liability for *franking deficit tax, or an increased liability for franking deficit tax, at the end of the income year.

Note: The combined effect of subsections (3) and (4) is that a private company can retrospectively frank a distribution, but not so as to create or increase a liability for franking deficit tax.

(5) The Commissioner may determine in writing that a *private company may give the statement before a time specified in the determination.

## 202-80 Distribution statement

(1) A ***distribution statement*** is a statement made in accordance with this section.

(2) The statement must be in the *approved form.

(3) The statement must:
(a) identify the entity making the distribution; and
(b) state the date on which the distribution is made; and
(c) state the amount of the distribution; and
(d) state that there is a *franking credit of an amount specified on the distribution; and
(e) state the *franking percentage for the distribution; and
(f) state the amount of any *withholding tax that has been deducted from the distribution by the entity; and
(g) include any other information required by the *approved form that is relevant to imputation generally or the distribution.

Note: Under the *Taxation Administration Act 1953* it is an offence to fail to give a statement required under this Subdivision, or make a

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



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misleading statement in connection with a distribution (whether franked or not).

## 202-85 Changing the franking credit on a distribution by amending the distribution statement

*Changing the franking credit on a specified distribution*

(1) The Commissioner may, on application by an entity, determine in writing that the entity may change the *franking credit on a specified *distribution by amending the *distribution statement for the distribution.

(2) In deciding whether to make a determination under subsection (1), the Commissioner must have regard to:

(a) whether the date for lodgment of an *income tax return by the recipient of the specified *distribution for the income year in which the distribution was made has passed; and

(b) whether, if the *franking credit on the specified distribution were changed in accordance with the entity's application, there would be any difference in the *withholding tax liability of the recipient; and

(c) whether amending the distribution statement as requested by the entity would lead to a breach of the *benchmark rule, or any of the rules in Division 204 (the anti-streaming rules); and

(d) whether amending the distribution statement as requested by the entity would lead to a new *benchmark franking percentage being set for the entity for the *franking period in which the distribution was made; and

(e) any other matters that the Commissioner considers relevant.

*Changing the franking credits on a specified class of distributions*

(3) The Commissioner may, on application by an entity, determine in writing that the entity may change the *franking credits on *distributions of a specified class by amending the *distribution statements for the distributions.

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



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(4) In deciding whether to make a determination under subsection (3), the Commissioner must have regard to:

(a) the number of recipients to whom an amended *distribution statement would be made; and

(b) whether the date for lodgment of *income tax returns by recipients of *distributions of the specified class for the income year in which the distributions were made has passed; and

(c) whether, if the *franking credit on the specified distributions were changed in accordance with the entity's application, there would be any difference in the *withholding tax liability of the recipients; and

(d) whether amending the distribution statements as requested by the entity would lead to a breach of the *benchmark rule, or any of the rules in Division 204 (the anti-streaming rules); and

(e) whether amending the distribution statements as requested by the entity would lead to a new *benchmark franking percentage being set for the entity for the *franking period in which the distributions were made; and

(f) any other matters that the Commissioner considers relevant.

*Applying to the Commissioner*

(5) The entity must:

(a) make its application under this section in writing; and

(b) include in the application all information relevant to the matters to which the Commissioner must have regard under:

(i) subsection (2), if the application relates to a *distribution; or

(ii) subsection (4), if the application relates to a class of distributions.

*Review*

(6) If the entity or a *member of the entity is dissatisfied with a determination under subsection (3), the entity or member may

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



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object to it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

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



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# Division 203—Benchmark rule

## Guide to Division 203

### 203-1 What this Division is about

Distributions within a particular period must all be franked to the same extent.

### Table of sections

203-5 Benchmark rule
203-10 Benchmark franking percentage

**Operative provisions**

203-15 Object
203-20 Application of the benchmark rule
203-25 Benchmark rule
203-30 Setting a benchmark franking percentage
203-35 Franking percentage
203-40 Franking periods—where the entity is not a private company
203-45 Franking period—private companies
203-50 Consequences of breaching the benchmark rule
203-55 Commissioner's powers to permit a departure from the benchmark rule

### 203-5 Benchmark rule

(1) A corporate tax entity must frank all frankable distributions made within a particular period at a franking percentage set as the benchmark for that period. This is the benchmark rule.

(2) The benchmark rule does not apply to some corporate tax entities. Those entities are identified in section 203-20.

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



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### 203-10 Benchmark franking percentage

(1) The benchmark franking percentage for an entity is set by reference to the franking percentage for the first frankable distribution made by the entity during the relevant period.

(2) An entity has a benchmark franking percentage, even if it is not subject to the benchmark rule.

## Operative provisions

### 203-15 Object

The object of this Subdivision is to ensure that one *member of a *corporate tax entity is not preferred over another when the entity *franks *distributions.

### 203-20 Application of the benchmark rule

(1) The *benchmark rule does not apply to a company in a *franking period if either:

(a) the company satisfies each of the following criteria:

(i) at all times during the franking period, the company is a *listed public company;

(ii) the company cannot make a *distribution on one *membership interest during the franking period without making a distribution under the same resolution on all other membership interests;

(iii) the company cannot *frank a distribution made on one membership interest during the franking period without franking distributions made on all other membership interests under the same resolution with a *franking credit worked out using the same *franking percentage; or

(b) the entity is a *100% subsidiary of a company that satisfies the criteria set out in paragraph (a).

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



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(2) The following are examples of cases in which a company satisfies the criteria set out in paragraph (1)(a):

(a) the company is a *listed public company with a single *class of *membership interest at all times during the relevant *franking period;

(b) the company is a listed public company that, under its constituent documents, must not:

(i) make a *distribution on one membership interest during the relevant franking period without making a distribution under the same resolution on all other membership interests; or

(ii) *frank a distribution made on one membership interest during the relevant franking period without franking distributions made on all other membership interests under the same resolution with a *franking credit worked out using the same *franking percentage;

(c) the company is a listed public company with more than one class of membership interest, but the rights in relation to distributions and the franking of distributions are the same for each class of membership interest.

This is not an exhaustive list.

(3) For the purposes of subsection (1), ignore *membership interests that do not carry a right to receive *distributions (other than distributions on the winding up of the company).

## 203-25 Benchmark rule

An entity must not make a *frankable distribution whose *franking percentage differs from the entity's *benchmark franking percentage for the *franking period in which the distribution is made. This is the ***benchmark rule***.

Note: If a corporate tax entity franks a distribution in breach of this rule, the distribution will still be a franked distribution, although consequences will flow under section 203-50.

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



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## 203-30 Setting a benchmark franking percentage

The ***benchmark franking percentage*** for an entity for a *franking period is the same as the *franking percentage for the first *frankable distribution made by the entity within the period.

Note: If no frankable distribution is made during the period, there is no benchmark franking percentage for the period.

## 203-35 Franking percentage

(1) Subject to subsection (2), the ***franking percentage*** for a *frankable distribution is worked out using the formula:

$$\frac{\text{*Franking credit allocated to the *frankable distribution}}{\text{*Maximum franking credit for the distribution}} \times 100$$

(2) If the *franking percentage for a *frankable distribution would exceed 100% if it were worked out under subsection (1), it is taken to be 100%.

## 203-40 Franking periods—where the entity is not a private company

(1) Use this section to work out the franking periods for an entity in an income year where the entity is not a *private company for the income year.

(2) If the entity's income year is a period of 12 months, each of the following is a ***franking period*** for the entity in that year:
   (a) the period of 6 months beginning at the start of the entity's income year;
   (b) the remainder of the income year.

(3) If the entity's income year is a period of 6 months or less, the ***franking period*** for the entity in that year is the same as the income year.

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



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(4) If the entity's income year is a period of more than 6 months and less than 12 months, each of the following is a ***franking period*** for the entity in that year:
   (a) the period of 6 months beginning at the start of the entity's income year;
   (b) the remainder of the income year.

(5) If the entity's income year is a period of more than 12 months, each of the following is a ***franking period*** for the entity in that year:
   (a) the period of 6 months beginning at the start of the entity's income year (the ***first franking period***);
   (b) the period of 6 months beginning immediately after the end of the first franking period;
   (c) the remainder of the income year.

## 203-45 Franking period—private companies

The ***franking period*** for an entity that is a *private company for an income year is the same as the income year.

## 203-50 Consequences of breaching the benchmark rule

(1) If an entity makes a *frankable distribution in breach of the *benchmark rule:
   (a) the entity is liable to pay over-franking tax imposed by the *New Business Tax System (Over-franking Tax) Act 2002* if the *franking percentage for the *distribution exceeds the entity's *benchmark franking percentage for the *franking period in which the distribution is made; and
   (b) a *franking debit arises in the entity's *franking account if the franking percentage for the distribution is less than the entity's benchmark franking percentage for the franking period in which the distribution is made.

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



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(2) Use the following formula to work out:

(a) in a case dealt with under paragraph (1)(a)—the amount of the *over-franking tax; and

(b) in a case dealt with under paragraph (1)(b)—the amount of the *franking debit:

$$\text{Amount of the *frankable distribution} \times \frac{\text{Franking \% differential}}{\text{Applicable gross-up rate}}$$

where:

***applicable gross-up rate*** means the *corporate tax gross-up rate of the entity making the distribution for the income year in which the distribution is made.

***franking % differential*** is the difference between:

(a) the *franking percentage for the *frankable distribution; and

(b) either:

(i) if subparagraph (ii) does not apply—the entity's *benchmark franking percentage for the *franking period in which the *distribution is made; or

(ii) if the Commissioner in the exercise of the Commissioner's powers under subsection 203-55(1), permits the entity to frank the distribution at a different franking percentage—that percentage.

Example: An entity makes 3 successive frankable distributions in a franking period. Each of those distributions is represented in the following diagram. The franking percentage for the first distribution is 40%, and so the entity's benchmark franking percentage for the period is 40%.

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



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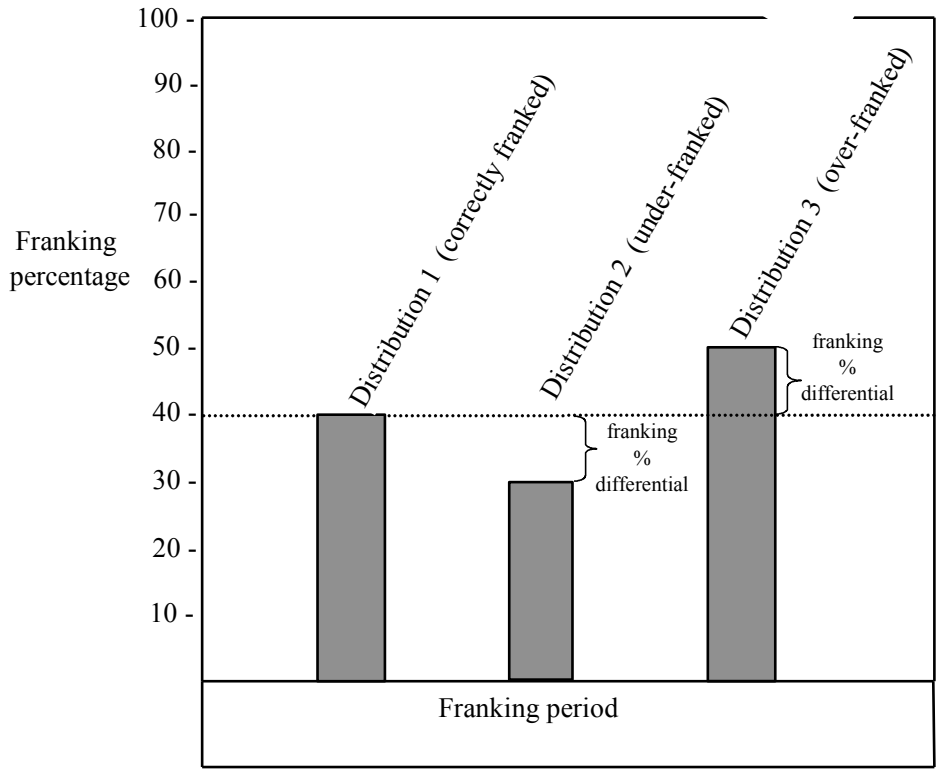


Note: Distribution 2 is under-franked to the extent of the franking % differential. This is used to work out the amount of the under-franking debit under subsection (2).

Distribution 3 is over-franked to the extent of the franking % differential. This is used to work out the amount of over-franking tax on the distribution under the *New Business Tax System (Over-franking Tax) Act 2002*. The amount of the tax is calculated using the same formula as that set out in subsection (2).

(3) A *franking debit arising under paragraph (1)(b) is in addition to any franking debit that would otherwise arise for the entity because of the *distribution.

(4) The *franking debit arises on the day on which the *frankable distribution is made.

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



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## 203-55 Commissioner's powers to permit a departure from the benchmark rule

*Powers of the Commissioner*

(1) The Commissioner may, on application by an entity, make a determination in writing permitting the entity to *frank a *distribution at a *franking percentage that differs from the entity's *benchmark franking percentage for the *franking period in which the distribution is made.

(2) Because the *benchmark rule is an integral part of the imputation system, the Commissioner's powers under this section may only be exercised in extraordinary circumstances.

*Matters to which the Commissioner must have regard in exercising the power*

(3) In deciding whether there are extraordinary circumstances justifying the exercise of the Commissioner's power to make a determination under subsection (1), the Commissioner must have regard to:

(a) the entity's reasons for departing, or proposing to depart, from the *benchmark rule; and

(b) the extent of the departure, or proposed departure, from the benchmark rule; and

(c) if the circumstances that give rise to the entity's application are within the entity's control, the extent to which the entity has sought the exercise of the Commissioner's powers under this section in the past; and

(d) whether a *member of the entity has been or will be disadvantaged as a result of the departure, or proposed departure, from the benchmark rule; and

(e) whether a *member of the entity will receive greater *imputation benefits than another member of the entity because a distribution *franked at a *franking percentage that differs from the *benchmark franking percentage for the *franking period is made to one of them; and

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



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(f) any other matters that the Commissioner considers relevant.

*When may the powers be exercised?*

(4) The Commissioner may make a determination under subsection (1) either before or after the *frankable distribution is made.

*Consequence of the Commissioner exercising the power under this section*

(5) An allocation of a *franking credit at a percentage specified by the Commissioner in a determination under subsection (1) is taken to comply with the *benchmark rule.

*Applying to the Commissioner*

(6) The entity must:
(a) make its application under this section in writing; and
(b) include in the application all information relevant to the matters to which the Commissioner must have regard under subsection (3).

*Review*

(7) If the entity or a *member of the entity is dissatisfied with the determination under subsection (1), the entity or member may object to it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

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



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# Division 204—Anti-streaming rules

## Table of Subdivisions

204-A Objects and application
204-B Linked distributions
204-C Substituting tax-exempt bonus share for franked distributions
204-D Streaming distributions
204-E Disclosure requirements

## Subdivision 204-A—Objects and application

### Table of sections

204-1 Objects
204-5 Application to non-share dividends

### 204-1 Objects

The objects of this Division are to ensure that:

(a) an entity and its *members cannot avoid the effect of the *benchmark rule by exploiting the *benchmark franking percentage of another entity; and

(b) an entity does not stream *franked distributions and *tax-exempt bonus shares; and

(c) an entity does not stream *distributions to members of the entity who *derive a *greater benefit from franking credits than other members.

### 204-5 Application

(1) The rules in this Division will apply to an entity even if it is not subject to the benchmark rule.

(2) This Division applies to non-share dividends in the same way as it applies to distributions.

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



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# Subdivision 204-B—Linked distributions

## Guide to Subdivision 204-B

### 204-10 What this Subdivision is about

This Subdivision prevents the exploitation of a corporate tax entity's benchmark franking percentage by another corporate tax entity, or that other entity's members, by imposing a franking debit where there is exploitation.

### Table of sections

**Operative provisions**

204-15 Linked distributions

## Operative provisions

### 204-15 Linked distributions

*Franking debit arises where a distribution by one entity is substituted for a distribution by another*

(1) This section gives rise to a *franking debit if:

(a) the exercise of a choice or selection by a *member of an entity (the ***first entity***); or

(b) the member's failure to exercise a choice or selection;

has the effect of determining (to any extent) that another entity makes to one of its members a *distribution (the ***linked distribution***) that is:

(c) in substitution (in whole or in part) for a distribution by the first entity to that member or any other member of the first entity; and

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



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(d) unfranked, or *franked at a *franking percentage that differs from the first entity's *benchmark franking percentage for the *franking period in which the linked distribution is made.

Note: Division 205 deals with a corporate tax entity's franking account and sets out when a debit, known as a franking debit, arises in that account.

*Franking account in which the debit arises*

(2) The debit arises in the *franking account of the entity with the higher *benchmark franking percentage for the *franking period in which the linked distribution is made.

*Amount of the debit*

(3) The debit is equal to the one that would arise in that *franking account if the entity had made a *franked distribution, equal to the linked distribution, with a *franking percentage equal to the *benchmark franking percentage for that entity.

*When does the debit arise*

(4) The debit arises on the day on which the linked distribution is made.

*Debit is in addition to any other franking debit arising because of the linked distribution*

(5) The debit is in addition to any other debit that arises in an entity's *franking account because of the linked distribution.

*Where an entity has no benchmark franking percentage*

(6) If an entity has no *benchmark franking percentage for the *franking period in which the linked distribution is made, this section applies as if:

(a) in a case where the linked distribution has a *franking percentage of less than 50%—the entity had a benchmark franking percentage of 100% for that period; and

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



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(b) in a case where the linked distribution has a franking percentage equal to or greater than 50%—the entity had a benchmark franking percentage of 0% for that period.

## Subdivision 204-C—Substituting tax-exempt bonus share for franked distributions

## Guide to Subdivision 204-C

### 204-20 What this Subdivision is about

This Subdivision prevents the substitution of a tax-exempt bonus share for a franked distribution by imposing a franking debit on the issue of the share as if it were a franked distribution.

### Table of sections

**Operative provisions**

204-25 Substituting tax-exempt bonus shares for franked distributions

## Operative provisions

### 204-25 Substituting tax-exempt bonus shares for franked distributions

*Franking debit arises if tax-exempt bonus shares are issued in substitution for a franked distribution*

(1) This section gives rise to a *franking debit in an entity's *franking account if:

(a) the exercise of a choice or selection by a *member of the entity; or

(b) the member's failure to exercise a choice or selection;

has the effect of determining (to any extent) that the entity issues one or more *tax-exempt bonus shares, to that member or another member of the entity, in substitution (in whole or in part) for one or

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more *franked distributions by the entity to that member or another member.

*Amount of the debit*

(2) The debit is equal to the one that would arise in the entity's *franking account if the entity made a *distribution, equal to the *franked distributions referred to in subsection (1), franked at the entity's *benchmark franking percentage for the *franking period in which the shares are issued.

*When does the debit arise*

(3) The debit arises on the day when the shares are issued.

*Meaning of **tax-exempt bonus share***

(4) For a company whose *shares have no par value, ***tax-exempt bonus share*** means a share issued by the company in the circumstances mentioned in subsection 6BA(6) of the *Income Tax Assessment Act 1936*.

(5) For any other company, ***tax-exempt bonus share*** means a *share issued by the company to a *shareholder in the company where:

(a) the amount or value of the share is debited against an amount standing to the credit of a share premium account of the company; and

(b) no part of the paid-up value of the share is a dividend; and

(c) the share is issued:

(i) as a bonus share; or

(ii) in the circumstances mentioned in subsection 6BA(1) of the *Income Tax Assessment Act 1936*, as in force immediately before 1 July 1998.

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



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*Where a company has no benchmark franking percentage for the franking period*

(6) If a company has no *benchmark franking percentage for the *franking period in which the *tax-exempt bonus share is issued, this section applies as if the entity had a benchmark franking percentage of 100% for that period.

## Subdivision 204-D—Streaming distributions

## Guide to Subdivision 204-D

### 204-26 What this Subdivision is about

This Subdivision prevents the streaming of imputation benefits to one member of a corporate tax entity in preference to another by either imposing a franking debit or denying an imputation benefit where there is streaming.

## Table of sections

**Operative provisions**

204-30 Streaming distributions
204-35 When does a franking debit arise if the Commissioner makes a determination under paragraph 204-30(3)(a)
204-40 Amount of the franking debit
204-41 Amount of the exempting debit
204-45 Effect of a determination about distributions to favoured members
204-50 Assessment and notice of determination
204-55 Right to review where a determination made

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



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## Operative provisions

### 204-30 Streaming distributions

*Commissioner's power to make a determination when distributions or distributions and other benefits are streamed*

(1) This section empowers the Commissioner to make determinations if an entity streams one or more *distributions (or one or more distributions and the giving of other benefits), whether in a single *franking period or in a number of franking periods, in such a way that:

(a) an *imputation benefit is, or apart from this section would be, received by a *member of the entity as a result of the distribution or distributions; and

(b) the member would *derive a *greater benefit from franking credits than another member of the entity; and

(c) the other member of the entity will receive lesser imputation benefits, or will not receive any imputation benefits, whether or not the other member receives other benefits.

The member that derives the greater benefit from franking credits is the ***favoured member***. The member that receives the lesser imputation benefits is the ***disadvantaged member***.

*Examples of other benefits*

(2) These are examples of the giving of other benefits:

(a) issuing bonus *shares;

(b) returning *paid-up share capital;

(c) *forgiving a debt;

(d) the entity or another entity making a payment of any kind, or giving any property, to a *member or to another person on a member's behalf.

*Nature of the determination that the Commissioner may make*

(3) The Commissioner may make one or more of these determinations:

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(a) that a specified *franking debit arises in the *franking account of the entity, for a specified *distribution or other benefit to a disadvantaged member;

(b) that a specified *exempting debit arises in the *exempting account of the entity, for a specified *distribution or other benefit to a disadvantaged member;

(c) that no *imputation benefit is to arise in respect of a distribution that is made to a favoured member and specified in the determination.

A determination must be in writing.

(4) The Commissioner may:

(a) specify the *franking debit under paragraph (3)(a) by specifying the *franking percentage to be used in working out the amount of the debit; and

(b) specify the *exempting debit under paragraph (3)(b) by specifying the *exempting percentage to be used in working out the amount of the debit.

(5) The Commissioner may specify the *distribution under paragraph (3)(a), (b) or (c) by specifying:

(a) the date on which the distribution was made, or the period during which the distribution was made; and

(b) the member, or class of members, to whom the distribution was made.

*What is an imputation benefit?*

(6) A *member of an entity receives an ***imputation benefit*** as a result of a distribution if:

(a) the member is entitled to a *tax offset under Division 207 as a result of the distribution; or

(b) an amount would be included in the member's assessable income as a result of the distribution because of the operation of section 207-35; or

(c) a *franking credit would arise in the *franking account of the member as a result of the distribution; or

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



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(d) an *exempting credit would arise in the *exempting account of the member as a result of the distribution; or

(e) the member would not be liable to pay *withholding tax on the distribution, because of the operation of paragraph 128B(3)(ga) of the *Income Tax Assessment Act 1936*; or

(f) the member is entitled to a *tax offset under section 210-170 as a result of the distribution.

*When does a favoured member derive greater benefit from franking credits?*

(7) The following subsection lists some of the cases in which a *member of an entity *derives a ***greater benefit from franking credits*** than another member of the entity. It is not an exhaustive list.

(8) A *member of an entity *derives a ***greater benefit from franking credits*** than another member of the entity if any of the following circumstances exist in relation to the other member in the income year in which the distribution giving rise to the benefit is made, and not in relation to the first member:

(a) the other member is a foreign resident;

(b) the other member would not be entitled to any *tax offset under Division 207 because of the distribution;

(c) the amount of income tax that, apart from this Division, would be payable by the other member because of the distribution is less than the tax offset to which the other member would be entitled;

(d) the other member is a *corporate tax entity at the time the distribution is made, but no *franking credit arises for the entity as a result of the distribution;

(e) the other member is a *corporate tax entity at the time the distribution is made, but cannot use *franking credits received on the distribution to *frank distributions to its own members because:

(i) it is not a *franking entity; or

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



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(ii) it is unable to make *frankable distributions;

(f) the other member is an *exempting entity.

(9) A *member of an entity *derives a ***greater benefit from franking credits*** than another member of the entity if any of the following circumstances exist in relation to the first member in the income year in which the *distribution giving rise to the benefit is made, and not in relation to the other member:

(a) a *franking credit arises for the first member under item 5, 6 or 7 of the table in section 208-130 (distributions by *exempting entities to exempting entities);

(b) a franking credit or *exempting credit arises for the first member because the distribution is *franked with an exempting credit;

(c) the first member is entitled to a *tax offset because:

(i) the distribution is a *franked distribution made by an exempting entity; or

(ii) the distribution is *franked with an exempting credit.

(10) A *member of an entity *derives a ***greater benefit from franking credits*** than another member if the first member is entitled to a *tax offset under section 210-170 as a result of the *distribution, and the other member is not.

## 204-35 When does a franking debit arise if the Commissioner makes a determination under paragraph 204-30(3)(a)

(1) If the Commissioner makes a determination giving rise to a *franking debit in the *franking account of an entity under paragraph 204-30(3)(a), the debit arises in the franking account of the entity on the day on which the notice of determination is given to the entity in accordance with section 204-50.

(2) If the Commissioner makes a determination giving rise to an *exempting debit in the *exempting account of an entity under paragraph 204-30(3)(b), the debit arises in the exempting account

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



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of the entity on the day on which the notice of determination is given to the entity in accordance with section 204-50.

## 204-40 Amount of the franking debit

(1) The amount of the *franking debit arising because of a determination by the Commissioner under paragraph 204-30(3)(a) must not exceed:

(a) if the specified *distribution has been *franked—the difference between the amount of the *franking credit on the distribution and an amount worked out by multiplying the amount of the distribution by the highest *franking percentage at which a distribution to a favoured member is franked; or

(b) if the specified distribution, although *frankable, has not been franked—an amount worked out by multiplying the amount of the distribution by the highest franking percentage at which a distribution to a favoured member is franked; or

(c) if the specified distribution is *unfrankable—an amount worked out by multiplying the amount of the distribution by the highest franking percentage at which a distribution to a favoured member is franked; or

(d) if the specified benefit is the issue of bonus shares from a share premium account—an amount worked out by multiplying the amount debited to the share premium account in respect of the bonus shares by the highest franking percentage at which a distribution to a favoured member is franked; or

(e) if some other benefit is specified—an amount worked out by multiplying the value of the benefit by the highest franking percentage at which a distribution to a favoured member is franked.

(2) In specifying the *franking debit, the Commissioner must have regard to:

(a) any *franking debit already arising in the *franking account of the entity under paragraph 203-50(1)(b) because the entity

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franked the specified *distribution in breach of the *benchmark rule; and

(b) any franking debit already arising in the franking account of the entity, because of the specified distribution or benefit, under section 204-15 (about linked distributions) or section 204-25 (about substituting *tax-exempt bonus shares for *franked distributions).

## 204-41 Amount of the exempting debit

The amount of the *exempting debit arising because of a determination by the Commissioner under paragraph 204-30(3)(b) must not exceed:

(a) if the specified *distribution has been *franked with an exempting credit—the difference between the amount of the *exempting credit on the distribution and an amount worked out by multiplying the amount of the distribution by the highest *exempting percentage at which a distribution to a favoured member is franked; or

(b) if the specified distribution, although *frankable, has not been franked with an exempting credit—an amount worked out by multiplying the amount of the distribution by the highest exempting percentage at which a distribution to a favoured member is franked; or

(c) if the specified distribution is *unfrankable—an amount worked out by multiplying the amount of the distribution by the highest exempting percentage at which a distribution to a favoured member is franked; or

(d) if the specified benefit is the issue of bonus shares from a share premium account—an amount worked out by multiplying the amount debited to the share premium account in respect of the bonus shares by the highest exempting percentage at which a distribution to a favoured member is franked; or

(e) if some other benefit is specified—an amount worked out by multiplying the value of the benefit by the highest exempting

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percentage at which a distribution to a favoured member is franked.

### 204-45 Effect of a determination about distributions to favoured members

If the Commissioner makes a determination denying an *imputation benefit under paragraph 204-30(3)(c) (about distributions to favoured members), the determination has effect according to its terms.

### 204-50 Assessment and notice of determination

(1) A determination under subsection 204-30(3) does not form part of an assessment.

(2) The Commissioner must give notice in writing of the determination:

(a) in a case where the Commissioner determines that a *franking debit is to arise in the *franking account of an entity under paragraph 204-30(3)(a)—to the entity; and

(b) in a case where the Commissioner determines that an *exempting debit is to arise in the *exempting account of an entity under paragraph 204-30(3)(b)—to the entity; and

(c) in a case where a favoured member is denied an *imputation benefit under paragraph 204-30(3)(c)—to the favoured member.

(3) If the Commissioner makes a determination denying an *imputation benefit under paragraph 204-30(3)(c) on a *distribution made by a *listed public company, the Commissioner is taken to have served notice in writing of the determination on the favoured member if the Commissioner causes a notice to be published in a daily newspaper that circulates generally in each State, the Australian Capital Territory and the Northern Territory. The notice is taken to have been served on the day on which the publication takes place.

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



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### 204-55 Right to review where a determination made

If a taxpayer to whom a determination relates is dissatisfied with the determination, the taxpayer may object to it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

## Subdivision 204-E—Disclosure requirements

## Guide to Subdivision 204-E

### 204-65 What this Subdivision is about

This Subdivision requires an entity to notify the Commissioner where there is a significant difference in its benchmark franking percentage over time, so that the Commissioner can assess whether there is streaming.

### Table of sections

**Operative provisions**

204-70 Application of this Subdivision
204-75 Notice to the Commissioner
204-80 Commissioner may require information where the Commissioner suspects streaming

## Operative provisions

### 204-70 Application of this Subdivision

(1) This Subdivision applies to an entity if the difference between:
  (a) the *benchmark franking percentage for the entity for a *franking period (the ***current franking period***); and
  (b) the benchmark franking percentage for the entity for the last franking period in which a *frankable distribution was made (the ***last relevant franking period***);

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



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is more than the amount worked out using the following formula (whether the percentage for the current franking period is more than or less than the percentage for the last relevant franking period):

$$\text{Number of } {}^{*}\text{franking periods starting immediately after the last relevant franking period and ending at the end of the current franking period} \times 20 \text{ percentage points}$$

(2) However, this Subdivision does not apply to an entity to which the benchmark rule does not apply.

Note: Section 203-20 identifies the entities to which the benchmark rule does not apply.

## 204-75 Notice to the Commissioner

(1) The entity must notify the Commissioner in writing of the difference.

(3) The notice must also state:

(a) the *benchmark franking percentage for the current franking period; and

(b) the benchmark franking percentage for the last relevant franking period.

(4) The notice must be in the *approved form and must be given to the Commissioner:

(a) if the entity is required to give the Commissioner a *franking return for the income year in which the current franking period occurs—with that return; or

(b) otherwise—within one month after the end of the income year in which the current franking period occurs.

Note: See Subdivision 214-A for requirements to give the Commissioner franking returns.

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



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## 204-80 Commissioner may require information where the Commissioner suspects streaming

(1) The Commissioner may request the entity to give the Commissioner the following information:

(a) the entity's reasons for setting a benchmark franking percentage for the current franking period that differs significantly from the benchmark franking percentage for the last relevant franking period; and

(b) the *franking percentages for all *frankable distributions made in the current franking period and the last relevant franking period; and

(c) details of any other benefits given to the entity's *members, either by the entity or an *associate of the entity, during the period beginning at the beginning of the last relevant franking period and ending at the end of the current franking period; and

(d) whether any member of the entity has *derived, or will derive, a *greater benefit from franking credits than another member of the entity as a result of the variation in the benchmark franking percentage between the current franking period and the last relevant franking period; and

(e) any other information required by the *approved form that is relevant in determining whether the entity is streaming *distributions.

(2) The entity must comply with the Commissioner's request.

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



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# Division 205—Franking accounts, franking deficit tax liabilities and the related tax offset

## Guide to Division 205

### 205-1 What this Division is about

This Division:

- creates a franking account for each entity that is, or has been, a corporate tax entity; and
- identifies when franking credits and debits arise in those accounts and the amount of those credits and debits; and
- identifies when there is a franking surplus or deficit in the account; and
- creates a liability to pay franking deficit tax if the account is in deficit at certain times; and
- creates a tax offset for that liability.

## Table of sections

205-5 Franking accounts, franking deficit tax liabilities and the related tax offset

**Operative provisions**

205-10 Each entity that is or has been a corporate tax entity has a franking account
205-15 Franking credits
205-20 Paying a PAYG instalment, income tax or diverted profits tax
205-25 Residency requirement for an event giving rise to a franking credit or franking debit
205-30 Franking debits
205-35 Refund of income tax or diverted profits tax
205-40 Franking surplus and deficit

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



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205-45 Franking deficit tax
205-50 Deferring franking deficit
205-70 Tax offset arising from franking deficit tax liabilities

## 205-5 Franking accounts, franking deficit tax liabilities and the related tax offset

(1) Each entity that is, or has ever been, a corporate tax entity has a franking account.

(2) The payment of a PAYG instalment or income tax will generate a franking credit in that account. The amount of the credit is equal to the amount of tax paid. The receipt of a franked distribution by an entity from another corporate tax entity will also generate a franking credit. There are other circumstances in which a franking credit arises.

(3) The receipt of a refund of income tax or the payment of a franked distribution by a corporate tax entity will generate a franking debit. There are, however, other cases where a franking debit arises. For example, a franking debit might arise under a determination by the Commissioner because distributions have been streamed.

(4) An entity must be a franking entity at certain times and satisfy certain residency requirements before a franking credit or debit arises in its account.

(5) Franking deficit tax is payable if the franking account of an entity is in deficit at the end of the entity's income year, or when the entity ceases to be a franking entity.

(6) A tax offset is available to an entity that has incurred a liability to pay franking deficit tax.

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



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## Operative provisions

### 205-10 Each entity that is or has been a corporate tax entity has a franking account

There is a ***franking account*** for each entity that is, or has at any time been, a *corporate tax entity.

Note: The balance in the franking account on 1 July 2002 will either be nil or, if the entity had a franking surplus or deficit immediately before 1 July 2002 under the imputation scheme existing at that time, an amount calculated under the *Income Tax (Transitional Provisions) Act 1997*.

### 205-15 Franking credits

(1) The following table sets out when a credit arises in the *franking account of an entity and the amount of the credit. The credit is called a ***franking credit***.

**Credits in the franking account**

| Item | If: | A credit of: | Arises: |
|---|---|---|---|
| 1 | the entity *pays a PAYG instalment; and<br>the entity satisfies the *residency requirement for the income year in relation to which the PAYG instalment is paid; and<br>the entity is a *franking entity for the whole or part of the relevant *PAYG instalment period | that part of the payment that is attributable to the period during which the entity was a franking entity, less any reduction under subsection (4) | on the day on which the payment is made |

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



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| **Credits in the franking account** | | | |
|---|---|---|---|
| **Item** | **If:** | **A credit of:** | **Arises:** |
| 2 | the entity *pays income tax; and<br>the entity satisfies the *residency requirement for the income year for which the tax is paid; and<br>the entity is a *franking entity for the whole or part of that income year | that part of the payment that is attributable to the period during which the entity was a franking entity, less any reduction under subsection (4) | on the day on which the payment is made |
| 3 | a *franked distribution is made to the entity; and<br>the entity satisfies the *residency requirement for the income year in which the distribution is made; and<br>the entity is a *franking entity when it receives the distribution; and<br>the entity is entitled to a *tax offset because of the distribution under Division 207 | the *franking credit on the distribution | on the day on which the distribution is made |

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



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| **Credits in the franking account** | | | |
|---|---|---|---|
| **Item** | **If:** | **A credit of:** | **Arises:** |
| 4 | a *franked distribution *flows indirectly to the entity through a partnership or the trustee of a trust; and<br>the entity is a *franking entity when the franked distribution is made; and<br>the entity is entitled to a *tax offset because of the distribution under Division 207 | the entity's share of the *franking credit on the distribution | at the time specified in subsection (2) |
| 4A | a *franking debit arises under item 2 or 2A of the table in subsection 205-30(1) because the entity receives a *tax offset refund; and<br>the entity's tax offset refund is subsequently reduced and the entity is liable to pay to the Commonwealth the amount of the excess mentioned in subsection 172A(2) of the *Income Tax Assessment Act 1936*; and<br>the entity pays the amount of the excess | the difference (if any) between:<br>(a) the amount of the franking debit; and<br>(b) the amount the franking debit would have been if the tax offset refund were reduced by the amount of the excess | on the day on which the amount of the excess is paid |

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



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Section 205-15

| **Credits in the franking account** | | | |
|---|---|---|---|
| **Item** | **If:** | **A credit of:** | **Arises:** |
| 5 | the entity incurs a liability to pay *franking deficit tax under section 205-45 or 205-50 | the amount of the liability | immediately after the liability is incurred |
| 6 | a *franking credit arises under section 316-275 for the *friendly society or one of its *wholly-owned subsidiaries because the society or subsidiary *receives a refund of income tax | the amount of the debit specified in subsection 316-275(3) | at the time provided by subsection 316-275(4) |
| 6A | a *franking credit arises under paragraph 417-50(5)(b) in relation to a deduction transferred to a *corporate tax entity | the amount of the *franking credit specified in subsection 417-50(6) | at the time provided by paragraph 417-50(5)(b) |
| 6B | a *franking credit arises under paragraph 417-100(1)(c) in relation to *tax loss transferred to a *corporate tax entity | the amount of the *franking credit specified in subsection 417-100(3) | at the time provided by paragraph 417-100(1)(c) |
| 7 | a *franking credit arises under subsection 418-50(1) in relation to an *exploration credit | the amount of the *franking credit specified in subsection 418-50(2) | at the time provided by subsection 418-50(3) |

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



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| **Credits in the franking account** | | | |
|---|---|---|---|
| **Item** | **If:** | **A credit of:** | **Arises:** |
| 8 | the entity *pays diverted profits tax; and<br>the entity satisfies the *residency requirement for the income year for which the tax is paid; and<br>the entity is a *franking entity for the whole or part of that income year | that part of the payment that is attributable to the period during which the entity was a franking entity, multiplied by the proportion worked out under subsection (5) | on the day on which the payment is made |

(2) A *franking credit covered by item 4 of the table arises at the end of the income year:

(a) that is an income year of the last partnership or trust interposed between:

(i) the entity; and

(ii) the *corporate tax entity that made the distribution; and

(b) during which the *franked distribution *flows indirectly to the entity.

(3) Despite item 1 or 2 of the table in subsection (1), no credit arises on that part of the payment that is attributable to a payment of income tax in relation to an *RSA component.

(4) An entity's *franking credit for a payment mentioned in item 1 or 2 of the table in subsection (1) is reduced by the amount (if any) worked out as follows, but not below zero.

*Method statement*

Step 1. Identify any income years ending before the payment was made for which the entity has *received a refund of income tax.

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| | |
|---|---|
| Step 2. | Add up the part (if any) of each of those refunds that is attributable to a *tax offset that is subject to the refundable tax offset rules because of section 67-30 (about R&D). |
| Step 3. | Subtract any reduction under this subsection of a *franking credit for any earlier payment by the entity. (For this purpose, assume a credit reduced to zero is still a franking credit.) |

(5) The proportion is the standard corporate tax rate (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*) divided by 40%.

## 205-20 Paying a PAYG instalment, income tax or diverted profits tax

(1) An entity ***pays a PAYG instalment*** if and only if:

(a) the entity has a liability to pay the instalment; and

(b) either:

(i) the entity makes a payment to satisfy the liability (in whole or in part); or

(ii) a credit, or an *RBA surplus, is applied to discharge or reduce the liability.

Note: The requirement in paragraph (a) means that the entity cannot generate franking credits by making a "voluntary" payment of income tax (that is, paying an amount on account of income tax for which the entity is not liable at the time when the payment is made).

(2) If an entity:

(a) is liable to pay a *PAYG instalment; and

(b) has a *PAYG instalment variation credit;

the PAYG instalment variation credit must be fully applied to reduce the liability for the PAYG instalment before any other credit or payment can be applied to reduce that liability.

(3) An entity ***pays income tax*** if and only if:

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



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(a) the entity has a liability to pay the income tax; and

(b) either:

(i) the entity makes a payment to satisfy the liability (in whole or in part); or

(ii) a credit, or an *RBA surplus, is applied to discharge or reduce the liability.

Note: The requirement in paragraph (a) means that the entity cannot generate franking credits by making a "voluntary" payment of income tax (that is, paying an amount on account of income tax for which the entity is not liable at the time when the payment is made).

(3A) An entity ***pays diverted profits tax*** if and only if:

(a) the entity has a liability to pay the *diverted profits tax; and

(b) either:

(i) the entity makes a payment to satisfy the liability (in whole or in part); or

(ii) a credit, or an *RBA surplus, is applied to discharge or reduce the liability.

(4) Subparagraphs (1)(b)(ii), (3)(b)(ii) and (3A)(b)(ii) do not apply to the application of a credit allowable under or by virtue of section 45-30 or 45-215 in Schedule 1 to the *Taxation Administration Act 1953* (these sections deal with credits for *PAYG instalments payable and credit on using a varied rate in certain cases).

(5) The amount of the *PAYG instalment or income tax paid is equal to:

(a) the amount of the liability, if it is satisfied in full; or

(b) the amount by which the liability is reduced, if it is not satisfied in full.

(6) If:

(a) a surplus in an *RBA of an entity is applied to satisfy a liability of the entity to *pay a PAYG instalment in respect of an income year; and

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(b) a credit allowable under section 45-30 in Schedule 1 to the *Taxation Administration Act 1953* in respect of that income year is included in the RBA; and

(c) the RBA does not include the liability to pay the *PAYG instalment; and

(d) the amount of the credit exceeds the income tax assessed to the entity in respect of that income year;

the amount of the PAYG instalment paid by virtue of the application of the surplus is reduced by the amount of the excess mentioned in paragraph (d).

## 205-25 Residency requirement for an event giving rise to a franking credit or franking debit

(1) An entity satisfies the ***residency requirement*** for an income year in which, or in relation to which, an event specified in a relevant table occurs if:

(a) the entity is a company, or a *corporate limited partnership, to which at least one of the following subparagraphs applies:

(i) the entity is an Australian resident for more than one half of the 12 months immediately preceding the event if the event occurs before the end of the income year;

(ii) the entity is an Australian resident at all times during the income year when the entity exists if the event occurs at or after the end of the income year;

(iii) the entity is an Australian resident for more than one half of the income year (whether or not the event occurs before the end of the income year); or

(c) the entity is a *public trading trust for the income year.

(2) The tables in sections 205-15 and 205-30 are relevant for the purposes of subsection (1).

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



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## 205-30 Franking debits

(1) The following table sets out when a debit arises in the *franking account of an entity and the amount of the debit. The debit is called a ***franking debit***.

**Debits in the franking account**

| Item | If: | A debit of: | Arises: |
|---|---|---|---|
| 1 | the entity *franks a *distribution | the amount of the *franking credit on the distribution | on the day on which the distribution is made |
| 2 | the entity *receives a refund of income tax; and<br>the entity satisfies the *residency requirement for the income year to which the refund relates; and<br>the entity was a *franking entity during the whole or part of the income year to which the refund relates | that part of the refund that is attributable to the period during which the entity was a franking entity | on the day on which the refund is received |

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



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**Debits in the franking account**

| Item | If: | A debit of: | Arises: |
|---|---|---|---|
| 2A | the entity *receives a *tax offset refund; and<br>the entity does not satisfy the *residency requirement for the income year to which the refund relates; and<br>the entity was a *franking entity during the whole or part of the income year to which the refund relates; and<br>the entity's *franking account is in *surplus on the day on which the refund is received | the lesser of:<br>(a) that part of the refund that is attributable to the period during which the entity was a franking entity; and<br>(b) the amount of the *franking surplus | on the day on which the refund is received |
| 3 | a *franking debit arises for the entity under paragraph 203-50(1)(b) (the entity *franks a *distribution in contravention of the *benchmark rule) | the franking debit worked out under paragraph 203-50(2)(b) | on the day specified in subsection 203-50(4) |
| 4 | the entity ceases to be a *franking entity; and<br>the entity's *franking account is in *surplus immediately before ceasing to be a franking entity | the amount of the *franking surplus | on the day on which the entity ceases to be a franking entity |
| 5 | a *franking debit arises for the entity under section 204-15 (linked distributions) | the franking debit specified in subsection 204-15(3) | on the day specified in subsection 204-15(4) |

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



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| **Debits in the franking account** | | | |
|---|---|---|---|
| **Item** | **If:** | **A debit of:** | **Arises:** |
| 6 | a *franking debit arises under section 204-25 (debit for substituting *tax-exempt bonus shares for *franked distributions) | the amount of the debit specified in subsection 204-25(2) | on the day specified in subsection 204-25(3) |
| 7 | the Commissioner makes a determination under paragraph 204-30(3)(a) giving rise to a *franking debit for the entity (streaming distributions) | the amount of the debit specified in the determination | on the day specified in section 204-35 |
| 7A | a *franking debit arises under subsection 197-45(1) because an amount to which Division 197 applies is transferred to a company's *share capital account | the amount of the debit specified in subsection 197-45(2) | at the time provided by subsection 197-45(1) |
| 7B | a *franking debit arises under subsection 197-65(2) because a company chooses to untaint its *share capital account | the amount of the debit specified in subsection 197-65(3) | at the time provided by subsection 197-65(2) |

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| **Debits in the franking account** | | | |
|---|---|---|---|
| **Item** | **If:** | **A debit of:** | **Arises:** |
| 9 | an *on-market buy-back by a company of a *membership interest in the company | an amount equal to the debit that would have arisen if:<br>(a) the purchase of the interest were a *frankable distribution equal to the one that would have arisen if the company had purchased the interest *off-market; and<br>(b) the distribution were *franked at the entity's *benchmark franking percentage for the *franking period in which the purchase was made or, if the entity does not have a benchmark franking percentage for the period, at a *franking percentage of 100% | on the day on which the interest is purchased |
| 10 | a *franking debit arises under section 316-260 for the *friendly society or one of its *wholly-owned subsidiaries because the *franking account of the society or subsidiary is in *surplus | the amount of the debit specified in subsection 316-260(2) | at the time provided by subsection 316-260(3) |

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**Debits in the franking account**

| Item | If: | A debit of: | Arises: |
|---|---|---|---|
| 11 | a *franking debit arises under section 316-265 for the *friendly society or one of its *wholly-owned subsidiaries because a *franking credit arises for the society or subsidiary | the amount of the debit specified in subsection 316-265(3) | at the time provided by subsection 316-265(4) |
| 12 | a *franking debit arises under section 316-270 for the *friendly society or one of its *wholly-owned subsidiaries because a *franking credit arises for the society or subsidiary | the amount of the debit specified in subsection 316-270(3) | at the time provided by subsection 316-270(4) |
| 13 | the entity *receives a refund of diverted profits tax; and<br>the entity satisfies the *residency requirement for the income year to which the refund relates; and<br>the entity was a *franking entity during the whole or part of the income year to which the refund relates | that part of the refund that is attributable to the period during which the entity was a franking entity, multiplied by the proportion worked out under subsection (3) | on the day on which the refund is received |

Note: For completeness, the table refers to some franking debits that arise under other sections of the Act. This does not mean that separate franking debits arise both under the relevant section and this table.

(2) Despite item 2 of the table in subsection (1), no debit arises on that part of the refund that is attributable to any of the following:

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(a) a payment of income tax in relation to an *RSA component;
(b) a *tax offset that is subject to the refundable tax offset rules because of section 67-30 (about R&D).

(3) The proportion is the standard corporate tax rate (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*) divided by 40%.

## 205-35 Refund of income tax or diverted profits tax

(1) An entity ***receives a refund of income tax*** if and only if:
(a) either:
(i) the entity receives an amount as a refund; or
(ii) the Commissioner applies a credit, or an *RBA surplus, against a liability or liabilities of the entity; and
(b) the refund of the amount, or the application of the credit, represents in whole or in part:
(i) a return to the entity of an amount paid or applied to satisfy the entity's liability to pay income tax; or
(ii) the amount remaining after applying a *loss carry back tax offset, or a *tax offset that is subject to the refundable tax offset rules because of section 67-30 (about R&D), against the entity's basic income tax liability.

(1A) An entity ***receives a refund of diverted profits tax*** if and only if:
(a) either:
(i) the entity receives an amount as a refund; or
(ii) the Commissioner applies a credit, or an *RBA surplus, against a liability or liabilities of the entity; and
(b) the refund of the amount, or the application of the credit, represents in whole or in part a return to the entity of an amount paid or applied to satisfy the entity's liability to pay *diverted profits tax.

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



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(2) The amount of the refund is so much of the amount refunded or applied as represents the return, or amount remaining, referred to in paragraph (1)(b) or (1A)(b).

## 205-40 Franking surplus and deficit

(1) An entity's *franking account is in ***surplus*** at a particular time if, at that time, the sum of the *franking credits in the account exceeds the sum of the *franking debits in the account. The amount of the ***franking surplus*** is the amount of the excess.

(2) An entity's *franking account is in ***deficit*** at a particular time if, at that time, the sum of the *franking debits in the account exceeds the sum of the *franking credits in the account. The amount of the ***franking deficit*** is the amount of the excess.

## 205-45 Franking deficit tax

*Object*

(1) While recognising that an entity may anticipate *franking credits when *franking *distributions, the object of this section is to prevent those credits from being anticipated indefinitely by requiring the entity to reconcile its *franking account at certain times and levying tax if the account is in *deficit.

*Franking deficit at end of income year*

(2) An entity is liable to pay franking deficit tax imposed by the *New Business Tax System (Franking Deficit Tax) Act 2002* if its *franking account is in *deficit at the end of an income year.

*Corporate tax entity ceases to be a franking entity*

(3) An entity is liable to pay *franking deficit tax imposed by the *New Business Tax System (Franking Deficit Tax) Act 2002* if:

(a) it ceases to be a *franking entity; and

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(b) immediately before it ceases to be a franking entity, its *franking account is in *deficit.

Note: The tax is imposed in the *New Business Tax System (Franking Deficit Tax) Act 2002* and the amount of the tax is set out in that Act.

## 205-50 Deferring franking deficit

*Object*

(1) The object of this section is to ensure that an entity does not avoid *franking deficit tax by deferring the time at which a *franking debit occurs in its *franking account.

*End of year deficit deferred*

(2) An entity is taken to have *received a refund of income tax for an income year immediately before the end of that year for the purposes of subsection 205-45(2) if:

(a) the refund is paid within 3 months after the end of that year; and

(b) the *franking account of the entity would have been in *deficit, or in deficit to a greater extent, at the end of that year if the refund had been received in that year.

*Deficit on ceasing to be a franking entity deferred*

(3) If an entity ceases to be a *franking entity during an income year, the entity is taken to have *received a refund of income tax immediately before it ceased to be a franking entity for the purposes of subsection 205-45(3) if:

(a) the refund is attributable to a period in the year during which the entity was a franking entity; and

(b) the refund is paid within 3 months after the entity ceases to be a franking entity; and

(c) the *franking account of the entity would have been in *deficit, or in deficit to a greater extent, immediately before it

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ceased to be a franking entity if the refund had been received before it ceased to be a franking entity.

## 205-70 Tax offset arising from franking deficit tax liabilities

*When does the tax offset arise?*

(1) A *corporate tax entity is entitled to a *tax offset for an income year for which it satisfies the *residency requirement (the ***relevant year***) if at least one of the following applies:

(a) the entity has incurred a liability to pay *franking deficit tax in the relevant year;

(b) the entity incurred such a liability in a previous income year for which it did not satisfy the residency requirement, and that liability has not been taken into account in working out a tax offset under this section;

(c) when the entity was last entitled to a tax offset under this section for a previous income year, some of the offset remained after applying section 63-10 (tax offset priority rules).

*The amount of the tax offset*

(2) Work out the amount of the *tax offset for the relevant year as follows:

| *Method statement* | |
|---|---|
| Step 1. | Work out the total amount of *franking deficit tax that is covered by paragraph (1)(a).<br><br>Then, subject to subsections (5) and (6), reduce so much of it as is attributable to *franking debits to which subsection (8) applies by 30% if that part exceeds 10% of the total amount of *franking credits that arose in the entity's *franking account for the relevant year. |

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| | |
|---|---|
| Step 2. | Work out the total amount of *franking deficit tax that is covered by paragraph (1)(b) for a previous income year.<br><br>Then, subject to subsections (5) and (6), reduce so much of it as is attributable to *franking debits to which subsection (8) applies by 30% if that part exceeds 10% of the total amount of *franking credits that arose in the entity's *franking account for that previous income year. |
| Step 3. | Add up the results of step 2 for all the previous income years covered by paragraph (1)(b). |
| Step 4. | Work out the remaining amount of a *tax offset covered by paragraph (1)(c). |
| Step 5. | Add up the results of steps 1, 3 and 4. The result is the *tax offset to which the entity is entitled under this section for the relevant year. |

Note: This method statement is modified for certain late balancing entities: see section 205-70 of the *Income Tax (Transitional Provisions) Act 1997*.

Example: The following apply to a corporate tax entity that satisfies the residency requirement for an income year:

- the entity's income tax liability for that year would be $100,000 if its tax offsets were disregarded;
- for that year, the entity has a tax offset of $60,000 under this section (the ***franking deficit offset***) and a tax offset of $80,000 in respect of foreign income tax paid by the entity (the ***foreign income tax offset***).

Under section 63-10 (about tax offset priority rules), the foreign income tax offset must be applied before the franking deficit offset is applied. As a result, that offset and $20,000 of the franking deficit offset combine to reduce the entity's income tax liability to nil. The remaining $40,000 of the franking deficit offset will be included in a franking deficit offset for the next income year for which the entity satisfies the residency requirement.

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*Residency requirement*

(4) To determine whether the entity satisfies the *residency requirement for the relevant year, section 205-25 has effect as if each of the following were an event specified in a relevant table for the purposes of that section:

(a) the entity incurring a liability to pay *franking deficit tax in the relevant year;

(b) the assessment of the entity's *income tax liability for the relevant year that is made on the *assessment day for that year.

*30% reduction will generally not apply to private company's first year of tax liability*

(5) The 30% reductions in steps 1 and 2 of the method statement in subsection (2) do not apply in working out the amount of the *tax offset to which the entity is entitled for the relevant year if:

(a) the entity is a *private company for the relevant year; and

(b) if the company did not have the tax offset (but had all its other tax offsets) it would have had an *income tax liability for the relevant year; and

(c) the company has not had an income tax liability for any income year before the relevant year; and

(d) the amount of the liability referred to in paragraph (b) is at least 90% of the amount of the *deficit in the company's *franking account at the end of the relevant year.

*Commissioner's discretion*

(6) The 30% reductions in steps 1 and 2 of the method statement in subsection (2) do not apply in working out the amount of the *tax offset to which the entity is entitled for the relevant year if the Commissioner determines in writing, on application by the entity in the *approved form, that the excess referred to in those steps was due to events outside the control of the entity.

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(7) A determination under subsection (6) is not a legislative instrument.

*Applicable franking debits*

(8) This subsection applies to *franking debits in the *franking account of an entity:

(a) that arise under table item 1, 3, 5 or 6 in section 205-30 for an income year; and

(b) if the entity has franking debits covered by paragraph (a) for that income year—that arise under table item 2 in that section for that income year.

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# Division 207—Effect of receiving a franked distribution

## Table of Subdivisions

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207-B Franked distribution received through certain partnerships and trustees
207-C Residency requirements for the general rule
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207-E Exceptions to the rules in Subdivision 207-D
207-F No gross-up or tax offset where the imputation system has been manipulated

## Guide to Division 207

### Table of sections

207-5 Overview

### 207-5 Overview

(1) If a corporate tax entity makes a franked distribution to one of its members, then, as a general rule:

(a) an amount equal to the franking credit on the distribution is included in the member's assessable income; and

(b) the member is entitled to a tax offset equal to the same amount.

(2) In some cases a residency requirement must be satisfied for the general rule to apply.

(3) If a franked distribution is made to a member that is a partnership or the trustee of a trust, an amount equal to the franking credit on

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the distribution is also included in the member's assessable income as mentioned in paragraph (1)(a).

(4) However, a tax offset in relation to that distribution is only available to an entity (who may be a partner, beneficiary or a trustee) if the distribution flows indirectly to it and does not flow indirectly through it to another entity. The tax offset is equal to its share of the franking credit on the distribution.

Note: That share is a notional amount and the entity can have that share without actually receiving any of that franking credit or distribution.

(5) There are exceptions to both the general rule mentioned in subsection (1) and the special rule mentioned in subsection (4). Basically, these exceptions are created:

(a) where the relevant entity would not have paid tax on the distribution or a share of the distribution (see Subdivisions 207-D and 207-E); and

(b) where there is a manipulation of the imputation system in a manner that is not permitted under the income tax law (see Subdivision 207-F).

## Subdivision 207-A—Effect of receiving a franked distribution generally

## Guide to Subdivision 207-A

### 207-10 What this Subdivision is about

As a general rule, if a member of an entity receives a franked distribution:

- an amount equal to the franking credit on the distribution is included in the member's assessable income; and
- the member is entitled to a tax offset equal to the franking credit on the distribution.

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## Table of sections

**Operative provisions**

207-15 Applying the general rule
207-20 General rule—gross-up and tax offset

# Operative provisions

## 207-15 Applying the general rule

(1) This Subdivision sets out, as a general rule, the tax effect of receiving a *franked distribution.

(2) This Subdivision does not apply to:

(a) a partnership or trustee to whom a *franked distribution is made (except a partnership or trustee that is a *corporate tax entity, or a trustee of a trust that is a *complying superannuation entity, when the distribution is made); or

(b) an entity to whom a franked distribution *flows indirectly.

Note: Subject to the other provisions in this Division, Subdivision 207-B applies to an entity excluded from the application of this Subdivision because of this subsection.

(3) This Subdivision applies subject to Subdivisions 207-C, 207-D, 207-E and 207-F.

Note 1: Subdivision 207-C sets out the residency requirements that must be satisfied by an individual or a corporate tax entity that receives a franked distribution.

Note 2: Subdivision 207-D sets out the cases in which the gross-up and tax offset rules in this Subdivision and Subdivision 207-B will not apply because the franked distribution (or a share of it) would not have been taxed in any case.

Note 3: Subdivision 207-E sets out the exceptions to the rules in Subdivision 207-D.

Note 4: Subdivision 207-F sets out the cases in which the gross-up and tax offset rules in this Subdivision and Subdivision 207-B will not apply because the imputation system has been manipulated in a way that is not permitted under the income tax law.

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### 207-20 General rule—gross-up and tax offset

(1) If an entity makes a *franked distribution to another entity, the assessable income of the receiving entity, for the income year in which the distribution is made, includes the amount of the *franking credit on the distribution. This is in addition to any other amount included in the receiving entity's assessable income in relation to the distribution under any other provision of this Act.

(2) The receiving entity is entitled to a *tax offset for the income year in which the distribution is made. The tax offset is equal to the *franking credit on the distribution.

## Subdivision 207-B—Franked distribution received through certain partnerships and trustees

## Guide to Subdivision 207-B

### 207-25 What this Subdivision is about

This Subdivision deals with an entity that receives a benefit of a franked distribution where:

(a) the distribution is made to a partnership or the trustee of a trust; and

(b) the benefit is received either directly or through other interposed partnerships or trusts.

The distribution is regarded as flowing indirectly to the entity under this Subdivision.

On the basis of a notional amount of the entity's share of the distribution, the entity may be entitled to have an amount included in its assessable income and/or a tax offset under this Subdivision.

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**Gross-up and tax offset**

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207-35 Gross-up—distribution made to, or flows indirectly through, a partnership or trustee
207-37 Attributable franked distribution—trusts
207-45 Tax offset—distribution flows indirectly to an entity

**Key concepts**

207-50 When a franked distribution flows indirectly to or through an entity
207-55 Share of a franked distribution
207-57 Share of the franking credit on a franked distribution
207-58 *Specifically entitled* to an amount of a franked distribution
207-59 Franked distributions within class treated as single franked distribution

# Gross-up and tax offset

## 207-30 Applying this Subdivision

This Subdivision applies subject to Subdivisions 207-D, 207-E and 207-F.

Note 1: Subdivision 207-D sets out the cases in which the gross-up and tax offset rules in this Subdivision and Subdivision 207-A will not apply because the franked distribution (or a share of it) would not have been taxed in any case.

Note 2: Subdivision 207-E sets out the exceptions to the rules in Subdivision 207-D.

Note 3: Subdivision 207-F sets out the cases in which the gross-up and tax offset rules in this Subdivision and Subdivision 207-A will not apply because the imputation system has been manipulated in a way that is not permitted under the income tax law.

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## 207-35 Gross-up—distribution made to, or flows indirectly through, a partnership or trustee

*Additional amount of assessable income*

(1) If:

(a) a *franked distribution is made in an income year to an entity that is a partnership or the trustee of a trust; and

(b) the entity is not a *corporate tax entity when the distribution is made; and

(c) if the entity is the trustee of a trust—the trust is not a *complying superannuation entity when the distribution is made;

the assessable income of the partnership or trust for that income year includes the amount of the *franking credit on the distribution.

(2) The amount is in addition to any other amount included in that assessable income in relation to the distribution under any other provision of this Act.

Note: The amount will affect the income tax liability of a partner in the partnership, or a beneficiary or the trustee of the trust: see Divisions 5 and 6 of Part III of the *Income Tax Assessment Act 1936*.

(3) Subsection (4) applies if:

(a) a *franked distribution is made, or *flows indirectly, to a partnership or the trustee of a trust in an income year; and

(b) the assessable income of the partnership or trust for that year includes an amount (the ***franking credit amount***) that is all or a part of the additional amount of assessable income included under subsection (1) in relation to the distribution; and

(c) the distribution flows indirectly to an entity that is a partner in the partnership, or a beneficiary or the trustee of the trust; and

(d) disregarding Division 6E of Part III of the *Income Tax Assessment Act 1936*, the entity has an amount of assessable

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income for that year that is attributable to all or a part of the distribution.

(4) Despite any provisions in Divisions 5 and 6 of Part III of the *Income Tax Assessment Act 1936*, the entity's assessable income for that year also includes:

(a) in the case of an entity that is a partner in a partnership—so much of the franking credit amount as is equal to the entity's *share of the *franking credit on the distribution; and

(b) in the case of an entity that is a beneficiary of a trust:

(i) so much of the franking credit amount as is equal to the entity's share of the franking credit on the distribution; and

(ii) the amount mentioned in section 207-37.

Example: A franked distribution of $70 is made to the trustee of a trust in an income year. The trust also has $100 of assessable income from other sources. Under subsection (1), the trust's assessable income includes an additional amount of $30 (which is the franking credit on the distribution). The trust has a net income of $200 for that income year.

There are 2 beneficiaries of the trust, P and Q, who are presently entitled to the trust's income. Under the trust deed, P is entitled to all of the franked distribution and Q is entitled to all other income.

The distribution flows indirectly to P (as P has a share of the trust's net income that is covered by paragraph 97(1)(a) and has a share of the distribution under section 207-55 equal to 100% of the distribution).

Under this subsection, P's assessable income includes $70 (the amount mentioned in section 207-37 (attributable franked distribution)) and also includes the full amount of the franking credit (as P's share of the franking credit on the distribution is $30 under section 207-57). Q's assessable income does not include any of the amount of the franked distribution or the franking credit.

(5) Subsection (6) applies if:

(a) a *franked distribution is made, or *flows indirectly, to the trustee of a trust in an income year; and

(b) the assessable income of the trust for that year includes an amount (the ***franking credit amount***) that is all or a part of

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



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the additional amount of assessable income included under subsection (1) in relation to the distribution; and

(c) disregarding Division 6E of Part III of the *Income Tax Assessment Act 1936*, the trustee of the trust is liable to be assessed (and pay tax) in respect of an amount (the ***assessable amount***) under section 98, 99 or 99A of that Act in relation to the trust.

(6) Despite any provisions in Division 6 of Part III of the *Income Tax Assessment Act 1936*, for the purposes of that Division, increase the assessable amount by so much of the franking credit amount as is equal to:

(a) if the trustee of the trust is liable to be assessed (and pay tax) under section 98 of that Act—the sum of:

(i) the trustee's *share of the *franking credit on the distribution in respect of the beneficiary; and

(ii) the amount mentioned in section 207-37; or

(b) if the trustee of the trust is liable to be assessed (and pay tax) under section 99 or 99A of that Act—the sum of:

(i) the trustee's share of the franking credit on the distribution; and

(ii) the amount mentioned in section 207-37.

## 207-37 Attributable franked distribution—trusts

(1) The amount is the product of:

(a) the amount of the *franked distribution (to the extent that an amount of the franked distribution remained after reducing it by deductions that were directly relevant to it); and

(b) the beneficiary's or the trustee's (as the case requires) *share of the franked distribution (see section 207-55), divided by the amount of the franked distribution.

(2) Subsection (3) applies if the net income of the trust estate (disregarding the amount of any *franking credits) for the relevant income year falls short of the sum of:

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(a) the *net capital gain (if any) of the trust estate for the income year; and

(b) the total of all *franked distributions (if any) included in the assessable income of the trust estate for the income year (to the extent that an amount of the franked distributions remained after reducing them by deductions that were directly relevant to them).

(3) For the purposes of subsection (1), replace paragraph (a) of that subsection with the following paragraph:

(a) the product of:

(i) the amount of the *franked distribution (to the extent that an amount of the franked distribution remained after reducing it by deductions that were directly relevant to it); and

(ii) the *net income of the trust estate for that income year (disregarding the amount of any *franking credits), divided by the sum mentioned in subsection (2); and

## 207-45 Tax offset—distribution flows indirectly to an entity

An entity to whom a *franked distribution *flows indirectly in an income year is entitled to a *tax offset for that income year that is equal to its *share of the *franking credit on the distribution, if it is:

(a) an individual; or

(b) a *corporate tax entity when the distribution flows indirectly to it; or

(c) the trustee of a trust that is liable to be assessed on a share of, or all or a part of, the trust's *net income under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* for that income year; or

(d) the trustee of a *complying superannuation entity, a *non-complying superannuation fund or a *non-complying approved deposit fund in relation to that income year.

Note: The entities covered by this section are the ultimate recipients of the distribution because the distribution does not flow indirectly through them to other entities. As a result they are also the ultimate taxpayers

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in respect of the distribution and are given the tax offset to acknowledge the income tax that has already been paid on the profits underlying the distribution.

## Key concepts

### 207-50 When a franked distribution flows indirectly to or through an entity

(1) For the purposes of this Subdivision, this section sets out the only circumstances in which a *franked distribution:

(a) ***flows indirectly*** to an entity (subsection (2), (3) or (4)); or

(b) ***flows indirectly*** through an entity (subsection (5)).

*Partners*

(2) A *franked distribution ***flows indirectly*** to a partner in a partnership in an income year if, and only if:

(a) during that income year, the distribution is made to the partnership, or *flows indirectly to the partnership as a beneficiary because of a previous application of subsection (3); and

(b) the partner has an individual interest:

(i) in the partnership's *net income for that income year that is covered by paragraph 92(1)(a) or (b) of the *Income Tax Assessment Act 1936*; or

(ii) in a *partnership loss of the partnership for that income year that is covered by paragraph 92(2)(a) or (b) of that Act;

(whether or not that individual interest becomes assessable income in the hands of the partner); and

(c) the partner's *share of the distribution under section 207-55 is a positive amount (whether or not the partner actually receives any of that share).

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*Beneficiaries*

(3) A *franked distribution ***flows indirectly*** to a beneficiary of a trust in an income year if, and only if:

(a) during that income year, the distribution is made to the trustee of the trust, or *flows indirectly to the trustee as a partner or beneficiary because of a previous application of subsection (2) or this subsection; and

(b) the beneficiary has this amount for that income year (the ***share amount***):

(i) a share of the trust's *net income for that income year that is covered by paragraph 97(1)(a) of the *Income Tax Assessment Act 1936*; or

(ii) an individual interest in the trust's net income for that income year that is covered by section 98A or 100 of that Act;

(whether or not the share amount becomes assessable income in the hands of the beneficiary); and

(c) the beneficiary's *share of the distribution under section 207-55 is a positive amount (whether or not the beneficiary actually receives any of that share).

*Trustees*

(4) A *franked distribution ***flows indirectly*** to the trustee of a trust in an income year if, and only if:

(a) during that income year, the distribution is made to the trustee, or *flows indirectly to the trustee as a partner or beneficiary because of a previous application of subsection (2) or (3); and

(b) the trustee is liable or, but for another provision in this Act, would be liable, to be assessed in respect of an amount (the ***share amount***) that is:

(i) a share of the trust's *net income for that income year under section 98 of the *Income Tax Assessment Act 1936*; or

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(ii) all or a part of the trust's net income for that income year under section 99 or 99A of that Act;

(whether or not the share amount becomes assessable income in the hands of the trustee); and

(c) the trustee's *share of the distribution under section 207-55 is a positive amount (whether or not the trustee actually receives any of that share).

Note: A trustee to whom a franked distribution flows indirectly under this subsection is entitled to a tax offset under section 207-45 and the distribution does not flow indirectly through the trustee to another entity.

(5) A *franked distribution ***flows indirectly*** through an entity (the ***first entity***) to another entity if, and only if:

(a) the other entity is the focal entity in an item of the table in section 207-55 in relation to the distribution; and

(b) that focal entity's *share of the distribution is based on the first entity's share of the distribution as an intermediary entity in that or another item of the table.

Example: A franked distribution of $140 is made to a partnership. An amount equal to the franking credit on the distribution ($60) is included in the partnership's assessable income under section 207-35. Because the partnership has losses of $300 from other sources, it has a partnership loss of $100 for the income year.

The partnership has 2 equal partners. One partner is the trustee of a trust and the other partner is an individual. The distribution flows indirectly to each partner under subsection (2). Each partner has a share of the partnership loss ($50), a share of the distribution under sections 207-55 ($70) and a share of the franking credit under section 207-57 ($30).

The individual partner is allowed a tax offset of $30 under section 207-45.

Because the trust has $100 of income from other sources, it has a net income of $50 for that income year ($100 minus the share of the partnership loss of $50).

The trust has one individual as a beneficiary, to whom the distribution flows indirectly under subsection (3). The beneficiary's share of the franked distribution is therefore $70 under sections 207-55 and its

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share of the franking credit is $30 under section 207-57. The beneficiary is also allowed a tax offset of $30 under section 207-45.

## 207-55 Share of a franked distribution

*Object of section*

(1) The object of this section is to ensure that:

(a) the amount of a *franked distribution made to a partnership or the trustee of a trust is allocated notionally amongst entities who *derive benefits from that distribution; and

(b) that allocation corresponds with the way in which those benefits were derived.

Note: An entity can derive a benefit from the distribution (and therefore has a share of the distribution) without actually receiving any of the distribution: see subsection (2) of this section and the example at the end of section 207-50.

(2) An entity's ***share*** of a *franked distribution is an amount notionally allocated to the entity as its share of the distribution, whether or not the entity actually receives any of that distribution.

(3) That amount is equal to the entity's ***share*** of the distribution as the focal entity in column 3 of an item of the table.

Note: An entity's share of the distribution is based on the share of the distribution of each preceding intermediary entity through which the distribution flows, starting from the intermediary entity to whom the distribution is made.

This means that in some cases (see items 2 and 4), more than one item of the table will need to be applied to work out the share of the distribution of an ultimate recipient of the distribution.

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Section 207-55

***Share* of a franked distribution**

| Item | Column 1<br>**For this intermediary entity and this focal entity**: | Column 2<br>**The intermediary entity's share of the franked distribution is:** | Column 3<br>**The focal entity's share of the franked distribution is:** |
|---|---|---|---|
| 1 | a partnership is the ***intermediary entity*** and a partner in that partnership is the ***focal entity*** if:<br>(a) a *franked distribution is made to the partnership; and<br>(b) the partner has, in respect of the partnership, an individual interest mentioned in subsection 207-50(2) | the amount of the franked distribution | so much of the franked distribution as is taken into account in working out the amount of that individual interest |
| 2 | a partnership is the ***intermediary entity*** and a partner in that partnership is the ***focal entity*** if:<br>(a) a *franked distribution *flows indirectly to the partnership as a beneficiary of a trust; and<br>(b) the partner has, in respect of the partnership, an individual interest mentioned in subsection 207-50(2) | the amount worked out under column 3 of item 3 or 4 of this table where the partnership, as a beneficiary, is the focal entity in that item | so much of the amount worked out under column 2 of this item as is attributable to the partner, having regard to the partnership agreement and any other relevant circumstances |

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| ***Share* of a franked distribution** | | | |
|---|---|---|---|
| **Item** | **Column 1**<br>**For this intermediary entity and this focal entity**: | **Column 2**<br>**The intermediary entity's share of the franked distribution is:** | **Column 3**<br>**The focal entity's share of the franked distribution is:** |
| 3 | the trustee of a trust is the ***intermediary entity*** and the trustee or a beneficiary of the trust is the ***focal entity*** if:<br>(a) a *franked distribution is made to the trustee; and<br>(b) the trustee or beneficiary has, in respect of the trust, a share amount mentioned in subsection 207-50(3) or (4) | (a) if the trust has a positive amount of *net income for that year—the amount of the franked distribution; or<br>(b) otherwise—nil | the amount mentioned in subsection (4) |

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| ***Share* of a franked distribution** | | | |
|---|---|---|---|
| **Item** | **Column 1**<br>**For this intermediary entity and this focal entity**: | **Column 2**<br>**The intermediary entity's share of the franked distribution is:** | **Column 3**<br>**The focal entity's share of the franked distribution is:** |
| 4 | the trustee of a trust is the ***intermediary entity*** and the trustee or a beneficiary of the trust is the ***focal entity*** if:<br>(a) a *franked distribution *flows indirectly to the trustee as a partner in a partnership or as a beneficiary of another trust; and<br>(b) the trustee or beneficiary has, in respect of the trust, a share amount mentioned in subsection 207-50(3) or (4) | the amount worked out under column 3 of:<br>(a) item 1 or 2 of this table where the trustee, as a partner, is the focal entity in that item; or<br>(b) item 3 or a previous application of this item where the trustee, as a beneficiary, is the focal entity in that item | so much of the amount worked out under column 2 of this item as is attributable to the focal entity in this item, having regard to the trust deed and any other relevant circumstances |

Note: In item 3 or 4, the trustee of a trust can be both the intermediary entity and the focal entity in the same item.

(4) For the purposes of column 3 of item 3 of the table in subsection (3), the amount is the sum of:

(a) so much of the amount worked out under column 2 of item 3 of the table in subsection (3) to which:

(i) unless subparagraph (ii) applies—the focal entity is *specifically entitled; or

(ii) if the focal entity is the trustee and has the share amount because of the operation of section 98 of the *Income Tax Assessment Act 1936* in respect of a beneficiary (see

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subparagraph 207-50(4)(b)(i))—the beneficiary is specifically entitled; and

(b) if there is an amount of the *franked distribution to which no beneficiary is specifically entitled—that amount multiplied by:

(i) unless subparagraph (ii) applies—the focal entity's *adjusted Division 6 percentage of the income of the trust for the relevant income year; or

(ii) if the focal entity is the trustee and has the share amount because of the operation of section 98 of the *Income Tax Assessment Act 1936* in respect of a beneficiary (see subparagraph 207-50(4)(b)(i))—the beneficiary's adjusted Division 6 percentage of the income of the trust for the relevant income year.

## 207-57 Share of the franking credit on a franked distribution

(1) An entity's ***share*** of a *franking credit on a *franked distribution is an amount notionally allocated to the entity as its share of that credit, whether or not the entity actually receives any of that credit or distribution.

(2) Work out that amount as follows:

$$\text{Amount of the *franking credit on the *franked distribution} \times \frac{\text{Entity's *share of the *franked distribution}}{\text{Amount of the *franked distribution}}$$

## 207-58 *Specifically entitled* to an amount of a franked distribution

(1) A beneficiary of a trust estate is ***specifically entitled*** to an amount of a *franked distribution made to the trust estate in an income year equal to the amount calculated under the following formula:

$$\text{*Franked distribution} \times \frac{\text{Share of net financial benefit}}{\text{Net financial benefit}}$$

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where:

***net financial benefit*** means an amount equal to the *financial benefit that is referable to the *franked distribution (after any application by the trustee of expenses that are directly relevant to the franked distribution).

***share of net financial benefit*** means an amount equal to the *financial benefit that, in accordance with the terms of the trust:

(a) the beneficiary has received, or can be reasonably expected to receive; and

(b) is referable to the *franked distribution (after application by the trustee of any expenses that are directly relevant to the franked distribution); and

(c) is recorded, in its character as referable to the franked distribution, in the accounts or records of the trust no later than the end of the income year.

(2) To avoid doubt, for the purposes of subsection (1), something is done in accordance with the terms of the trust if it is done in accordance with:

(a) the exercise of a power conferred by the terms of the trust; or

(b) the terms of the trust deed (if any), and the terms applicable to the trust because of the operation of legislation, the common law or the rules of equity.

## 207-59 Franked distributions within class treated as single franked distribution

(1) Subsection (2) applies if:

(a) a trust receives 2 or more *franked distributions in an income year; and

(b) all of the franked distributions that the trust receives in the income year are, in accordance with the terms of the trust, to the extent that they are distributed in that income year, distributed within a single class.

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(2) For the purposes of this Subdivision and Division 6E of Part III of the *Income Tax Assessment Act 1936*, treat all of the *franked distributions that the trust receives in the income year as one single franked distribution.

(3) To avoid doubt, for the purposes of subsection (1), something is done in accordance with the terms of the trust if it is done in accordance with:

(a) the exercise of a power conferred by the terms of the trust; or

(b) the terms of the trust deed (if any), and the terms applicable to the trust because of the operation of legislation, the common law or the rules of equity.

## Subdivision 207-C—Residency requirements for the general rule

## Guide to Subdivision 207-C

### 207-60 What this Subdivision is about

Some recipients of a franked distribution must satisfy a residency requirement if their assessable income is to include the franking credit on the distribution, and they are to be entitled to a tax offset, under the general rule.

### Table of sections

207-65 Satisfying the residency requirement

**Operative provisions**

207-70 Gross-up and tax offset under section 207-20
207-75 Residency requirement

### 207-65 Satisfying the residency requirement

(1) This Subdivision sets out the residency requirements that must be satisfied by an individual or a corporate tax entity that receives a

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franked distribution, if the franking credit on the distribution is to be included in that entity's assessable income, or the entity is to be entitled to a tax offset, under the general rule.

(2) It does not impose a residency requirement on other entities, because the significance of residency for those entities is dealt with elsewhere in this Act.

(3) It does not impose a residency requirement where a distribution flows indirectly to an entity. This is also because the significance of residency is dealt with elsewhere, for the most part in Divisions 5 and 6 of Part III of the *Income Tax Assessment Act 1936*.

## Operative provisions

### 207-70 Gross-up and tax offset under section 207-20

If an entity makes a *franked distribution to an individual or a *corporate tax entity:

(a) no amount is included in the receiving entity's assessable income under subsection 207-20(1); and

(b) the receiving entity is not entitled to a *tax offset under subsection 207-20(2);

unless the receiving entity satisfies the *residency requirement at the time the distribution is made.

### 207-75 Residency requirement

(1) An entity that receives a *distribution satisfies the ***residency requirement*** at the time the distribution is made if:

(a) in the case of an individual—the individual is an Australian resident at that time; and

(b) in the case of a company—the company is an Australian resident at that time; and

(c) in the case of a *corporate limited partnership—the corporate limited partnership is an Australian resident at that time; and

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(e) in the case of a *public trading trust—the public trading trust is a resident unit trust for the income year in which that time occurs.

(2) An entity that receives a *distribution also satisfies the ***residency requirement*** at the time the distribution is made if the entity at that time:

(a) is a company or an individual; and

(b) is a foreign resident; and

(c) 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 the distribution is attributable to the permanent establishment.

## Subdivision 207-D—No gross-up or tax offset where distribution would not be taxed

## Guide to Subdivision 207-D

### 207-80 What this Subdivision is about

This Subdivision creates the appropriate adjustment to cancel the effect of the gross-up and tax offset rules where a franked distribution (or a share of it) is, or would be, exempt income or *non-assessable non-exempt income in the relevant entity's hands (and therefore would not be taxed in any case).

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## Table of sections

**Operative provisions**

207-85 Applying this Subdivision
207-90 Distribution that is made to an entity
207-95 Distribution that flows indirectly to an entity

# Operative provisions

## 207-85 Applying this Subdivision

This Subdivision applies subject to Subdivisions 207-E and 207-F.

Note 1: Subdivision 207-E sets out exceptions to the rules in this Subdivision.

Note 2: Where both this Subdivision and Subdivision 207-F apply to an entity, the application of this Subdivision is subject to the rules in Subdivision 207-F: see subsections 207-145(3) and 207-150(7) and (8).

## 207-90 Distribution that is made to an entity

*Whole of distribution not assessable*

(1) If:

(a) a *franked distribution is made to an entity; and

(b) the distribution does not *flow indirectly through the entity to another entity; and

(c) the distribution is *exempt income or *non-assessable non-exempt income in the hands of the entity;

then, for the purposes of this Act:

(d) the amount of the *franking credit on the distribution is not included in the assessable income of the entity under section 207-20; and

(e) the entity is not entitled to a *tax offset under this Division because of the distribution.

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*Part of distribution not assessable*

(2) If:

(a) a *franked distribution is made to an entity; and

(b) the distribution does not *flow indirectly through the entity to another entity; and

(c) a part of the distribution (the ***relevant part***) is *exempt income or *non-assessable non-exempt income in the hands of the entity;

then, for the purposes of this Act:

(d) the amount of the distribution is taken to have been reduced by the relevant part; and

(e) the amount of the *franking credit on the distribution is to be worked out as follows:

$$\frac{\text{*Franked distribution apart from this section} - \text{Relevant part}}{\text{*Franked distribution apart from this section}} \times \text{*Franking credit on the *franked distribution apart from this section}$$

## 207-95 Distribution that flows indirectly to an entity

*Whole of share of distribution not assessable*

(1) If:

(a) a *franked distribution *flows indirectly to an entity in an income year; and

(b) the entity's *share of the distribution would, in its hands, be *exempt income or *non-assessable non-exempt income (whether or not it had actually received that share);

then, for the purposes of this Act:

(c) subsection (2), (3) or (4) (as appropriate) applies to the entity in relation to that income year; and

(d) the entity is not entitled to a *tax offset under this Division because of the distribution; and

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(e) if the distribution flows indirectly through the entity to another entity—subsection 207-35(3) and section 207-45 do not apply to that other entity.

Note: This section can therefore apply, for example, where the entity is a partner in a partnership that has a partnership loss and the entity does not actually receive any of the distribution.

*Partner*

(2) If the *franked distribution *flows indirectly to the entity as a partner in a partnership under subsection 207-50(2), the entity can deduct an amount for that income year that is equal to its *share of the *franking credit on the distribution.

*Beneficiary*

(3) If the *franked distribution *flows indirectly to the entity as a beneficiary of a trust under subsection 207-50(3), the entity can deduct an amount for that income year that is equal to the lesser of:

(a) its share amount in relation to the distribution that is mentioned in that subsection; and

(b) its *share of the *franking credit on the distribution.

*Trustee*

(4) If the *franked distribution *flows indirectly to the entity as the trustee of a trust under subsection 207-50(4), the entity's share amount in relation to the distribution that is mentioned in that subsection is to be reduced by the lesser of:

(a) that share amount; and

(b) its *share of the *franking credit on the distribution.

Example: A franked distribution of $70 is made to a partnership.

Under section 207-35, an additional amount of $30 is included in the partnership's assessable income because of the distribution.

The partnership has 2 equal partners, X and Y. X is a foreign resident individual whose share of partnership's net income for the income year is $50 (share of distribution of $35 and share of franking credit of $15). That share of distribution is not assessable income and not

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exempt income under section 128D of the *Income Tax Assessment Act 1936*.

X's assessable income of $15 (share of franking credit) is reduced to nil because of the deduction of $15 under subsection (2). Because of subsection (1), X is not entitled to a tax offset under section 207-45.

*Part of share of distribution not assessable*

(5) If:

(a) a *franked distribution *flows indirectly to an entity in an income year; and

(b) a part of the entity's *share of the distribution (the ***relevant part***) would, in its hands, be *exempt income or *non-assessable non-exempt income(whether or not it had actually received that part);

then, subsection (2), (3) or (4) (as appropriate) applies to the entity on the basis that the amount of its *share of the *franking credit on the distribution is worked out as follows:

$$\frac{\text{Relevant part}}{\text{Entity's *share of the *franked distribution}} \times \text{Entity's *share of the *franking credit on the *franked distribution apart from this section}$$

(6) In addition, the following apply to an entity covered by subsection (5):

(a) if the distribution would otherwise *flow indirectly through the entity—the entity's *share of the distribution for the purposes of this Act (other than subsection (2), (3) or (4)) is to be reduced by the relevant part mentioned in subsection (5);

(b) if the entity would otherwise be entitled to a *tax offset under this Division because of the distribution—the amount of the tax offset is to be worked out as follows:

$$\text{Entity's *share of the *franking credit on the *franked distribution apart from this section} - \text{Amount worked out under subsection (5)}$$

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# Subdivision 207-E—Exceptions to the rules in Subdivision 207-D

## Guide to Subdivision 207-E

### 207-105 What this Subdivision is about

Subdivision 207-D does not apply to certain exempt institutions, trusts and life insurance companies as set out in this Subdivision. Such an entity may be entitled to a tax offset under this Subdivision in relation to a franked distribution.

## Table of sections

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207-110 Effect of non-assessable income on gross up and tax offset

**Exempt institutions**

207-115 Which exempt institutions are eligible for a refund?
207-117 Residency requirement
207-119 Entity not treated as exempt institution eligible for refund in certain circumstances
207-120 Entity may be ineligible because of a distribution event
207-122 Entity may be ineligible if distribution is in the form of property other than money
207-124 Entity may be ineligible if other money or property also acquired
207-126 Entity may be ineligible if distributions do not match trust share amounts
207-128 Reinvestment choice
207-130 Controller's liability
207-132 Treatment of benefits provided by an entity to a controller
207-134 Entity's present entitlement disregarded in certain circumstances
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## Operative provisions

### 207-110 Effect of non-assessable income on gross up and tax offset

(1) This section applies to an entity to whom a *franked distribution is made, or *flows indirectly, in any of the following circumstances:

(a) the entity is an *exempt institution that is eligible for a refund and the distribution does not flow indirectly to the entity as a partner in a partnership under subsection 207-50(2);

(b) the distribution is, or the entity's *share of the distribution would have been, this kind of income in its hands:

(i) *exempt income under section 295-385 (about income from assets set aside to meet current pension liabilities), section 295-390 (about income from other assets used to meet current pension liabilities) or section 295-400 (about income of a PST attributable to current pension liabilities); or

(ii) *non-assessable non-exempt income under paragraph 320-37(1)(a) (segregated exempt assets of a life insurance company) or paragraph 320-37(1)(d) (certain amounts received by a friendly society) of this Act.

(2) The following have effect in relation to the entity:

(a) section 207-90 or 207-95 (as appropriate) does not apply to the entity;

(b) if the entity would, apart from section 207-90 or 207-95, be entitled to a *tax offset under section 207-20 or 207-45 in relation to the distribution—the entity is entitled to that tax offset;

(c) if the entity would not be entitled to such a tax offset, the entity is entitled to a tax offset under this section that is equal to:

(i) if the distribution is made to the entity—the *franking credit on the distribution; or

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



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(ii) if the distribution *flows indirectly to the entity—the entity's *share of the franking credit on the distribution;

(d) if the distribution flows indirectly through the entity to another entity—subsection 207-35(3) and section 207-45 do not apply to that other entity.

Note: Paragraph (2)(c) only applies to an exempt institution that is eligible for a refund and that is not entitled to a tax offset under section 207-20 or 207-45. An entity covered by paragraph (1)(b) will, in all cases, be entitled to a tax offset under section 207-20 or 207-45.

## Exempt institutions

### 207-115 Which exempt institutions are eligible for a refund?

(1) This section sets out the only circumstances in which an entity is an ***exempt institution that is eligible for a refund***.

*Income tax exempt charities*

(2) An entity is an ***exempt institution that is eligible for a refund*** if it:
(a) is covered by item 1.1 of the table in section 50-5; and
(b) is endorsed as exempt from income tax under Subdivision 50-B; and
(c) satisfies the *residency requirement.

*Income tax exempt deductible gift recipients*

(3) An entity is an ***exempt institution that is eligible for a refund*** if it:
(a) is endorsed under paragraph 30-120(a); and
(b) satisfies the *residency requirement.

*Income tax exempt specified deductible gift recipients*

(4) An entity is an ***exempt institution that is eligible for a refund*** if:
(a) the entity's name is specified in a table in a section in Subdivision 30-B; and
(b) it has an ABN; and

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



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(c) it satisfies the *residency requirement.

*Income tax exempt relief funds*

(5) An entity is an ***exempt institution that is eligible for a refund*** if:
(a) a declaration by the Minister is in force in relation to the institution under subsection 30-85(2); and
(b) the regulations do not provide that the entity is not an exempt institution that is eligible for a refund.

*Prescribed income tax exempt entities*

(6) An entity is an ***exempt institution that is eligible for a refund*** if the entity is prescribed as an exempt institution that is eligible for a refund by the regulations.

(7) This section has effect subject to sections 207-119 to 207-136.

## 207-117 Residency requirement

An entity satisfies the ***residency requirement*** for the purposes of determining whether, at the time a *franked distribution is made, the entity is an *exempt institution that is eligible for a refund if:
(a) the entity has a physical presence in Australia; and
(b) to that extent, incurs its expenditure and pursues its objectives principally in Australia;
at all times during the income year in which the distribution is made.

## 207-119 Entity not treated as exempt institution eligible for refund in certain circumstances

For the purposes of this Act:
(a) an entity must not be treated as an *exempt institution that is eligible for a refund in relation to a *franked distribution if section 207-120, 207-122 or 207-124 applies to the entity in relation to the distribution; and

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



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(b) a beneficiary of a trust must not be treated as an exempt institution that is eligible for a refund in relation to a franked distribution made in an income year if section 207-126 applies to the beneficiary in relation to that income year.

## 207-120 Entity may be ineligible because of a distribution event

(1) This section applies to an entity (the ***ineligible entity***) if:

(a) a *franked distribution is made, or *flows indirectly under subsection 207-50(3) or (4), to the entity; and

(b) subsection (2) of this section applies because of a *distribution event in relation to the distribution.

(2) Subject to subsection (3) and to section 207-128, this subsection applies if, because of a *distribution event in relation to the *franked distribution:

(a) the ineligible entity or another entity:

(i) makes, becomes liable to make, or may reasonably be expected to make or to become liable to make, a payment to any entity; or

(ii) transfers, becomes liable to transfer, or may reasonably be expected to transfer or to become liable to transfer, any property to any entity; or

(iii) incurs, becomes liable to incur, or may reasonably be expected to incur or to become liable to incur, any other detriment, disadvantage, liability or obligation; or

(b) if the distribution is made to the ineligible entity—the amount or value of the benefit *derived by the ineligible entity from the distribution is, will be, or may reasonably be expected to be, less than the amount or value of the distribution as at the time the distribution is made; or

(c) if the distribution *flows indirectly to the ineligible entity—the amount or value of the benefit derived by the ineligible entity from the ineligible entity's *trust share amount in relation to the distribution is, will be, or may reasonably be expected to be, less than the amount or value of the ineligible

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



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entity's trust share amount in relation to the distribution as at the time when that amount arises; or

(d) any of the following entities has obtained, will obtain or may reasonably be expected to obtain, a benefit, advantage, right or privilege:

(i) the entity making the distribution;

(ii) an entity through which the distribution flows indirectly to the ineligible entity;

(iii) an *associate of any of those entities.

Note: For when paragraph (d) is satisfied, see also subsection 207-132(2).

*Exception to paragraph (2)(b) or (c)*

(3) Paragraph (2)(b) or (c) does not apply if:

(a) that paragraph would otherwise apply only because of expenses the ineligible entity has incurred, will incur, or may reasonably be expected to incur, for the purpose of obtaining the *franked distribution or *trust share amount mentioned in that paragraph; and

(b) the Commissioner considers the expenses to be reasonable.

*Trust share amount*

(4) An entity's ***trust share amount*** in relation to a *franked distribution that *flows indirectly to the entity under subsection 207-50(3) or (4) is the entity's share amount that is mentioned in that subsection.

*Distribution event*

(5) A ***distribution event*** in relation to a *franked distribution is an act, transaction or circumstance that has happened, will happen, or may reasonably be expected to happen, as part of, in relation to or as a result of:

(a) the payment or receipt of the distribution; or

(b) if the distribution *flows indirectly to an entity under subsection 207-50(3) or (4)—the arising of, or the

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distribution or receipt of, the entity's *trust share amount in relation to the distribution; or

(c) an *arrangement entered into in association with a matter mentioned in paragraph (a) or (b).

## 207-122 Entity may be ineligible if distribution is in the form of property other than money

This section applies to an entity (the ***ineligible entity***) to whom a *franked distribution is made, or *flows indirectly under subsection 207-50(3) or (4), if:

(a) one of the following is in the form of property other than money:

(i) if the distribution is made to the ineligible entity—all or part of the distribution;

(ii) if the distribution flows indirectly to the ineligible entity through the trustee of a trust under subsection 207-50(3) or (4)—all or a part of a distribution (the ***trust distribution***) made by the trustee of the trust that relates to the ineligible entity's *trust share amount in relation to the franked distribution; and

(b) the terms and conditions on which the franked distribution or trust distribution is made are such that the ineligible entity:

(i) does not receive immediate custody and control of the property; or

(ii) does not have the unconditional right to retain custody and control of the property in perpetuity; or

(iii) does not obtain an immediate, indefeasible and unencumbered legal and equitable title to the property.

## 207-124 Entity may be ineligible if other money or property also acquired

Subject to section 207-128, this section applies to an entity (the ***ineligible entity***) to whom a *franked distribution is made, or *flows indirectly under subsection 207-50(3) or (4), if:

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



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(a) the ineligible entity or another entity has entered into an *arrangement as part of, or in association with:
  (i) the distribution; or
  (ii) if the distribution flows indirectly to the ineligible entity—the ineligible entity's *trust share amount in relation to the distribution; and
(b) because of the arrangement, the ineligible entity or another entity has acquired or will acquire (whether directly or indirectly) money or property, other than money or property comprising the distribution or the ineligible entity's trust share amount, from:
  (i) the entity making the distribution; or
  (ii) an entity through which the distribution flows indirectly to the ineligible entity; or
  (iii) an *associate of any of those entities (other than the ineligible entity).

## 207-126 Entity may be ineligible if distributions do not match trust share amounts

(1) This section applies to a beneficiary of a trust in relation to an income year if:
  (a) the sum of the distributions:
    (i) made to the beneficiary during the income year by the trustee of the trust; and
    (ii) that relate to the beneficiary's *trust share amount in relation to a *franked distribution made during the income year;

  is less than:
  (b) that trust share amount.

*Commissioner's power to treat trust share amount as having been distributed during the income year*

(2) Subsection (1) does not apply if the Commissioner, having regard to all the circumstances, considers that it would be reasonable to

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



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treat the *trust share amount as having been distributed to the beneficiary in the income year.

## 207-128 Reinvestment choice

(1) If, apart from this section, paragraph 207-120(2)(a) or (d) or section 207-124 would apply to an entity (the ***receiving entity***) to whom a *franked distribution is made or *flows indirectly, that paragraph or section is taken not to apply to the receiving entity if:

(a) instead of receiving the distribution, or the *trust share amount concerned, by a payment of money, the receiving entity chooses to be issued with:

(i) if the distribution is made to the receiving entity—*shares in the *corporate tax entity making the distribution; or

(ii) if the distribution flows indirectly to the receiving entity—a fixed interest in the trust in relation to which the trust share amount arises; and

(b) the choice is genuine and furthers the purpose for which the entity was established; and

(c) the choice is not made for the purpose, or purposes that include the purpose, of benefiting the corporate tax entity, trust or any of their *associates (other than the receiving entity); and

(d) any benefit *derived by the corporate tax entity, trust or any of their associates (other than the receiving entity) because of that choice is one which is an ordinary incident of issuing the shares or interests to the receiving entity or of the receiving entity's holding of those shares or interests; and

(e) the parties that were involved in the *distribution event or *arrangement concerned deal with one another on an *arm's length basis in relation to the event or arrangement.

*A vested and indefeasible interest constitutes a fixed interest*

(2) The receiving entity's interest in a trust is a fixed interest if the interest is a vested and indefeasible interest in the trust's capital.

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



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*Special rule about whether interests in unit trusts are defeasible*

(3) If:

(a) the trust is a unit trust and the receiving entity holds units in the unit trust; and

(b) the units are redeemable or further units are able to be issued; and

(c) the units held by the receiving entity will be redeemed, or any further units will be issued:

(i) if units in the unit trust are listed for quotation in the official list of an *approved stock exchange—for the price at which other units of the same kind in the unit trust are offered for sale on the exchange at the time of the redemption or issue; or

(ii) if the units are not listed as mentioned in subparagraph (i)—for their *market value at the time of the redemption or issue;

then the mere fact that the units are redeemable, or that the further units are able to be issued, does not mean that the receiving entity's interest, as a unit holder, in the trust's capital is defeasible.

*Commissioner's power to treat an interest in a trust as being a fixed interest*

(4) If:

(a) the receiving entity has an interest in the trust's capital; and

(b) apart from this subsection, the interest would not be a vested or indefeasible interest; and

(c) the Commissioner considers that the interest should be treated as being vested and indefeasible, having regard to:

(i) the circumstances in which the interest is capable of not vesting, or the defeasance can happen; and

(ii) the likelihood of the interest not vesting or the defeasance happening; and

(iii) the nature of the trust; and

(iv) any other matter the Commissioner thinks relevant;

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



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the Commissioner may determine that the interest is to be taken to be vested and indefeasible.

(5) A determination made under subsection (4) has effect according to its terms.

## 207-130 Controller's liability

(1) A *controller (for imputation purposes) of an entity (the ***controlled entity***) is liable to pay an amount under this section in respect of a refund paid to the controlled entity under Division 67 if:

(a) the controlled entity claimed the refund wholly or partly on the basis that:

(i) the controlled entity was entitled to a *tax offset under section 207-20, 207-45 or 207-110 in relation to a *franked distribution; and

(ii) the controlled entity was an *exempt institution that is eligible for a refund; and

(b) because of the operation of section 207-120, 207-122, 207-124 or 207-126 in respect of a *distribution event or an *arrangement in relation to the distribution, the controlled entity is not entitled to the tax offset; and

(c) the controller or an *associate of the controller benefited from that event or arrangement; and

(d) some or all of the amount that the controlled entity is liable to pay in respect of the refund remains unpaid after the day on which the amount becomes due and payable; and

(e) the Commissioner gives the controller written notice:

(i) stating that the controller is liable to pay an amount under this section; and

(ii) specifying that amount.

Except as provided for in subsection (5), this subsection does not affect any liability the controlled entity has in relation to the refund.

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



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Note 1: Section 207-134 also provides that the controlled entity's present entitlement to a trust share amount is disregarded for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*.

Note 2: For when paragraph (c) is satisfied, see also subsection 207-132(3).

(2) The amount that the *controller (for imputation purposes) is liable to pay under subsection (1):

(a) is the amount specified under subparagraph (1)(e)(ii); and

(b) becomes due and payable at the end of the period of 14 days that starts on the day on which the notice mentioned in paragraph (1)(e) is given.

(3) The amount that the *controller (for imputation purposes) is liable to pay under subsection (1) must not exceed the total amount or value of the benefit that the controller and its *associates obtained from the *distribution event or *arrangement.

(4) The total of:

(a) the amounts that the Commissioner recovers under subsection (1) in relation to the refund from all of the controlled entity's *controllers (for imputation purposes); and

(b) the amounts that the Commissioner recovers in relation to the refund from the controlled entity;

must not exceed the amount that the controlled entity was liable to pay as mentioned in paragraph (1)(d).

*Controller of a company*

(5) An entity is a ***controller (for imputation purposes)*** of a company if the entity is a *controller of the company (for CGT purposes).

*Controller of an entity other than a company—basic meaning*

(6) Subject to subsections (7) and (8), an entity is a ***controller (for imputation purposes)*** of an entity other than a company (the ***controlled entity***) if:

(a) a group in relation to the entity has the power, by means of the exercise of a power of appointment or revocation or

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



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otherwise, to obtain beneficial enjoyment (directly or indirectly) of the capital or income of the controlled entity; or

(b) a group in relation to the entity is able (directly or indirectly) to control the application of the capital or income of the controlled entity; or

(c) a group in relation to the entity is capable, under a *scheme, of gaining the beneficial enjoyment mentioned in paragraph (a) or the control mentioned in paragraph (b); or

(d) the controlled entity or, if the controlled entity is a trust, the trustee of the trust:

(i) is accustomed; or

(ii) is under an obligation; or

(iii) might reasonably be expected;

to act in accordance with the directions, instructions or wishes of a group in relation to the entity; or

(e) if the controlled entity is a trust—a group in relation to the entity is able (directly or indirectly) to remove or appoint the trustee of the trust; or

(f) a group in relation to the entity has *more than a 50% stake in the income or capital of the controlled entity; or

(g) entities in a group in relation to the entity are the only entities that, under the terms of:

(i) the constitution of the controlled entity or the terms on which the controlled entity is established; or

(ii) if the controlled entity is a trust—the terms of the trust;

can obtain the beneficial enjoyment of the income or capital of the controlled entity.

*Group in relation to an entity*

(7) For the purposes of subsection (6), each of the following constitutes a ***group*** in relation to an entity:

(a) the entity acting alone;

(b) an *associate of the entity acting alone;

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(c) the entity and one or more associates of the entity acting together;

(d) 2 or more associates of the entity acting together.

*Commissioner's power to take an entity not to be a controller (for imputation purposes)*

(8) If:

(a) at a particular time, an entity (the ***first entity***) would, but for this subsection, be a *controller (for imputation purposes) of an entity other than a company (the ***second entity***); and

(b) the Commissioner, having regard to all relevant circumstances, considers that it is reasonable that the first entity be taken not to be such a controller of the second entity at the particular time;

the first entity is taken *not* to be a controller (for imputation purposes) of the second entity at the particular time.

(9) Without limiting paragraph (8)(b), if the second entity is a trust, the Commissioner may have regard under that paragraph to the identity of the beneficiaries of the trust at any time (whether before or after the first entity began to be a *controller (for imputation purposes) of the second entity).

## 207-132 Treatment of benefits provided by an entity to a controller

(1) This section applies in relation to a benefit (the ***relevant benefit***) given by an entity to a *controller (for imputation purposes) of the entity, or to an *associate of such a controller, if:

(a) the controller or associate:

(i) makes a *franked distribution to the entity; or

(ii) is the trustee of the trust in relation to which a *trust share amount of the entity arises in relation to a franked distribution that *flows indirectly to the entity; and

(b) the benefit is, or was, given to the controller or associate at any time during the period that starts 3 years before, and ends

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



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3 years after, the distribution is made or the trust share amount arises (as appropriate).

(2) For the purposes of paragraph 207-120(2)(d), the controller or *associate is taken to have obtained the relevant benefit because of a *distribution event in relation to the *franked distribution or *trust share amount.

(3) For the purposes of paragraph 207-130(1)(c), and at least to the extent of the relevant benefit, the controller or *associate is taken to have benefited from a *distribution event or *arrangement that caused section 207-120 to apply in relation to the *franked distribution or *trust share amount.

*Commissioner's power not to apply subsection (2) or (3)*

(4) Subsection (2) or (3) does not apply in relation to a benefit if the Commissioner is satisfied, having regard to all the circumstances, that it would be unreasonable to apply that subsection.

## 207-134 Entity's present entitlement disregarded in certain circumstances

The present entitlement of a beneficiary of a trust to a share of trust income is disregarded for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936* if:

(a) the beneficiary has claimed a *tax offset under section 207-45 or 207-110 of this Act on the basis that the beneficiary was an *exempt institution that was eligible for a refund in relation to a *trust share amount that is that share of trust income; but

(b) the beneficiary was not entitled to that tax offset because of the operation of section 207-120, 207-122, 207-124 or 207-126 in respect of a *distribution event, or an *arrangement, to which the trust share amount is related.

Note: This means that the trustee of the trust is liable to pay income tax on that share of the trust income.

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



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### 207-136 Review of certain decisions

An entity that is dissatisfied with a decision of the Commissioner under any of the following provisions may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*:

(a) paragraph 207-120(3)(b);
(b) subsection 207-126(2);
(c) subsection 207-128(4);
(d) paragraph 207-130(1)(e);
(e) paragraph 207-130(8)(b);
(f) subsection 207-132(4).

## Subdivision 207-F—No gross-up or tax offset where the imputation system has been manipulated

## Guide to Subdivision 207-F

### 207-140 What this Subdivision is about

This Subdivision creates the appropriate adjustment to cancel the effect of the gross-up and tax offset rules where the entity concerned has manipulated the imputation system in a manner that is not permitted under the income tax law.

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



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## Operative provisions

### 207-145 Distribution that is made to an entity

*Whole of distribution manipulated*

(1) If a *franked distribution is made to an entity in one or more of the following circumstances:

(a) the entity is not a qualified person in relation to the distribution for the purposes of Division 1A of former Part IIIAA of the *Income Tax Assessment Act 1936*;

(b) the Commissioner has made a determination under paragraph 177EA(5)(b) of that Act that no imputation benefit (within the meaning of that section) is to arise in respect of the distribution for the entity;

(c) the Commissioner has made a determination under paragraph 204-30(3)(c) of this Act that no *imputation benefit is to arise in respect of the distribution for the entity;

(d) the distribution is made as part of a *dividend stripping operation;

(da) the distribution is one to which section 207-157 (which is about distribution washing) applies;

(db) the distribution is one to which section 207-158 (which is about foreign income tax deductions) applies;

then, for the purposes of this Act:

(e) the amount of the *franking credit on the distribution is not included in the assessable income of the entity under section 207-20 or 207-35; and

(f) the entity is not entitled to a *tax offset under this Division because of the distribution; and

(g) if the distribution *flows indirectly through the entity to another entity—subsection 207-35(3) and section 207-45 do not apply to that other entity.

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



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*Part of share of distribution manipulated*

(2) If:

(a) a *franked distribution is made to an entity; and

(b) the Commissioner makes a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no imputation benefit (within the meaning of that section) is to arise in respect of a specified part of the distribution (the ***specified part***) for the entity;

then, for the purposes of this Act:

(c) the amount of the distribution is taken to have been reduced by the specified part; and

(d) the amount of the *franking credit on the distribution is to be worked out as follows:

$$\frac{\text{*Franked distribution apart from this section} - \text{Specified part}}{\text{*Franked distribution apart from this section}} \times \text{*Franking credit on the *franked distribution apart from this section}$$

Example: A franked distribution of $70 is made to the trustee of a trust. Apart from this section, the franking credit on the distribution ($30) would be included in the assessable income of the trust under section 207-35.

The Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no imputation benefit (within the meaning of that section) is to arise for the trustee in respect of $49 of the distribution.

Under this subsection, the amount included in the assessable income of the trust under section 207-35 because of the distribution is reduced from $30 to $9.

If there is a beneficiary of the trust that is presently entitled to the trust's income, the amount of the distribution that flows indirectly to the beneficiary is reduced from $70 to $21 under this subsection.

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



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*What happens if both subsection 207-90(2) and subsection (2) of this section would apply*

(3) If, apart from this subsection, both subsection 207-90(2) and subsection (2) of this section would apply to an entity in relation to a *franked distribution, then:

(a) apply subsection 207-90(2) first; and

(b) apply subsection (2) of this section on the basis that the amount of the *franked distribution had been reduced under subsection 207-90(2).

## 207-150 Distribution that flows indirectly to an entity

*Whole of share of distribution manipulated*

(1) If a *franked distribution *flows indirectly to an entity in an income year in one or more of the following circumstances:

(a) the entity is not a qualified person in relation to the distribution for the purposes of Division 1A of former Part IIIAA of the *Income Tax Assessment Act 1936*;

(b) the Commissioner has made a determination under paragraph 177EA(5)(b) of that Act that no imputation benefit (within the meaning of that section) is to arise in respect of the distribution for the entity;

(c) the Commissioner has made a determination under paragraph 204-30(3)(c) of this Act that no *imputation benefit is to arise in respect of the distribution for the entity;

(d) the distribution is treated as an interest payment for the entity under section 207-160 of this Act;

(e) the distribution is made as part of a *dividend stripping operation;

(ea) the distribution is one to which section 207-157 (which is about distribution washing) applies;

(eb) the distribution is one to which section 207-158 (which is about foreign income tax deductions) applies;

then, for the purposes of this Act:

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



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(f) subsection (2), (3) or (4) (as appropriate) applies to the entity in relation to that income year; and

(g) the entity is not entitled to a *tax offset under this Division because of the distribution; and

(h) if the distribution *flows indirectly through the entity to another entity—subsection 207-35(3) and section 207-45 do not apply to that other entity.

*Partner*

(2) If the *franked distribution *flows indirectly to the entity as a partner in a partnership under subsection 207-50(2), the entity can deduct an amount for that income year that is equal to its *share of the *franking credit on the distribution.

*Beneficiary*

(3) If the *franked distribution *flows indirectly to the entity as a beneficiary of a trust under subsection 207-50(3), the entity can deduct an amount for that income year that is equal to the lesser of:

(a) its share amount in relation to the distribution that is mentioned in that subsection; and

(b) its *share of the *franking credit on the distribution.

*Trustee*

(4) If the *franked distribution *flows indirectly to the entity as the trustee of a trust under subsection 207-50(4), the entity's share amount in relation to the distribution that is mentioned in that subsection is to be reduced by the lesser of:

(a) that share amount; and

(b) its *share of the *franking credit on the distribution.

*Part of share of distribution manipulated*

(5) If:

(a) a *franked distribution *flows indirectly to an entity in an income year; and

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



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(b) the Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no imputation benefit (within the meaning of that section) is to arise in respect of a specified part of the distribution (the ***specified part***) for the entity;

then, subsection (2), (3) or (4) (as appropriate) applies to the entity on the basis that the amount of its *share of the *franking credit on the distribution is worked out as follows:

$$\frac{\text{Specified part}}{\text{Entity's *share of the *franked distribution}} \times \text{Entity's *share of the *franking credit on the *franked distribution apart from this section}$$

(6) In addition, the following apply to an entity covered by subsection (5):

(a) if the distribution would otherwise *flow indirectly through the entity—the entity's *share of the distribution for the purposes of this Act (other than subsection (2), (3) or (4)) is to be reduced by the specified part mentioned in subsection (5);

(b) if the entity would otherwise be entitled to a *tax offset under this Division because of the distribution—the amount of the tax offset is to be worked out as follows:

$$\text{Entity's *share of the *franking credit on the *franked distribution apart from this section} - \text{Amount worked out under subsection (5)}$$

Example: X is a partner in a partnership to which a franked distribution of $140 is made. The franking credit on the distribution ($60) is included in the assessable income of the partnership under section 207-35. X's share of the distribution is $70 and its share of the franking credit on the distribution is $30.

The Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no imputation benefit (within the meaning of that section) is to arise for X in respect of $42 of the distribution.

Under subsection (5), X will be allowed a deduction of $18.

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



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X is the trustee of a trust and the distribution will flow indirectly through X to beneficiaries of the trust. For the purposes of working out a beneficiary's share of the distribution and its share of the franking credit, X's share of the franked distribution is reduced to $28 under this subsection.

*What happens if both subsection 207-95(1) and subsection (1) of this section would apply*

(7) If, apart from this subsection, both subsection 207-95(1) and subsection (1) of this section would apply to an entity in relation to a *franked distribution, then:

(a) subsection (1) of this section applies to the entity; but

(b) subsection 207-95(1) does not apply to the entity.

*What happens if both subsection 207-95(5) and subsection (5) of this section would apply*

(8) If, apart from this subsection, both subsection 207-95(5) and subsection (5) of this section would apply to an entity in relation to a *franked distribution, then:

(a) apply subsections 207-95(5) and (6) first; and

(b) apply subsections (5) and (6) of this section on the basis that:

(i) the amount of the entity's *share of the *franking credit on the distribution had been reduced under subsection 207-95(5); and

(ii) the amount of the entity's *share of the distribution had been reduced under subsection 207-95(6).

## 207-155 When is a distribution made as part of a dividend stripping operation?

A distribution made to a *member of a *corporate tax entity is taken to be made as part of a ***dividend stripping operation*** if, and only if, the making of the distribution arose out of, or was made in the course of, a *scheme that:

(a) was by way of, or in the nature of, dividend stripping; or

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



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(b) had substantially the effect of a scheme by way of, or in the nature of, dividend stripping.

## 207-157 Distribution washing

(1) This section applies to a *franked distribution received by a *member of a *corporate tax entity on a *membership interest (the ***washed interest***) if:

(a) the washed interest was acquired after the member, or a *connected entity of the member, disposed of a substantially identical membership interest; and

(b) a corresponding franked distribution is made to the member, or the connected entity, on the substantially identical interest.

*Further requirement for connected entities*

(2) However, if the entity that disposed of the substantially identical interest was a *connected entity of the member, this section does not apply to the *franked distribution unless:

(a) it would be concluded that the disposal took place wholly or partly because there was an expectation that the acquisition would, or would be likely to, take place; or

(b) it would be concluded that the acquisition took place wholly or partly because there was a belief that the disposal had taken place.

*Substantially identical interests*

(3) Without limiting paragraph (1)(a), for the purpose of that paragraph a *membership interest is substantially identical to the washed interest if it is any one or more of the following:

(a) fungible with, or economically equivalent to, the washed interest;

(b) a membership interest in the same *corporate tax entity as the washed interest and of a class that is the same as, or not materially different from, the washed interest;

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



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(c) a membership interest in the same corporate tax entity as the washed interest and of a class that is exchangeable at a fixed rate for an interest of the same class as the washed interest;
(d) a membership interest in another corporate tax entity that holds predominantly membership interests that are covered by any of the preceding paragraphs;
(e) a membership interest in another corporate tax entity that is exchangeable at a fixed rate for interests that are covered by any one or more of paragraphs (a) to (c).

*Exception for individuals who are small holders*

(4) Despite subsection (1), this section does not apply to a *franked distribution made to an individual in an income year if the sum of the *tax offsets to which the individual would be entitled, worked out on the basis mentioned in subsection (5), is $5000 or less.

(5) Work out the sum of the *tax offsets:
(a) disregarding this Subdivision, to the extent it applies to the individual; and
(b) not disregarding this Subdivision, to the extent it applies to any other entity through which a *franked distribution *flows indirectly to the individual.

## 207-158 Distributions entitled to a foreign income tax deduction

(1) This section applies to a *franked distribution if all or part of the distribution gives rise to a *foreign income tax deduction.

*Exception for distributions made under certain regulatory capital instruments*

(2) However, this section does not apply to a distribution made in respect of an *equity interest if the interest forms part of Additional Tier 1 capital for the purposes of:
(a) applicable *prudential standards; or
(b) applicable prudential standards determined by *APRA and in force under section 32 of the *Insurance Act 1973*; or

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



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(c) applicable prudential standards determined by APRA and in force under section 230A of the *Life Insurance Act 1995*.

## 207-160 Distribution that is treated as an interest payment

(1) For the purposes of this Subdivision, a *franked distribution is treated as an ***interest payment*** for an entity to whom the distribution *flows indirectly if:

(a) all or a part of the entity's individual interest or share amount in relation to the distribution that is mentioned in subsection 207-50(2), (3) or (4) could reasonably be regarded as the payment of interest on a loan, having regard to:

(i) the way in which that individual interest or share amount was calculated; and

(ii) the conditions applying to the payment or application of that individual interest or share amount; and

(iii) any other relevant matters; and

(b) the entity's interest in the last intermediary entity (see subsection (2)):

(i) was acquired, or was acquired for a period that was extended, at or after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997; or

(ii) was acquired as part of a *financing arrangement for the entity (including an arrangement extending to an earlier arrangement) that was entered into at or after that time.

(2) The entity's interest in the last intermediary entity is:

(a) if the distribution *flows indirectly to the entity as a partner in a partnership under subsection 207-50(2)—the entity's interest in the partnership; or

(b) if the distribution flows indirectly to the entity as a beneficiary of a trust under subsection 207-50(3)—the entity's interest in the trust; or

(c) if the distribution flows indirectly to the entity as the trustee of a trust under subsection 207-50(4)—the entity's interest in the trust in respect of which the entity is liable to be assessed.

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



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# Division 208—Exempting entities and former exempting entities

## Table of Subdivisions

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208-B Franking with an exempting credit
208-C Amount of the exempting credit on a distribution
208-D Distribution statements
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## Guide to Division 208

### Table of sections

208-5 What is an exempting entity?
208-10 Former exempting entities
208-15 Distributions by exempting entities and former exempting entities

### 208-5 What is an exempting entity?

(1) An exempting entity is a corporate tax entity that is effectively owned by entities that, either because they are not Australian residents or because they receive distributions as exempt income or non-assessable non-exempt income, would not be able to fully utilise franking credits on distributions by the corporate tax entity.

(2) In deciding whether a corporate tax entity is effectively owned by such entities, these rules:

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



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(a) look at the membership interests in the entity that involve the holder of the interest in bearing the risks and accruing the opportunities of ownership of the entity; and
(b) ask whether at least 95% of those membership interests, and 95% of any interests in those membership interests, are held by Australian residents or entities that receive distributions as exempt income or non-assessable non-exempt income.

### 208-10 Former exempting entities

When an entity ceases to be an exempting entity, it becomes a former exempting entity.

### 208-15 Distributions by exempting entities and former exempting entities

To ensure that franking credits accumulated by an exempting entity are not the target of franking credit trading, these rules:
(a) limit the circumstances in which a distribution franked with those credits can give rise to benefits under the imputation system; and
(b) quarantine those credits by moving them into a separate account, called the exempting account, when the entity ceases to be an exempting entity; and
(c) deny a recipient of a distribution franked with a credit from that account any benefit under the imputation system as a result of that distribution, unless the recipient was a member of the entity immediately before it became a former exempting entity.

## Subdivision 208-A—What are exempting entities and former exempting entities?

### Table of sections

208-20 Exempting entities
208-25 Effective ownership of entity by prescribed persons
208-30 Accountable membership interests

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



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208-35 Accountable partial interests
208-40 Prescribed persons
208-45 Persons who are taken to be prescribed persons
208-50 Former exempting companies

## 208-20 Exempting entities

A *corporate tax entity is an ***exempting entity*** at a particular time if, at that time, the entity is effectively owned by prescribed persons.

Note: Prescribed persons are identified in sections 208-40 and 208-45.

## 208-25 Effective ownership of entity by prescribed persons

(1) An entity is ***effectively owned by prescribed persons*** at a particular time if:

(a) at that time:

(i) not less than 95% of the *accountable membership interests in the entity; or

(ii) not less than 95% of the *accountable partial interests in the entity;

are held by, or held indirectly for the benefit of, prescribed persons; or

(b) paragraph (a) does not apply but it would nevertheless be reasonable to conclude that, at that time, the risks involved in, and the opportunities resulting from, holding accountable membership interests, or accountable partial interests, in the entity that are not held by, or directly or indirectly for the benefit of, prescribed persons are substantially borne by, or substantially accrue to, prescribed persons.

(2) In deciding whether it would be reasonable to conclude as mentioned in paragraph (1)(b):

(a) have regard to any *arrangement in respect of *membership interests (including unissued membership interests), or in respect of *partial interests, in the entity (including any derivatives held or issued in connection with those

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



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membership interests or partial interests) of which the entity is aware; but

(b) do not have regard to risks involved in the ownership of membership interests, or partial interests, in the entity that are substantially borne by any person in the person's capacity as a secured creditor.

(3) An entity has a ***partial interest*** in a *corporate tax entity if it has an interest in a *membership interest in the corporate tax entity.

## 208-30 Accountable membership interests

(1) The purpose of this section is to identify which *membership interests in an entity are relevant in determining whether the entity is effectively owned by prescribed persons.

(2) A *membership interest in an entity is an ***accountable membership interest*** if it is not an excluded membership interest.

(3) A *membership interest in an entity is an ***excluded membership interest*** if, having regard to:

(a) the purposes for which the membership interest was issued; and

(b) any special or limited rights connected with, arising from, or attached to:

(i) the membership interest; or

(ii) other membership interests in the entity held by the holder of the membership interest; or

(iii) membership interests in the entity held by persons other than the holder of the membership interest; or

(iv) interests in any of the above;

including rights that are conferred or exercisable only if the holder of the membership interest or interests concerned is, or is not, a prescribed person; and

(c) the extent to which any such special or limited rights are similar to or differ from the rights that are normally attached

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to the ownership of *ordinary membership interests in *corporate tax entities; and

(d) the relationship between the value of the membership interest and the value of the entity; and

(e) any relationship or connection (whether of a personal or business nature) between holders of membership interests in the entity of which the entity is aware; and

(f) any *arrangement in respect of membership interests (including unissued membership interests) in the entity, or interests in membership interests in the entity, of which the entity is aware;

it would be reasonable to conclude that the membership interest is not relevant in determining whether the entity is effectively owned by prescribed persons because holding the membership interest does not involve the holder bearing the risks, or result in the accrual to the holder of the opportunities, of ownership of the entity that ordinarily arise from, or are ordinarily attached to, the holding of ordinary membership interests in an entity.

(4) In applying subsection (3), the fact that a person is a trustee is to be disregarded.

(5) Without limiting subsection (3), a *membership interest in an entity held by a person who is not a prescribed person is an ***excluded membership interest*** if:

(a) it is a finance membership interest; or

(b) it is a distribution access membership interest; or

(c) it does not carry the right to receive distributions; or

(d) it was issued, transferred or acquired for a purpose (other than an incidental purpose) of ensuring that the entity is not effectively owned by prescribed persons.

(6) A *membership interest is a ***finance membership interest*** if:

(a) the membership interest is a *non-equity share in the entity; or

(b) having regard to the rights attached to the membership interest and to any *arrangement with respect to the

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



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membership interest of which the entity is aware, the membership interest is equivalent to a debt owed by the entity to the holder of the membership interest.

(7) A *membership interest to which subsection (6) does not apply is a ***finance membership interest*** if:

(a) the manner in which the *distributions payable in respect of the membership interest are calculated, and the conditions applying to the payment of such distributions, indicate that the distributions paid are equivalent to the receipt by the person to whom they are paid of interest or an amount in the nature of or similar to interest; or

(b) the capital invested by the holder of the membership interest will be redeemed or, because of an *arrangement between the holder and the entity or an *associate of the entity, it is reasonable for the holder to expect that the capital will be redeemed, for an amount that is not less than, or for property (including other membership interests in the entity) the value of which is not less than, the amount paid for the membership interest; or

(c) the membership interest is redeemable by the entity by payment of a lump sum or by the transfer of property, or the membership interest has a preferred right to a repayment of capital on a winding up, where the amount of the lump sum or the value of the property, or the amount of the capital to be repaid, as the case may be, is to be calculated by reference to an implicit interest rate.

(8) A *membership interest in an entity is a ***distribution access membership interest*** if, having regard to:

(a) the terms of the issue of the membership interest, including any guarantee of payment of distributions; and

(b) the amounts of the *distributions paid on the membership interest relative to the issue price of the membership interest; and

(c) whether there is any guaranteed rate at which *franked distributions are to be paid on the membership interest; and

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



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(d) the duration of the period within which the membership interest was issued; and

(e) the rights attached to other membership interests in the entity; and

(f) any other relevant matters;

it could be concluded that the membership interest was issued only for the purpose of paying distributions to the holder of the membership interest.

## 208-35 Accountable partial interests

(1) The purpose of this section is to identify which *partial interests in an entity are relevant in determining whether the entity is effectively owned by prescribed persons.

(2) A *partial interest in an entity is an ***accountable partial interest*** if it is not an excluded partial interest.

(3) A *partial interest in an entity is an ***excluded partial interest*** if, having regard to:

(a) the purposes for which the interest was granted; and

(b) the nature of the interest; and

(c) any special or limited rights connected with or arising from:

(i) the interest; or

(ii) other *membership interests, or partial interests, in the entity held by the holder of the interest; or

(iii) membership interests, or partial interests, in the entity held by persons other than the holder of the interest;

including rights that are conferred or exercisable only if the holder of the membership interests or partial interests concerned is, or is not, a prescribed person; and

(d) the extent to which the interest is similar to or differs from beneficial ownership; and

(e) the relationship between the value of the interest and the value of the entity; and

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



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(f) any relationship or connection (whether of a personal or business nature) between holders of partial interests in the entity, and the holders of membership interests in the entity, of which the entity is aware; and

(g) any *arrangement in respect of membership interests (including unissued membership interests) in the entity, or partial interests in the entity, of which the entity is aware;

it would be reasonable to conclude that the partial interest is not relevant in determining whether the entity is effectively owned by prescribed persons because holding the membership interest to which the partial interest relates does not involve the holder bearing the risks, or result in the accrual to the holder of the opportunities, of ownership of the entity that ordinarily arise from, or are ordinarily attached to, the holding of *ordinary membership interests in an entity.

(4) In applying subsection (3), the fact that a person is a trustee is to be disregarded.

(5) Without limiting subsection (3), a *partial interest in an entity is also an ***excluded partial interest*** if it was granted or otherwise created, or was transferred or acquired, for a purpose (other than an incidental purpose) of ensuring that the entity is not effectively owned by prescribed persons.

## 208-40 Prescribed persons

(1) A company is a ***prescribed person*** in relation to another *corporate tax entity if:

(a) the company is a foreign resident; or

(b) were the company to receive a *distribution made by the other corporate tax entity, the distribution would be *exempt income or *non-assessable non-exempt income of the company.

(2) A trustee is a ***prescribed person*** in relation to a *corporate tax entity if:

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



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(a) all the beneficiaries in the trust are prescribed persons under other provisions of this section; or

(b) were the trustee to receive a *distribution made by the corporate tax entity, the distribution would be *exempt income or *non-assessable non-exempt income of the trust estate.

(3) A partnership is a ***prescribed person*** in relation to a *corporate tax entity if:

(a) all the partners are prescribed persons under other provisions of this section; or

(b) were the partnership to receive a *distribution made by the corporate tax entity, the distribution would be *exempt income or *non-assessable non-exempt income of the partnership.

(4) An individual (other than a trustee) is a prescribed person in relation to a *corporate tax entity if:

(a) he or she is a foreign resident; or

(b) were he or she to receive a *distribution made by the corporate tax entity, the distribution would be *exempt income or *non-assessable non-exempt income of the individual.

(5) The Commonwealth, each of the States, the Australian Capital Territory, the Northern Territory and Norfolk Island are prescribed persons in relation to any *corporate tax entity.

(6) An *exempt institution that is eligible for a refund cannot be a ***prescribed person*** in relation to a *corporate tax entity under this section.

## 208-45 Persons who are taken to be prescribed persons

(1) This section applies to a person that:

(a) is a company, a trustee, or a partnership, that holds *membership interests (whether *accountable membership interests or excluded membership interests), or *partial

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



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interests (whether *accountable partial interests or excluded partial interests), in a *corporate tax entity (the ***relevant entity***); and

(b) is not a prescribed person under section 208-40.

(2) A company that holds *membership interests, or *partial interests, in the relevant entity is taken to be a ***prescribed person*** in relation to the relevant entity if the risks involved in, and the opportunities resulting from, holding the membership interests or partial interests are substantially borne by, or substantially accrue to, as the case may be, one or more prescribed persons.

(3) A trustee of a trust who holds *membership interests, or *partial interests, in the relevant entity is taken to be a ***prescribed person*** in relation to the relevant entity if the risks involved in, and the opportunities resulting from, holding the membership interests or partial interests are substantially borne by, or substantially accrue to, as the case may be, one or more prescribed persons.

(4) A trustee of a trust who holds *membership interests, or *partial interests, in the relevant entity is taken to be a ***prescribed person*** in relation to the relevant entity if:

(a) unless subsection (7) applies, the trust is controlled by one or more persons who are prescribed persons; or

(b) all the beneficiaries who are presently entitled to, or during the relevant income year become presently entitled to, income from the trust are prescribed persons.

(5) In determining whether subsection (3) or (4) applies in respect of a trust that is controlled by a person, have regard to the way in which the person, or any *associate of the person, exercises powers in relation to the trust.

(6) A person ***controls a trust*** if:

(a) the person has the power, either directly, or indirectly through one or more interposed entities, to control the application of the income, or the distribution of the property, of the trust; or

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



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(b) the person has the power, either directly, or indirectly through one or more entities, to appoint or remove the trustee of the trust; or

(c) the person has the power, either directly, or indirectly through one or more entities, to appoint or remove beneficiaries of the trust; or

(d) the trustee of the trust is accustomed or under an obligation, whether formal or informal, to act according to the directions, instructions or wishes of the person or of an *associate of the person.

(7) Paragraph (4)(a) does not apply in relation to a trust if some of the beneficiaries receiving income from the trust are not prescribed persons and the Commissioner considers that it is reasonable to conclude that the risks involved in, and the opportunities resulting from, holding the *membership interests or *partial interests in the relevant entity are substantially borne by, or substantially accrue to, as the case may be, one or more persons who are not prescribed persons.

(8) A partnership that holds *membership interests, or *partial interests, in the relevant entity is taken to be a ***prescribed person*** in relation to the relevant entity if the risks involved in, and the opportunities resulting from, holding the membership interests or partial interests are substantially borne by, or substantially accrue to, as the case may be, one or more prescribed persons.

(9) If any of the prescribed persons referred to in subsection (2), (3), (4) or (8) is a *corporate tax entity, that subsection applies even if the risks involved in, and the opportunities resulting from, holding any of the *membership interests, or *partial interests, in that entity are substantially borne by, or substantially accrue to, as the case may be, one or more persons who are not prescribed persons.

(10) An *exempt institution that is eligible for a refund cannot be taken to be a ***prescribed person*** in relation to a *corporate tax entity under this section.

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



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### 208-50 Former exempting companies

(1) Subject to subsection (2), a *corporate tax entity is a ***former exempting entity*** if it has, at any time, ceased to be an *exempting entity and is not again an exempting entity.

(2) If an entity that, at any time, becomes effectively owned by prescribed persons ceases to be so effectively owned within 12 months after that time, the entity is not taken, by so ceasing, to become a former exempting entity.

## Subdivision 208-B—Franking with an exempting credit

## Guide to Subdivision 208-B

### 208-55 What this Subdivision is about

If a former exempting entity makes a distribution in circumstances where it could be franked, the entity can frank the distribution with an exempting credit.

## Table of sections

**Operative provisions**

208-60 Franking with an exempting credit

## Operative provisions

### 208-60 Franking with an exempting credit

An entity franks a *distribution with an exempting credit if:

(a) the entity is a *former exempting entity when the distribution is made; and

(b) the entity is a *franking entity that satisfies the *residency requirement when the distribution is made; and

(c) the distribution is a *frankable distribution; and

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



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(d) the entity allocates an *exempting credit to the distribution.

Note: The residency requirement for an entity making a distribution is set out in section 202-20.

# Subdivision 208-C—Amount of the exempting credit on a distribution

## Guide to Subdivision 208-C

### 208-65 What this Subdivision is about

The amount of the exempting credit on a distribution is that stated in the distribution statement, unless the amount stated exceeds the maximum franking credit for the distribution. In that case, it is nil.

### Table of sections

**Operative provisions**

208-70 Amount of the exempting credit on a distribution

## Operative provisions

### 208-70 Amount of the exempting credit on a distribution

(1) Subject to subsection (2), the amount of the *exempting credit on a *distribution is that stated in the *distribution statement for the distribution.

(2) If the sum of the *franking credit and the *exempting credit stated in the *distribution statement for a *distribution exceeds the *maximum franking credit for the distribution, the amount of the exempting credit on the distribution is taken to be nil.

Note: If the franking credit stated in the distribution statement exceeds the maximum franking credit for the distribution, the amount of the franking credit on the distribution is taken to equal that maximum under section 202-65.

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



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## Subdivision 208-D—Distribution statements

## Guide to Subdivision 208-D

### 208-75 Guide to Subdivision 208-D

Former exempting entities and exempting entities that make certain distributions must provide additional information in the distribution statement given to the recipient.

### Table of sections

**Operative provisions**

208-80 Additional information to be included by a former exempting entity or exempting entity

## Operative provisions

### 208-80 Additional information to be included by a former exempting entity or exempting entity

(1) A *former exempting entity that makes a *distribution *franked with an exempting credit must include in the *distribution statement given to the recipient, a statement that there is an *exempting credit of a specified amount on the distribution.

(2) An *exempting entity that makes a *frankable distribution to a *member must include in the *distribution statement given to the member, a statement to the effect that members who are Australian residents are not entitled to a *tax offset or *franking credit as a result of the distribution, except for certain *corporate tax entities, and employees who receive the distribution in connection with certain *employee share schemes.

(3) If, under subsection (1) or (2), a statement must be included in a *distribution statement, the distribution statement is taken not to have been given unless the statement is included.

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



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# Subdivision 208-E—Distributions to be franked with exempting credits to the same extent

## Guide to Subdivision 208-E

### 208-85 What this Subdivision is about

All frankable distributions made within a franking period must be franked to the same extent with an exempting credit.

## Table of sections

**Operative provisions**

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## Operative provisions

### 208-90 All frankable distributions made within a franking period must be franked to the same extent with an exempting credit

(1) If an entity *franks a *distribution with an exempting credit, it must frank each other *frankable distribution made within the same *franking period with an exempting credit worked out at the same *exempting percentage.

(2) If an entity is not a *former exempting entity for the whole of a *franking period (the ***longer period***), then, for the purposes of subsection (1), each period within that longer period during which the entity is a former exempting entity is taken to be a ***franking period***.

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



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### 208-95 Exempting percentage

The ***exempting percentage*** for a *frankable distribution is worked out using the formula:

$$\frac{\text{Amount of the *exempting credit on the distribution}}{\text{*Maximum franking credit for the distribution}} \times 100$$

### 208-100 Consequences of breaching the rule in section 208-90

If an entity *franks a *distribution with an exempting credit in breach of section 208-90:

(a) that distribution is taken not to have been franked with an exempting credit; and

(b) each other *frankable distribution made by the entity within the relevant *franking period is taken not to have been franked with an exempting credit.

## Subdivision 208-F—Exempting accounts and franking accounts of exempting entities and former exempting entities

## Guide to Subdivision 208-F

### 208-105 What this Subdivision is about

This Subdivision:

- creates an exempting account for each former exempting entity; and
- identifies when exempting credits and debits arise in those accounts and the amount of those credits and debits; and

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



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- identifies when there is an exempting surplus or deficit in the account; and
- identifies when franking credits and debits arise in the franking account of an entity because it is an exempting entity, or former exempting entity.

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



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## Operative provisions

### 208-110 Exempting account

Each *former exempting entity has an ***exempting account***.

### 208-115 Exempting credits

(1) The following table sets out when a credit arises in the *exempting account of a *former exempting entity. A credit in the former exempting entity's account is called an ***exempting credit***.

**Exempting Credits**

| Item | If: | A credit of: | Arises: |
|---|---|---|---|
| 1 | the entity had a *franking surplus at the time it became a *former exempting entity (at the time of its ***transition***) | an amount equal to:<br>(a) in a case not covered by paragraph (b)—the franking surplus; or<br>(b) if the entity has been a former exempting entity at any time within a period of 12 months before its transition—so much of the franking surplus as would have been the entity's *exempting surplus had it remained a former exempting entity throughout the period | immediately after its transition |

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



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**Exempting Credits**

| Item | If: | A credit of: | Arises: |
|---|---|---|---|
| 2 | the entity receives a *distribution *franked with an exempting credit; and<br>the entity satisfies the *residency requirement for the income year in which the distribution is made and at the time the distribution is made; and<br>some part of the distribution is neither *exempt income nor *non-assessable non-exempt income of the entity; and<br>the entity is an *eligible continuing substantial member in relation to the distribution; and<br>the distribution is not affected by a manipulation of the imputation system mentioned in section 208-160 | an amount worked out under subsection 208-165(1) | on the day on which the distribution is made |

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



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**Exempting Credits**

| Item | If: | A credit of: | Arises: |
|---|---|---|---|
| 3 | the entity receives a *distribution *franked with an exempting credit; and<br>the entity satisfies the *residency requirement for the income year in which the distribution is made and at the time the distribution is made; and<br>some part of the distribution is neither *exempt income nor *non-assessable non-exempt income of the entity; and<br>the entity is an *eligible continuing substantial member in relation to the distribution; and<br>the Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no franking credit benefit (within the meaning of that section) is to arise in respect of a specified part of the distribution | an amount worked out under subsection 208-170(1) | on the day on which the distribution is made |

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



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| **Exempting Credits** | | | |
|---|---|---|---|
| **Item** | **If:** | **A credit of:** | **Arises:** |
| 4 | a *distribution *franked with an exempting credit *flows indirectly to the entity (the ***ultimate recipient***); and<br>the recipient of the distribution is an *eligible continuing substantial member in relation to the distribution; and<br>except for the fact that the ultimate recipient is not an eligible continuing substantial member in relation to the distribution, it would have been entitled to an *exempting credit because of the distribution had the distribution been made to the ultimate recipient | an amount equal to the exempting credit that would have arisen for the ultimate recipient if:<br>(a) the ultimate recipient had been an eligible continuing substantial member in relation to the distribution; and<br>(b) the distribution had been made to the ultimate recipient; and<br>(c) the distribution had been franked with an exempting credit equal to the ultimate recipient's *share of the actual exempting credit | on the day on which the distribution is made |
| 5 | the entity *pays a *PAYG instalment; and<br>the entity satisfies the *residency requirement for the income year in relation to which the PAYG instalment is paid; and<br>the entity was an *exempting entity for the whole or part of the relevant *PAYG instalment period | an amount equal to that part of the payment that is attributable to the period during which the entity was an exempting entity | on the day on which the payment is made |

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



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| **Exempting Credits** | | | |
|---|---|---|---|
| **Item** | **If:** | **A credit of:** | **Arises:** |
| 6 | the entity *pays income tax; and<br>the entity satisfies the *residency requirement for the income year for which the tax is paid; and<br>the entity was an *exempting entity for the whole or part of that income year | an amount equal to that part of the payment that is attributable to the period during which the entity was an exempting entity | on the day on which the payment is made |
| 7 | the *exempting account of the entity would, apart from this item, be in *deficit immediately before the end of an income year | an amount equal to the deficit | immediately before the end of the income year |
| 8 | the entity becomes an *exempting entity; and<br>the entity has an *exempting deficit at the time it becomes an exempting entity | an amount equal to the exempting deficit | immediately after the entity becomes an exempting entity |
| 9 | the entity *pays diverted profits tax; and<br>the entity satisfies the *residency requirement for the income year for which the tax is paid; and<br>the entity was an *exempting entity for the whole or part of that income year | an amount equal to that part of the payment that is attributable to the period during which the entity was an exempting entity, multiplied by the proportion worked out under subsection (2) | on the day on which the payment is made |

(2) The proportion is the standard corporate tax rate (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*) divided by 40%.

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



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## 208-120 Exempting debits

(1) The following table sets out when a debit arises in the *exempting account of the *former exempting entity. A debit in the *former exempting entity's exempting account is called an ***exempting debit***.

**Exempting debits**

| Item | If: | A debit of: | Arises: |
|---|---|---|---|
| 1 | the entity had a *franking deficit at the time it became a *former exempting entity (at the time of its ***transition***) | an amount equal to:<br>(a) in a case not covered by paragraph (b)—the franking deficit; or<br>(b) if the entity has been a former exempting entity at any time within a period of 12 months before its transition—so much of the franking deficit as would have been the entity's *exempting deficit had it remained a former exempting entity throughout the period | immediately after its transition |
| 2 | the entity makes a *distribution *franked with an exempting credit | an amount equal to the *exempting credit on the distribution | on the day on which the distribution is made |

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



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**Exempting debits**

| Item | If: | A debit of: | Arises: |
|---|---|---|---|
| 3 | the entity *receives a refund of income tax; and<br>the entity was an *exempting entity during all or part of the income year to which the refund relates; and<br>the entity satisfies the *residency requirement for the income year to which the refund relates | an amount equal to that part of the refund that is attributable to the period during which the entity is an exempting entity | on the day on which the refund is received |
| 4 | the Commissioner makes a determination under paragraph 204-30(3)(b) giving rise to an *exempting debit for the entity (streaming distributions) | the amount specified in the determination | on the day specified in section 204-35 |
| 5 | a *franking debit arises for the entity under section 204-15 (linked distributions), 204-25 (substituting tax-exempt bonus shares for franked distributions) or a determination made under paragraph 204-30(3)(a) (streaming distributions); and<br>the entity was an *exempting entity for the whole or part of the period to which the franking debit relates | an amount equal to that part of the franking debit that relates to the period during which the entity was an exempting entity | when the franking debit arises |

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



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| **Exempting debits** | | | |
|---|---|---|---|
| **Item** | **If:** | **A debit of:** | **Arises:** |
| 6 | the Minister makes a determination under paragraph 208-185(4)(a) giving rise to an *exempting debit for the entity | the amount specified in the determination | on the day specified in the determination |
| 7 | the entity becomes an *exempting entity; and<br>the entity has an *exempting surplus at the time it becomes an exempting entity | an amount equal to the exempting surplus | immediately after the entity becomes an exempting entity |
| 8 | the entity *receives a refund of diverted profits tax; and<br>the entity was an *exempting entity during all or part of the income year to which the refund relates; and<br>the entity satisfies the *residency requirement for the income year to which the refund relates | an amount equal to that part of the refund that is attributable to the period during which the entity is an exempting entity, multiplied by the proportion worked out under subsection (2) | on the day on which the refund is received |

(2) The proportion is the standard corporate tax rate (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*) divided by 40%.

## 208-125 Exempting surplus and deficit

(1) An entity's *exempting account is in ***surplus*** at a particular time if, at that time, the sum of the *exempting credits in the account exceeds the sum of the *exempting debits in the account. The amount of the ***exempting surplus*** is the amount of the excess.

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



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(2) An entity's *exempting account is in ***deficit*** at a particular time if, at that time, the sum of the *exempting debits in the account exceeds the sum of the *exempting credits in the account. The amount of the ***exempting deficit*** is the amount of the excess.

## 208-130 Franking credits arising because of status as exempting entity or former exempting entity

The following table sets out when a credit arises in the *franking account of an entity because of its status as an *exempting entity or *former exempting entity.

**Franking credits arising because of status as an exempting entity or former exempting entity**

| Item | If: | A credit of: | Arises: |
|---|---|---|---|
| 1 | an entity becomes a *former exempting entity; and<br>the entity has a *franking deficit at the time it becomes a former exempting entity | an amount equal to the franking deficit | immediately after the entity becomes a former exempting entity |
| 2 | an entity receives a *distribution *franked with an exempting credit; and<br>the entity is an *exempting entity at the time the distribution is made; and<br>the entity satisfies the *residency requirement for the income year in which the distribution is made and at the time the distribution is made; and<br>some part of the distribution is neither *exempt income nor *non-assessable non-exempt income of the entity; and | an amount worked out under subsection 208-165(1) | on the day on which the distribution is made |

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



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**Franking credits arising because of status as an exempting entity or former exempting entity**

| Item | If: | A credit of: | Arises: |
|---|---|---|---|
| | the entity is an *eligible continuing substantial member in relation to the distribution; and<br>the distribution is not affected by a manipulation of the imputation system mentioned in section 208-160 | | |
| 3 | the entity receives a *distribution *franked with an exempting credit; and<br>the entity is an *exempting entity at the time the distribution is made; and<br>the entity satisfies the *residency requirement for the income year in which the distribution is made and at the time the distribution is made; and<br>some part of the distribution is neither *exempt income nor *non-assessable non-exempt income of the entity; and<br>the entity is an *eligible continuing substantial member in relation to the distribution; and<br>the Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no franking credit benefit (within the meaning of | an amount worked out under subsection 208-170(1) | on the day on which the distribution is made |

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



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**Franking credits arising because of status as an exempting entity or former exempting entity**

| Item | If: | A credit of: | Arises: |
|---|---|---|---|
| | that section) is to arise in respect of a specified part of the distribution | | |
| 4 | a *distribution *franked with an exempting credit *flows indirectly to the entity (the ***ultimate recipient***); and<br>the recipient of the distribution is an *eligible continuing substantial member in relation to the distribution; and<br>except for the fact that the ultimate recipient is not an eligible continuing substantial member in relation to the distribution, it would have been entitled to a *franking credit because of the distribution had the distribution been made to the ultimate recipient | an amount equal to the franking credit that would have arisen for the ultimate recipient if:<br>(a) the ultimate recipient had been an eligible continuing substantial member in relation to the distribution; and<br>(b) the distribution had been made to the ultimate recipient; and<br>(c) the distribution had been franked with a franking credit equal to the ultimate recipient's *share of the actual franking credit | on the day on which the distribution is made |

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



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**Franking credits arising because of status as an exempting entity or former exempting entity**

| Item | If: | A credit of: | Arises: |
|---|---|---|---|
| 5 | an *exempting entity makes a *franked distribution to the entity (the ***recipient***); and<br>at the time the distribution is made:<br>(a) the recipient is an exempting entity; and<br>(b) the recipient satisfies the *residency requirement; and<br>(c) the relationship between the entities is of the type mentioned in section 208-135; and<br>the recipient satisfies the residency requirement for the income year in which the distribution is made; and<br>some part of the distribution is neither *exempt income nor *non-assessable non-exempt income of the recipient; and<br>the distribution is not affected by a manipulation of the imputation system mentioned in section 208-160 | an amount worked out using the formula in subsection 208-165(2) | on the day on which the distribution is made |

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**Franking credits arising because of status as an exempting entity or former exempting entity**

| Item | If: | A credit of: | Arises: |
|---|---|---|---|
| 6 | an *exempting entity makes a *franked distribution to the entity (the ***recipient***); and<br>at the time the distribution is made:<br>(a) the recipient is an exempting entity; and<br>(b) the recipient satisfies the *residency requirement; and<br>(c) the relationship between the entities is of the type mentioned in section 208-135; and<br>the recipient satisfies the residency requirement for the income year in which the distribution is made; and<br>some part of the distribution is neither *exempt income nor *non-assessable non-exempt income of the recipient; and<br>the Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no franking credit benefit (within the meaning of that section) is to arise in respect of a specified part of the distribution | an amount worked out using the formula in subsection 208-170(2) | on the day on which the distribution is made |

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



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**Franking credits arising because of status as an exempting entity or former exempting entity**

| Item | If: | A credit of: | Arises: |
|---|---|---|---|
| 7 | a *distribution made by an *exempting entity *flows indirectly to the entity (the ***ultimate recipient***); and<br>the recipient of the distribution is an *eligible continuing substantial member in relation to the distribution; and<br>except for the fact that the ultimate recipient is not an eligible continuing substantial member in relation to the distribution, it would have been entitled to a *franking credit because of the distribution had the distribution been made to the ultimate recipient | an amount equal to the franking credit that would have arisen for the ultimate recipient if:<br>(a) the ultimate recipient had been an eligible continuing substantial member in relation to the distribution; and<br>(b) the distribution had been made to the ultimate recipient; and<br>(c) the distribution had been franked with a franking credit equal to the ultimate recipient's *share of the actual franking credit | on the day on which the distribution is made |
| 8 | the Minister makes a determination under paragraph 208-185(4)(b) giving rise to a *franking credit for the entity | the amount of the credit specified in the determination | on the day specified in the determination |
| 9 | an *exempting debit arises for the entity under item 3, 5 or 8 of the table in section 208-120 | an amount equal to the exempting debit | when the exempting debit arises |

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| Franking credits arising because of status as an exempting entity or former exempting entity | | | |
|---|---|---|---|
| **Item** | **If:** | **A credit of:** | **Arises:** |
| 10 | a *former exempting entity becomes an *exempting entity; and<br>the entity has an *exempting surplus at the time it becomes an *exempting entity | an amount equal to the *exempting surplus | immediately after it becomes an exempting entity |

Note: Item 9 is designed to reverse out franking debits that arise in relation to a period during which the entity is an exempting entity. The entity will receive an exempting debit instead.

## 208-135 Relationships that will give rise to a franking credit under item 5 of the table in section 208-130

(1) A relationship between an entity making a *franked distribution and the recipient of the distribution is of a type that gives rise to a *franking credit under item 5 or 6 of the table in section 208-130 if either:

(a) both entities are members of the same effectively wholly-owned group; or

(b) the recipient holds more than 5% of the *membership interests in the entity making the distribution (other than finance membership interests or distribution access membership interests within the meaning of section 208-30 or membership interests that do not carry the right to receive distributions) and it would be reasonable to conclude that the risks involved in, and the opportunities resulting from, holding those membership interests are substantially borne by, or substantially accrue to, the recipient.

(2) In deciding whether it would be reasonable to make the conclusion mentioned in paragraph (1)(b):

(a) have regard to any *arrangement in respect of the *membership interests (including unissued membership

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



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interests) in the entity making the distribution (including derivatives held or issued in connection with those membership interests); and

(b) do not have regard to risks involved in the ownership of membership interests in the entity making the distribution that are substantially borne by any person in the person's capacity as a secured creditor.

## 208-140 Membership of the same effectively wholly-owned group

(1) Two *corporate tax entities are members of the ***same effectively wholly-owned group of entities*** on a particular day if:

(a) throughout that day, not less than 95% of the *accountable membership interests in each of the entities, and not less than 95% of the *accountable partial interests in each of the entities, are held by, or are held indirectly for the benefit of, the same persons; or

(b) paragraph (a) does not apply but it would nevertheless be reasonable to conclude, having regard to the matters mentioned in subsection (2), that, throughout that day, the risks involved in, and the opportunities resulting from, holding accountable membership interests, or accountable partial interests, in each of the entities are substantially borne by, or substantially accrue to, the same persons.

(2) The matters to which regard is to be had as mentioned in paragraph (1)(b) are:

(a) any special or limited rights attaching to *accountable membership interests, or *accountable partial interests, in each of the entities held by persons other than the persons mentioned in paragraph (1)(b) or their *associates; and

(b) any special rights attaching only to accountable membership interests, or accountable partial interests, in each of the entities held by the persons mentioned in paragraph (1)(b) or their associates; and

(c) the respective proportions:

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(i) that accountable membership interests in each of the entities held by the persons mentioned in paragraph (1)(b) or their associates, and other accountable membership interests in the entity concerned, bear to all the accountable membership interests in that entity; and

(ii) that accountable partial interests in each of the entities held by the persons mentioned in paragraph (1)(b) or their associates, and other accountable partial interests in the entity concerned, bear to all the accountable partial interests in that entity; and

(d) the respective proportions that:

(i) the total value of accountable membership interests in each of the entities held by the persons mentioned in paragraph (1)(b) or their associates, and the total value of other accountable membership interests in the entity concerned, bear to the total value of all the accountable membership interests in that entity; and

(ii) the total value of accountable partial interests in each of the entities held by the persons mentioned in paragraph (1)(b) or their associates, and the total value of other accountable partial interests in the entity concerned, bear to the total value of all the accountable partial interests in that entity; and

(e) the purposes for which accountable membership interests, or accountable partial interests, in each of the entities were issued or granted to persons other than the persons mentioned in paragraph (1)(b) or their associates; and

(f) any *arrangement in respect of accountable membership interests, or accountable partial interests, in each of the entities held by persons other than the persons mentioned in paragraph (1)(b) or their associates (including any derivatives held or issued in connection with those membership interests or interests) of which the entity concerned is aware.

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



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## 208-145 Franking debits arising because of status as exempting entity or former exempting entity

The following table sets out when a debit arises in the *franking account of an entity because of its status as an *exempting entity or *former exempting entity.

**Franking debits arising because of status as an exempting entity or former exempting entity**

| Item | If: | A debit of: | Arises: |
|---|---|---|---|
| 1 | an entity becomes a *former exempting entity; and<br>the entity has a *franking surplus at the time it becomes a former exempting entity | the amount of the franking surplus | immediately after the entity becomes a former exempting entity |
| 2 | the *exempting account of a *former exempting entity would, apart from item 7 of the table in section 208-115, be in *deficit immediately before the end of an income year | an amount equal to the deficit | immediately before the end of the income year |
| 3 | an *exempting credit arises in the *exempting account of the entity under item 5, 6 or 9 of the table in section 208-115 | an amount equal to the exempting credit | when the exempting credit arises |

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| **Franking debits arising because of status as an exempting entity or former exempting entity** | | | |
|---|---|---|---|
| **Item** | **If:** | **A debit of:** | **Arises:** |
| 4 | a *former exempting entity becomes an *exempting entity; and<br>the entity has an *exempting deficit at the time it becomes an *exempting entity | an amount equal to the exempting deficit | immediately after it becomes an exempting entity |
| 5 | a *franking credit arises in the *franking account of an entity under item 3 or 4 of the table in section 205-15 because a *distribution is made by an *exempting entity to the entity, or a distribution made by an exempting entity *flows indirectly to the entity | an amount equal to the amount of the franking credit | when the franking credit arises |

Note 1: Item 3 of the table is designed to reverse out franking credits that arise in relation to a period during which the entity is an exempting entity. The entity will receive an exempting credit instead.

Note 2: Item 5 of the table is designed to reverse out franking credits that arise under the core rules because an entity receives a franked distribution from an exempting entity. Only a recipient who is itself an exempting entity is entitled to a franking credit in these circumstances.

## 208-150 Residency requirement

The tables in sections 208-115, 208-120, 208-130 and 208-145 are relevant for the purposes of subsection 205-25(1).

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



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Note 1: Subsection 205-25(1) sets out the residency requirement for an income year in which, or in relation to which, an event specified in one of the tables occurs.

Note 2: Section 207-75 sets out the residency requirement that must be satisfied by the entity receiving a distribution when the distribution is made.

## 208-155 Eligible continuing substantial member

(1) A *member of a *former exempting entity is an ***eligible continuing substantial member*** in relation to a *distribution made by the entity if the following provisions apply.

(2) At both the time when the *distribution was made, and the time immediately before the entity ceased to be an *exempting entity, the *member was entitled to not less than 5% of:

(a) where the entity is a company:

(i) if the voting shares (as defined in the *Corporations Act 2001*) in the relevant former exempting entity are not divided into classes—those voting shares; or

(ii) if the voting shares (as so defined) in the relevant former exempting entity are divided into 2 or more classes—the shares in one of those classes; and

(b) where the entity is a *public trading trust—the units in the trust; and

(c) where the entity is a *corporate limited partnership—the income of the partnership.

(3) At both the time when the *distribution was made, and the time immediately before the entity ceased to be an *exempting entity, the *member was a person referred to in one or more of the following paragraphs:

(a) a person who is a foreign resident;

(b) a *life insurance company;

(c) an exempting entity;

(d) a *former exempting entity;

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(e) a trustee of a trust in which an interest was held by a person referred to in any of paragraphs (a) to (d);

(f) a partnership in which an interest was held by a person referred to in any of paragraphs (a) to (d).

(4) If the assumptions set out in subsection (5) are made:

(a) if the *member was a person referred to in any of paragraphs (3)(a) to (d)—the member; or

(b) if the member was a trustee of a trust or a partnership, being a trust or partnership in which a person referred to in any of those paragraphs held an interest—the holder of the interest;

would (if a foreign resident) be exempt from *withholding tax on the distribution or (if an Australian resident) be entitled to a *franking credit or a *tax offset in respect of the distribution.

(5) The assumptions referred to in subsection (4) are that:

(a) the relevant former exempting entity was an *exempting entity at the time it made the *distribution; and

(b) the distribution was a *franked distribution made to the member; and

(c) if the *member was a *former exempting entity—the member was an exempting entity; and

(d) if the member was a trustee of a trust or partnership in which a former exempting entity had an interest—the former exempting entity was an exempting entity.

(6) A person is taken to hold an interest in a trust, for the purposes of paragraph (3)(e), if:

(a) the person is a beneficiary under the trust; or

(b) the person *derives, or will derive, income indirectly, through interposed trusts or partnerships, from *distributions received by the trustee.

(7) A person is taken to hold an interest in a partnership, for the purposes of paragraph (3)(f), if:

(a) the person is a partner in the partnership; or

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



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(b) the person *derives, or will derive, income indirectly, through interposed trusts or partnerships, from *distributions received by the partnership.

## 208-160 Distributions that are affected by a manipulation of the imputation system

For the purposes of item 2 of the table in section 208-115 and items 2 and 5 of the table in section 208-130, a *distribution to an entity is affected by a manipulation of the imputation system if:

(a) the Commissioner has made a determination under paragraph 204-30(3)(c) that no *imputation benefit is to arise for the entity in respect of the distribution; or

(b) the Commissioner has made a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* that no franking credit benefit (within the meaning of that section) is to arise in respect of the distribution to the entity; or

(c) the distribution is part of a *dividend stripping operation.

## 208-165 Amount of the exempting credit or franking credit arising because of a distribution franked with an exempting credit

(1) Use the following formula to work out:

(a) the amount of an *exempting credit arising under item 2 of the table in section 208-115 because a *former exempting entity receives a *distribution *franked with an exempting credit; or

(b) the amount of a *franking credit arising under item 2 of the table in section 208-130 because an *exempting entity receives a distribution franked with an exempting credit;

$$\text{*Exempting credit on the *distribution} \times \frac{\text{Amount of the distribution that is not *exempt income of the recipient}}{\text{Amount of the distribution}}$$

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



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(2) Use the following formula to work out the amount of a *franking credit arising under item 5 of the table in section 208-130 because an *exempting entity receives a *distribution *franked with an exempting credit:

$$\text{*Franking credit on the *distribution} \times \frac{\text{Amount of the distribution that is not *exempt income of the recipient}}{\text{Amount of the distribution}}$$

## 208-170 Where a determination under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* affects part of the distribution

(1) Use the following formula to work out:

(a) the amount of an *exempting credit arising under item 3 of the table in section 208-115 because a *former exempting entity receives a *distribution *franked with an exempting credit; or

(b) the amount of a *franking credit arising under item 3 of the table in section 208-130 because an *exempting entity receives a distribution franked with an exempting credit;

$$\text{*Exempting credit on the *distribution} \times \frac{\text{Amount of the distribution that is not *exempt income of the recipient}}{\text{Amount of the distribution}} \times \frac{\text{Amount of the distribution} - \text{Specified part of the distribution}}{\text{Amount of the distribution}}$$

(2) Use the following formula to work out the amount of a *franking credit arising under item 6 of the table in section 208-130 because an *exempting entity receives *a distribution *franked with an exempting credit:

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



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$$\text{*Franking credit on the *distribution} \times \frac{\text{Amount of the distribution that is not *exempt income of the recipient}}{\text{Amount of the distribution}} \times \frac{\text{Amount of the distribution} - \text{Specified part of the distribution}}{\text{Amount of the distribution}}$$

## 208-175 When does a distribution franked with an exempting credit flow indirectly to an entity?

A *distribution *franked with an exempting credit is taken to ***flow indirectly*** to an entity if, had it been a *franked distribution, it would have been taken to have flowed indirectly to the entity under section 207-50.

## 208-180 What is an entity's share of the exempting credit on a distribution?

To work out an entity's ***share*** of the *exempting credit on a *distribution *franked with that credit, use sections 207-55 and 207-57 to work out what the entity's share of the credit would be it if were a *franking credit on a *franked distribution. The entity's share of the exempting credit is equal to that amount.

## 208-185 Minister may convert exempting surplus to franking credit of former exempting entity previously owned by the Commonwealth

(1) The Minister may make a determination or determinations under this section if:

(a) at a particular time, a *corporate tax entity is an *exempting entity; and

(b) at that time all of the *membership interests in the entity are owned by the Commonwealth; and

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



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(c) the Commonwealth has offered for sale or sold, or proposes to offer for sale, some or all of the membership interests; and

(d) the Minister is satisfied, having regard to the matters mentioned in subsection (2), that it is desirable to make a determination or determinations under this section in relation to the entity.

(2) The matters to which the Minister must have regard under paragraph (1)(d) are:

(a) whether the making of the determination or determinations is necessary to enable the entity to make *distributions *franked at a *franking percentage of 100% after the sale; and

(b) the extent to which the success of the sale or proposed sale depended or will depend upon the ability of the entity to make *franked distributions; and

(c) the extent to which the reduction in receipts of income tax resulting from the making of the determination or determinations would be offset by the receipt of increased proceeds from the sale; and

(d) any other matters that the Minister thinks relevant.

(3) The following provisions of this section apply after the *exempting entity becomes a *former exempting entity.

(4) If the *former exempting entity would, apart from this section, have an *exempting surplus at the end of an income year, the Minister may, in writing, determine that:

(a) an *exempting debit of the entity (not exceeding the exempting surplus) specified in the determination is taken to have arisen immediately before the end of that income year; and

(b) a *franking credit of the entity equal to the amount of the exempting debit is taken to have arisen immediately before the end of that income year.

(5) A determination under this section may be expressed to be subject to compliance by the *former exempting entity with such conditions as are specified in the determination.

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



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(6) If a condition specified in a determination is not complied with, the Minister may revoke the determination and, if the Minister thinks it appropriate, make a further determination under subsection (4).

(7) A determination, unless it is revoked, has effect according to its terms.

## Subdivision 208-G—Tax effects of distributions by exempting entities

## Guide to Subdivision 208-G

### 208-190 What this Subdivision is about

Generally, a franked distribution from an exempting entity will only generate a tax effect for the recipient under Division 207 if the recipient is also an exempting entity.

A concession is made to employees of the entity who receive a franked distribution because they hold shares acquired under an eligible employee share scheme.

### Table of sections

**Operative provisions**

208-195 Division 207 does not generally apply
208-200 Distributions to exempting entities
208-205 Distributions to employees acquiring shares under eligible employee share schemes
208-215 Eligible employee share schemes

## Operative provisions

### 208-195 Division 207 does not generally apply

Division 207 does not apply to a *distribution by an *exempting entity, unless expressly applied under this Subdivision.

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



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## 208-200 Distributions to exempting entities

(1) Division 207 applies to a *franked distribution made by an *exempting entity to another exempting entity if the distribution gives rise to a *franking credit for the other exempting entity under item 5 or 6 of the table in section 208-130.

(2) Division 207 applies to a *franked distribution that is made by an *exempting entity and *flows indirectly to another exempting entity if the distribution gives rise to a *franking credit for that other entity under item 7 of the table in section 208-130.

## 208-205 Distributions to employees acquiring shares under eligible employee share schemes

Division 207 also applies to a *franked distribution made by an *exempting entity if:

(a) the distribution is made to an individual who, at the time the distribution is made, is an employee of:
  (i) the exempting entity; or
  (ii) a *subsidiary of the exempting entity; and

(b) the employee acquired a beneficial interest in the *share on which the distribution is made:
  (i) under an *employee share scheme; and
  (ii) in circumstances specified as relevant in section 208-215; and

(c) the employee does not hold that beneficial interest as a trustee.

## 208-215 Eligible employee share schemes

(1) An individual acquires a beneficial interest in a *share in a company under an *employee share scheme in circumstances that are relevant for the purposes of paragraphs 208-205(b) and 208-235(b) if:

(a) all the *ESS interests available for acquisition under the scheme relate to:

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



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(i) ordinary shares; or

(ii) preference shares to which are attached substantially the same rights as are attached to ordinary shares; and

(b) immediately after the individual acquires the interest:

(i) he or she does not hold a beneficial interest in more than 10% of the shares in the company; and

(ii) he or she is not in a position to control, or to control the casting of, more than 10% of the maximum number of votes that might be cast at a general meeting of the company; and

(c) the share is not a *non-equity share.

(2) An individual also acquires a beneficial interest in a *share in a company under an *employee share scheme in circumstances that are relevant for the purposes of paragraphs 208-205(b) and 208-235(b) if:

(a) the share is part of a stapled security; and

(b) Subdivision 83A-B or 83A-C (about employee share schemes) applies to the beneficial interest in the stapled security.

(3) For the purposes of paragraph (1)(b), you are taken to:

(a) hold a beneficial interest in any *shares in the company that you can acquire under an *ESS interest that is a beneficial interest in a right to acquire a beneficial interest in such shares; and

(b) be in a position to cast votes as a result of holding that interest in those shares.

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



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# Subdivision 208-H—Tax effect of a distribution franked with an exempting credit

## Guide to Subdivision 208-H

### 208-220 What this Subdivision is about

Generally, a distribution franked with an exempting credit will only generate a tax effect for the recipient under Division 207 if a tax effect would have been generated for the recipient had the recipient received a franked distribution when the distributing entity was an exempting entity.

## Table of sections

**Operative provisions**

208-225 Division 207 does not generally apply
208-230 Distributions to exempting entities and former exempting entities
208-235 Distributions to employees acquiring shares under eligible employee share schemes
208-240 Distributions to certain individuals

## Operative provisions

### 208-225 Division 207 does not generally apply

Division 207 does not apply to a *distribution *franked with an exempting credit, unless the Division is expressly applied to the distribution under this Subdivision.

### 208-230 Distributions to exempting entities and former exempting entities

Division 207 applies to a *distribution *franked with an exempting credit by a *former exempting entity as if it were a *franked distribution if:

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



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(a) the recipient of the distribution is a former exempting entity and the distribution gives rise to an *exempting credit for the recipient; or

(b) the recipient of the distribution is an *exempting entity and the distribution gives rise to a *franking credit for the recipient; or

(c) the distribution *flows indirectly to a former exempting entity and gives rise to an exempting credit for that entity; or

(d) the distribution flows indirectly to an exempting entity and gives rise to a franking credit for that entity.

## 208-235 Distributions to employees acquiring shares under eligible employee share schemes

Division 207 also applies to a *distribution *franked with an exempting credit made by a *former exempting entity as if it were a *franked distribution if:

(a) the distribution is made to an individual who, at the time the distribution is made, is an employee of:

(i) the former exempting entity; or

(ii) a *subsidiary of the former exempting entity; and

(b) the employee acquired a beneficial interest in the *share on which the distribution is made:

(i) under an *employee share scheme; and

(ii) in circumstances specified as relevant in section 208-215; and

(c) the employee does not hold that beneficial interest as a trustee.

## 208-240 Distributions to certain individuals

Division 207 also applies to a *distribution *franked with an exempting credit made by a *former exempting entity as if it were a *franked distribution if:

(a) a *corporate tax entity other than a former exempting entity became an *exempting entity; and

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



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(b) immediately before the entity became an exempting entity all the accountable membership interests and accountable partial interests were beneficially owned (whether directly or indirectly) by individuals who were Australian residents; and

(c) the entity became an exempting entity because some or all of the individuals ceased to be Australian residents; and

(d) the entity becomes a former exempting entity because all of the individuals are or have become Australian residents; and

(e) an amount attributable to a distribution *franked with an exempting credit made by the entity is included in the assessable income of such an individual; and

(f) all the accountable membership interests or accountable partial interests in the entity were, throughout the period beginning when the entity became an exempting entity and ending when the amount was received by the individual mentioned in paragraph (e), beneficially owned (directly or indirectly) by that individual; and

(g) the individual is an eligible continuing substantial member in relation to the distribution.

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



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# Division 210—Venture capital franking

## Table of Subdivisions

Guide to Division 210
210-A Franking a distribution with a venture capital credit
210-B Participating PDFs
210-C Distributions that are frankable with a venture capital credit
210-D Amount of the venture capital credit on a distribution
210-E Distribution statements
210-F Rules affecting the allocation of venture capital credits
210-G Venture capital sub-account
210-H Effect of receiving a distribution franked with a venture capital credit

# Guide to Division 210

## Table of sections

210-1 Purpose of venture capital franking
210-5 How is this achieved?
210-10 What is a venture capital credit?
210-15 What does the PDF have to do to distribute the credits?
210-20 Limits on venture capital franking

## 210-1 Purpose of venture capital franking

The purpose of these rules is to encourage venture capital investment by superannuation funds and other entities that deal with superannuation.

## 210-5 How is this achieved?

This is done by giving tax benefits to those entities when they invest in PDFs, which are the vehicles for venture capital

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



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investment. If the PDF makes a distribution franked with a venture capital credit, the relevant venture capital investor receives a certain part of a distribution from the PDF as exempt income and, in addition, is entitled to a tax offset equal to the venture capital credit.

### 210-10 What is a venture capital credit?

(1) There is a venture capital franking sub-account in the franking account of each PDF.

(2) Venture capital credits arise in the sub-account if the PDF pays income tax that is reasonably attributable to capital gains from venture capital investments.

### 210-15 What does the PDF have to do to distribute the credits?

Only a participating PDF can distribute venture capital credits. A PDF elects to participate by keeping a record of its venture capital sub-account.

### 210-20 Limits on venture capital franking

(1) The venture capital credit on a distribution cannot exceed the franking credit on the distribution. It is, in this sense, a species of franking credit.

(2) A PDF can only distribute venture capital credits if it does it so that all members of the PDF receive venture capital credits in proportion to their holdings.

(3) If a PDF has a venture capital surplus when it makes a distribution, it must frank the distribution with venture capital credits.

(4) There are measures to ensure that a PDF does not maintain a venture capital deficit over a prolonged period.

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



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# Subdivision 210-A—Franking a distribution with a venture capital credit

## Guide to Subdivision 210-A

### 210-25 What this Subdivision is about

A PDF can only frank a distribution with a venture capital credit if certain conditions are met. These conditions are set out in this Subdivision.

## Table of sections

**Operative provisions**

210-30 Franking a distribution with a venture capital credit

## Operative provisions

### 210-30 Franking a distribution with a venture capital credit

An entity ***franks*** a *distribution ***with a venture capital credit*** if:

(a) the entity is a *participating PDF at the time the distribution is made; and

(b) the distribution is *frankable with a venture capital credit; and

(c) the entity allocates a *venture capital credit to the distribution.

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



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## Subdivision 210-B—Participating PDFs

## Guide to Subdivision 210-B

### 210-35 What this Subdivision is about

A PDF may participate if it elects to keep a record of its venture capital sub-account.

### Table of sections

**Operative provisions**

210-40 What is a participating PDF

## Operative provisions

### 210-40 What is a participating PDF

A *PDF is a ***participating PDF*** at a particular time if it keeps a record of its *venture capital sub-account at that time.

## Subdivision 210-C—Distributions that are frankable with a venture capital credit

## Guide to Subdivision 210-C

### 210-45 What this Subdivision is about

A distribution can only be franked with a venture capital credit if all members of the PDF receive distributions in proportion to their holdings.

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



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## Table of sections

**Operative provisions**

210-50 Which distributions can be franked with a venture capital credit?

## Operative provisions

### 210-50 Which distributions can be franked with a venture capital credit?

A *distribution by a *participating PDF is ***frankable with a venture capital credit*** if:

(a) the distribution is a *franked distribution; and

(b) the distribution is made under a resolution under which:

(i) distributions are made to all members of the PDF; and

(ii) the amount of the distribution per *membership interest is the same for each of those distributions.

## Subdivision 210-D—Amount of the venture capital credit on a distribution

## Guide to Subdivision 210-D

### 210-55 What this Subdivision is about

The amount of the venture capital credit on a distribution is that stated in the distribution statement, unless the amount exceeds the franking credit on the distribution.

In that case, the amount of the venture capital credit on the distribution is taken to be the same as the franking credit.

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



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## Table of sections

**Operative provisions**

210-60 Amount of the venture capital credit on a distribution

## Operative provisions

### 210-60 Amount of the venture capital credit on a distribution

(1) The amount of the *venture capital credit on a *distribution is that stated in the *distribution statement for the distribution, unless that amount exceeds the *franking credit on the distribution.

(2) If the amount of the *venture capital credit stated in the *distribution statement for a *distribution exceeds the *franking credit on the distribution, the amount of the venture capital credit is taken to be the same as the amount of the franking credit, and not the amount stated in the distribution statement.

## Subdivision 210-E—Distribution statements

## Guide to Subdivision 210-E

### 210-65 What this Subdivision is about

A participating PDF that makes a distribution franked with a venture capital credit must provide additional information in the distribution statement given to the recipient.

## Table of sections

**Operative provisions**

210-70 Additional information to be included when a distribution is franked with a venture capital credit

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



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## Operative provisions

### 210-70 Additional information to be included when a distribution is franked with a venture capital credit

(1) A *participating PDF that makes a *distribution *franked with a venture capital credit must include in the *distribution statement given to the recipient:

(a) a statement that there is a *venture capital credit of a specified amount on the distribution; and

(b) a statement to the effect that the venture capital credit is only relevant for a taxpayer who is:

(i) the trustee of an entity that is a *complying superannuation entity in relation to the income year in which the distribution is made and is not a *self managed superannuation fund; or

(iv) a *life insurance company.

(2) If, under subsection (1), a statement must be included in a *distribution statement, the distribution statement is taken not to have been given unless the statement is included.

## Subdivision 210-F—Rules affecting the allocation of venture capital credits

## Guide to Subdivision 210-F

### 210-75 What this Subdivision is about

If a PDF has a venture capital surplus when it makes a distribution frankable with venture capital credits, it must frank the distribution with venture capital credits.

## Table of sections

**Operative provisions**

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



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210-80 Draining the venture capital surplus when a distribution frankable with venture capital credits is made
210-81 Distributions to be franked with venture capital credits to the same extent
210-82 Consequences of breaching the rule in section 210-81

## Operative provisions

### 210-80 Draining the venture capital surplus when a distribution frankable with venture capital credits is made

(1) If a *participating PDF would otherwise have a *venture capital surplus at the time a *distribution that is *frankable with a venture capital credit is made, the PDF must either:

(a) allocate a *venture capital credit to the distribution that is equal to the *franking credit on the distribution; or

(b) allocate a venture capital credit to the distribution that either alone or when added to venture capital credits allocated to other distributions made under the resolution of the PDF under which the distribution in question is made, reduces the surplus to nil, or creates a *venture capital deficit.

(2) A *venture capital debit arises for a *participating PDF when a *distribution is made if the PDF does not allocate a *venture capital credit in accordance with subsection (1). The amount of the debit is:

Subsection (1) franked amount – Actual franked amount

where:

***actual franked amount*** is the amount of the *venture capital credit that is allocated to the *distribution by the PDF (this may be nil).

***subsection (1) franked amount*** is the amount of the *venture capital credit that would have been allocated to the *distribution if the PDF had made the smallest allocation needed to satisfy subsection (1).

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### 210-81 Distributions to be franked with venture capital credits to the same extent

(1) If a *PDF *franks a *distribution with a venture capital credit, it must frank each other distribution made under the same resolution with a venture capital credit worked out using the same venture capital percentage.

(2) The ***venture capital percentage*** for a *distribution is worked out using the formula:

$$\frac{\text{Amount of the *venture capital credit on the distribution}}{\text{Maximum franking credit for the distribution}} \times 100$$

### 210-82 Consequences of breaching the rule in section 210-81

If a *PDF *franks a *distribution with a venture capital credit in breach of section 210-81:

(a) the distribution is taken not to have been franked with a venture capital credit; and

(b) each other distribution made under the same resolution is taken not to have been franked with a venture capital credit.

## Subdivision 210-G—Venture capital sub-account

## Guide to Subdivision 210-G

### 210-85 What this Subdivision is about

This Subdivision:

- creates a venture capital sub-account for each PDF; and
- identifies when venture capital credits and debits arise in the sub-account and the amount of those credits and debits; and

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



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- identifies when there is a venture capital surplus or deficit in the sub-account; and
- creates a liability to pay venture capital deficit tax if the account is in deficit at certain times.

## Table of sections

210-90 The venture capital sub-account
210-95 Venture capital deficit tax

**Operative provisions**

210-100 Venture capital sub-account
210-105 Venture capital credits
210-110 Determining the extent to which a franking credit is reasonably attributable to a particular payment of tax
210-115 Participating PDF may elect to have venture capital credits arise on its assessment day
210-120 Venture capital debits
210-125 Venture capital debit where CGT limit is exceeded
210-130 Venture capital surplus and deficit
210-135 Venture capital deficit tax
210-140 Effect of a liability to pay venture capital deficit tax on franking deficit tax
210-145 Effect of a liability to pay venture capital deficit tax on the franking account
210-150 Deferring venture capital deficit

## 210-90 The venture capital sub-account

(1) Each PDF has a venture capital sub-account in its franking account. The sub-account exists even if the PDF does not elect to become a participating PDF by keeping a record of it.

(2) To the extent that income tax is reasonably attributable to capital gains from venture capital investments, it generates a venture capital credit in the sub-account. There are other circumstances in which a venture capital credit arises.

(3) If a PDF receives a refund of that tax, a venture capital debit will arise for the PDF. There are other circumstances in which a venture

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



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capital debit will arise, such as on the payment of a distribution franked with a venture capital credit.

### 210-95 Venture capital deficit tax

(1) Venture capital deficit tax is payable if a PDF's venture capital sub-account is in deficit at the end of the PDF's income year, or immediately before it ceases to be a PDF.

(2) A PDF's venture capital sub-account may be in deficit, even if its franking account is not. This can happen because only income tax on income of a particular kind (capital gains on venture capital investments) gives rise to venture capital credits. This means that when a PDF anticipates a venture capital credit, it is not only anticipating that income tax will be paid, but that income tax on income of that kind will be paid. Although income tax may, in fact, later be paid, it will not necessarily be income of the kind that would give rise to a venture capital credit. This results in franking credits arising even while the venture capital sub-account remains in deficit.

(3) The discrepancy between the franking account balance and the venture capital sub-account balance can also arise because venture capital credits do not necessarily arise at the same time as the relevant franking credits and debits (see item 1 of the table in section 210-105 and item 2 of the table in section 210-120).

## Operative provisions

### 210-100 Venture capital sub-account

Each *PDF has a ***venture capital sub-account*** within its *franking account.

Note: The balance in the venture capital sub-account on 1 July 2002 will be either nil or, if the entity has a venture capital surplus or deficit immediately before 1 July 2002 under the imputation scheme existing at that time, an amount calculated under 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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## 210-105 Venture capital credits

The table sets out when a credit arises in the *venture capital sub-account of a *PDF. A credit in a PDF's venture capital sub-account is called a ***venture capital credit***.

**Credits in the venture capital sub-account**

| Item | If: | A credit of: | Arises on: |
|---|---|---|---|
| 1 | the *PDF has a *franking credit because it has *paid a PAYG instalment; and<br>the whole or part of the instalment is reasonably attributable to a *CGT event in relation to a *qualifying SME investment of the PDF | that part of the franking credit that is reasonably attributable to the CGT event | the day on which the franking credit arises; or<br>if the PDF elects to have the *venture capital credit arise on the assessment day under section 210-115—on that day |
| 2 | the *PDF has a *franking credit because it has *paid income tax; and<br>the whole or part of the payment is reasonably attributable to a *CGT event in relation to a *qualifying SME investment of the PDF | that part of the franking credit that is reasonably attributable to the CGT event | the day on which the franking credit arises; or<br>if the PDF elects to have the *venture capital credit arise on the assessment day under section 210-115—on that day |
| 3 | the *PDF incurs a liability to pay *venture capital deficit tax | the amount of the liability | immediately after the liability is incurred |

## 210-110 Determining the extent to which a franking credit is reasonably attributable to a particular payment of tax

In determining the extent to which a *franking credit is reasonably attributable to a *CGT event in relation to a *qualifying SME investment of the *PDF, have regard to:

(a) the extent to which the credit can reasonably be attributed to the *payment of a PAYG instalment or the payment of

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



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income tax by the PDF in relation to its *section 124ZZB SME assessable income for an income year; and

(b) the extent to which the section 124ZZB SME assessable income can reasonably be attributed to the CGT event.

## 210-115 Participating PDF may elect to have venture capital credits arise on its assessment day

(1) Before a *PDF's assessment day for an income year, the PDF may elect to have the *venture capital credits that arise because of the *payment of PAYG instalments and income tax during that income year arise on the assessment day.

(2) The *PDF's ***assessment day*** for an income year is the earlier of:

(a) the day on which the PDF furnishes its *income tax return for the income year; or

(b) the day on which the Commissioner makes an assessment of the amount of the PDF's taxable income for that year under section 166 of the *Income Tax Assessment Act 1936*.

## 210-120 Venture capital debits

The table sets out when a debit arises in the *venture capital sub-account of a *PDF. A debit in a PDF's venture capital sub-account is called a ***venture capital debit***.

**Debits in the venture capital sub-account**

| Item | If: | A debit of: | Arises on: |
|---|---|---|---|
| 1 | the *PDF makes a *distribution *franked with a venture capital credit | the amount of the *venture capital credit | the day on which the distribution is made |

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



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| **Debits in the venture capital sub-account** | | | |
|---|---|---|---|
| **Item** | **If:** | **A debit of:** | **Arises on:** |
| 2 | the *PDF receives a *franking debit as a result of *receiving a refund of income tax; and<br>all or part of the refund is attributable to a *payment of a PAYG instalment or a payment of income tax that gave rise to a *venture capital credit of the PDF | that part of the refund that is attributable to a payment of a PAYG instalment or a payment of income tax that gave rise to a venture capital credit of the PDF | the day on which the franking debit arises; or<br>if the venture capital credit did not arise until a later day—that later day |
| 3 | a *venture capital debit arises for the *PDF under subsection 210-80(2) | the amount of the venture capital debit arising under that subsection | the day on which the *distribution giving rise to the venture capital debit is made |
| 4 | the Commissioner makes a determination under paragraph 204-30(3)(a) giving rise to a *franking debit for the *PDF (streaming distributions); and<br>the *imputation benefit underlying the determination is a *tax offset under section 210-170 | the amount of the tax offset | on the day on which the franking debit arises |
| 5 | a *venture capital debit arises for the *PDF under section 210-125 because its net venture capital credits for an income year exceed certain limits | the amount of the excess | the last day of the income year |

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



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## 210-125 Venture capital debit where CGT limit is exceeded

(1) A *venture capital debit arises for a *PDF where the PDF's net venture capital credits for the income year exceed whichever is the lesser of:

(a) the PDF's CGT limit for that income year; and

(b) the tax paid by the PDF on its *SME income component for that income year.

*Net venture capital credits*

(2) The *PDF's ***net venture capital credits*** for the income year is:

Venture capital credits – Venture capital debits

where:

***venture capital credits*** is the total *venture capital credits of the *PDF that relate to tax in relation to taxable income of that income year.

***venture capital debits*** is the total *venture capital debits of the *PDF that relate to tax in relation to taxable income of that income year.

*CGT limit*

(3) The *PDF's ***CGT limit*** for the income year is worked out using the formula:

$$\frac{\text{Ordinary capital gains from venture capital CGT events}}{\text{Ordinary capital gains from all SME CGT events}} \times \text{*Section 124ZZB SME assessable income} \times \text{SME tax rate}$$

where:

***ordinary capital gains from all SME CGT events*** means the total of the *ordinary capital gains for the income year for *CGT events in relation to *SME investments of the *PDF.

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



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***ordinary capital gains from venture capital CGT events*** means the total of *ordinary capital gains for the income year for *CGT events in relation to shares in companies that are *qualifying SME investments.

***SME tax rate*** is the tax rate applicable to the *SME income component of the *PDF for the income year.

*Tax paid by the PDF on its SME income component*

(4) The ***tax paid by the PDF on its SME income component*** for the income year is the tax paid by the *PDF on its *SME income component after allowing *tax offsets referred to in section 4-10.

## 210-130 Venture capital surplus and deficit

(1) A *PDF's *venture capital sub-account is in ***surplus*** at a particular time if, at that time, the sum of the *venture capital credits in the account exceeds the sum of the *venture capital debits in the account. The amount of the ***venture capital surplus*** is the amount of the excess.

(2) A *PDF's *venture capital sub-account is in ***deficit*** at a particular time if, at that time, the sum of the *venture capital debits in the account exceeds the sum of the *venture capital credits in the account. The amount of the ***venture capital deficit*** is the amount of the excess.

(3) A *PDF's *venture capital sub-account may be in *deficit even though its *franking account as a whole is in *surplus. Similarly, a PDF's venture capital sub-account may be in surplus even though its franking account as a whole is in deficit.

## 210-135 Venture capital deficit tax

(1) While recognising that an entity may anticipate *venture capital credits when *franking *distributions, the object of this section is to prevent those credits from being anticipated indefinitely by

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



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requiring the entity to reconcile its *venture capital sub-account at certain times and levying tax if the account is in *deficit.

(2) An entity is liable to pay *venture capital deficit tax imposed by the *New Business Tax System (Venture Capital Deficit Tax) Act 2003* if its *venture capital sub-account is in *deficit at the end of an income year.

(3) An entity is liable to pay *venture capital deficit tax imposed by the *New Business Tax System (Venture Capital Deficit Tax) Act 2003* if:

(a) it ceases to be a *PDF; and

(b) immediately before it ceases to be a PDF, its *venture capital sub-account is in *deficit.

## 210-140 Effect of a liability to pay venture capital deficit tax on franking deficit tax

(1) If an entity is liable to pay *venture capital deficit tax under subsection 210-135(2) because its *venture capital sub-account is in *deficit at the end of an income year, the amount (if any) of *franking deficit tax that the entity would otherwise be liable to pay under subsection 205-45(2) because its *franking account is in *deficit at that time is reduced by the amount of the liability for venture capital deficit tax.

(2) If an entity is liable to pay *venture capital deficit tax under subsection 210-135(3) because it ceases to be a *PDF during an income year, the amount (if any) of *franking deficit tax that the entity would otherwise be liable to pay under subsection 205-45(3) because it ceases to be a *franking entity at that time is reduced by the amount of the liability for *venture capital deficit tax.

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



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## 210-145 Effect of a liability to pay venture capital deficit tax on the franking account

(1) If an entity incurs a liability to pay *venture capital deficit tax, a *franking credit arises for the entity immediately after the liability arises (the ***relevant day***).

(2) The amount of the *franking credit is equal to:

(a) if no liability to pay *franking deficit tax arises on the relevant day—the amount of the *venture capital deficit tax; or

(b) if a liability to pay franking deficit tax also arises on the relevant day—the amount of the venture capital deficit tax reduced by the amount of the franking deficit tax.

## 210-150 Deferring venture capital deficit

(1) The object of this section is to ensure that an entity does not avoid *venture capital deficit tax by deferring the time at which a *venture capital debit occurs.

(2) An entity is taken to have *received a refund of income tax for an income year immediately before the end of that year for the purposes of subsection 210-135(2) if:

(a) the refund is paid within 3 months after the end of that year; and

(b) the entity's *venture capital sub-account would have been in *deficit, or in deficit to a greater extent, at the end of the previous income year if the refund had been received in the previous income year.

(3) If an entity ceases to be a *PDF during an income year, it is taken to have *received a refund of income tax immediately before it ceased to be a PDF for the purposes of subsection 210-135(3) if:

(a) the refund is attributable to a period in the year during which the entity was a PDF; and

(b) the refund is paid within 3 months after the entity ceases to be a PDF; and

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



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(c) the *venture capital sub-account of the entity would have been in *deficit, or in deficit to a greater extent, immediately before it ceased to be a PDF if the refund had been received before it ceased to be a PDF.

# Subdivision 210-H—Effect of receiving a distribution franked with a venture capital credit

## Guide to Subdivision 210-H

### 210-155 What this Subdivision is about

A superannuation fund or other entity that deals with superannuation that receives a distribution franked with a venture capital credit is entitled to a tax offset equal to the credit.

### Table of sections

210-160 The significance of a venture capital credit
210-165 Recipients for whom the venture capital credit is not significant

**Operative provisions**

210-170 Tax offset for certain recipients of distributions franked with venture capital credits
210-175 Amount of the tax offset
210-180 Application of Division 207 where the recipient is entitled to a tax offset under section 210-170

### 210-160 The significance of a venture capital credit

(1) The venture capital credit on a distribution is only significant in the hands of a relevant venture capital investor (basically a superannuation fund or other entity that deals with superannuation).

(2) That investor receives a tax offset. In most cases, this will be equal to the venture capital credit.

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



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(3) Under section 124ZM of the *Income Tax Assessment Act 1936*, that part of the distribution that is franked with a venture capital credit is also treated as exempt income in the hands of the entity.

### 210-165 Recipients for whom the venture capital credit is not significant

(1) For other entities, the fact that all or part of the franking credit on a distribution is also a venture capital credit can be ignored.

(2) The franking credit will either generate a gross-up of the entity's assessable income and a corresponding tax offset under Division 207 or, if the right to make an election under section 124ZM of the *Income Tax Assessment 1936* is exercised, the franked part of the distribution will be treated as exempt income.

(3) The unfranked part of the distribution is treated as exempt income under section 124ZM of the *Income Tax Assessment Act 1936*.

## Operative provisions

### 210-170 Tax offset for certain recipients of distributions franked with venture capital credits

(1) The recipient of a *distribution *franked with a venture capital credit is entitled to a *tax offset for the income year in which the distribution is made if:

(a) the recipient is a relevant venture capital investor; and

(b) the recipient is not:

(i) a partnership; or

(ii) a trustee (other than the trustee of a *complying superannuation entity, a *non-complying superannuation fund or a *non-complying approved deposit fund); and

(c) the recipient satisfies the *residency requirement for an entity receiving a distribution; and

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



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(d) the distribution is not *exempt income of the recipient (ignoring section 124ZM of the *Income Tax Assessment Act 1936*); and

(e) the recipient is a qualified person in relation to the distribution for the purposes of Division 1A of former Part IIIAA of the *Income Tax Assessment Act 1936*; and

(f) the distribution is not part of a *dividend stripping operation; and

(g) the Commissioner has not made a determination under paragraph 204-30(3)(c) that no *imputation benefit is to arise for the receiving entity in respect of the distribution; and

(h) the Commissioner has not made a determination under paragraph 177EA(5)(b) that no imputation benefit is to arise in respect of the distribution to the recipient.

*Relevant venture capital investors*

(2) The following entities are ***relevant venture capital investors***:

(a) the trustee of an entity that is a *complying superannuation entity in relation to the income year in which the *distribution is made and is not a *self managed superannuation fund;

(d) a *life insurance company.

## 210-175 Amount of the tax offset

*Where the recipient is not a life insurance company*

(1) If the entity receiving the *distribution is not a *life insurance company, the *tax offset is equal to the *venture capital credit on the distribution.

*Where the recipient is a life insurance company*

(2) If the entity receiving the *distribution is a *life insurance company, the *tax offset is worked out using the formula:

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



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$$\text{Tax offset to which the entity would otherwise be entitled} \times \frac{\text{*Complying superannuation class of taxable income}}{\text{Total income}}$$

where:

***complying superannuation class of taxable income*** means the *complying superannuation class of taxable income of the company for the income year in which the *distribution is made.

***tax offset to which the entity would otherwise be entitled*** is the *tax offset that the company would be entitled to under subsection (1) if the entity were not a life insurance company.

***total income*** is the company's assessable income for the income year.

## 210-180 Application of Division 207 where the recipient is entitled to a tax offset under section 210-170

If the recipient of a *distribution *franked with a venture capital credit is entitled to a *tax offset under section 210-170, Division 207 does not apply to that *part of the distribution that is venture capital franked.

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



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# Division 214—Administering the imputation system

## Table of Subdivisions

Guide to Division 214
214-A Franking returns
214-B Franking assessments
214-C Amending franking assessments
214-D Collection and recovery
214-E Records

## Guide to Division 214

### Table of sections

214-1 Purpose of the system
214-5 Key features

### 214-1 Purpose of the system

These provisions:

(a) allow the Commissioner to gather sufficient information to determine whether tax is payable by a corporate tax entity under the imputation system; and

(b) provide for the Commissioner to assess the amount of tax that is payable; and

(c) specify when the tax is payable; and

(d) establish systems to support the assessment and collection of the tax.

### 214-5 Key features

(1) Initial information about a corporate tax entity's franking activities is provided by means of a return, called a franking return, given by the entity to the Commissioner.

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



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(2) The Commissioner is able to make a legislative instrument requiring corporate tax entities to give a franking return for an income year.

(3) The Commissioner is also able to require a particular corporate tax entity to give a franking return for one or more income years. The Commissioner might do this, for example, if the Commissioner wishes to audit the corporate tax entity's franking activities over a number of years.

(4) The Commissioner may assess whether tax is payable under the imputation system and the amount of that tax.

(5) In most cases, this is done by treating the first franking return of a corporate tax entity for an income year as an assessment by the Commissioner. To this extent, there is self-assessment.

(6) An assessment by the Commissioner is conclusive evidence of a corporate tax entity's tax liabilities under the imputation system, except for the purposes of objection, review and appeal processes under Part IVC of the *Taxation Administration Act 1953* (see section 350-10 in Schedule 1 to the *Taxation Administration Act 1953*).

(7) Assessments can be amended by the Commissioner within certain time limits.

## Subdivision 214-A—Franking returns

## Guide to Subdivision 214-A

### 214-10 What this Subdivision is about

A franking return for an income year provides the Commissioner with information about a corporate tax entity's franking activities during that year.

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



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214-20 Notice to a specific corporate tax entity
214-25 Content and form of a franking return
214-30 Franking account balance
214-35 Venture capital sub-account balance
214-40 Meaning of ***franking tax***
214-45 Effect of a refund on franking returns

# Operative provisions

## 214-15 Requirement to give franking return—general

(1) The Commissioner may, by legislative instrument, require each *corporate tax entity to which the instrument applies to give the Commissioner a *franking return for a specified income year.

(2) An entity to which the instrument applies must comply with the requirement within the time specified in the instrument.

Note: The Commissioner may defer the time for giving the return: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

## 214-20 Notice to a specific corporate tax entity

(1) The Commissioner may give a *corporate tax entity a written notice requiring the entity to give the Commissioner a *franking return for an income year specified in the notice.

(2) The entity must comply with the requirement within the time specified in the notice, or within any further time allowed by the Commissioner.

(3) The entity must comply with the requirement regardless of whether the entity has given, or has been required to give, the Commissioner a *franking return.

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



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## 214-25 Content and form of a franking return

(1) A *corporate tax entity must include the following information in its *franking return for an income year:

(a) if the entity is a *franking entity at the end of the income year—its *franking account balance at the end of the income year; and

(b) if the entity ceased to be a franking entity during the income year—its franking account balance immediately before it ceased to be a franking entity; and

(c) if the entity is a *PDF at the end of the income year—its *venture capital sub-account balance at the end of the income year; and

(d) if the entity ceased to be a PDF during the income year—its venture capital sub-account balance immediately before it ceased to be a PDF; and

(e) the amounts (if any) of *franking tax which the entity is liable to pay because of events that have occurred, or are taken to have occurred, during the income year; and

(f) any other information required by the Commissioner for the purposes of administering this Part.

(2) The return must be in the *approved form.

## 214-30 Franking account balance

A *corporate tax entity's ***franking account balance*** at a particular time is:

(a) if the entity has a *franking surplus or a *franking deficit at that time—the amount of the surplus or deficit; or

(b) if the entity does not have a franking surplus or a franking deficit at that time—nil.

## 214-35 Venture capital sub-account balance

A *PDF's ***venture capital sub-account balance*** at a particular time is:

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



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(a) if the PDF has a *venture capital surplus or a *venture capital deficit at that time—the amount of the surplus or deficit; or
(b) if the entity does not have a venture capital surplus or a venture capital deficit at that time—nil.

## 214-40 Meaning of *franking tax*

Each of the following is a ***franking tax***:
(a) *franking deficit tax;
(b) *over-franking tax;
(c) *venture capital deficit tax.

## 214-45 Effect of a refund on franking returns

*If no franking return is outstanding*

(1) If:
(a) a *corporate tax entity *receives a refund of income tax or *receives a refund of diverted profits tax; and
(b) the receipt of the refund gives rise to a liability, or an increased liability, to pay *franking deficit tax because of the operation of subsection 205-50(2) or (3); and
(c) when the refund is received, the entity does not have a *franking return that is *outstanding for the income year in which the liability arose;
the entity must give the Commissioner a franking return for the income year within 14 days after the refund is received.

*Refund received within 14 days before an outstanding franking return is due*

(2) If:
(a) an entity *receives a refund of income tax or *receives a refund of diverted profits tax; and
(b) the receipt of the refund gives rise to a liability, or an increased liability, to pay *franking deficit tax because of the operation of subsection 205-50(2) or (3); and

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



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(c) when the refund is received, the entity has a *franking return that is *outstanding for the income year in which the liability arose; and

(d) the entity receives the refund within the period of 14 days ending on the day by which the outstanding return must be given to the Commissioner;

the entity may, instead of accounting for the liability, or increased liability, in the outstanding return, account for it in a further return given to the Commissioner within 14 days after the refund is received.

*Meaning of* ***outstanding***

(3) A *franking return for an income year is ***outstanding*** at a particular time if each of the following is true at that time:

(a) the *corporate tax entity has been required to give a *franking return for the income year;

(b) the time within which the franking return must be given has not yet passed;

(c) the franking return has not yet been given.

## Subdivision 214-B—Franking assessments

## Guide to Subdivision 214-B

### 214-55 What this Subdivision is about

The Commissioner may make an assessment of a corporate tax entity's liability to pay franking tax, and the franking account balance and the venture capital sub-account balance on which that liability is based. An entity's first franking return for an income year is treated as an assessment by the Commissioner. To this extent, there is self-assessment.

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



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214-65 Commissioner taken to have made a franking assessment on first return
214-70 Part-year assessment
214-75 Validity of assessment
214-80 Objections

# Operative provisions

## 214-60 Commissioner may make a franking assessment

(1) The Commissioner may make an assessment of:

(a) if a *corporate tax entity is a *franking entity at the end of the income year—its *franking account balance at the end of the income year; and

(b) if a corporate tax entity ceased to be a franking entity during the income year—its franking account balance immediately before it ceased to be a franking entity; and

(c) if a corporate tax entity is a *PDF at the end of the income year—its *venture capital sub-account balance at the end of the income year; and

(d) if a corporate tax entity ceased to be a PDF during the income year—its venture capital sub-account balance immediately before it ceased to be a PDF; and

(e) the amounts (if any) of *franking tax which the entity is liable to pay because of events that have occurred, or are taken to have occurred, during the income year.

This is a ***franking assessment*** for the entity for the income year.

(1A) However, the Commissioner must not make an assessment under subsection (1) for an entity for an income year if:

(a) the entity is not required under Subdivision 214-A to give the Commissioner a *franking return for the income year; and

(b) the entity is not required under Division 214 of the *Income Tax (Transitional Provisions) Act 1997* to give the

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



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Commissioner a franking return for the balancing period ending within the income year; and

(c) the entity was required to lodge an *income tax return for the income year by a particular time; and

(d) the entity has lodged that income tax return; and

(e) 3 years have passed since the later of the following:

(i) the time mentioned in paragraph (c);

(ii) the time when the entity lodged that income tax return.

(2) The Commissioner must give the entity notice of the assessment as soon as practicable after making the assessment.

## 214-65 Commissioner taken to have made a franking assessment on first return

(1) If:

(a) a *corporate tax entity gives the Commissioner a *franking return for an income year on a particular day (the ***return day***); and

(b) the return is the first franking return given by the entity for the year; and

(c) the Commissioner has not already made a *franking assessment for the entity for the year;

the Commissioner is taken to have made a franking assessment for the entity for the year on the return day, and to have assessed:

(d) the entity's *franking account balance at a particular time as that stated in the return as the balance at that time; and

(e) the entity's *venture capital sub-account balance (if any) at a particular time as that stated in the return as the balance at that time; and

(f) the amounts (if any) of *franking tax payable by the entity because of events that have occurred, or are taken to have occurred, during that income year as those stated in the return.

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



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(2) The return is taken to be notice of the assessment signed by the Commissioner and given to the entity on the return day.

### 214-70 Part-year assessment

(1) The Commissioner may, at any time during an income year, make a *franking assessment for a *corporate tax entity for a particular period within that year as if the beginning and end of that period were the beginning and end of an income year.

(2) This Part applies, for the purposes of that assessment, as if the beginning and end of the period were the beginning and end of an income year.

### 214-75 Validity of assessment

The validity of a *franking assessment is not affected because any of the provisions of this Act have not been complied with.

### 214-80 Objections

If a *corporate tax entity is dissatisfied with a *franking assessment made in relation to the entity, the entity may object against the assessment in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

## Subdivision 214-C—Amending franking assessments

## Guide to Subdivision 214-C

### 214-90 What this Subdivision is about

| |
|---|
| The Commissioner may amend franking assessments within certain time limits. |

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



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214-100 Amended assessments are treated as franking assessments
214-105 Further return as a result of a refund affecting a franking deficit tax liability
214-110 Later amendments—on request
214-115 Later amendments—failure to make proper disclosure
214-120 Later amendments—fraud or evasion
214-125 Further amendment of an amended particular
214-135 Amendment on review etc.
214-140 Notice of amendments

# Operative provisions

## 214-95 Amendments within 3 years of the original assessment

(1) The Commissioner may amend a *franking assessment for a *corporate tax entity for an income year at any time during the period of 3 years after the *original franking assessment day for the entity for that year.

(2) The ***original franking assessment day*** for a *corporate tax entity for an income year is the day on which the first *franking assessment for the entity for the income year is made.

## 214-100 Amended assessments are treated as franking assessments

Once an amended *franking assessment for a corporate tax entity for an income year is made, it is taken to be a ***franking assessment*** for the entity for the year.

## 214-105 Further return as a result of a refund affecting a franking deficit tax liability

(1) If:

(a) a *franking assessment for a *corporate tax entity for an income year has been made; and

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



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(b) on a particular day (the ***further return day***) the entity gives the Commissioner a further *franking return for the income year under subsection 214-45(1) (because the entity has *received a refund of income tax that affects its liability to pay *franking deficit tax);

the Commissioner is taken to have amended the entity's franking assessment on the further return day, and to have assessed:

(c) the entity's *franking account balance at a particular time as that stated in the further return as the balance at that time; and

(d) the entity's *venture capital sub-account balance (if any) at a particular time as that stated in the further return as the balance at that time; and

(e) the amounts (if any) of *franking tax payable by the entity because of events that have occurred, or are taken to have occurred, during that income year as those stated in the further return.

(2) The further return is taken to be notice of the amended assessment signed by the Commissioner and given to the entity on the further return day.

## 214-110 Later amendments—on request

The Commissioner may amend a *franking assessment for a *corporate tax entity for an income year after the end of the period of 3 years after the *original franking assessment day for the entity for the year if, within that 3 year period:

(a) the entity applies for the amendment; and

(b) the entity gives the Commissioner all the information necessary for making the amendment.

## 214-115 Later amendments—failure to make proper disclosure

(1) If:

(a) a *corporate tax entity does not make a full and true disclosure to the Commissioner of the information necessary

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for a *franking assessment for the entity for an income year; and

(b) in making the assessment, the Commissioner makes an *under-assessment; and

(c) the Commissioner is not of the opinion that the under-assessment is due to fraud or evasion;

the Commissioner may amend the assessment at any time during the period of 6 years after the *original franking assessment day for the entity for the year.

(2) The Commissioner makes an ***under-assessment*** in a *franking assessment (the ***earlier assessment***) if, in amending the earlier assessment, the Commissioner would have to do one or more of the following for the amended assessment to be correct:

(a) reduce the *franking surplus (including to a nil balance);

(b) increase the *franking deficit (including from a nil balance);

(c) increase *franking tax payable.

## 214-120 Later amendments—fraud or evasion

If:

(a) a *corporate tax entity does not make a full and true disclosure to the Commissioner of the information necessary for a *franking assessment for the entity for an income year; and

(b) in making the assessment, the Commissioner makes an *under-assessment; and

(c) the Commissioner is of the opinion that the under-assessment is due to fraud or evasion;

the Commissioner may amend the assessment at any time.

## 214-125 Further amendment of an amended particular

(1) If:

(a) a *franking assessment has been amended (the ***first amendment***) in any particular; and

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



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(b) the Commissioner is of the opinion that it would be just to further amend the assessment in that particular so as to *reduce the assessment;

the Commissioner may do so within a period of 3 years after the first amendment.

(2) The Commissioner ***reduces a franking assessment*** if the Commissioner amends the assessment by doing one or more of the following:

(a) increasing the *franking surplus (including from a nil balance);

(b) decreasing the *franking deficit (including to a nil balance);

(c) decreasing *franking tax payable.

### 214-135 Amendment on review etc.

Nothing in this Subdivision prevents the amendment of a *franking assessment:

(a) to give effect to a decision on a review or appeal; or

(b) to *reduce the assessment as a result of an objection made under this Act or pending an appeal or review.

### 214-140 Notice of amendments

If the Commissioner amends an entity's *franking assessment, the Commissioner must give the entity notice of the amendment as soon as practicable after making the amendment.

## Subdivision 214-D—Collection and recovery

## Guide to Subdivision 214-D

### 214-145 What this Subdivision is about

Franking tax is due and payable at certain times and the general interest charge applies to unpaid amounts.

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



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## Table of sections

**Operative provisions**

214-150 Due date for payment of franking tax
214-155 General interest charge
214-160 Refunds of amounts overpaid

# Operative provisions

## 214-150 Due date for payment of franking tax

*General rule*

(1) Unless this section provides otherwise, *franking tax assessed for a *corporate tax entity because of events that have occurred, or are taken to have occurred, during an income year is due and payable on the last day of the month immediately following the end of the income year.

*Part-year assessments*

(2) *Franking tax payable because of an assessment under section 214-70 (a part-year assessment) is due and payable on the day specified in the notice of assessment as the day on which it is due and payable.

*Amended assessments—other than because of deficit deferral*

(3) If:

(a) the Commissioner amends a *franking assessment (the ***earlier assessment***) other than because of the operation of section 214-105 (an amendment because of a refund of tax that affects *franking deficit tax liability); and

(b) the amount of *franking tax of a particular type payable under the amended assessment exceeds the amount of franking tax of that type payable under the earlier assessment;

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



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the excess amount is due and payable one month after the day on which the assessment was amended.

*Tax payable because of deficit deferral*

(4) If:

(a) a *corporate tax entity *receives a refund of income tax or *receives a refund of diverted profits tax; and

(b) the receipt of the refund gives rise to a liability, or an increased liability, to pay *franking deficit tax because of the operation of subsection 205-50(2) or (3);

the franking deficit tax or, if there is an increase in an existing liability to pay franking deficit tax, the difference between the original liability and the increased liability, is due and payable on:

(c) if the entity accounts for the liability, or increased liability, in a *franking return that is *outstanding for the income year in which the liability arose—the day on which the outstanding return is required to be given to the Commissioner; or

(d) in any other case—14 days after the day on which the refund was received.

## 214-155 General interest charge

If:

(a) *franking tax of a particular type payable by a *corporate tax entity remains unpaid after the time by which it is due and payable; and

(b) the Commissioner has not allocated the unpaid amount to an *RBA;

the entity is liable to pay the *general interest charge on the unpaid amount for each day in the period that:

(c) starts at the beginning of the day on which the franking tax was due to be paid; and

(d) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:

(i) the franking tax;

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(ii) general interest charge on any of the franking tax.

Note: The general interest charge is worked out under Part IIA of the *Taxation Administration Act 1953*.

### 214-160 Refunds of amounts overpaid

Section 172 of the *Income Tax Assessment Act 1936* applies for the purposes of this Part as if references in that section to tax included references to *franking tax.

## Subdivision 214-E—Records

## Guide to Subdivision 214-E

### 214-170 What this Subdivision is about

Generally applicable provisions to do with record keeping apply for the purposes of the imputation system.

### Table of sections

**Operative provisions**

214-175 Record keeping

## Operative provisions

### 214-175 Record keeping

(1) Section 262A of the *Income Tax Assessment Act 1936* applies for the purposes of this Part as if:

(a) the reference in that section to a person carrying on a business were a reference to a *corporate tax entity; and

(b) the reference in paragraph (2)(a) of that section to the person's income and expenditure were a reference to:

(i) the entity's *franking account balance; and

(ii) the entity's liability to pay *franking tax; and

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



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(c) paragraph (5)(a) of that section were omitted.

(2) A *PDF does not need to maintain records under section 262A of the *Income Tax Assessment Act 1936* in relation to a *venture capital sub-account if the *PDF does not elect to be a *participating PDF.

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



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# Division 215—Consequences of the debt/equity rules

## Subdivision 215-A—Application of the imputation system to non-share equity interests

### 215-1 Application of the imputation system to non-share equity interests

(1) The *imputation system applies to a *non-share equity interest in the same way as it applies to a *membership interest.

(2) The *imputation system applies to an equity holder in an entity who is not a member of the entity in the same way as it applies to a member of the entity.

## Subdivision 215-B—Non-share dividends that are unfrankable to some extent

## Guide to Subdivision 215-B

### 215-5 What this Subdivision is about

While non-share dividends are, as a general rule, frankable, all or part of some non-share dividends are taken to be unfrankable by virtue of these rules.

### Table of sections

215-10 Certain non-share dividends by ADIs unfrankable
215-15 Non-share dividends are unfrankable if profits are unavailable
215-20 Working out the available frankable profits
215-25 Anticipating available frankable profits

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



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## 215-10 Certain non-share dividends by ADIs unfrankable

(1) A *non-share dividend paid by an ADI (an authorised deposit-taking institution) for the purposes of the *Banking Act 1959* is ***unfrankable*** if:

(a) the ADI is an Australian resident; and

(b) the non-share dividend is paid in respect of a *non-share equity interest that:

(i) by itself; or

(ii) in combination with one or more *schemes that are *related schemes to the scheme under which the interest arises;

forms part of the ADI's Tier 1 capital either on a solo or consolidated basis (within the meaning of the *prudential standards); and

(c) the non-share equity interest is issued at or through a *permanent establishment of the ADI in a *listed country; and

(d) the funds from the issue of the non-share equity interest are raised and applied solely for one or more purposes permitted under subsection (2) in relation to the non-share equity interest.

(2) The permitted purposes in relation to the *non-share equity interest (the ***relevant interest***) are the following:

(a) the purpose of the business of the ADI carried on at or through the permanent establishment other than the transfer of funds directly or indirectly to:

(i) the Australian head office of the permanent establishment; or

(ii) any *connected entity of the ADI that is an Australian resident; or

(iii) a permanent establishment of the ADI, or of a connected entity of the ADI, located in Australia;

(b) the purpose of redeeming:

(i) a *debt interest; or

(ii) a non-share equity interest;

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that is issued, before the relevant interest is issued, at or through the permanent establishment and is held by a connected entity of the ADI that is an Australian resident;

(c) the purpose of returning funds to:

(i) the Australian head office of the permanent establishment; or

(ii) a permanent establishment of the ADI or of a connected entity of the ADI, located in Australia;

if the funds are contributed, before the relevant interest is issued, for use in the business of the ADI carried on at or through the permanent establishment.

## 215-15 Non-share dividends are unfrankable if profits are unavailable

(1) If:

(a) a *corporate tax entity pays a *non-share dividend; and

(b) immediately before the payment, the amount of the *available frankable profits of the entity is nil, or less than nil;

the non-share dividend is ***unfrankable***.

(2) If:

(a) a *corporate tax entity pays a *non-share dividend that is not one of a number of non-share dividends paid at the same time; and

(b) immediately before the payment, the amount of the *available frankable profits of the entity, although greater than nil, are less than the amount of the non-share dividend;

the entity is taken to have made a ***frankable distribution*** equal to the amount of the available frankable profits. The remainder of the dividend is taken to be an ***unfrankable*** distribution.

(3) If:

(a) a *corporate tax entity pays a *non-share dividend that is one of a number paid at the same time; and

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



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(b) immediately before the payment, the amount of the *available frankable profits of the entity, although greater than nil are less than the sum of the amounts of the non-share dividends;

the entity is taken to have made a ***frankable distribution*** equal to the amount worked out using the formula:

$$\frac{\text{Amount of the *non-share dividend}}{\text{Sum of the amounts of all the non-share dividends}} \times \text{*Available frankable profits}$$

The remainder of the dividend is taken to be an ***unfrankable*** distribution.

## 215-20 Working out the available frankable profits

(1) Use the following formula to work out the amount of a *corporate tax entity's ***available frankable profits*** at a particular time:

$$\text{Maximum frankable amount} - \left[\text{Committed share dividends} + \text{Undebited non-share dividends}\right]$$

where:

***committed share dividends*** means the sum of:

(a) the amounts of any *distributions that are not *non-share dividends and are paid by the entity at that time; and

(b) if the entity has announced that it will pay distributions that are not non-share dividends at a later time, or is committed or has resolved (formally or informally) to paying such distributions at a later time—the amounts of those distributions.

***maximum frankable amount*** means the maximum amount of *frankable *distributions (other than *non-share dividends) that the *corporate tax entity could pay at that time having regard to its available profits at that time.

***undebited non-share dividends*** means the sum of the amounts of the franked parts of the *non-share dividends (worked out under subsection (2)) that:

(a) were not debited to available profits; and

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(b) were paid within the preceding 2 income years or were paid under the same *scheme under which the entity pays the non-share dividend.

(2) The amount of the ***franked part*** of a *non-share dividend is worked out using the following formula:

*Franking credit on the dividend × Applicable gross-up rate

where:

***applicable gross-up rate*** means the *corporate tax gross-up rate of the entity making the distribution for the income year in which the distribution is made.

## 215-25 Anticipating available frankable profits

(1) A *corporate tax entity that pays a *non-share dividend may anticipate *available frankable profits if:

(a) the entity:

(i) has announced the payment of; or

(ii) is committed or has resolved (formally or informally) to pay;

*distributions other than non-share dividends (the ***committed distributions***) after payment of the non-share dividend; and

(b) but for this subsection, section 215-15 would apply to the non-share dividend; and

(c) the entity's available frankable profits would be greater than nil at the relevant time if the committed distributions were ignored; and

(d) it is reasonable to expect that available profits will arise after payment of the non-share dividend and before payment of the committed distributions; and

(e) it is reasonable to expect that, having regard to the available profits mentioned in paragraph (d), the amount of the entity's *adjusted available frankable profits immediately after each of the committed distributions is paid will be greater than nil.

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The ***available frankable profits*** immediately before the entity pays the non-share dividend is then the smallest of the amounts of the adjusted available frankable profits mentioned in paragraph (e).

(2) The entity's ***adjusted available frankable profits*** immediately after a committed distribution is paid is the amount that would be its *available frankable profits at that time if all committed distributions to be paid after that time, and the *non-share dividend, were ignored.

(3) A *franking debit arises for the entity if:

(a) the entity anticipates*available frankable profits under subsection (1); and

(b) the available frankable profits of the entity are less than nil:

(i) immediately after the last of the committed distributions is made; or

(ii) immediately before the end of the income year following the income year in which the *non-share dividend is paid;

whichever is earlier.

(4) The *franking debit is equal to the lesser of:

(a) the amount by which the *available frankable profits is below nil; and

(b) the amount of the franked part of the *non-share dividend (worked out using subsection 215-20(2)) or, if more than one non-share dividend is made at the relevant time, the sum of the amounts of the franked parts of those non-share dividends.

(5) In working out the entity's *available frankable profits for the purposes of subsection (3) or (4), disregard:

(a) any *distributions that:

(i) the entity announces, or becomes committed to or resolves (formally or informally) to pay after the payment of the *non-share dividend; and

(ii) have not been paid; and

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



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(b) any estimate made by the entity under subsection (1) after the non-share dividend is paid.

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



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# Division 216—Cum dividend sales and securities lending arrangements

## Table of Subdivisions

216-A Circumstances where a distribution to a member of a corporate tax entity is treated as having been made to someone else

216-B Statements to be made where there is a cum dividend sale or securities lending arrangement

## Subdivision 216-A—Circumstances where a distribution to a member of a corporate tax entity is treated as having been made to someone else

### Table of sections

216-1 When a distribution made to a member of a corporate tax entity is treated as having been made to someone else

216-5 First situation (cum dividend sales)

216-10 Second situation (securities lending arrangements)

216-15 Distribution closing time

### 216-1 When a distribution made to a member of a corporate tax entity is treated as having been made to someone else

There are 2 situations in which a *franked distribution, or a distribution *franked with an exempting credit, that is made to a *member of a *corporate tax entity is taken to have been made to another entity.

### 216-5 First situation (cum dividend sales)

(1) The first situation is one in which:

(a) the *corporate tax entity makes a *franked distribution, or a *distribution franked with an exempting credit, to a *member

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of the entity in respect of a *membership interest in the entity; and

(b) at the *distribution closing time, the member is under an obligation to transfer the membership interest to another person under a contract for the sale of the membership interest; and

(c) the contract:

(i) requires that the distribution be paid on to the other person; and

(ii) is entered into in the ordinary course of trading on an *approved stock exchange in Australia or elsewhere.

(2) The *distribution is taken to have been made to the other person as a *member of the entity (and not to the member).

Note: As the other person is the entity receiving the distribution, there may be tax effects for the other person under Division 207 or 208.

(3) The *distribution referred to in paragraph (1)(a) includes a distribution that is taken to be made as a result of one or more previous applications of this section or section 216-10.

## 216-10 Second situation (securities lending arrangements)

(1) The second situation is one in which:

(a) the *corporate tax entity makes a *franked distribution, or a *distribution franked with an exempting credit, to a *member of the entity in respect of a *membership interest in the entity; and

(b) at the time the distribution was made, the member was under an obligation to pay the distribution to another person under a securities lending arrangement; and

(c) the obligation was incurred in the member's capacity as the borrower under the securities lending arrangement; and

(d) the *distribution closing time occurred during the borrowing period.

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(2) The *distribution is taken to have been made to the other person as a *member of the entity (and not to the member).

Note: As the other person is the entity receiving the distribution, there may be tax effects for the other person under Division 207 or 208.

(3) The distribution referred to in paragraph (1)(a) includes a distribution that is taken to be made as a result of one or more previous applications of this section or section 216-5.

### 216-15 Distribution closing time

If *distributions by a *corporate tax entity are made to those *members who were members as at a particular time at or before the distribution is made, that time is the ***distribution closing time*** in relation to those distributions.

## Subdivision 216-B—Statements to be made where there is a cum dividend sale or securities lending arrangement

### Table of sections

216-20 Cum dividend sale—statement by securities dealer
216-25 Cum dividend sale—statement by party
216-30 Securities lending arrangements—statement by borrower

### 216-20 Cum dividend sale—statement by securities dealer

If:

(a) section 216-5 applies in relation to a *franked distribution or a *distribution franked with an exempting credit (cum dividend sales); and

(b) a *securities dealer has acted for a particular party to the contract concerned;

the securities dealer must, as soon as practicable after the making of the distribution, give to the other party to the contract a statement in the *approved form setting out such information in relation to the distribution as is required by the approved form.

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



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## 216-25 Cum dividend sale—statement by party

If:

(a) section 216-5 applies in relation to a *franked distribution or a *distribution franked with an exempting credit (cum dividend sales); and

(b) a particular party to the contract concerned has not had a *securities dealer acting for him or her;

that party must, as soon as practicable after the making of the distribution, give to the other party to the contract a statement in the *approved form setting out such information in relation to the distribution as is required by the approved form.

## 216-30 Securities lending arrangements—statement by borrower

If section 216-10 (securities lending arrangements) applies in relation to a *franked distribution, or a *distribution franked with an exempting credit, the borrower must, as soon as practicable after the making of the distribution, give to the lender a statement in the *approved form setting out such information in relation to the distribution as is required by the approved form.

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



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# Division 218—Application of imputation rules to co-operative companies

## 218-5 Application of imputation rules to co-operative companies

(1) The *imputation system applies to a *co-operative company in the same way as it applies to any other company but with the modifications set out in this section.

(2) Each reference to a *distribution is taken to include a reference to an amount distributed as mentioned in paragraph 120(1)(a) or (b) of the *Income Tax Assessment Act 1936*.

(3) Despite subsection 202-75(1) (about giving distribution statements), a *co-operative company does not have to give the recipient of a *frankable distribution a *distribution statement unless the *franking percentage for the distribution is greater than zero.

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



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# Division 219—Imputation for life insurance companies

## Table of Subdivisions

Guide to Division 219
219-A Application of imputation rules to life insurance companies
219-B Franking accounts of life insurance companies

## Guide to Division 219

### 219-1 What this Division is about

This Division sets out how the imputation rules are applied to a life insurance company.

## Subdivision 219-A—Application of imputation rules to life insurance companies

### Table of sections

219-10 Application of imputation rules to life insurance companies

### 219-10 Application of imputation rules to life insurance companies

(1) This Part (except this Division) applies to a *life insurance company in the same way as it applies to any other company.

(2) However, that application is subject to the modifications set out in this Division.

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



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# Subdivision 219-B—Franking accounts of life insurance companies

## Table of sections

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219-30 Franking debits
219-40 Residency requirement
219-45 Assessment day
219-50 Amount attributable to shareholders' share of income tax liability
219-55 Adjustment resulting from an amended assessment
219-70 Tax offset under section 205-70
219-75 Working out franking credits and franking debits where a tax offset under section 205-70 is applied

## 219-15 Franking credits

(1) The table in section 205-15 does not apply to a *life insurance company.

(2) The following table sets out when a *franking credit arises under this section in the *franking account of a *life insurance company.

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



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**Franking credits in the franking account**

| Item | If: | A credit of: | Arises: |
|---|---|---|---|
| 1 | the company *pays a PAYG instalment; and<br>the company satisfies the *residency requirement for the income year in relation to which the PAYG instalment is paid; and<br>the payment is made before the company's *assessment day for that income year; and<br>the company is a *franking entity for the whole or part of the relevant *PAYG instalment period | that part of the payment that:<br>(a) the company estimates will be attributable to the *shareholders' share of the *income tax liability of the company for that income year; and<br>(b) is attributable to the period during which the company was a franking entity | on the day on which the payment is made (see note 1 to this subsection) |

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| **Franking credits in the franking account** | | | |
|---|---|---|---|
| **Item** | **If:** | **A credit of:** | **Arises:** |
| 2 | the company *paid a PAYG instalment; and<br>the company satisfied the *residency requirement for the income year in relation to which the PAYG instalment was paid; and<br>the payment was made before the company's *assessment day for that income year; and<br>the company was a *franking entity for the whole or part of the relevant *PAYG instalment period | that part of the payment that is attributable to:<br>(a) the *shareholders' share of the *income tax liability of the company for that income year; and<br>(b) the period during which the company was a franking entity | on the company's assessment day for that income year (see note 1 to this subsection) |
| 3 | the company *pays a PAYG instalment; and<br>the company satisfies the *residency requirement for the income year in relation to which the PAYG instalment is paid; and<br>the payment is made on or after the company's *assessment day for that income year; and<br>the company is a *franking entity for the whole or part of the relevant *PAYG instalment period | that part of the payment that is attributable to:<br>(a) the *shareholders' share of the *income tax liability of the company for that income year; and<br>(b) the period during which the company was a franking entity | on the day on which the payment is made |

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



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| **Franking credits in the franking account** | | | |
|---|---|---|---|
| **Item** | **If:** | **A credit of:** | **Arises:** |
| 4 | the company *pays income tax; and<br>the company satisfies the *residency requirement for the income year for which the tax is paid; and<br>the company is a *franking entity for the whole or part of that income year | that part of the payment that is attributable to:<br>(a) the *shareholders' share of the *income tax liability of the company for that income year; and<br>(b) the period during which the company was a franking entity | on the day on which the payment is made |
| 5 | a *franked distribution is made to the company; and<br>the company satisfies the *residency requirement for the income year in which the distribution is made; and<br>the company is a *franking entity when it receives the distribution; and<br>the company is entitled to a *tax offset under Division 207 because of the distribution; and<br>the tax offset is not subject to the refundable tax offset rules (see Division 67) | the amount of the tax offset | on the day on which the distribution is made |

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



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| **Franking credits in the franking account** | | | |
|---|---|---|---|
| **Item** | **If:** | **A credit of:** | **Arises:** |
| 6 | a *franked distribution *flows indirectly to the company through a partnership or the trustee of a trust; and<br>the company is a *franking entity when the franked distribution is made; and<br>the company is entitled to a *tax offset under Division 207 because of the distribution; and<br>the tax offset is not subject to the refundable tax offset rules (see Division 67) | the amount of the tax offset | at the time specified in subsection (3) |

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



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| **Franking credits in the franking account** | | | |
|---|---|---|---|
| **Item** | **If:** | **A credit of:** | **Arises:** |
| 6A | a *franking debit arises under item 2 or 3 of the table in subsection 219-30(2) because the company receives a *tax offset refund; and<br>the company's tax offset refund is subsequently reduced and the company is liable to pay to the Commonwealth the amount of the excess mentioned in subsection 172A(2) of the *Income Tax Assessment Act 1936*; and<br>the company pays the amount of the excess | the difference (if any) between:<br>(a) the amount of the franking debit; and<br>(b) the amount the franking debit would have been if the tax offset refund were reduced by the amount of the excess | on the day on which the amount of the excess is paid |
| 7 | the company incurs a liability to pay *franking deficit tax under section 205-45 or 205-50 | the amount of the liability | immediately after the liability is incurred |
| 8 | a *franking credit arises under subsection 418-55(1) in relation to an *exploration credit | the amount of the *franking credit specified in subsection 418-55(2) | at the time provided by subsection 418-55(3) |

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



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| **Franking credits in the franking account** | | | |
|---|---|---|---|
| **Item** | **If:** | **A credit of:** | **Arises:** |
| 9 | the company *pays diverted profits tax; and<br>the company satisfies the *residency requirement for the income year for which the tax is paid; and<br>the company is a *franking entity for the whole or part of that income year | that part of the payment that is attributable to:<br>(a) the *shareholders' share of the *income tax liability of the company for that income year; and<br>(b) the period during which the company was a franking entity;<br>multiplied by the proportion worked out under subsection (4) | on the day on which the payment is made |

Note 1: On the assessment day, a franking credit that arose under item 1 of the table:
- is reversed by a franking debit that arises under item 1 of the table in section 219-30; and
- is replaced with a franking credit that arises under item 2 of the table in this section.

Note 2: Section 219-50 tells you how to work out the part of an amount that is attributable to the shareholders' share of the income tax liability of the company for the income year.

Note 3: To find out whether a tax offset under Division 207 is subject to the refundable tax offset rules: see section 67-25.

(3) A *franking credit covered by item 6 of the table arises at the end of the income year:

(a) that is an income year of the last partnership or trust interposed between:

(i) the *life insurance company; and

(ii) the *corporate tax entity that made the distribution; and

(b) during which the *franked distribution *flows indirectly to the life insurance company.

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



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(4) The proportion is the standard corporate tax rate (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*) divided by 40%.

## 219-30 Franking debits

(1) The table in section 205-30 (except items 2 and 2A) applies to a *life insurance company in the same way as it applies to any other company.

(2) The following table sets out when a *franking debit arises under this section in the *franking account of a *life insurance company.

**Franking debits in the franking account**

| Item | If: | A debit of: | Arises: |
|---|---|---|---|
| 1 | a *franking credit arises for the company under item 1 of the table in section 219-15 (*payment of a PAYG instalment) | the amount of the franking credit | on the company's *assessment day for the income year mentioned in that item |
| 2 | the company *receives a refund of income tax; and<br>the company satisfies the *residency requirement for the income year to which the refund relates; and<br>the company was a *franking entity for the whole or part of that income year | that part of the refund that is attributable to:<br>(a) the *shareholders' share of the *income tax liability of the company for that income year; and<br>(b) the period during which the company was a franking entity | on the day on which the refund is received |

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



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**Franking debits in the franking account**

| Item | If: | A debit of: | Arises: |
|---|---|---|---|
| 3 | the company *receives a *tax offset refund; and<br>the company does not satisfy the *residency requirement for the income year to which the refund relates; and<br>the company was a *franking entity for the whole or part of that income year; and<br>the company's *franking account is in *surplus on the day on which the refund is received | the lesser of:<br>(a) that part of the refund that is attributable to:<br>(i) the *shareholders' share of the *income tax liability of the company for that income year; and<br>(ii) the period during which the company was a franking entity; and<br>(b) the amount of the *franking surplus | on the day on which the refund is received |
| 4 | the company *receives a refund of diverted profits tax; and<br>the company satisfies the *residency requirement for the income year to which the refund relates; and<br>the company was a *franking entity for the whole or part of that income year | that part of the refund that is attributable to:<br>(a) the *shareholders' share of the *income tax liability of the company for that income year; and<br>(b) the period during which the company was a franking entity;<br>multiplied by the proportion worked out under subsection (3) | on the day on which the refund is received |

Note 1: On the assessment day, a franking debit that arises under item 1 of this table reverses the effect of a franking credit that arose under item 1 of the table in section 219-15.

Note 2: Section 219-50 tells you how to work out the part of an amount that is attributable to the shareholders' share of the income tax liability of the company for the income year.

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



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(3) The proportion is the standard corporate tax rate (within the meaning of Part IVA of the *Income Tax Assessment Act 1936*) divided by 40%.

## 219-40 Residency requirement

The tables in sections 219-15 and 219-30 are relevant for the purposes of subsection 205-25(1) (about the residency requirement).

## 219-45 Assessment day

A *life insurance company's ***assessment day*** for an income year is the earlier of:

(a) the day on which the company furnishes its *income tax return for that income year; or

(b) the day on which the Commissioner makes an assessment of the amount of the company's taxable income for that income year under section 166 of the *Income Tax Assessment Act 1936*.

## 219-50 Amount attributable to shareholders' share of income tax liability

(1) Subsection (2) applies to a *life insurance company in relation to the payment or refund mentioned in an item of a table in this Subdivision (except item 1 of the table in section 219-15).

Note: The operation of this section is affected by section 219-75 if a tax offset under section 205-70 is applied to work out the company's income tax liability.

(2) For the purposes of this Part, the part of the payment or refund that is attributable to the *shareholders' share of the *income tax liability of the company for an income year must be worked out as follows:

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



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*Method statement*

Step 1. Work out the part of the company's total *income tax liability for the income year that is attributable to the company's shareholders.

The result of this step is the ***shareholders' share*** of the income tax liability of the company for the income year.

Step 2. Divide the step 1 result by that total *income tax liability.

The result of this step is the ***shareholders' ratio*** for the income year.

Step 3. Multiply the amount of the payment or refund by the *shareholders' ratio.

The result of this step is the part of the payment or refund that is attributable to the *shareholders' share of the *income tax liability of the company for the income year.

(3) For the purposes of this Part, the estimate mentioned in item 1 of the table in section 219-15 (the part of a payment estimated to be attributable to the *shareholders' share of a company's *income tax liability for an income year) must be worked out on the basis of:

(a) subject to paragraph (b), the method statement in subsection (2); and

(b) the company's reasonable estimate of the amounts that, on the company's *assessment day for the income year, will be:

(i) its total income tax liability for the income year; and

(ii) the part of that total income tax liability that is attributable to its shareholders.

(4) In working out the part of the *income tax liability of a *life insurance company that is attributable to the shareholders of the company for the purposes of this section, regard is to be had to the accounting records of the company.

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



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## 219-55 Adjustment resulting from an amended assessment

(1) This section applies in relation to the *franking account of a *life insurance company if:

(a) the assessment of the company's *income tax liability for an income year is amended on a particular day (the ***adjustment day***); and

(b) the *shareholders' ratio (the ***new ratio***) based on the amended assessment is different from the shareholders' ratio used previously in relation to that income year to work out a *franking credit or *franking debit for the company; and

(c) the franking account would have a different balance on the adjustment day if the new ratio had been used to work out all the franking credits and franking debits covered by paragraph (b).

Note: The operation of this section is affected by section 219-75 if a tax offset under section 205-70 is, or has been, applied to work out the company's income tax liability.

(2) On the adjustment day, a *franking credit or *franking debit (as appropriate) of the amount worked out under subsection (3) arises in the *franking account.

(3) The amount is an adjustment that will bring the *franking account to the balance that it would have on the adjustment day if the new ratio had been used to work out all the *franking credits and *franking debits covered by paragraph (1)(b).

Example: On the basis of a shareholders' ratio of 60% for the income year, franking credits of the amounts of $6,000, $6,000, $6,000 and $6,000 arose under item 2 of the table in section 219-15 for Company X.

An amended assessment results in a new shareholders' ratio of 70%. Under this section, a franking credit of $4,000 arises on the day of the amended assessment to bring the balance of the franking account from $24,000 to $28,000, which would be the account's balance if the new shareholders' ratio had been used.

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



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## 219-70 Tax offset under section 205-70

(1) For the purposes of paragraph 205-70(1)(c), if a *life insurance company was entitled to a *tax offset under section 205-70 for a previous income year, assume section 63-10 applied to the part of the company's basic income tax liability for that previous income year that was attributable to its shareholders.

(2) In working out the part of the company's basic income tax liability that was attributable to its shareholders, have regard to the company's accounting records.

Example: The following apply to a life insurance company that satisfies the residency requirement for an income year:

(a) the company has a tax offset of $60,000 under section 205-70 (the franking deficit offset) for that year;

(b) the company's basic income tax liability for that year would be $100,000 if the franking deficit offset were disregarded;

(c) 20% of the $100,000 is attributable to the company's shareholders (the shareholders' part).

As a result of applying $20,000 of the franking deficit offset to reduce the shareholders' part to nil, the company's basic income tax liability becomes $80,000. The remaining $40,000 of the offset will be included in a franking deficit tax offset for the next income year for which the company satisfies the residency requirement.

## 219-75 Working out franking credits and franking debits where a tax offset under section 205-70 is applied

*Revised shareholders' ratio—modification of section 219-50*

(1) Subsection (2) applies to a *life insurance company if a *tax offset under section 205-70 is applied to work out the company's *income tax liability for an income year.

Note: This means subsection (2) applies if the tax offset is applied to reduce the part of the company's basic income tax liability mentioned in subsection 219-70(1) in relation to the income year.

(2) For the purposes of working out the amount of a *franking credit or *franking debit for the company in relation to the income year

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



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(other than a franking credit covered by item 1 of the table in section 219-15), section 219-50 has effect as if:

(a) steps 1 and 2 of the method statement in section 219-50 were omitted; and

(b) the reference in step 3 of that method statement to the *shareholders' ratio were a reference to the ***revised shareholders' ratio*** worked out as follows:

*Method statement*

Step 1. Work out the remainder (if any) of the part of the company's basic income tax liability mentioned in subsection 219-70(1) after the *tax offset is applied to reduce that part.

Note: The part mentioned in that subsection is the part of an amount of the company's income tax liability for the income year that is attributable to its shareholders.

Step 2. Divide the step 1 result by the company's total *income tax liability for the income year (after applying the *tax offset).

The result (which can be nil) is the company's ***revised shareholders' ratio*** for the income year.

Example: For the 2002-2003 income year X Co (which is a life insurance company) has a tax offset of $68,000 under section 205-70. Its income tax liability for that year would have been $400,000 on the assessment day (1 February 2004) if the tax offset were disregarded. Of that liability, $80,000 is attributable to the shareholders. The step 1 result is therefore $12,000 ($80,000 minus $68,000).

X Co's income tax liability after applying the tax offset is $332,000 ($400,000 minus $68,000). The revised shareholders' ratio is therefore 3/83 ($12,000 divided by $332,000).

For that income year, the company paid $249,000 of PAYG instalments before the assessment day and $83,000 of income tax one month after that day.

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



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On the assessment day, a franking credit of $9,000 arises under item 2 of the table in section 219-15 ($249,000 multiplied by 3/83). On the day the additional amount of tax is paid, another franking credit of $3,000 arises under item 4 of that table ($83,000 multiplied by 3/83).

*Adjustment resulting from amended assessment—modification of section 219-55*

(3) Subsection (4) applies to a *life insurance company if:

(a) the assessment of the company's *income tax liability for an income year (the ***previous assessment***) is amended; and

(b) at least one of the following applies:

(i) a *tax offset under section 205-70 is applied in making that amended assessment;

(ii) a tax offset under section 205-70 was applied in making the previous assessment.

(4) Section 219-55 has effect in relation to the company as if:

(a) if subparagraph (3)(b)(i) of this section applies—a reference in that section to the new ratio were a reference to the revised shareholders' ratio that is based on the amended assessment; and

(b) if subparagraph (3)(b)(ii) of this section applies—the reference in paragraph (1)(b) of that section to the *shareholders' ratio used previously were a reference to the revised shareholders' ratio that is based on the previous assessment.

Example: Continuing the example in subsection (2), the assessment of X Co for the 2002-2003 income year is amended on 31 March 2004. Under the amended assessment, X Co's income tax liability would be $300,000 if the tax offset were disregarded.

Of that liability, $60,000 is attributable to the shareholders. That amount is reduced by the tax offset of $68,000 to nil.

X Co's liability to pay income tax is therefore reduced to $240,000 ($300,000 minus $60,000) and it will receive a refund of $92,000 ($332,000 minus $240,000). As the revised shareholders' ratio has become nil, no franking debit arises from the refund.

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The franking credits that previously arose from the payments of PAYG instalments and income tax would not have arisen if the new revised shareholders' ratio had been used. Section 219-55 (as applied by subsection (4) of this section) therefore operates to create an adjustment to cancel those franking credits. The adjustment is a franking debit of $12,000 that arises on the day of the amendment of the assessment.

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



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# Division 220—Imputation for NZ resident companies and related companies

## Table of Subdivisions

Guide to Division 220
220-A Objects of this Division
220-B NZ company treated as Australian resident for imputation system if company chooses
220-C Modifications of other Divisions of this Part

## Guide to Division 220

### 220-1 What this Division is about

A company resident in New Zealand may choose that the imputation system apply in relation to it. If it does, the rest of this Part applies in relation to it as if it were an Australian resident company, but with modifications. Some of the modifications also affect:

(a) other companies that are members of the same wholly-owned group; or

(b) entities that receive distributions from the company resident in New Zealand.

## Subdivision 220-A—Objects of this Division

### Table of sections

220-15 Objects
220-20 What is an ***NZ resident***?

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



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## 220-15 Objects

(1) The main objects of this Division are:
  (a) to allow a company that is an *NZ resident to choose that the *imputation system apply in relation to it; and
  (b) if the company makes that choice, to apply the rest of this Part in relation to the company generally as if it were an Australian resident.

(2) Another object of this Division is to prevent the benefits of the *imputation system from being inappropriately made available to or through a *member of a company that is a foreign resident, by modifying the way in which the rest of this Part applies to:
  (a) a company that has chosen that the system apply in relation to it; and
  (b) other companies that are members of the same *wholly-owned group as that company; and
  (c) other entities that receive (directly or indirectly) *distributions from that company.

## 220-20 What is an *NZ resident*?

*Company*

(1) A company is an ***NZ resident*** if:
  (a) the company is incorporated in New Zealand; or
  (b) the company is not incorporated in New Zealand but carries on business there and either:
    (i) has its central management and control there; or
    (ii) has its voting power controlled by *members who are NZ residents.

*Natural person*

(2) A natural person is an ***NZ resident*** if he or she resides in New Zealand.

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



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(3) A natural person is also an ***NZ resident*** if his or her domicile is in New Zealand, unless the Commissioner is satisfied that the person's permanent place of abode is outside New Zealand.

(4) A natural person is also an ***NZ resident*** if he or she has actually been in New Zealand, continuously or intermittently, during more than half of the income year, unless the Commissioner is satisfied that:

(a) the person's usual place of abode is outside New Zealand; and

(b) the person does not intend to take up residence in New Zealand.

*Not an NZ resident if an Australian resident*

(5) A person is *not* an ***NZ resident*** if the person is an Australian resident. This has effect despite subsections (1), (2), (3) and (4).

## Subdivision 220-B—NZ company treated as Australian resident for imputation system if company chooses

### Table of sections

220-25 Application of provisions of Part 3-6 outside this Division
220-30 What is an ***NZ franking company***?
220-35 Making an NZ franking choice
220-40 When is an NZ franking choice in force?
220-45 Revoking an NZ franking choice
220-50 Cancelling an NZ franking choice

### 220-25 Application of provisions of Part 3-6 outside this Division

(1) The provisions of Part 3-6 outside this Division apply in relation to a company that is an *NZ franking company at a time as if it were an Australian resident at that time.

(2) They apply with the modifications made by the other sections of this Division.

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



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### 220-30 What is an *NZ franking company*?

A company is an ***NZ franking company*** at a time if, at the time, the company is an *NZ resident and has an *NZ franking choice in force.

### 220-35 Making an NZ franking choice

A company that is an *NZ resident may, by notice in the *approved form given to the Commissioner, choose that the *imputation system is to apply in relation to the company. The choice is an ***NZ franking choice***.

### 220-40 When is an NZ franking choice in force?

(1) A company's *NZ franking choice comes into force:
  (a) at the start of the company's income year in which the notice was given to the Commissioner; or
  (b) at the start of a later income year specified in the notice.

(2) The *NZ franking choice continues in force until it is revoked by the company or cancelled by the Commissioner.

### 220-45 Revoking an NZ franking choice

(1) A company may revoke its *NZ franking choice by notice in the *approved form given to the Commissioner.

(2) To avoid doubt, the revocation takes effect when the notice is given to the Commissioner.

### 220-50 Cancelling an NZ franking choice

(1) The Commissioner may cancel a company's *NZ franking choice by written notice given to the company, but only if the Commissioner is satisfied that either:
  (a) the company was liable to pay *franking deficit tax or *over-franking tax (whether or not because of

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



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section 220-800 (about joint and several liability for the tax)) and the company did not pay the tax by the day on which it was due and payable; or

(b) the company has not complied with subsection 214-15(2) or 214-20(2) (about giving the Commissioner a *franking return).

(2) To avoid doubt, the cancellation takes effect when the notice is given to the company.

*Review of cancellation*

(3) If the company is dissatisfied with the cancellation of the choice, it may object against the cancellation in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Note: That Part provides for review of the cancellation objected against.

*Effect of cancelling a choice on making another choice in future*

(4) If the company makes another *NZ franking choice, it does not come into force unless the Commissioner consents in writing to the choice coming into force.

(5) In consenting, the Commissioner may specify when the choice is to come into force. The consent has effect according to its terms, despite section 220-40.

(6) The Commissioner must give a copy of the consent to the company.

## Subdivision 220-C—Modifications of other Divisions of this Part

### Table of sections

**Franking NZ franking companies' distributions**

220-100 Residency requirement for franking
220-105 Unfrankable distributions by NZ franking companies

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



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**NZ franking companies' franking accounts etc.**

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220-210 Effect of franked distribution to NZ franking company or flowing indirectly to NZ franking company
220-215 Effect on franking account if NZ franking choice ceases to be in force

**Franking accounts of NZ franking company and some of its 100% subsidiaries**

220-300 NZ franking company's franking account affected by franking accounts of some of its 100% subsidiaries

**Effect of NZ franking company making distribution that is non-assessable and non-exempt**

220-350 Providing for a franking credit to arise

**Effects of supplementary dividend from NZ franking company**

220-400 Gross-up and tax offset for distribution from NZ franking company reduced by supplementary dividend
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220-500 Publicly listed post-choice NZ franking company and its 100% subsidiaries are not exempting entities
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220-510 Parent company's status as prescribed person sets status of all other members of same wholly-owned group

**NZ franking companies' exempting accounts**

220-605 Effect on exempting account if NZ franking choice ceases to be in force

**Tax effect of distribution franked by NZ franking company with an exempting credit**

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



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**Joint and several liability for NZ resident company's unmet franking liabilities**

220-800 Joint and several liability for NZ resident company's franking tax etc.

## Franking NZ franking companies' distributions

### 220-100 Residency requirement for franking

(1) An *NZ franking company satisfies the ***residency requirement*** when making a *distribution only if the distribution is made at least one month after the notice constituting the company's *NZ franking choice was given to the Commissioner.

Note: This section is relevant to both section 202-5 and section 208-60, which let a company frank a distribution, or frank a distribution with an exempting credit, only if the company satisfies the residency requirement when making the distribution.

(2) Section 202-20, as applying because of section 220-25, has effect subject to this section.

Note: Section 202-20 sets out how a company satisfies the residency requirement when making a distribution.

### 220-105 Unfrankable distributions by NZ franking companies

(1) These *distributions by an *NZ franking company are *unfrankable:

(a) a conduit tax relief additional dividend (as defined in section OB1 of the Income Tax Act 1994 of New Zealand);

(b) a supplementary dividend (as defined in that section).

(2) This section does not limit section 202-45 (about *unfrankable distributions).

### 220-110 Maximum franking credit under section 202-60

For the purposes of working out the *maximum franking credit for a *frankable distribution made by an *NZ franking company in a *foreign currency, translate the amount of the distribution into

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



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Australian currency at the exchange rate applicable at the time of the decision to make the *distribution.

## NZ franking companies' franking accounts etc.

### 220-205 Franking credit for payment of NZ franking company's withholding tax liability

(1) A *franking credit arises in the *franking account of a company on the day a payment is made of *withholding tax that the company is liable under section 128B of the *Income Tax Assessment Act 1936* to pay, if:

(a) because of section 220-25, the company satisfies the *residency requirement for the income year in which it *derived the income on which it was liable to pay the withholding tax; and

(b) the company is a *franking entity for the whole or part of that income year.

The amount of the credit equals the amount of the payment.

(2) For the purposes of determining whether the company satisfies the *residency requirement for the income year described in paragraph (1)(a), section 205-25 has effect as if the derivation of the income described in that paragraph were an event specified in a relevant table for the purposes of that section.

### 220-210 Effect of franked distribution to NZ franking company or flowing indirectly to NZ franking company

*No tax offset for NZ franking company*

(1) An *NZ franking company to which a *franked distribution is made or *flows indirectly is not entitled under Division 207 to a *tax offset for the *distribution. That Division has effect subject to this section.

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



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*Denial of tax offset does not stop franking credit or debit arising*

(2) However, subsection (1) does not prevent a *franking credit or *franking debit from arising in the *NZ franking company's *franking account under Division 205 or 208. To avoid doubt, the amount of the credit or debit, and the time at which it arises, are the same as they would be apart from subsection (1).

Note: This has the effect that the amount and timing of the credit or debit are worked out as if the NZ franking company had been entitled to the tax offset that subsection (1) prevents the company from being entitled to.

## 220-215 Effect on franking account if NZ franking choice ceases to be in force

(1) This section has effect if:

(a) a company has made an *NZ franking choice; and

(b) the choice is revoked or cancelled at a time (the ***end time***); and

(c) immediately before the end time the company is a foreign resident.

*Franking debit if franking surplus just before end time*

(2) A *franking debit arises in the company's *franking account on the day during which the end time occurs if the account was in *surplus immediately before that time. The amount of the debit equals the *franking surplus.

*Franking deficit tax if franking deficit just before end time*

(3) If the company's *franking account was in *deficit immediately before the end time, subsection 205-45(3) applies in relation to the company as if it ceased to be a *franking entity at the end time.

Note: Subsection 205-45(3) makes an entity liable to pay franking deficit tax if the entity ceases to be a franking entity and had a franking deficit immediately before ceasing to be a franking entity.

(4) Subsection (3) does not limit the effect of subsection 205-45(3).

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



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*Take account of franking debit arising under section 220-605*

(5) Take account of any *franking debit arising under section 220-605 because of the revocation or cancellation in working out for the purposes of this section whether the company's *franking account is in *surplus or *deficit immediately before the end time.

Note: Section 220-605 provides for a franking debit to arise in the company's franking account immediately before the end time if, immediately before the end time, the company was a former exempting entity and its exempting account was in deficit.

## Franking accounts of NZ franking company and some of its 100% subsidiaries

### 220-300 NZ franking company's franking account affected by franking accounts of some of its 100% subsidiaries

(1) This section has effect if all these conditions are met in relation to a company (the ***franking donor company***) at a time:

(a) the franking donor company is at the time:

(i) an Australian resident or a *post-choice NZ franking company; and

(ii) a *100% subsidiary of a post-choice NZ franking company (the ***parent company***) that is not a 100% subsidiary of another company that is a member of the same *wholly-owned group as the parent company;

(b) the franking donor company is at the time a 100% subsidiary of a post-choice NZ franking company (the ***NZ recipient company***) in relation to which these requirements are met:

(i) there must be no companies that are *NZ residents and 100% subsidiaries of the NZ recipient company interposed between it and the franking donor company;

(ii) the NZ recipient company must be either the parent company or a 100% subsidiary of the parent company;

(c) there are interposed between the NZ recipient company and the franking donor company at the time one or more companies, each of which:

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



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(i) is a 100% subsidiary of the NZ recipient company; and
(ii) is neither an Australian resident nor an NZ resident.

*What is a **post-choice NZ franking company**?*

(2) A company is a ***post-choice NZ franking company*** at a time if:
(a) at the time, the company is an *NZ franking company; and
(b) the notice constituting the *NZ franking choice that makes the company an NZ franking company at the time was given to the Commissioner at or before the time.

*Franking donor company's franking surplus when conditions met*

(3) If the franking donor company's *franking account is in *surplus at the first time all the conditions in subsection (1) are met:
(a) a *franking debit equal to the surplus arises in the franking donor company's franking account immediately after that time; and
(b) a *franking credit equal to the surplus arises in the NZ recipient company's franking account immediately after that time.

*Franking donor company's franking deficit when conditions met*

(4) If the franking donor company's *franking account is in *deficit at the first time all the conditions in subsection (1) are met, subsection 205-45(3) applies in relation to the franking donor company as if:
(a) it ceased to be a *franking entity at that time; and
(b) its franking account had been in deficit to the same extent immediately before that cessation.

Note: Subsection 205-45(3) makes an entity liable to pay franking deficit tax if the entity ceases to be a franking entity and had a franking deficit immediately before ceasing to be a franking entity.

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



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*NZ recipient company's franking account after conditions are met*

(5) If, apart from paragraph (a), a *franking credit or *franking debit would arise in the franking donor company's *franking account at a time (the ***accounting time***) that is a time when all the conditions in subsection (1) are met but after the first time at which all those conditions are met in relation to the franking donor company:

(a) the credit or debit does not arise in the franking donor company's franking account; and

(b) a credit or debit of the same amount arises at the accounting time in the NZ recipient company's franking account instead.

(6) However, subsection (5) does not apply in relation to:

(a) a *franking debit arising in the franking donor company's *franking account under subsection (3); or

(b) a *franking credit arising in that account because of item 5 of the table in section 205-15 in conjunction with subsection (4) of this section; or

(c) a franking debit arising in that account under paragraph 220-605(3)(a).

Note 1: Item 5 of the table in section 205-15 gives rise to a franking credit immediately after a liability to franking deficit tax arises. Subsection (4) of this section causes such a liability to arise under section 205-45.

Note 2: Paragraph 220-605(3)(a) gives rise to a franking debit if the NZ franking choice of a company that is a former exempting entity is revoked or cancelled and the company's exempting account is in deficit immediately before the revocation or cancellation.

*Franking donor company's benchmark franking percentage*

(7) Subsection (5) does not affect the franking donor company's *benchmark franking percentage.

*Special rules if franking donor company is former exempting entity*

(8) If the franking donor company becomes a *former exempting entity at the first time all the conditions in subsection (1) are met:

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



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(a) subsections (3) and (4) do not apply; and
(b) subsection (5) does not apply in relation to:
(i) a *franking credit arising in the franking donor company's *franking account under item 1 of the table in section 208-130 immediately after that time; or
(ii) a *franking debit arising in the franking donor company's franking account under item 1 of the table in section 208-145 immediately after that time.

Note: Subsection (8) ensures that the franking donor company's franking account has a nil balance immediately after the company becomes a former exempting entity and that there is an appropriate balance in the company's exempting account that is not made available for use by the NZ recipient company in franking distributions.

## Effect of NZ franking company making distribution that is non-assessable and non-exempt

### 220-350 Providing for a franking credit to arise

(1) This section has effect if:
(a) an *NZ franking company makes a *franked distribution to a company (the ***receiving company***); and
(b) the distribution does not *flow indirectly through the receiving company to another entity; and
(c) because of section 768-5, or section 23AI or 23AK of the *Income Tax Assessment Act 1936*:
(i) all of the distribution is *exempt income, or is *non-assessable non-exempt income, in the hands of the receiving company; or
(ii) part of the distribution is exempt income, or is non-assessable non-exempt income, in the hands of the receiving company.

(2) A *franking credit arises in the receiving company's *franking account on the day on which the distribution is made.

Note: If only part of the distribution is exempt income or non-assessable non-exempt income:

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



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(a) a franking credit in relation to the distribution will arise under this section in relation to the part of the distribution that is exempt income, or that is non-assessable non-exempt income; and

(b) another franking credit in relation to the distribution will arise under item 3 of the table in subsection 205-15(1) in relation to the part of the distribution that is not exempt income, or that is not non-assessable non-exempt income (see also subsection 207-90(2)).

(3) The amount of the *franking credit that so arises is:

(a) if subparagraph (1)(c)(i) applies—the amount of the franking credit on the distribution made by the *NZ franking company; or

(b) if subparagraph (1)(c)(ii) applies—so much of the franking credit on the distribution made by the NZ franking company as is attributable to the part of the distribution referred to in that subparagraph.

(4) The table in subsection 205-15(1) has effect subject to this section.

## Effects of supplementary dividend from NZ franking company

### 220-400 Gross-up and tax offset for distribution from NZ franking company reduced by supplementary dividend

(1) This section has effect if:

(a) an *NZ franking company:

(i) makes a *franked distribution to an entity (the ***recipient***) in an income year; and

(ii) pays a supplementary dividend (as defined in section OB1 of the Income Tax Act 1994 of New Zealand) to the recipient in connection with the franked distribution; and

(b) an amount is included in the recipient's assessable income for the income year under section 207-20, and the recipient is entitled to a *tax offset for the income year under that section or section 207-110; and

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



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(c) the recipient is entitled to a tax offset under Division 770 because of the inclusion of the *distribution in the recipient's assessable income for the income year.

*Reduced gross-up*

(2) The amount included in the recipient's assessable income under section 207-20 is reduced by the amount of the supplementary dividend (but not below zero).

*Reduced tax offset*

(3) The amount of the *tax offset under section 207-20 is reduced by the amount of the supplementary dividend (but not below zero).

*What happens if certain provisions apply*

(4) Subsections (2) and (3) do not apply to the recipient in relation to the *franked distribution if one or more of the following provisions also apply to the recipient in relation to the distribution:

(a) subsection 207-90(1);
(b) subsection 207-90(2);
(c) subsection 207-145(1);
(d) subsection 207-145(2).

(5) If subsection 207-90(2) or 207-145(2) would also apply to the recipient in relation to the *franked distribution, apply that subsection on the basis that:

(a) the amount of the *franking credit on the distribution;

had been reduced by:

(b) so much of the supplementary dividend as does not exceed that amount of the franking credit.

*Relationship with sections 207-20, 207-90 and 207-145*

(6) Sections 207-20, 207-90 and 207-145 have effect subject to this section.

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



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## 220-405 Franked distribution and supplementary dividend flowing indirectly

(1) This section has effect if:

(a) an *NZ franking company:

(i) makes a *franked distribution; and

(ii) pays a supplementary dividend (as defined in section OB1 of the Income Tax Act 1994 of New Zealand) in connection with the franked distribution; and

(b) the franked distribution and the supplementary dividend *flow indirectly to an entity (the ***recipient***) in an income year because the recipient is a partner in a partnership or a beneficiary or trustee of a trust; and

(c) the recipient is entitled under section 207-45 to a *tax offset in connection with the *distribution; and

(d) the recipient is entitled to a tax offset under Division 770 for the income year because of the distribution.

*Recipient that is a partner or beneficiary*

(2) If the *franked distribution *flows indirectly to the recipient under subsection 207-50(2) or (3), then:

(a) the recipient can deduct an amount for the income year that is equal to so much of its share of the supplementary dividend as does not exceed:

(i) if the distribution flows indirectly to the recipient under subsection 207-50(2)—the recipient's individual interest in relation to the distribution that is mentioned in that subsection; or

(ii) if the distribution flows indirectly to the recipient under subsection 207-50(3)—the recipient's share amount in relation to the distribution that is mentioned in that subsection; and

(b) the recipient's *tax offset under section 207-45 is reduced by so much of the deduction under paragraph (a) as does not exceed its *share of the *franking credit on the distribution.

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



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*Recipient that is a trustee*

(3) If the *franked distribution *flows indirectly to the recipient under subsection 207-50(4), then:

(a) the share amount mentioned in that subsection in relation to the distribution is reduced by so much of the recipient's share of the supplementary dividend as does not exceed that share amount; and

(b) the recipient's *tax offset under section 207-45 is reduced by so much of the reduction under paragraph (a) as does not exceed its *share of the *franking credit on the distribution.

*What happens if certain provisions apply*

(4) Subsection (2) or (3) (as appropriate) does not apply to the recipient in relation to the *franked distribution if one or more of the following provisions also apply to the recipient in relation to the distribution:

(a) subsection 207-95(1);

(b) subsection 207-95(5);

(c) subsection 207-150(1);

(d) subsection 207-150(5).

(5) If subsection 207-90(5) or 207-150(5) would also apply to the recipient in relation to the *franked distribution, apply that subsection on the basis that:

(a) the amount of the recipient's *share of the *franking credit on the distribution;

had been reduced by:

(b) so much of the recipient's share of the supplementary dividend as does not exceed the amount of that share of the franking credit.

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



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*When does a supplementary dividend flow to an entity?*

(6) A supplementary dividend ***flows indirectly*** to an entity if it would have *flowed indirectly to the entity under subsection 207-50(2), (3) or (4), if:

(a) the dividend had been a *franked distribution; and

(b) a reference in that subsection to the entity's *share of the franked distribution had been a reference to the entity's share of the supplementary dividend.

*Share of supplementary dividend*

(7) The entity's ***share of the supplementary dividend*** is worked out as follows:

$$\text{Amount of the supplementary dividend} \times \frac{\text{Entity's *share of the *franked distribution}}{\text{Amount of the *franked distribution}}$$

(8) Nothing in this section has the effect of including in the entity's assessable income its share of the supplementary dividend.

*Relationship with Subdivisions 207-B, 207-D, 207-E and 207-F*

(9) Subdivisions 207-B, 207-D, 207-E and 207-F have effect subject to this section.

## 220-410 Franking credit reduced if tax offset reduced

(1) If, under section 220-400 or 220-405, a *corporate tax entity's *tax offset (the ***reduced tax offset***) for the *franked distribution described in that section is less than it would be apart from that section, the *franking credit arising in that entity's *franking account because of the *distribution is equal to the reduced tax offset.

(2) The following provisions have effect subject to this section:

(a) items 3 and 4 of the table in section 205-15;

(b) items 5 and 6 of the table in section 219-15.

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



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Note: Each of those items gives rise to a franking credit for a franked distribution if the recipient is entitled under Division 207 to a tax offset for the distribution. Those items provide that the amount of the credit equals the amount of that offset.

## Rules about exempting entities

### 220-500 Publicly listed post-choice NZ franking company and its 100% subsidiaries are not exempting entities

(1) A company is not an *exempting entity at a particular time if:
  (a) it is a *post-choice NZ franking company at the time; and
  (b) the company is a *listed public company at the time.

(2) A company (the ***non-exempting company***) is not an *exempting entity at a particular time if at the time:
  (a) the non-exempting company is a *100% subsidiary of a company (the ***listed company***) that is not an exempting entity because of subsection (1); and
  (b) the non-exempting company is an Australian resident or a *post-choice NZ franking company; and
  (c) if:
    (i) there are one or more companies interposed between the non-exempting company and the listed company; and
    (ii) one or more of the interposed companies are *NZ residents;

  all of the interposed companies that are NZ residents are post-choice NZ franking companies.

(3) This section has effect despite section 208-20 (about an entity being an *exempting entity).

### 220-505 Post-choice NZ franking company is not automatically prescribed person

(1) A *post-choice NZ franking company is not a prescribed person under section 208-40 for the purposes of working out whether another *corporate tax entity is an *exempting entity at a particular

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



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time because it is effectively owned by prescribed persons within the meaning of section 208-25.

(2) However, this section does not prevent the company from being taken under section 208-45 to be a prescribed person for those purposes.

## 220-510 Parent company's status as prescribed person sets status of all other members of same wholly-owned group

(1) This section has effect for the purposes of working out whether a company is an *exempting entity at a particular time because it is effectively owned by prescribed persons within the meaning of section 208-25, if:

(a) at the time the company is a *100% subsidiary of another company (the ***parent company***) that is not a 100% subsidiary of another member of the same *wholly-owned group; and

(b) at the time the parent company is a *post-choice NZ franking company; and

(c) there is at least one company (the ***non-Tasman company***) that meets all these conditions:

(i) the non-Tasman company is neither an Australian resident nor an *NZ resident at the time;

(ii) the non-Tasman company is a member of the same wholly-owned group at the time;

(iii) the non-Tasman company is interposed between the parent company and a company that, at the time, is an Australian resident or a post-choice NZ franking company.

(2) At the time, each company that is a *100% subsidiary of the parent company is a prescribed person if the parent company is a prescribed person at the time for those purposes because of section 208-40 or 208-45 (taking account of section 220-505, if relevant).

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



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(3) At the time, each company that is a *100% subsidiary of the parent company is *not* a prescribed person if the parent company is *not* a prescribed person for those purposes because of section 208-40 or 208-45 (taking account of section 220-505, if relevant).

(4) This section has effect despite sections 208-40, 208-45 and 220-505 so far as those sections apply in relation to a *100% subsidiary of the parent company.

## NZ franking companies' exempting accounts

### 220-605 Effect on exempting account if NZ franking choice ceases to be in force

(1) This section has effect if:
  (a) a company has made an *NZ franking choice; and
  (b) the choice is revoked or cancelled at a time (the ***end time***); and
  (c) immediately before the end time:
    (i) the company is a foreign resident; and
    (ii) the company is a *former exempting entity.

*Exempting debit if exempting surplus just before end time*

(2) An *exempting debit arises in the company's *exempting account at the end time if the account was in *surplus immediately before that time. The amount of the debit equals the *exempting surplus.

*If exempting deficit just before end time*

(3) If the company's *exempting account was in *deficit immediately before the end time:
  (a) a *franking debit equal to that deficit arises in the company's *franking account immediately before the end time; and
  (b) an *exempting credit equal to that deficit arises in the company's exempting account at the end time.

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



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## Tax effect of distribution franked by NZ franking company with an exempting credit

### 220-700 Tax effect of distribution franked by NZ franking company with an exempting credit

(1) This section has effect if an *NZ franking company *franks with an exempting credit a *distribution the company makes when it is a *former exempting entity.

(2) If, under Subdivision 208-H, Division 207 applies in relation to the *distribution, it applies subject to the provisions of this Division that modify the effect of that Division.

Note 1: Subdivision 208-H provides in some cases for the tax effect of a distribution franked with an exempting credit by applying Division 207 as if the distribution were a franked distribution.

Note 2: Sections 220-400 and 220-405 modify the effect of Division 207 so far as it relates to the tax effect of distributions by NZ franking companies that pay supplementary dividends in connection with the distributions.

(3) Subdivision 208-H has effect subject to this section.

## Joint and several liability for NZ resident company's unmet franking liabilities

### 220-800 Joint and several liability for NZ resident company's franking tax etc.

(1) This section has effect if:

(a) a company (the ***defaulter***) became liable under another section to pay an amount described in subsection (2) because the company was an *NZ franking company; and

(b) the amount was unpaid by the time (the ***defaulter's due time***) it was due and payable by the defaulter; and

(c) at any time during the period for the amount (see subsection (2)), the defaulter was a member of the same

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*wholly-owned group as one or more other companies (each of which is a ***contributor***).

(2) For the purposes of subsection (1), the amount and period are shown in the table:

**Amount and period**

| Item | For an amount of this kind: | The period is: |
|---|---|---|
| 1 | *Franking deficit tax | Whichever of these periods is relevant:<br>(a) if the defaulter was liable to pay the tax because its franking account was in deficit at the end of an income year—that income year;<br>(b) if the defaulter was liable to pay the tax because of another event—the period starting at the start of the income year in which the event occurred and ending when the event occurred |
| 2 | *Over-franking tax | The income year in which the defaulter made the *frankable distribution that made the defaulter liable to pay the tax |
| 3 | *General interest charge on *franking deficit tax or *over-franking tax | The period identified under item 1 or 2 for the tax |
| 4 | Administrative penalty that:<br>(a) is mentioned in section 284-75, 284-145, 286-75 or 288-25 in Schedule 1 to the *Taxation Administration Act 1953*; and<br>(b) relates entirely to *franking deficit tax or *over-franking tax | The period identified under item 1 or 2 for the tax |

(3) Just after the defaulter's due time, these companies become jointly and severally liable to pay the unpaid amount:

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(a) the defaulter;

(b) each contributor, other than one that, at that time:

(i) is neither an Australian resident nor an *NZ resident; or

(ii) is prohibited by an *Australian law or a law of New Zealand from entering into an *arrangement that would make the contributor jointly or severally liable for the unpaid amount.

(4) The joint and several liability of a particular contributor becomes due and payable by the contributor 14 days after the Commissioner gives it written notice of the liability.

Note 1: Two or more contributors will have different due and payable dates for the same liability if the Commissioner gives them notice of their liability on different days.

Note 2: This section does not affect the time at which the liability for the unpaid amount arose for, or became due and payable by, the defaulter.

(5) If:

(a) the unpaid amount (the ***first interest amount***) is *general interest charge for a day in relation to another unpaid amount (the ***primary liability***) that consists of *franking deficit tax or *over-franking tax; and

(b) on a day the Commissioner gives a particular contributor written notice under subsection (4) of the contributor's liability for the first interest amount; and

(c) general interest charge arises:

(i) for a day (the ***later day***) after the days mentioned in paragraphs (a) and (b); and

(ii) in relation to the primary liability; and

(d) the general interest charge for the later day has not been paid or otherwise discharged in full by the time it became due and payable;

the Commissioner is taken to have given the contributor written notice under subsection (4) of the general interest charge for the later day on that later day.

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(6) Section 254 of the *Income Tax Assessment Act 1936* applies in relation to the contributors' liability as if it were a liability for tax.

Note: Section 254 of the *Income Tax Assessment Act 1936* deals with the payment of tax by agents and trustees.

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



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# Part 3-10—Financial transactions

## Division 230—Taxation of financial arrangements

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## Guide to Division 230

### 230-1 What this Division is about

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

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

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



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

## 230-5 Scope of this Division

(1) You have a financial arrangement if you have one or more cash settlable legal or equitable rights and/or obligations to receive or provide a financial benefit.

(2) This Division does not apply to all financial arrangements. The main exceptions are if:

(a) you are:

(i) an individual; or

(ii) a superannuation entity or fund, managed investment scheme or an entity substantially similar to a managed investment scheme under foreign law with assets of less than $100 million; or

(iii) an ADI, securitisation vehicle or other financial sector entity with an aggregated turnover of less than $20 million; or

(iv) another entity with an aggregated turnover of less than $100 million, financial assets of less than $100 million and assets of less than $300 million;

and either:

(iva) the arrangement is to end not more than 12 months after you start to have it; or

(v) the arrangement is not a qualifying security; or

(b) the arrangement is a financial arrangement under section 230-50 (equity interests etc.) and neither a fair value election, a hedging financial arrangement election nor an

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



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election to rely on financial reports applies to the arrangement.

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

## Subdivision 230-A—Core rules

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



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## Objects

### 230-10 Objects of this Division

The objects of this Division are:

(a) to minimise the extent to which the tax treatment of gains and losses from your *financial arrangements distorts, by providing inappropriate impediments and stimulation, your trading, financing and investment decisions and your risk taking and risk management; and

(b) to do so by aligning more closely the tax and commercial recognition of gains and losses from your financial arrangements in the following ways:

(i) by allocating the gains and losses to income years throughout the life of your financial arrangements on a reasonable basis;

(ii) by generally recognising gains and losses on revenue rather than capital account; and

(c) to appropriately take account of, and minimise, your compliance costs.

## Tax treatment of gains and losses from financial arrangements

### 230-15 Gains are assessable and losses deductible

*Gains*

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

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

*Losses*

(2) You can deduct a loss you make from a *financial arrangement, but only to the extent that:

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



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(a) you make it in gaining or producing your assessable income; or

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

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

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

(a) you are an *Australian entity; and

(b) you make the loss in deriving income from a foreign source; and

(c) the income is *non-assessable non-exempt income under section 768-5, or section 23AI or 23AK of the *Income Tax Assessment Act 1936*; and

(d) the loss is, in whole or in part, a cost in relation to a *debt interest you issue that is covered by paragraph 820-40(1)(a).

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

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

(4) If the *financial arrangement is a *debt interest, the loss is not prevented from being deductible for an income year under subsection (2) merely because of either or both of the following:

(a) one or more of the *financial benefits that are taken into account in working out the amount of the loss are *contingent on aspects of the economic performance (whether past, current or future) of:

(i) you or a part of your activities; or

(ii) a *connected entity of yours or a part of the activities of a connected entity of yours;

(b) one or more of the financial benefits that are taken into account in working out the amount of the loss secure a

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permanent or enduring benefit for you or a connected entity of yours.

(4A) A *dividend on a *debt interest is a loss you can deduct to the extent to which it would have been a deductible loss under subsection (2) if:

(a) the payment of the amount of the dividend were the incurring of a liability to pay the same amount as interest; and

(b) that interest were incurred in respect of the finance raised by you and in respect of which the dividend was paid or provided; and

(c) the debt interest retained its character as a debt interest for the purposes of subsection (4).

(5) Subject to subsection (6), subsection (4) does not apply to the loss to the extent to which the annually compounded internal rate of return on the *debt interest exceeds the *benchmark rate of return for the debt interest increased by 150 basis points.

(6) If:

(a) regulations made for the purposes of subsection 25-85(6) provide that a specified number of basis points is to apply for the purposes of applying subsection 25-85(5) in particular circumstances; and

(b) those circumstances exist in relation to the *debt interest;

subsection (5) applies as if the reference in that subsection to 150 basis points were a reference to the number of basis points specified in the regulations.

*Division does not affect foreign residence rules*

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

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

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

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



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

*Application of section*

(1) This section applies to the following:

(a) a gain that is included in your assessable income for an income year under this Division;

(b) a loss that is allowable as a deduction to you for an income year under this Division;

(c) a gain or a loss that is dealt with in accordance with subsection 230-310(4) in relation to an income year.

*Purpose of this section*

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

*Gain or loss to be taken into account only once*

(3) A gain or loss to which this section applies is not to be (to any extent):

(a) included in your assessable income; or

(b) allowable as a deduction to you; or

(c) dealt with in accordance with subsection 230-310(4);

again under this Division for the same or any other income year.

(4) A gain or loss to which this section applies is not to be (to any extent):

(a) included in your assessable income; or

(b) allowable as a deduction to you;

under any provisions of this Act outside this Division for the same or any other income year.

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



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*Section does not give rise to exempt income*

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

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

*Application of section*

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

*Associated financial benefit to be taken into account only once*

(2) A *financial benefit to which this section applies is not to be (to any extent):

(a) included in your assessable income; or

(b) allowable as a deduction to you;

under any provision of this Act outside this Division for the same or any other income year.

*Exception for certain bad debts*

(3) If:

(a) a *financial benefit has been included in your assessable income under a provision of this Act outside this Division; and

(b) a bad debt deduction would have been allowed under section 25-35 in relation to the financial benefit;

subsection (2) does not prevent that bad debt deduction from being allowed under section 25-35 in relation to the financial benefit as if the debt were still outstanding.

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



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*Section does not give rise to exempt income*

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

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

(1) Despite section 230-15, a gain that you make from a *financial arrangement:

(a) to the extent that it reflects an amount that would be treated, or would reasonably expected to be treated, as *exempt income under a provision of this Act if this Division were disregarded—is exempt income; and

(b) to the extent that it reflects an amount that would be treated or would reasonably expected to be treated, as *non-assessable non-exempt income under a provision of this Act if this Division were disregarded—is not assessable income and is not exempt income.

(2) Despite section 230-15, a gain that you make from a *financial arrangement:

(a) to the extent that, if it had been a loss, you would have made it in gaining or producing *exempt income—is exempt income; and

(b) to the extent to which, if it had been a loss, you would have made it in gaining or producing *non-assessable non-exempt income—is not assessable income and is not exempt income.

(3) A loss you make from a *financial arrangement is *not* allowable as a deduction to you under any provision of this Act (other than subsection 230-15(3)) to the extent that you make it in gaining or producing your:

(a) *exempt income; or

(b) *non-assessable non-exempt income.

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



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

*Borrowings etc. used for private or domestic purpose*

(1) Subsections (2) and (3) apply if:
   (a) a *borrowing is made by you, or credit is provided to you, under a *financial arrangement; and
   (b) you use some or all of the funds borrowed or the credit provided for a private or domestic purpose.

(2) This Division does not apply to a gain you make from the arrangement to the extent that you use the funds raised or the credit provided for a private or domestic purpose.

(3) A loss you make from the arrangement is *not* allowable as a deduction to you under any provision of this Act to the extent that you use the funds raised or the credit provided for a private or domestic purpose.

*Derivative financial arrangement held for private or domestic purpose*

(4) Subsections (5) and (6) apply if:
   (a) you are an individual; and
   (b) you make a gain or loss from a *derivative financial arrangement; and
   (c) the arrangement is held, wholly or in part, for a private or domestic purpose.

(5) This Division does not apply to a gain you make from the arrangement to the extent that the arrangement is held or used for a private or domestic purpose.

(6) A loss you make from the arrangement is *not* allowable as a deduction to you under any provision of this Act to the extent that the arrangement is held or used for a private or domestic purpose.

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



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## Method to be applied to take account of gain or loss

### 230-40 Methods for taking gain or loss into account

*Methods available*

(1) The methods that can be applied to take account of a gain or loss you make from a *financial arrangement are:

(a) the accruals and realisation methods provided for in Subdivision 230-B; or

(b) the fair value method provided for in Subdivision 230-C; or

(c) the foreign exchange retranslation method provided for in Subdivision 230-D; or

(d) the hedging financial arrangement method provided for in Subdivision 230-E; or

(e) the method of relying on your financial reports provided for in Subdivision 230-F; or

(f) a balancing adjustment provided for in Subdivision 230-G.

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

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

(3) A gain or loss is not taken into account under the method referred to in paragraph (1)(f) (balancing adjustment) to the extent to which it is taken into account under the method referred to in paragraph (1)(d) (hedging financial arrangement method).

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

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*Elections override accruals and realisation methods*

(4) Subdivision 230-B (accruals and realisation method) does not apply to a gain or loss you make from a *financial arrangement:

(a) to the extent that Subdivision 230-C (fair value method) applies to the gain or loss; or

Note: See subsection (5) of this section and subsection 230-230(4).

(b) to the extent that Subdivision 230-D (foreign exchange retranslation method) applies to the gain or loss; or

(c) to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement; or

(d) if Subdivision 230-F (method of relying on financial reports) applies to the arrangement; or

(e) if the arrangement is a financial arrangement under section 230-50 (equity interests etc.).

*Priorities among election methods*

(5) Subdivision 230-C (fair value method) does not apply to a gain or loss you make from a *financial arrangement:

(a) to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement; or

(b) if Subdivision 230-F (method of relying on financial reports) applies to the arrangement.

(6) Subdivision 230-D (foreign exchange retranslation method) does not apply to a gain or loss you make from a *financial arrangement:

(a) if Subdivision 230-C (fair value method) applies to the arrangement; or

(b) to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement; or

(c) if Subdivision 230-F (method of relying on financial reports) applies to the arrangement.

(7) Subdivision 230-F (method of relying on financial reports) does not apply to a gain or loss you make from a *financial arrangement

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to the extent that Subdivision 230-E (hedging financial arrangements method) applies to the arrangement.

## Financial arrangement concept

### 230-45 Financial arrangement

(1) You have a ***financial arrangement*** if you have, under an *arrangement:

(a) a *cash settlable legal or equitable right to receive a *financial benefit; or

(b) a cash settlable legal or equitable obligation to provide a financial benefit; or

(c) a combination of one or more such rights and/or one or more such obligations;

unless:

(d) you also have under the arrangement one or more legal or equitable rights to receive something and/or one or more legal or equitable obligations to provide something; and

(e) for one or more of the rights and/or obligations covered by paragraph (d):

(i) the thing that you have the right to receive, or the obligation to provide, is not a financial benefit; or

(ii) the right or obligation is not cash settlable; and

(f) the one or more rights and/or obligations covered by paragraph (e) are not insignificant in comparison with the right, obligation or combination covered by paragraph (a), (b) or (c).

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

Note 1: Whether your rights and/or obligations under an arrangement constitute a financial arrangement can change over time depending on changes either to the terms of the arrangement or external circumstances (such as particular rights or obligations under the arrangement being satisfied by the parties). For example, a contract may provide for the transfer of a boat in 6 months time and payment of the contract price at the end of 2 years. Until the boat is delivered,

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there is no financial arrangement because of the operation of paragraphs (d), (e) and (f) above. Once the boat is delivered, there is a financial arrangement because those paragraphs are no longer applicable.

Note 2: The operative provisions of this Division do not apply to all financial arrangements, and only apply partially to some: see the exceptions in Subdivision 230-H.

Note 3: There are some rules in this Division that tell you what happens if an arrangement ceases to be a financial arrangement (see Subdivision 230-G and section 230-505).

(2) A right you have to receive, or an obligation you have to provide, a *financial benefit is ***cash settlable*** if, and only if:

(a) the benefit is money or a *money equivalent; or

(b) in the case of a right—you intend to satisfy or settle it by receiving money or a money equivalent or by starting to have, or ceasing to have, another *financial arrangement; or

(c) in the case of an obligation—you intend to satisfy or settle it by providing money or a money equivalent or by starting to have, or ceasing to have, another financial arrangement; or

(d) you have a practice of satisfying or settling similar rights or obligations as mentioned in paragraph (b) or (c) (whether or not you intend to satisfy or settle the right or obligation in that way); or

(e) you deal with the right or obligation, or with similar rights or obligations, in order to generate a profit from short-term fluctuations in price, from a dealer's margin, or from both; or

(f) none of paragraphs (a) to (e) applies but you satisfy subsection (3); or

(g) you are able to settle the right or obligation as mentioned in paragraph (b) or (c) (whether or not you intend to satisfy or settle the right or obligation in that way) and you do not have, as your sole or dominant purpose for entering into the arrangement under which you are to receive or provide the financial benefit, the purpose of receiving or delivering the financial benefit as part of your expected purchase, sale or usage requirements.

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

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

(a) dealing with the right or obligation, or similar rights or obligations, on a frequent basis, a short-term basis or on a frequent and short-term basis; and

(b) acquiring the right or obligation, or similar rights or obligations, and managing the resulting risk by entering into offsetting arrangements that provide a profit margin.

(3) You satisfy this subsection if:

(a) the *financial benefit is readily convertible into money or a *money equivalent; and

(b) there is a market for the financial benefit that has a high degree of liquidity; and

(c) subsection (4) or (5) is satisfied.

(4) This subsection is satisfied if, for the recipient of the *financial benefit, the amount of the money or *money equivalent referred to in paragraph (3)(a) is not subject to a substantial risk of substantial decrease in value.

(5) This subsection is satisfied if your purpose, or one of your purposes, for entering into the arrangement under which you are to receive or provide the *financial benefit, is to receive or deliver the financial benefit:

(a) to raise or provide finance; or

(b) if paragraph (a) does not apply—so that it may be converted or liquidated into money or a money equivalent (other than as part of your expected purchase, sale or usage requirements).

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

(1) You also have a ***financial arrangement*** if you have an *equity interest. The equity interest constitutes the financial arrangement.

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



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(2) You also have a ***financial arrangement*** if:

(a) you have, under an *arrangement:

(i) a legal or equitable right to receive something that is a financial arrangement under this section; or

(ii) a legal or equitable obligation to provide something that is a financial arrangement under this section; or

(iii) a combination of one or more such rights and/or obligations; and

(b) the right, obligation or combination does not constitute, or form part of, a financial arrangement under subsection 230-45(1).

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

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

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

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

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

*Single right or obligation or multiple rights or obligations?*

(1) If you have a right to receive 2 or more *financial benefits, you are taken, for the purposes of this Division, to have a separate right to receive each of those financial benefits.

(2) If you have an obligation to provide 2 or more *financial benefits, you are taken, for the purposes of this Division, to have a separate obligation to provide each of those financial benefits.

(3) Subsections (1) and (2) apply for the avoidance of doubt.

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



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

(4) For the purposes of this Division, whether a number of rights and/or obligations are themselves an *arrangement or are 2 or more separate arrangements is a question of fact and degree that you determine having regard to the following:

(a) the nature of the rights and/or obligations;

(b) their terms and conditions (including those relating to any payment or other consideration for them);

(c) the circumstances surrounding their creation and their proposed exercise or performance (including what can reasonably be seen as the purposes of one or more of the entities involved);

(d) whether they can be dealt with separately or must be dealt with together;

(e) normal commercial understandings and practices in relation to them (including whether they are regarded commercially as separate things or as a group or series that forms a whole);

(f) the objects of this Division.

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

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

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

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

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

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and/or obligations in the group or series together constitute one arrangement.

## General rules

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

*Financial benefit provided under financial arrangement*

(1) You are taken, for the purposes of this Division, to have (or to have had) an obligation to provide a *financial benefit under a *financial arrangement if:

(a) you have (or had) an obligation to provide the financial benefit in relation to the arrangement; and

(b) the financial benefit would not otherwise be treated as one that you have (or had) an obligation to provide under the arrangement; and

(c) the financial benefit plays an integral role in determining:

(i) whether you make a gain or loss from the arrangement; or

(ii) the amount of such a gain or loss.

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

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

*Financial benefit received under financial arrangement*

(2) You are taken, for the purposes of this Division, to have (or to have had) a right to receive a *financial benefit under a *financial arrangement if:

(a) you have (or had) a right to receive the financial benefit in relation to the arrangement; and

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(b) the financial benefit would not otherwise be treated as one that you have (or had) a right to receive under the arrangement; and

(c) the financial benefit plays an integral role in determining:

(i) whether you make a gain or loss from the arrangement; or

(ii) the amount of such a gain or loss.

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

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

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

(1) This section applies if:

(a) a *financial benefit plays the integral role mentioned in paragraph 230-60(1)(c) or (2)(c) in relation to a *financial arrangement; and

(b) either or both of the following apply:

(i) the financial benefit plays that role in relation to one or more other financial arrangements;

(ii) the financial benefit is provided or received for one or more other things that are not financial arrangements.

(2) For the purposes of this Division, determine the amount of the *financial benefit that plays that role in relation to a particular *financial arrangement by apportioning the actual amount of the financial benefit, on a reasonable basis, between:

(a) that financial arrangement; and

(b) each other financial arrangement (if any) in relation to which the benefit plays that role; and

(c) each other thing (if any) mentioned in subparagraph (1)(b)(ii).

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## 230-70 Apportionment when financial benefit received or right ceases

(1) Apply subsection (2) in working out whether you make, or will make, a gain or loss (and the amount of the gain or loss) at a time when:

(a) you receive a particular *financial benefit under a *financial arrangement; or

(b) one of your rights under a financial arrangement ceases.

The gain or loss is to be calculated in nominal (and not *present value) terms.

(2) You must have regard to the extent to which the *financial benefits that you have provided, or are to provide or might provide, under the *financial arrangement are reasonably attributable, at the time mentioned in subsection (1), to the benefit or right referred to in paragraph (1)(a) or (b).

(3) Any attribution made under subsection (2) must reflect appropriate and commercially accepted valuation principles that properly take into account:

(a) the nature of the rights and obligations under the *financial arrangement; and

(b) the risks associated with each *financial benefit, right and obligation under the arrangement; and

(c) the time value of money.

Note: Generally, no financial benefit you have provided, or are to provide or might provide, under a financial arrangement is reasonably attributable to an amount you receive that is in the nature of interest.

## 230-75 Apportionment when financial benefit provided or obligation ceases

(1) Apply subsection (2) in working out whether you make, or will make, a gain or loss (and the amount of the gain or loss) at a time when:

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(a) you provide a particular *financial benefit under the *financial arrangement; or

(b) one of your obligations under a financial arrangement ceases.

The gain or loss is to be calculated in nominal (and not *present value) terms.

(2) You must have regard to the extent to which the *financial benefits that you have received, or are to receive or might receive, under the *financial arrangement are reasonably attributable, at the time mentioned in subsection (1), to the benefit or obligation referred to in paragraph (1)(a) or (b).

(3) Any attribution made under subsection (2) must reflect appropriate and commercially accepted valuation principles that properly take into account:

(a) the nature of the rights and obligations under the *financial arrangement; and

(b) the risks associated with each *financial benefit, right and obligation under the arrangement; and

(c) the time value of money.

Note: Generally, no financial benefit you have received, or are to receive or might receive, under a financial arrangement is reasonably attributable to an amount you provide that is in the nature of interest.

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

*Object of section*

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

*Consistent treatment for particular financial arrangement*

(2) If:

(a) this Division provides that a particular method applies to gains or losses you have from a *financial arrangement; and

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



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(b) that method allows you to choose the particular manner in which you apply that method;

you must use that manner consistently for the arrangement for all income years.

*Consistent treatment for financial arrangements of essentially the same nature*

(3) If:

(a) this Division provides that a particular method applies to gains or losses you have from 2 or more *financial arrangements; and

(b) that method allows you to choose the particular manner in which you apply that method;

you must use that same manner consistently for all of those financial arrangements that are essentially of the same nature.

(4) Subsection (3) does not require you to use that same manner consistently for:

(a) a *financial arrangement that you start to have on or after the time a *Commonwealth law that amends the method is made; and

(b) a financial arrangement that you start to have before that time;

if:

(c) the Commonwealth law allows you to choose to apply the method in a particular manner (being a manner in which you are not, apart from the Commonwealth law, allowed to apply the method); and

(d) the inconsistency is entirely due to you choosing to apply the method in that manner to the financial arrangement mentioned in paragraph (a).

## 230-85 Rights and obligations include contingent rights and obligations

To avoid doubt:

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

## Subdivision 230-B—The accruals/realisation methods

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230-172 Applying accruals method to loss resulting from impairment
230-175 Running balancing adjustments

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



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**Realisation method**

230-180 Realisation method

**Reassessment and re-estimation**

230-185 Reassessment
230-190 Re-estimation
230-192 Re-estimation—impairments and reversals
230-195 Balancing adjustment if rate of return maintained on re-estimation
230-200 Re-estimation if balancing adjustment on partial disposal

## Guide to Subdivision 230-B

### 230-90 What this Subdivision is about

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

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

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

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

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

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



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## Objects of Subdivision

### 230-95 Objects of this Subdivision

The objects of this Subdivision are:

(a) to properly recognise gains and losses from *financial arrangements by allocating them to appropriate periods of time; and

(b) to reduce compliance costs by reflecting commercial accounting concepts where appropriate; and

(c) to minimise tax deferral.

## When accruals method or realisation method applies

### 230-100 When accruals method or realisation method applies

*When accruals method applies and when realisation method applies*

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

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

(2) The accruals method provided for in this Subdivision applies to a gain or loss you have from a *financial arrangement if:

(a) the gain or loss is an overall gain or loss from the arrangement; and

(b) the gain or loss is sufficiently certain at the time when you start to have the arrangement; and

(c) you choose to apply the accruals method to the gain or loss, or subsection (4) applies to the gain or loss.

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

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*Accruals method—sufficiently certain particular gain or loss*

(3) The accruals method provided for in this Subdivision also applies to a gain or loss you have from a *financial arrangement if:

(a) the gain or loss arises from a *financial benefit that you are to receive or are to provide under the arrangement; and

(b) the gain or loss:

(i) is sufficiently certain before or at the time when you start to have the arrangement and before you are to receive or provide the benefit; or

(ii) becomes sufficiently certain after the time when you start to have the arrangement and before you are to receive or provide the benefit; and

(c) the benefit has not already been taken into account in applying:

(i) the accruals method provided for in this Subdivision; or

(ii) the realisation method provided for in this Subdivision;

to another gain or loss from the arrangement.

This subsection has effect subject to subsection (4).

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

*Accruals method—particular gain or loss becomes sufficiently certain*

(3A) The accruals method provided for in this Subdivision also applies to a gain or loss you have from a *financial arrangement if:

(a) the gain or loss arises from a *financial benefit that you are to receive or are to provide under the arrangement; and

(b) the gain or loss becomes sufficiently certain at the time you receive or provide the benefit; and

(c) at least part of the period over which the gain or loss would be spread under that method (assuming that method applied) occurs after the time you receive or provide the benefit.

This subsection has effect subject to subsection (4).

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

Note 2: For the period over which the gain or loss would be spread, see subsections 230-130(3) to (5).

*Accruals method—particular gain or loss from qualifying security*

(4) Subsection (3) or (3A) does not apply to a gain or loss that you have from a *financial arrangement if:

(a) you are:

(i) an individual; or

(ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and

(b) the arrangement is a *qualifying security; and

(c) you have not made an election under subsection 230-455(7).

*Realisation method—gain or loss not sufficiently certain*

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

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

## 230-105 Sufficiently certain overall gain or loss

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

(a) a particular amount; or

(b) at least a particular amount.

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

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

(2) In applying subsection (1), you must:

(a) assume that you will continue to have the *financial arrangement for the rest of its life; and

(b) have regard to the extent of the risk that a *financial benefit that you are not sufficiently certain to provide or receive under the arrangement may reduce the amount of the gain or loss.

## 230-110 Sufficiently certain gain or loss from particular event

(1) You have a sufficiently certain gain or loss from a *financial arrangement at a particular time if it is sufficiently certain at that time that you make, or will make, a gain or loss from the arrangement of:

(a) a particular amount; or

(b) at least a particular amount;

when one of the following occurs:

(c) you receive a particular *financial benefit under the arrangement or one of your rights under the arrangement ceases;

(d) you provide a particular financial benefit under the arrangement or one of your obligations under the arrangement ceases.

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

(2) In applying subsection (1) to work out whether you have a sufficiently certain gain or loss at a particular time:

(a) have regard to the extent of the risk that a *financial benefit that you are not sufficiently certain to provide or receive

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under the arrangement may reduce the amount of the gain or loss, and the extent to which such a financial benefit is, for the purposes of subsection 230-70(2) or 230-75(2), reasonably attributable to the benefit, right or obligation mentioned in paragraph (1)(c) or (d) of this section at the time mentioned in subsection (1); and

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

(c) disregard any financial benefit (or that part of any financial benefit) that has already been taken into account in working out the amount of a sufficiently certain gain or loss from the *financial arrangement under subsection (1).

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

## 230-115 Sufficiently certain financial benefits

(1) In deciding for the purposes of this Subdivision whether it is sufficiently certain at a particular time that you make, or will make, a gain or loss from a *financial arrangement:

(a) have regard only to:

(i) *financial benefits that you are sufficiently certain to receive; and

(ii) financial benefits that you are sufficiently certain to provide; and

(b) have regard to those financial benefits only to the extent that the amount or value of the benefits is, at that time, fixed or determinable with reasonable accuracy.

Note: The particular time may be the time at which you start to have the arrangement.

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(2) A *financial benefit that you are to receive or provide is to be treated as one that you are sufficiently certain to receive or to provide only if:

(a) it is reasonably expected that you will receive or provide the financial benefit (assuming that you will continue to have the *financial arrangement for the rest of its life); and

(b) at least some of the amount or value of the benefit is, at that time, fixed or determinable with reasonable accuracy.

(3) In applying subsection (2) to the *financial benefit:

(a) you must have regard to:

(i) the terms and conditions of the *financial arrangement; and

(ii) accepted pricing and valuation techniques; and

(iii) the economic or commercial substance and effect of the arrangement; and

(iv) the contingencies that attach to the other financial benefits that are to be provided or received under the arrangement; and

(b) you must treat the financial benefit as if it were not contingent if it is appropriate to do so having regard to the contingencies that attach to the other financial benefits that are to be received or provided under the arrangement.

(4) In applying paragraph (2)(b) at a particular time (the ***reference time***) to a *financial benefit that depends on a variable that is based on:

(a) an interest rate; or

(b) a rate that solely or primarily reflects the time value of money; or

(c) a rate that solely or primarily reflects a consumer price index; or

(d) a rate that solely or primarily reflects an index prescribed by the regulations for the purposes of this paragraph;

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

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(5) Despite subsection (4), in applying paragraph (2)(b) at a particular time to a *financial benefit that depends on a rate of change to a variable that is based on:

(a) a rate that solely or primarily reflects a consumer price index; or

(b) a rate that solely or primarily reflects an index prescribed by the regulations for the purposes of this paragraph;

you must assume that the rate of change to that variable will continue to be the rate of change that is current at that time.

(6) If subsection (4) or (5) applies to a gain or loss and you are determining the amount of the gain or loss at a particular time, you must also assume that that variable will continue to have the value that it has at that time.

(7) Subsections (4) and (5) do not limit paragraph (2)(b).

(8) If all of the *financial benefits provided and received under the *financial arrangement are denominated in a particular *foreign currency, those financial benefits are not to be translated into:

(a) your *applicable functional currency; or

(b) if you do not have an applicable functional currency—Australian currency;

for the purposes of applying subsection (2) to the arrangement.

(9) To avoid doubt:

(a) a *financial benefit that you have already provided at a particular time is taken to be one that it is, at that time, a financial benefit that you are sufficiently certain to provide; and

(b) a financial benefit that you have already received at a particular time is taken to be one that it is, at that time, a financial benefit that you are sufficiently certain to receive.

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## 230-120 Financial arrangements with notional principal

(1) This section applies to a *financial arrangement that you have if, in substance or effect, and having regard to the pricing, terms and conditions of the arrangement:

(a) the arrangement consists of these things:

(i) a leg, the *financial benefits to be provided or received in respect of which are calculated by reference to, or are reasonably related to, a notional principal;

(ii) another leg, the financial benefits to be provided or received in respect of which also are calculated by reference to, or are reasonably related to, a notional principal;

(iii) if the arrangement includes one or more other things—those things; and

(b) when you start to have the arrangement, the value of the notional principal in relation to one leg is equal to the value of the notional principal in relation to the other leg; and

(c) all or part of the notional principal in relation to each leg is provided or received at a time, regardless of whether that time is different in relation to each leg.

Example: A swap contract.

(2) To avoid doubt, the *financial benefits mentioned in subparagraphs (1)(a)(i) and (ii), and the notional principal in relation to each leg, need not actually be provided or received.

(3) In applying this Subdivision to the *financial arrangement:

(a) work out the *financial benefits from the arrangement as follows:

(i) work out the financial benefits from each thing of which the arrangement consists separately from the financial benefits from each other thing of which the arrangement consists;

(ii) ensure that results under subparagraph (i) are consistent with the timing and amount of financial benefits to be

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actually provided or received under the arrangement; and

(b) work out your gains and losses from the arrangement as follows:

(i) work out the gains and losses from each thing of which the arrangement consists separately from the gains and losses from each other thing of which the arrangement consists;

(ii) treat the gains and losses mentioned in subparagraph (i) for all of those things as your gains and losses from the arrangement; and

(c) in working out a gain or loss from a thing for the purposes of subparagraph (b)(i), and, if the accruals method applies to the gain or loss, how it is to be spread and allocated:

(i) if the thing is a leg—take into account the amount of the notional principal at a time and in a manner that properly reflects the way in which the financial benefits in respect of that leg are calculated; and

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

## The accruals method

### 230-125 Overview of the accruals method

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

(a) you use section 230-130 to work out the period over which the gain or loss is to be spread; and

(b) you use section 230-135 to work out how to allocate the gain or loss to particular intervals within the period over which the gain or loss is to be spread; and

(c) if an interval to which part of the gain or loss is allocated straddles 2 income years, you use section 230-170 to work

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out how to allocate that part of the gain or loss allocated between those 2 income years.

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

*Period over which overall gain or loss is to be spread*

(1) If you have a sufficiently certain overall gain or loss from a *financial arrangement under subsection 230-105(1), the period over which the gain or loss is to be spread is the period that:

(a) starts when you start to have the arrangement; and

(b) ends when you will cease to have the arrangement.

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

*Period over which particular gain or loss is to be spread*

(3) If you have a sufficiently certain gain or loss from a *financial arrangement under subsection 230-110(1), the period over which the gain or loss is to be spread is the period to which the gain or loss relates. Have regard to the pricing, terms and conditions of the arrangement in working out the period to which the gain or loss relates. This subsection has effect subject to subsections (4) and (5).

(4) The start of the period over which a gain or loss to which subsection (3) applies is to be spread must:

(a) not start earlier than the time when you start to have the *financial arrangement; and

(b) other than in the case of a gain or loss to which subsection 230-100(3A) or subsection (4A) of this section applies—not start earlier than the start of the income year during which it becomes sufficiently certain that you will make the gain or loss.

(4A) This subsection applies to a gain or loss to which subsection (3) applies, if:

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(a) there is an impairment (within the meaning of the *accounting principles) of:
(i) the *financial arrangement; or
(ii) a financial asset or financial liability that forms part of the arrangement; and
(b) because of the impairment, you make a reassessment under section 230-185 in relation to the arrangement; and
(c) you determine on the reassessment that the gain or loss is not sufficiently certain (whether or not the gain or loss was sufficiently certain before the reassessment); and
(d) there is a reversal of the impairment loss (within the meaning of the accounting principles) that resulted from the impairment; and
(e) because of the reversal, you make a reassessment under section 230-185 in relation to the arrangement; and
(f) you determine on the reassessment that the gain or loss has become sufficiently certain.

Note: For the income years to which the gain or loss is allocated, see section 230-170.

(5) The end of the period over which a gain or loss to which subsection (3) applies is to be spread must not end later than the time when you will cease to have the *financial arrangement.

## 230-135 How gain or loss is spread

*How to spread gain or loss*

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

*Compounding accruals or approximation*

(2) The gain or loss is to be spread using:
(a) compounding accruals; or
(b) a method whose results approximate those obtained using the method referred to in paragraph (a) (having regard to the

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length of the period over which the gain or loss is to be spread).

(3) The following subsections of this section clarify the way in which the gain or loss is to be spread in accordance with paragraph (2)(a).

*Intervals to which parts of gain or loss allocated*

(4) The intervals to which parts of the gain or loss are allocated must:
(a) not exceed 12 months; and
(b) all be of the same length.

Paragraph (b) does not apply to the first and last intervals. These may be shorter than the other intervals.

*Fixing of amount and rate for interval*

(5) For each interval:
(a) determine a rate of return; and
(b) determine an amount to which you apply the rate of return.

(6) For the purposes of paragraph (5)(b), in determining the amount to which you apply the rate of return for an interval, have regard to:
(a) the amount or value; and
(b) the timing;

of *financial benefits that are to be taken into account in working out the amount of the gain or loss, and were provided or received by you during the interval.

(6A) However, if there is only one *financial benefit that is to be taken into account in working out the amount of the gain or loss, then, for the purposes of paragraph (5)(b), in determining the amount to which you apply the rate of return, have regard to a notional principal:
(a) by reference to which the financial benefit is calculated; or
(b) which is reasonably related to the financial benefit.

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*Assumption of continuing to hold arrangement for rest of its life*

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

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

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

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

(1) This section clarifies that the method mentioned in subsection (2) of spreading gains and losses is a method covered by paragraph 230-135(2)(b) (methods approximating compounding accruals).

(2) The method is the effective interest method mentioned in *accounting standard AASB 139 (or another accounting standard prescribed by the regulations for the purposes of this subsection).

(3) However, this section applies to a particular *financial arrangement you have only if:

(a) in a case where there is a discount or premium under the arrangement—when you start to have the arrangement, the annually compounded rate of return applicable to the discount or premium does not exceed 1%; and

(b) when you start to have the arrangement, neither the maximum life of the arrangement (as determined under the terms and conditions of the arrangement) nor the expected life of the arrangement exceeds:

(i) unless subparagraph (ii) applies—30 years; or

(ii) if the regulations prescribe a different period for the purposes of this subparagraph—that period; and

(c) each *financial benefit that you have an obligation to provide or a right to receive under the arrangement, and that gives

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rise to a gain or loss from the arrangement (other than a gain or loss that is attributable to any discount or premium):

(i) relates to a period not exceeding 12 months; and

(ii) is to be provided or received in the period to which it relates; and

Note: Different financial benefits may relate to different periods.

(d) you prepare a financial report for the year in which you start to have the arrangement; and

(e) that financial report is:

(i) prepared in accordance with paragraph 230-210(2)(a); and

(ii) audited in accordance with paragraph 230-210(2)(b); and

(f) all gains and losses from the arrangement to which the accrual method applies are spread in a way that is consistent with that financial report.

(4) For the purposes of paragraph (3)(a), assume that you will continue to have the arrangement for the rest of its expected life.

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

(1) This section applies if:

(a) you prepare a financial report for a year (the ***first year***); and

(b) you prepare a financial report for the subsequent year (the ***second year***); and

(c) your income year starts in the first year and ends in the second year; and

(d) both the financial report for the first year and the financial report for the second year are:

(i) prepared in accordance with paragraph 230-210(2)(a); and

(ii) audited in accordance with paragraph 230-210(2)(b); and

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(e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.

(2) For the purposes of paragraph 230-140(3)(d), treat yourself as having prepared a financial report for the income year in which you start to have the arrangement.

(3) Work out the gain or loss you make from the arrangement for the income year as follows:

(a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with paragraph 230-140(3)(f) (treating the first year as an income year);

(b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);

(c) next, work out the gain or loss you make from the arrangement for the second year in accordance with paragraph 230-140(3)(f) (treating the second year as an income year);

(d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);

(e) next:

(i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or

(ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or

(iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.

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(4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
  (a) using a methodology that is reasonable; and
  (b) using the same methodology for the first and second years.

## 230-150 Election for portfolio treatment of fees

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

(2) An election under this section is irrevocable.

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

(1) This section applies if:
  (a) you prepare a financial report for a year (the ***first year***); and
  (b) you prepare a financial report for the subsequent year (the ***second year***); and
  (c) your income year starts in the first year and ends in the second year; and
  (d) both the financial report for the first year and the financial report for the second year are:

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(i) prepared in accordance with paragraph 230-150(1)(a); and

(ii) audited in accordance with paragraph 230-150(1)(b); and

(e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.

(2) Treat yourself as eligible to make an election for the income year under subsection 230-150(1).

(3) Work out the gain or loss you make from the arrangement for the income year as follows:

(a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with subsections 230-160(3) and (4) or 230-165(3) and (4) (treating the first year as an income year);

(b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);

(c) next, work out the gain or loss you make from the arrangement for the second year in accordance with subsections 230-160(3) and (4) or 230-165(3) and (4) (treating the second year as an income year);

(d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);

(e) next:

(i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or

(ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or

(iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the

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gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.

(4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:
  (a) using a methodology that is reasonable; and
  (b) using the same methodology for the first and second years.

## 230-160 Portfolio treatment of fees

(1) This section applies in relation to a *financial arrangement if:
  (a) you have made an election under section 230-150 in an income year; and
  (b) you start to have the financial arrangement in that income year or a later income year; and
  (c) the financial arrangement is part of a portfolio of similar financial arrangements; and
  (d) a gain or loss to which subsection 230-130(3) applies arises in part from fees in respect of the *financial arrangement; and
  (e) the fees play an integral role in determining the amount of the gain or loss; and
  (f) the net amount of the fees is *not* expected to be significant relative to an overall gain or loss from the arrangement.

(2) For the purposes of this Division, split the gain or loss mentioned in paragraph (1)(d) as follows:
  (a) to the extent that it arises from the fees, treat it as a gain or loss from the *financial arrangement (the ***fees gain or loss***) to which subsection 230-130(3) applies;
  (b) to the extent that it does not arise from the fees, treat it as a separate gain or loss from the financial arrangement to which subsection 230-130(3) applies.

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

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



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*Determination of period for fees gain or loss*

(3) The period over which the fees gain or loss is to be spread is the period that you determine to be the expected life of the portfolio, if:

(a) the basis on which you determine the period accords with the spreading of the fees gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and

(b) the basis on which you determine the period is set and recorded before any fees in respect of the *financial arrangement fall due; and

(c) the period can be justified objectively; and

(d) the period is reasonable in the circumstances.

*Spreading the fees gain or loss*

(4) The method by which the fees gain or loss is to be spread is the method that you determine, if:

(a) the basis on which you determine the method accords with the spreading of the fees gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and

(b) the method is determined before any fees in respect of the *financial arrangement fall due; and

(c) the method can be justified objectively; and

(d) the method is reasonable in the circumstances.

(5) To avoid doubt, subsections (3) and (4) apply despite sections 230-130 and 230-135.

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

(1) This section applies in relation to a *financial arrangement if:

(a) you have made an election under section 230-150 in an income year; and

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



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(b) you start to have the financial arrangement in that income year or a later income year; and

(c) the financial arrangement is part of a portfolio of similar financial arrangements; and

(d) a gain or loss to which subsection 230-130(3) applies arises in part from a premium or discount in starting to have the portfolio; and

(e) the gain or loss is *not* expected to be significant relative to the amount of the gain or loss on the portfolio.

(2) For the purposes of this Division, split the gain or loss mentioned in paragraph (1)(d) as follows:

(a) to the extent that it arises from the premium or discount, treat it as a gain or loss from the *financial arrangement (the ***premium/discount gain or loss***) to which subsection 230-130(3) applies;

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

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

*Determination of period for premium/discount gain or loss*

(3) The period over which the premium/discount gain or loss is to be spread is the period that you determine to be the expected life of the portfolio, if:

(a) the basis on which you determine the period accords with the spreading of the premium/discount gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and

(b) the basis on which you determine the period is set and recorded before you start to have the *financial arrangement; and

(c) the period can be justified objectively; and

(d) the period is reasonable in the circumstances.

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



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*Spreading the premium/discount gain or loss*

(4) The method by which the premium/discount gain or loss is to be spread is the method that you determine, if:

(a) the basis on which you determine the method accords with the spreading of the premium/discount gain or loss for the purposes of the profit or loss statement of the financial report mentioned in paragraph 230-150(1)(a); and

(b) the method is determined before you start to have the *financial arrangement; and

(c) the method can be justified objectively; and

(d) the method is reasonable in the circumstances.

(5) To avoid doubt, subsections (3) and (4) apply despite sections 230-130 and 230-135.

## 230-170 Allocating gain or loss to income years

(1) You are taken, for the purposes of section 230-15, to make, for an income year, a gain or loss equal to a part of a gain or loss if:

(a) that part of the gain or loss is allocated to an interval under section 230-135; and

(b) that interval falls wholly within that income year.

(2) If:

(a) a part of a gain or loss is allocated to an interval under section 230-135; and

(b) that interval straddles 2 income years;

you are taken, for purposes of section 230-15, to make a gain or loss equal to so much of that part of the gain or loss as is allocated between those income years on a reasonable basis.

(2A) Subsections (1) and (2) do not apply to a part of a gain or loss if:

(a) subsection 230-100(3A) or 230-130(4A) applies to the gain or loss; and

(b) that part of the gain or loss is allocated to an interval under section 230-135; and

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



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(c) that interval ends before or during the income year during which the gain or loss becomes sufficiently certain (as mentioned in paragraph 230-100(3A)(b) or 230-130(4A)(f), whichever is applicable).

Instead, you are taken, for the purposes of section 230-15, to make, for that income year, a gain or loss equal to that part of that gain or loss.

(3) If:

(a) a *head company of a *consolidated group or *MEC group has a *financial arrangement; and

(b) a subsidiary member of the group ceases to be a member of the group at a particular time (the ***leaving time***); and

(c) immediately after the leaving time, the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group;

an income year of the group is taken, for the purposes of applying this section to the group and the arrangement, to end at the leaving time.

## 230-172 Applying accruals method to loss resulting from impairment

(1) This section applies if:

(a) there is an impairment (within the meaning of the *accounting principles) of:

(i) a *financial arrangement; or

(ii) a financial asset or financial liability that forms part of a financial arrangement; and

(b) you make a loss from the financial arrangement as a result of the impairment; and

(c) the accruals method applies to the loss.

(2) You cannot deduct a loss you make for an income year under section 230-15, to the extent that the loss results from the impairment (including as affected by any later reversal of the

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



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impairment loss (within the meaning of the *accounting principles) that resulted from the impairment).

(3) Disregard subsection (2) for the purposes of paragraph (c) of step 1 of the method statement in subsection 230-445(1).

## 230-175 Running balancing adjustments

*Overestimate of financial benefit to be received*

(1) You are taken for the purposes of this Division to make a loss from a *financial arrangement if:

(a) a provision of this Subdivision has applied on the basis that you were sufficiently certain, at a particular time, to receive a *financial benefit of, or of at least, a particular amount under the arrangement; and

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

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

(1A) Subsection (1) does not apply to the extent that the difference results from:

(a) an impairment (within the meaning of the *accounting principles) of:

(i) the *financial arrangement; or

(ii) a financial asset or financial liability that forms part of the arrangement; or

(b) you writing off, as a bad debt, a right to a *financial benefit (or a part of a financial benefit).

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



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*Underestimate of financial benefit to be received*

(2) You are taken for the purposes of this Division to make a gain from a *financial arrangement if:

(a) a provision of this Subdivision has applied on the basis that you were sufficiently certain at a particular time to receive a *financial benefit of, or of at least, a particular amount under the arrangement; and

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

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

(2A) Subsection (2) does not apply to the extent that the difference results from the reversal of an impairment loss (within the meaning of the *accounting principles) that resulted from an impairment (within the meaning of the accounting principles) of:

(a) the *financial arrangement; or

(b) a financial asset or financial liability that forms part of the arrangement.

*Overestimate of financial benefit to be provided*

(3) You are taken for the purposes of this Division to make a gain from a *financial arrangement if:

(a) a provision of this Subdivision has applied on the basis that you were sufficiently certain at a particular time to provide a *financial benefit of, or of at least, a particular amount under the arrangement; and

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

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



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

*Underestimate of financial benefit to be provided*

(4) You are taken for the purposes of this Division to make a loss from a *financial arrangement if:

(a) a provision of this Subdivision has applied on the basis that you were sufficiently certain at a particular time to provide a *financial benefit of, or of at least, a particular amount under the arrangement; and

(b) when you provide the benefit, or the time comes for you to provide the benefit, the amount you are to provide is more than the estimated amount referred to in paragraph (a).

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

## Realisation method

### 230-180 Realisation method

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

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

(2) For the purposes of subsection (1), a gain or loss from a *financial arrangement is taken to occur at:

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



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(a) if the last of the *financial benefits, rights and obligations taken into account in determining the amount of the gain or loss is a financial benefit—the time the financial benefit:
  (i) is provided; or
  (ii) if the financial benefit is not provided at the time when it is due to be provided under the arrangement and it is reasonable to expect that the financial benefit will be provided—is due to be provided; or
(b) if the last of the financial benefits, rights and obligations taken into account in determining the amount of the gain or loss is a right to receive a financial benefit or an obligation to provide a financial benefit—the time:
  (i) if the right or obligation ceases before the financial benefit is provided—the right or obligation ceases; or
  (ii) otherwise—the financial benefit is provided.

This subsection has effect subject to subsection (3).

(3) For the purposes of subsection (1), you make a loss from a *financial arrangement from writing off, as a bad debt, a right to a *financial benefit (or a part of a financial benefit) if:
(a) the financial benefit was taken into account in working out the amount of a gain from the arrangement and the gain has been included in your assessable income under this Division; or
(b) the right is one in respect of money that you lent in the ordinary course of your *business of lending money; or
(c) the right is one that you bought in the ordinary course of your business of lending money.

(4) The loss referred to in subsection (3) occurs when you write off the right to the *financial benefit (or the part of the financial benefit) as a bad debt.

(5) The amount of the loss referred to in subsection (3) is:
(a) if paragraph (3)(a) applies—so much of the gain referred to in that paragraph as is reasonably attributable to the *financial benefit (or the part of the financial benefit); or

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



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(b) if paragraph (3)(b) applies—the amount of the financial benefit (or the part of the financial benefit); or

(c) if paragraph (3)(c) applies—the amount of the financial benefit (or the part of the financial benefit) but only up to the value of the financial benefit you provided to acquire the right to the financial benefit (or the part of the financial benefit).

(6) For the purposes of this Act, a deduction for the loss referred to in subsection (3) is to be treated as a deduction of a bad debt.

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

## Reassessment and re-estimation

### 230-185 Reassessment

(1) You must make a fresh assessment of which gains and losses from a *financial arrangement the accruals method should apply to, and which gains and losses from that arrangement the realisation method should apply to, if:

(a) the accruals method, or the realisation method, provided for in this Subdivision applies to gains and losses from the arrangement; and

(b) there is a material change to:

(i) the terms and conditions of the arrangement; or

(ii) circumstances that affect the arrangement.

(2) Without limiting subsection (1), the following changes are material changes to the terms and conditions of, or circumstances that affect, the *financial arrangement:

(a) a change to the terms or conditions of the arrangement in a way that alters the essential nature of the arrangement (for example, by altering it from a *debt interest to an *equity interest or from an equity interest to a debt interest);

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(b) a change to the terms or conditions of the arrangement in a way that materially affects the contingencies on which significant obligations and rights under the arrangement are dependent (for example, by introducing such a contingency or removing such a contingency);

(c) a change in circumstances that makes something that:

(i) materially affects significant obligations and rights under the arrangement; and

(ii) was previously dependent on a contingency;

no longer dependent on a contingency (because, for example, only one of a number of previously possible contingencies is realised);

(d) a change to:

(i) the terms on which credit is to be provided to an entity that is not a party to the arrangement; or

(ii) the credit rating of an entity that is not a party to the arrangement;

if a significant obligation or right under the arrangement is dependent on that credit being provided or that rating being maintained;

(e) if the arrangement is, or includes, a financial asset or financial liability and you prepare your financial reports in accordance with:

(i) the *accounting principles; or

(ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting made under a *foreign law that apply to the preparation of the financial report under a foreign law;

a change to the terms or conditions of, or circumstances that affect, the arrangement that are sufficient for the financial asset or financial liability to be treated as impaired for the purposes of those principles or standards.

(3) You do not need to make a reassessment under this section merely because of a change in the fair value of the *financial arrangement.

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



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## 230-190 Re-estimation

*When re-estimation necessary*

(1) You re-estimate a gain or loss from a *financial arrangement under subsection (5) if:

(a) the accruals method applies to the gain or loss; and

(b) circumstances arise that materially affect:

(i) the amount or value; or

(ii) the timing;

of *financial benefits that were taken into account in working out the amount of the gain or loss; and

(c) the circumstances do not give rise to a re-estimation under section 230-200.

(2) You must re-estimate the gain or loss as soon as reasonably practicable after you become aware of the circumstances referred to in paragraph (1)(b), if subsection (1) applies.

(3) Without limiting subsection (1), the following are circumstances of the kind referred to in paragraph (1)(b):

(a) a material change in market conditions that are relevant to the amount or value of the *financial benefits to be received or provided under the *financial arrangement;

(b) cash flows that were previously estimated becoming known and the difference between the cash flows that become known and the cash flows that were previously estimates is not insignificant;

(c) a right to, or a part of a right to, a financial benefit under the arrangement is written off as a bad debt;

(d) you have made a reassessment under section 230-185 in relation to gains or losses under the arrangement and you have determined on the reassessment under that section that the accruals method should continue to apply to those gains or losses.

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



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(3A) You also re-estimate a gain or loss from a *financial arrangement under subsection (5) if:

(a) the gain or loss is spread using the method referred to in paragraph 230-135(2)(b) in accordance with section 230-140 (effective interest method); and

(b) you recalculate the effective interest rate in accordance with that method; and

(c) the terms and conditions of the arrangement provide for reset dates to occur no more than 12 months apart; and

(d) the maximum life of the arrangement (as determined under the terms and conditions of the arrangement) is more than 12 months.

(3B) You must re-estimate the gain or loss at the relevant reset date if subsection (3A) applies.

(4) You do not re-estimate the gain or loss from a *financial arrangement under subsection (5) merely because of a change in the credit rating, or the creditworthiness, of a party or parties to the arrangement.

*Nature of re-estimation*

(5) Making a re-estimation in relation to a gain or loss under this subsection involves:

(a) a fresh determination of the amount of the gain or loss; and

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

*Basis for re-estimation*

(6) You may make the fresh allocation of the gain or loss under subsection (5) on these bases:

(a) if you satisfy subsection (7) in relation to the *financial arrangement—by maintaining the rate of return being used

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



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and adjusting the amount to which you apply the rate of return to the present value of the estimated future cash flows discounted at the maintained rate of return;

(b) in any case—by adjusting the rate of return and maintaining the amount to which the adjusted rate of return is to be applied.

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

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

(7) You satisfy this subsection in relation to a *financial arrangement if every re-estimation you make under subsection (5) in relation to a gain or loss from the arrangement is made in accordance with:

(a) financial reports of the kind referred to in paragraph 230-395(2)(a) that are audited as referred to in paragraph 230-395(2)(b) (regardless of whether Subdivision 230-F (reliance on financial reports method) is to apply to a particular financial arrangement); and

(b) *accounting standard AASB 139 (or another accounting standard prescribed by the regulations for the purposes of this paragraph).

## 230-192 Re-estimation—impairments and reversals

(1) This section applies if the re-estimation mentioned in section 230-190 arises because of:

(a) an impairment (within the meaning of the *accounting principles) of:

(i) the *financial arrangement; or

(ii) a financial asset or financial liability that forms part of the arrangement; or

(b) a reversal of an impairment loss (within the meaning of the accounting principles) that resulted from such an impairment.

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



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(2) Despite paragraph 230-190(6)(a), you must make the fresh allocation in accordance with paragraph 230-190(6)(b).

*Losses non-deductible*

(3) You cannot deduct a loss you make for an income year under section 230-15, to the extent that the loss results from:
  (a) the impairment (including as affected by any later reversal of the impairment loss that resulted from the impairment); or
  (b) the operation of subsection (7).

(4) Disregard subsection (3) for the purposes of paragraph (c) of step 1 of the method statement in subsection 230-445(1).

*Reversals*

(5) Subsections (7) and (8) apply to the part of the gain or loss that is to be reallocated in accordance with paragraph 230-190(6)(b), if:
  (a) the fresh determination under paragraph 230-190(5)(a) that arose because of the reversal resulted in that part being a gain; and
  (b) there are losses that:
    (i) resulted from the impairment; and
    (ii) you could have deducted apart from subsection 230-172(2) or subsection (3) of this section.

(6) Paragraph (5)(b) does not apply to a loss to the extent that:
  (a) the loss reflects the amount of a loss you make under paragraph 230-195(1)(b) or (c); and
  (b) the loss you make under paragraph 230-195(1)(b) or (c) relates to you writing off, as a bad debt, a right to receive a *financial benefit (or a part of a financial benefit).

(7) Treat the fresh determination as having resulted in that part being a loss, if the total of the losses mentioned in paragraph (5)(b) of this section exceeds the amount of the gain mentioned in paragraph (5)(a). The amount of the loss is equal to the amount of the excess.

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



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(8) Otherwise, reduce the amount of that gain by the total of those losses.

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

(1) If you make a fresh allocation of the gain or loss on the basis referred to in paragraph 230-190(6)(a), you must make the following balancing adjustment:

(a) if you re-estimate a gain and the amount to which you apply the rate of return increases—you make a gain from the *financial arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;

(b) if you re-estimate a gain and the amount to which you apply the rate of return decreases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the decrease;

(c) if you re-estimate a loss and the amount to which you apply the rate of return increases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;

(d) if you re-estimate a loss and the amount to which you apply the rate of return decreases—you make a gain from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the decrease.

(2) Subsection (3) applies if:

(a) the re-estimation is made wholly or partly on the basis that you have written off, as a bad debt, a right to receive a *financial benefit (or a part of a financial benefit); and

(b) the right:

(i) is not one in respect of money that you lent in the ordinary course of your *business of lending money; and

(ii) is not one that you bought in the ordinary course of your business of lending money.

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



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(3) The balancing adjustment to be made under paragraph (1)(b), to the extent that it relates to the writing off of the bad debt, must not exceed so much of the gain in relation to the *financial arrangement as:

(a) has been assessed under this Division; and

(b) is reasonably attributable to the *financial benefit (or the part of the financial benefit).

(4) Subsection (5) applies if:

(a) the re-estimation is made wholly or partly on the basis that you have written off, as a bad debt, a right to receive a *financial benefit; and

(b) the right is one that you bought in the ordinary course of your *business of lending money.

(5) The balancing adjustment to be made under paragraph (1)(b), to the extent that it relates to the writing off of the bad debt, must not exceed the value of the *financial benefit you provided to acquire the right to the financial benefit (or the part of the financial benefit).

(6) For the purposes of this Act, a deduction for the balancing adjustment referred to in subsection (3) is to be treated as a deduction of a bad debt.

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

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

*Re-estimation if balancing adjustment on partial disposal*

(1) You also re-estimate a gain or loss from a *financial arrangement under subsection (2) if:

(a) the accruals method applies to the gain or loss; and

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(b) a balancing adjustment is made in relation to the arrangement under Subdivision 230-G because you transfer to another entity:

(i) a proportionate share of all of your rights and/or obligations under the arrangement; or

(ii) a right or obligation that you have under the arrangement to a specifically identified *financial benefit; or

(iii) a proportionate share of a right or obligation that you have under the arrangement to a specifically identified financial benefit.

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

*Nature of re-estimation*

(2) Making a re-estimation in relation to a gain or loss under this subsection involves:

(a) a fresh determination of the amount of the gain or loss disregarding:

(i) *financial benefits; and

(ii) amounts of the gain or loss that have already been allocated to intervals ending before the re-estimation is made;

to the extent to which they are reasonably attributable to the proportionate share, or the right or obligation, referred to in paragraph (1)(b); and

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

*Basis for re-estimation*

(3) You make the fresh allocation of the gain or loss under subsection (2) by maintaining the rate of return being used and

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



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adjusting the amount to which you apply the rate of return to the present value of the estimated future cash flows discounted at the maintained rate of return. The object to be achieved by the fresh allocation is to allow you to bring the redetermined gain or loss properly to account over the remainder of the period over which you spread the gain or loss.

## Subdivision 230-C—Fair value method

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### 230-205 Objects of this Subdivision

The objects of this Subdivision are:

(a) to allow you to align the tax treatment of gains and losses from *financial arrangements with the accounting treatment that applies where assets and liabilities are classified or designated as at fair value through profit or loss; and

(b) to facilitate efficient price-making; and

(c) to achieve the above objects without allowing you to obtain an inappropriate tax benefit.

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



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## 230-210 Fair value election

*Election*

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

*Eligibility to make fair value election for an income year*

(2) You are eligible to make a ***fair value election*** for an income year if:

(a) you prepare a financial report for that income year in accordance with:

(i) the *accounting principles; or

(ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting made under a *foreign law that apply to the preparation of the financial report under a foreign law; and

(b) the financial report is audited in accordance with:

(i) the *auditing principles; or

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

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

*Election irrevocable*

(3) A *fair value election is irrevocable.

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

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



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

(1) This section applies if:

(a) you prepare a financial report for a year (the ***first year***); and

(b) you prepare a financial report for the subsequent year (the ***second year***); and

(c) your income year starts in the first year and ends in the second year; and

(d) both the financial report for the first year and the financial report for the second year are:

(i) prepared in accordance with paragraph 230-210(2)(a); and

(ii) audited in accordance with paragraph 230-210(2)(b); and

(e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.

(2) Treat yourself as eligible to make an election for the income year under subsection 230-210(2).

(3) Work out the gain or loss you make from the *financial arrangement for the income year as follows:

(a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with section 230-230 (treating the first year as an income year);

(b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);

(c) next, work out the gain or loss you make from the arrangement for the second year in accordance with section 230-230 (treating the second year as an income year);

(d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);

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



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(e) next:

(i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or

(ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or

(iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.

(4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:

(a) using a methodology that is reasonable; and

(b) using the same methodology for the first and second years.

(5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

## 230-220 Financial arrangements to which fair value election applies

(1) A *fair value election applies in relation to *financial arrangements that:

(a) are *Division 230 financial arrangements; and

(b) are recognised in financial reports of the kind referred to in paragraph 230-210(2)(a) that are audited, or required to be audited, as referred to in paragraph 230-210(2)(b); and

(c) are assets or liabilities that you are required (whether or not as a result of a choice you make) by:

(i) the *accounting principles; or

(ii) if the accounting principles do not apply to the preparation of the financial report—comparable

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



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standards for accounting that apply to the preparation of the financial report under a *foreign law;

to classify, designate or (in whole or in part) otherwise treat, in the financial reports, as at fair value through profit or loss; and

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

This subsection has effect subject to section 230-225.

(2) If, but for this subsection, paragraphs (1)(b) and (c) would not be satisfied in relation to a *financial arrangement because the arrangement is an intra-group transaction for the purposes of:

(a) *accounting standard AASB 127 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or

(b) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a *foreign law;

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

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

(3) If:

(a) the *financial arrangement would not be a financial arrangement if the following provisions were disregarded:

(i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);

(ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and

(b) paragraphs (1)(b) and (c) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities; and

(c) the *fair value election is made by:

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



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(i) if section 121EB of the *Income Tax Assessment Act 1936* applies—the OBU mentioned in that section (disregarding the operation of that section); or

(ii) if section 160ZZW of that Act applies—the bank mentioned in that section (disregarding the operation of that section);

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

## 230-225 Financial arrangements to which election does not apply

(1) A *fair value election does not apply to a *financial arrangement if:

(a) the arrangement is an *equity interest; and

(b) you are the issuer of the equity interest.

(2) A *fair value election does not apply to a *financial arrangement if:

(a) you are:

(i) an individual; or

(ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and

(b) the arrangement is a *qualifying security; and

(c) you have not made an election under subsection 230-455(7).

(3) A *fair value election does not apply to a *financial arrangement if:

(a) the election is made by the *head company of a *consolidated group or *MEC group; and

(b) the election specifies that the election is not to apply to financial arrangements in relation to *life insurance business carried on by a member of the consolidated group or MEC group; and

(c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.

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



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(4) A *fair value election does not apply to a *financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

## 230-230 Applying fair value method to gains and losses

(1) You make a gain or loss for an income year from a *financial arrangement to which a *fair value election applies if:

(a) the principles or standards mentioned in paragraph 230-210(2)(a) require you to recognise a gain or loss in profit or loss for the income year from the asset or liability mentioned in paragraph 230-220(1)(c); or

(b) in the case of an arrangement to which subsection 230-220(2) applies—the principles or standards referred to in paragraph 230-220(1)(c) would have required you to recognise a gain or loss in profit or loss for the year from the asset or liability mentioned in paragraph 230-220(1)(c) if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-220(2)(b); or

(c) in the case of an arrangement to which subsection 230-220(3) applies—the principles or standards referred to in paragraph 230-220(1)(c) would have required you to recognise a gain or loss in profit or loss for the year from the asset or liability mentioned in paragraph 230-220(1)(c) if the arrangement had been between 2 separate entities.

Note: Subsection 230-40(7) provides that an election under Subdivision 230-E (hedging financial arrangements method) or Subdivision 230-F (method of relying on financial reports) may override a fair value election.

(1A) The gain or loss you make is the gain or loss the principles or standards require, or would have required, you to recognise in profit or loss as mentioned in subsection (1).

(2) Subsection (3) applies if:

(a) a *head company of a *consolidated group or *MEC group has a *financial arrangement; and

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



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(b) a *fair value election applies to the arrangement; and

(c) a subsidiary member of the group ceases to be a member of the group at a particular time (the ***leaving time***); and

(d) immediately after the leaving time, the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group.

(3) The gain or loss the group makes from the arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that the principles or standards referred to in paragraph 230-210(2)(a) would require the group to recognise as at fair value through profit or loss for the income year from the asset or liability mentioned in paragraph 230-220(1)(c) if:

(a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and

(b) any circumstances that arise in relation to the financial arrangement after the leaving time were disregarded.

*Subdivision does not apply to extent gains or losses not recognised as at fair value*

(4) This Subdivision does not apply to a gain or loss you make from the *financial arrangement, to the extent:

(a) you are required, as mentioned in paragraph 230-220(1)(c), to otherwise treat as at fair value through profit and loss the assets or liabilities that the financial arrangement is; and

(b) the principles or standards referred to in paragraph 230-210(2)(a) do not require you to recognise the gain or loss as at fair value through profit or loss.

Note: See also subsection 230-40(5).

## 230-235 Splitting financial arrangements into 2 financial arrangements

(1) If:

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



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(a) a *financial arrangement is constituted only in part by an asset or liability mentioned in paragraph 230-220(1)(c); and

(b) a *fair value election would apply to the arrangement if it were constituted solely by that asset or liability;

the provisions of this Division (other than this section) apply to the arrangement as if it were instead 2 separate financial arrangements.

(2) The 2 separate *financial arrangements are:

(a) one consisting of the part referred to in paragraph (1)(a); and

(b) one consisting of the remaining part.

## 230-240 When election ceases to apply

(1) A *fair value election ceases to have effect from the start of an income year if you cease to be eligible under subsection 230-210(2) to make the fair value election for that income year.

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

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

(3) A *fair value election ceases to apply to a particular *financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of paragraph 230-220(1)(b) or (c) during that income year.

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

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



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## 230-245 Balancing adjustment if election ceases to apply

(1) You must make balancing adjustments under subsection (2) if a *fair value election ceases to have effect under subsection 230-240(1).

(2) The balancing adjustments under this subsection are the balancing adjustments you would make under Subdivision 230-G for each of the *financial arrangements to which the election applied if you disposed of the arrangement for its fair value when the election ceases to have effect.

(3) You must make a balancing adjustment under subsection (4) if a *fair value election ceases to apply to a particular *financial arrangement under subsection 230-240(3).

(4) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you disposed of the *financial arrangement for its fair value when the election ceases to apply to the arrangement.

(5) If a balancing adjustment is made under subsection (2) or (4) in relation to a *financial arrangement, you are taken, for the purposes of this Division, to have reacquired the arrangement at its fair value immediately after the election ceased to have effect or ceased to apply to the arrangement.

(6) In determining, for the purposes of the balancing adjustment under subsection (2) or (4) or for the purposes of subsection (5), the fair value of the *financial arrangement at a time, disregard any changes in the fair value to the extent that:

(a) you are required, as mentioned in paragraph 230-220(1)(c), to otherwise treat the financial arrangement as at fair value through profit and loss; and

(b) the principles or standards referred to in paragraph 230-210(2)(a) do not require you to recognise the changes as at fair value through profit or loss.

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



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# Subdivision 230-D—Foreign exchange retranslation method

## Table of sections

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## 230-250 Objects of this Subdivision

The objects of this Subdivision are:

(a) to allow you to align the tax treatment of gains and losses from foreign exchange rate changes with the accounting treatment of profits and losses from such changes; and

(b) to achieve this without allowing you to obtain an inappropriate tax benefit.

## 230-255 Foreign exchange retranslation election

*General election*

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

*Eligibility to make election*

(2) You are eligible to make a *foreign exchange retranslation election for an income year if:

(a) you prepare a financial report for that income year in accordance with:

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



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(i) the *accounting principles; or

(ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting made under a *foreign law that apply to the preparation of the financial report under a foreign law; and

(b) the financial report is audited in accordance with:

(i) the *auditing principles; or

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

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

*Election in relation to qualifying forex accounts*

(3) You may make a ***foreign exchange retranslation election*** under this subsection in relation to a *financial arrangement if:

(a) the arrangement is a *qualifying forex account; and

(b) you have not made a *foreign exchange retranslation election under subsection (1) that applies to the account.

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

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

(4) The election under subsection (3) applies to the *financial arrangement:

(a) from the time when you start to have the arrangement if the election is made before you start to have the arrangement; or

(b) from the start of the income year in which the election is made if you make the election after you start to have the arrangement.

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



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*Election irrevocable*

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

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

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

(1) This section applies if:

(a) you prepare a financial report for a year (the ***first year***); and

(b) you prepare a financial report for the subsequent year (the ***second year***); and

(c) your income year starts in the first year and ends in the second year; and

(d) both the financial report for the first year and the financial report for the second year are:

(i) prepared in accordance with paragraph 230-255(2)(a); and

(ii) audited in accordance with paragraph 230-255(2)(b); and

(e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.

(2) Treat yourself as eligible to make an election for the income year under subsection 230-255(2).

(3) Work out the gain or loss you make from the arrangement for the income year as follows:

(a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with section 230-280 (treating the first year as an income year);

(b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);

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



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(c) next, work out the gain or loss you make from the arrangement for the second year in accordance with section 230-280 (treating the second year as an income year);

(d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);

(e) next:

(i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or

(ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or

(iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.

(4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:

(a) using a methodology that is reasonable; and

(b) using the same methodology for the first and second years.

(5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

## 230-265 Financial arrangements to which general election applies

(1) A *foreign exchange retranslation election under subsection 230-255(1) applies to each of your *financial arrangements:

(a) that are *Division 230 financial arrangements; and

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



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(b) that are recognised in financial reports of a kind referred to in paragraph 230-255(2)(a) that are audited, or required to be audited, as referred to in paragraph 230-255(2)(b); and

(c) in relation to which you are required by:

(i) *accounting standard AASB 121 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or

(ii) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a *foreign law;

to recognise, in the financial reports, amounts in profit or loss (if any) that are attributable to changes in currency exchange rates; and

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

This subsection has effect subject to section 230-270.

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

(2) If, but for this subsection, paragraphs (1)(b) and (c) would not be satisfied in relation to a *financial arrangement because the arrangement is an intra-group transaction for the purposes of:

(a) *accounting standard AASB 127 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or

(b) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a *foreign law;

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

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

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



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(3) If:

(a) the *financial arrangement would not be a financial arrangement if the following provisions were disregarded:

(i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);

(ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and

(b) paragraphs (1)(b) and (c) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities; and

(c) the *foreign exchange retranslation election under subsection 230-255(1) is made by:

(i) if section 121EB of the *Income Tax Assessment Act 1936* applies—the OBU mentioned in that section (disregarding the operation of that section); or

(ii) if section 160ZZW of that Act applies—the bank mentioned in that section (disregarding the operation of that section);

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

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

(1) For the purposes of this Division, a *foreign exchange retranslation election under subsection 230-255(1) does not apply to a *financial arrangement if the arrangement is a financial arrangement under section 230-50 (equity interests etc.).

(2) For the purposes of this Division, a *foreign exchange retranslation election under subsection 230-255(1) does not apply to a *financial arrangement if:

(a) you are:

(i) an individual; or

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



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(ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and

(b) the arrangement is a *qualifying security; and

(c) you have not made an election under subsection 230-455(7).

(3) A *foreign exchange retranslation election under subsection 230-255(1) does not apply to a *financial arrangement if:

(a) the election is made by the *head company of a *consolidated group or *MEC group; and

(b) the election specifies that the election is not to apply to financial arrangements in relation to *life insurance business carried on by a member of the consolidated group or MEC group; and

(c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.

(4) A *foreign exchange retranslation election does not apply to a *financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

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

(1) If you make a *foreign exchange retranslation election under subsection 230-255(3) in relation to a *financial arrangement after you start to have the arrangement, you must make a balancing adjustment under subsection (2).

(2) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you ceased to have the arrangement for its fair value at the time when the election started to apply to the arrangement (but only to the extent to which the balancing adjustment is reasonably attributable to a *currency exchange rate effect).

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



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

*General election*

(1) You make a gain or loss from a *financial arrangement for an income year if:

(a) a *foreign exchange retranslation election under subsection 230-255(1) applies to the arrangement; and

(b) any of the following subparagraphs apply:

(i) the standard referred to in paragraph 230-265(1)(c) requires you to recognise a particular amount in profit or loss in relation to that arrangement for that income year;

(ii) if subsection 230-265(2) applies to the arrangement—the standard referred to in paragraph 230-265(1)(c) would have required you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-265(2)(b);

(iii) if subsection 230-265(3) applies to the arrangement—the standard referred to in paragraph 230-265(1)(c) would have required you to recognise a particular amount in profit or loss for the year that is attributable to currency exchange rates mentioned in paragraph 230-265(1)(c) if the arrangement had been between 2 separate entities.

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

Note: See subsection 230-40(6).

*Election in relation to qualifying forex accounts*

(2) You make a gain or loss from a *financial arrangement for an income year if:

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



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(a) a *foreign exchange retranslation election under subsection 230-255(3) applies to the arrangement; and

(b) the standard referred to in paragraph 230-265(1)(c):

(i) requires you to recognise a particular amount in profit or loss in relation to that arrangement for that income year; or

(ii) would require you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if that standard applied to the arrangement; or

(iii) would require you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-265(2)(b); or

(iv) would require you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-265(2)(b) and if that standard applied to the arrangement.

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

*Subsidiary leaving group*

(3) Subsection (4) applies if:

(a) a *head company of a *consolidated group or *MEC group has a *financial arrangement; and

(b) a *foreign exchange retranslation election under subsection 230-255(1) or (3) applies to the arrangement; and

(c) a subsidiary member of the group ceases to be a member of the group at a particular time (the ***leaving time***); and

(d) immediately after the leaving time, the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group.

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



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(4) The gain or loss the group makes from the *financial arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that the standard referred to in paragraph 230-265(1)(c) would require the group to recognise in profit or loss in relation to the arrangement for that income year if:

(a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and

(b) any circumstances that arise in relation to the arrangement after the leaving time were disregarded.

## 230-285 When election ceases to apply

*General election*

(1) A *foreign exchange retranslation election under subsection 230-255(1) ceases to have effect from the start of an income year if you cease to be eligible under subsection 230-255(2) to make a foreign exchange retranslation election under subsection 230-255(1) for that income year.

(2) Subsection (1) does not prevent you from making a new *foreign exchange retranslation election at a later time if you become, at that later time, eligible under subsection 230-255(2), to make a foreign exchange retranslation election under subsection 230-255(1) for that income year.

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

(3) A *foreign exchange retranslation election under subsection 230-255(1) ceases to apply to a *financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of paragraph 230-265(1)(b) or (c) during that income year.

(4) If the election ceases to apply to a particular *financial arrangement under subsection (3), the election cannot subsequently reapply to

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



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that arrangement (even if the requirements of paragraphs 230-265(1)(b) and (c) are satisfied once more in relation to the arrangement).

*Election in relation to qualifying forex accounts*

(5) A *foreign exchange retranslation election under subsection 230-255(3) ceases to apply to a *financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of subsection 230-255(3) during that income year.

(6) If the election ceases to apply to a particular *financial arrangement under subsection (5), the election cannot subsequently reapply to that arrangement (even if the requirements of subsection 230-255(3) are satisfied once more in relation to the arrangement).

## 230-290 Balancing adjustment if election ceases to apply

(1) You must make balancing adjustments under subsection (2) if a *foreign exchange retranslation election ceases to have effect under subsection 230-285(1).

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

(3) You must make a balancing adjustment under this section if a *foreign exchange retranslation election ceases to apply to a particular *financial arrangement under subsection 230-285(3) or (5).

(4) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you

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disposed of the *financial arrangement for its fair value when the election ceases to apply to the arrangement (but only to the extent to which the balancing adjustment is reasonably attributable to a *currency exchange rate effect).

(5) If a balancing adjustment is made under subsection (2) or (4) in relation to a *financial arrangement, you are taken, for the purposes of this Division, to have reacquired the arrangement at its fair value immediately after the election ceased to have effect or ceased to apply to the arrangement.

## Subdivision 230-E—Hedging financial arrangements method

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## 230-295 Objects of this Subdivision

The objects of this Subdivision are:

(a) to facilitate the efficient management of financial risk by reducing after-tax mismatches and better aligning tax treatment where hedging takes place; and

(b) to minimise tax deferral and tax motivated practices (including tax deferral arising from such practices as tax advantaged selection from among possible hedges and inappropriate selection of tax treatment).

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

(1) If you have a *hedging financial arrangement to which a *hedging financial arrangement election applies, the gain or loss you make for an income year from the arrangement is worked out under this section and section 230-310 instead of under Subdivision 230-B, 230-C, 230-D, 230-F or 230-G.

(2) Except where subsection (5) applies, the gain or loss you make from the *hedging financial arrangement is equal to the overall gain or loss you make from the arrangement.

(3) The gain or loss you make from the *hedging financial arrangement is allocated over income years according to the determination referred to in subsection 230-360(1).

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

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

(4) If the *hedging financial arrangement is a *foreign currency hedge and is a *debt interest, split a gain or loss you make from the arrangement as follows:

(a) to the extent to which the gain or loss represents a *currency exchange rate effect attributable to the outstanding balance in

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relation to the debt interest, treat it as a separate gain or loss to which subsections (1) and (2) apply;

(b) to the extent that it does not represent that effect, treat it as a separate gain or loss from the financial arrangement that is allocated under Subdivision 230-B, 230-F or 230-G.

(5) If an event listed in the table in subsection 230-305(1) occurs:

(a) the gain or loss you make from the *hedging financial arrangement is equal to any gain or loss that you would have made:

(i) while the arrangement was hedging the *hedged item or items; and

(ii) on ceasing to have the arrangement;

if you ceased to have the arrangement for its fair value at the time of the event; and

(b) this Division further applies as if, just after the event, you had acquired the arrangement for its fair value at the time of the event.

Despite subsection (3), the gain or loss referred to in paragraph (a) is allocated over income years according to the table.

(7) Subsection (8) applies if the *hedging financial arrangement:

(a) is a *financial arrangement under section 230-50 (equity interests etc.); and

(b) is a *foreign currency hedge; and

(c) is one that you issue.

(8) Split a gain or loss you make from the arrangement as follows:

(a) to the extent to which the gain or loss represents a *currency exchange rate effect, treat it as a separate gain or loss to which subsections (1) and (2) apply;

(b) to the extent that it does not represent that effect, treat it as a separate gain or loss from the financial arrangement to which this Division does not apply.

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(9) Subsections (10) and (11) apply if:

(a) a *head company of a *consolidated group or *MEC group has a *hedging financial arrangement; and

(b) a *hedging financial arrangement election applies to the arrangement; and

(c) a subsidiary member of the group ceases to be a member of the group at a particular time (the ***leaving time***); and

(d) immediately after the leaving time:

(i) the head company no longer has the arrangement because the subsidiary member ceased to be a member of the group; and

(ii) the head company no longer has the *hedged item (or all of the hedged items) because the subsidiary member ceased to be a member of the group.

(10) The gain or loss the group makes from the arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that would be allocated to the group in accordance with this section (disregarding subsection (5)) if:

(a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and

(b) any circumstances that arise in relation to the *financial arrangement after the leaving time were disregarded.

(11) For the purposes of applying paragraph (5)(a) to the *head company of the group at the leaving time, disregard item 2 of the table in subsection 230-305(1).

## 230-305 Table of events and allocation rules

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

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**Table of events and allocation rules**

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

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(2) For the purposes of item 2A of the table in subsection (1), determine the extent to which the gain or loss is reasonably attributable to a particular *hedged item having regard to the following:

(a) the fair value of the hedged item;

(b) the length of the period over which you have held the hedged item;

(c) commercially accepted valuation principles;

(d) any other relevant factors.

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

(1) The object of this section is to better align, in particular circumstances, the tax classification of a gain or loss you make from a *hedging financial arrangement with the tax classification of the *hedged item.

(2) This section applies if:

(a) you make a gain or loss from a *hedging financial arrangement for an income year; and

(b) a *hedging financial arrangement election applies to the arrangement.

(3) Subject to subsection (4):

(a) if you make a gain from the arrangement—your assessable income includes the gain in accordance with subsection 230-15(1); and

(b) if you make a loss from the arrangement—you may deduct the loss in accordance with subsections 230-15(2) and (3).

Note: Section 230-300 tells you how to allocate the gain or loss to an income year or years.

(4) A gain or loss you make from a *hedging financial arrangement, to the extent to which it is reasonably attributable to a *hedged item

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referred to in the following table, is dealt with in the way indicated in that item:

**Special tax classification for gains and losses**

| Item | For a hedged item that is or produces … | the gain … | the loss … |
|---|---|---|---|
| 1 | a *CGT asset any *net capital gain in relation to which would be assessable under Parts 3-1 and 3-3 in relation to which a *CGT event (the ***hedged item CGT event***) occurs | is treated as a *capital gain from a CGT event (but only to the extent to which the gain is reasonably attributable to the hedged item CGT event) | is treated as a *capital loss from a CGT event (but only to the extent to which the loss is reasonably attributable to the hedged item CGT event) |
| 2 | a *CGT asset that is *taxable Australian property | is treated as a *capital gain from a *CGT event for a CGT asset that is taxable Australian property | is treated as a *capital loss from a CGT event for a CGT asset that is taxable Australian property |
| 3 | a *CGT asset your capital gains and losses in relation to which are disregarded, or reduced by a particular percentage, under Division 855 | is disregarded or reduced by the same percentage | is disregarded or reduced by the same percentage |
| 4 | *exempt income | is treated as exempt income | is not deductible |
| 5 | *non-assessable non-exempt income of an Australian resident | is treated as non-assessable non-exempt income | is not deductible |

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



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**Special tax classification for gains and losses**

| Item | For a hedged item that is or produces … | the gain … | the loss … |
|---|---|---|---|
| 6 | a share in a company that is a foreign resident if the capital gain or loss you make from a *CGT event that happens to the share is reduced by a particular percentage under Subdivision 768-G | is treated as a *capital gain from a CGT event that is reduced by the same percentage | is treated as a *capital loss from a CGT event that is reduced by the same percentage |
| 7 | *ordinary income or *statutory income from an *Australian source | is treated as ordinary income or statutory income from an Australian source | is treated as a loss incurred in gaining or producing ordinary income or statutory income from an Australian source |
| 8 | *ordinary income or *statutory income from a source out of Australia | is treated as ordinary income or statutory income from a source out of Australia | is treated as a loss incurred in gaining or producing ordinary income or statutory income from a source out of Australia |
| 9 | a loss or outgoing incurred in gaining or producing *ordinary income or *statutory income from a source out of Australia | is treated as ordinary income or statutory income from a source out of Australia | is treated as a loss incurred in gaining or producing ordinary income or statutory income from a source out of Australia |
| 10 | a loss or outgoing incurred in gaining or producing *ordinary income or *statutory income from an *Australian source | is treated as ordinary income or statutory income from an Australian source | is treated as a loss incurred in gaining or producing ordinary income or statutory income from an Australian source |

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



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**Special tax classification for gains and losses**

| Item | For a hedged item that is or produces … | the gain … | the loss … |
|---|---|---|---|
| 11 | a loss or outgoing that is not allowed as a deduction | is treated as *non-assessable non-exempt income | is treated as a loss that is not allowed as a deduction |
| 12 | a net investment in a foreign operation (within the meaning of the *accounting principles) that is not carried on through:<br>(a) a company in which you hold shares; or<br>(b) a company that is a subsidiary of yours (within the meaning of the *Corporations Act 2001*). | (a) to the extent that the net investment would give rise to income that is *non-assessable non-exempt income under section 23AH of the *Income Tax Assessment Act 1936*—is treated as non-assessable non-exempt income; and<br>(b) otherwise—is treated in accordance with the item or items in this table that are applicable to the gain. | (a) to the extent that the net investment would give rise to income that is non-assessable non-exempt income under section 23AH of the *Income Tax Assessment Act 1936*—is not deductible; and<br>(b) otherwise—is treated in accordance with the item or items in this table that are applicable to the loss. |

(5) Subsection (6) applies if:

(a) a *hedged item is your net investment in a foreign operation (within the meaning of the *accounting principles); and

(b) the foreign operation is carried on through:

(i) a company in which you hold *shares; or

(ii) a company that is a subsidiary of yours (within the meaning of the *Corporations Act 2001*).

(6) The table in subsection (4) has effect as if:

(a) to the extent that the *hedging financial arrangement hedges a risk or risks in relation to *shares you hold in the company—

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the reference in that table to the *hedged item were a reference to your interest in those shares; and

(b) to the extent that the hedging financial arrangement hedges a risk or risks in relation to another interest you have in the company—the reference in that table to the hedged item were a reference to that interest.

## 230-315 Hedging financial arrangement election

*Election*

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

*Eligibility to make hedging financial arrangement election for an income year*

(2) You are eligible to make a ***hedging financial arrangement election*** for an income year if:

(a) you prepare a financial report for that income year in accordance with:

(i) the *accounting principles; or

(ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting made under a *foreign law that apply to the preparation of the financial report under a foreign law; and

(b) the financial report is audited in accordance with:

(i) the *auditing principles; or

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

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

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*Election irrevocable*

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

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

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

(1) This section applies if:

(a) you prepare a financial report for a year (the ***first year***); and

(b) you prepare a financial report for the subsequent year (the ***second year***); and

(c) your income year starts in the first year and ends in the second year; and

(d) both the financial report for the first year and the financial report for the second year are:

(i) prepared in accordance with paragraph 230-315(2)(a); and

(ii) audited in accordance with paragraph 230-315(2)(b); and

(e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.

(2) Treat yourself as eligible to make an election for the income year under subsection 230-315(2).

## 230-325 Hedging financial arrangements to which election applies

A *hedging financial arrangement election applies to a *hedging financial arrangement:

(a) that you start to have in the income year in which you make the election or in a later income year; and

(b) that is not excluded from the application of the election by section 230-330.

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



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Note: Subject to a determination by the Commissioner, the hedging financial arrangement election does not apply to a financial arrangement you start to have after you fail to comply with the requirements in sections 230-355 and 230-360 and paragraph 230-365(c) in relation to a hedging financial arrangement to which the election does apply: see section 230-385. See also subsection 230-305(1).

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

(1) A *hedging financial arrangement election does not apply to a *financial arrangement if the arrangement is a financial arrangement under section 230-50 (equity interests etc.).

(2) Subsection (1) does not apply to a *hedging financial arrangement if:

(a) the hedging financial arrangement is a *foreign currency hedge; and

(b) you issue the hedging financial arrangement.

(3) A *hedging financial arrangement election does not apply to a *financial arrangement if:

(a) you are:

(i) an individual; or

(ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and

(b) the arrangement is a *qualifying security; and

(c) you have not made an election under subsection 230-455(7).

(4) A *hedging financial arrangement election does not apply to a *financial arrangement if:

(a) the election is made by the *head company of a *consolidated group or *MEC group; and

(b) the election specifies that the election is not to apply to financial arrangements in relation to *life insurance business carried on by a member of the consolidated group or MEC group; and

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(c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.

(5) A *hedging financial arrangement election does not apply to a *financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

## 230-335 *Hedging financial arrangement* and *hedged item*

*Hedging financial arrangement*

(1) A *financial arrangement that you have that is a *derivative financial arrangement, or is not a derivative financial arrangement but is a *foreign currency hedge, is a ***hedging financial arrangement*** if:

(a) you create, acquire or apply the arrangement for the purpose of hedging a risk or risks in relation to a *hedged item or items; and

(b) at the time you create, acquire or apply the arrangement, the arrangement satisfies the requirements of the principles or standards referred to in paragraph 230-315(2)(a) to be a hedging instrument; and

(c) the arrangement is recorded as a hedging instrument in:

(i) your financial report (including documents and records on which the report is based); or

(ii) if the arrangement hedges a risk in relation to *foreign currency—your financial report or the financial report of a consolidated entity in which you are included (including documents and records on which the report is based);

for the income year in which the rights and/or obligations are created, acquired or applied.

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

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(2) If:

(a) the *financial arrangement would not be a financial arrangement if the following provisions were disregarded:

(i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);

(ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and

(b) paragraphs (1)(b) and (c) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities;

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

(3) A *financial arrangement that is a *derivative financial arrangement, or is not a derivative financial arrangement but is a *foreign currency hedge, is a ***hedging financial arrangement*** if:

(a) you create, acquire or apply the arrangement for the purpose of hedging a risk or risks in relation to something; and

(b) one or more of subsections (4), (5), (6) or (7) is satisfied; and

(c) the requirements of paragraphs (1)(b) or (c) are not able to be satisfied:

(i) because of the requirements of the principles or standards referred to in paragraph 230-315(2)(a); and

(ii) not because of any act or omission on your part to deliberately fail to satisfy those requirements; and

(d) in a case in which none of subsections (5), (6) and (7) are satisfied—you satisfy the additional recording requirements of subsection 230-355(5); and

(e) in any case—you satisfy the requirements (if any) prescribed by the regulations for the purposes of this paragraph.

(3A) Disregard paragraph (3)(d) if subsection (4) is satisfied and:

(a) a *hedging financial arrangement election applies to the *financial arrangement (because you previously satisfied the additional recording requirements mentioned in that paragraph at a time when the election applied); or

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(b) all of the following subparagraphs apply:

(i) a hedging financial arrangement election would apply to the financial arrangement if you satisfied the additional recording requirements mentioned in paragraph (3)(d);

(ii) the election and subsection (3) apply to another financial arrangement;

(iii) subsection (4) is or was satisfied in relation to that other arrangement at a time when the election applied to that other arrangement.

(4) This subsection is satisfied if:

(a) the *financial arrangement hedges a foreign currency risk in relation to an anticipated *foreign equity distribution from a *connected entity; and

(b) the distribution is *non-assessable non-exempt income under section 768-5.

(5) This subsection is satisfied if:

(a) you enter into a *financial arrangement with a *connected entity; and

(b) the principles or standards referred to in paragraph 230-315(2)(a) require that a consolidated financial report be prepared that deals with both your affairs and the affairs of the connected entity; and

(c) the report properly reflects your affairs; and

(d) the arrangement satisfies the requirements of paragraph (1)(a); and

(e) the arrangement would satisfy the requirements of paragraph (1)(b) or (c) but for the fact that the consolidated report disregards the arrangement.

(6) This subsection is satisfied if:

(a) the period for which the risk or risks are hedged does not straddle 2 or more income years; and

(b) the *financial arrangement satisfies the requirements of paragraph (1)(a); and

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(c) the arrangement would satisfy the requirements of paragraph (1)(c) if the period for which the risk or risks that are hedged did straddle 2 or more income years.

(7) This subsection is satisfied if the requirements prescribed by the regulations for the purposes of this subsection are satisfied.

*Financial arrangement hedging more than one type of risk*

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

*More than one financial arrangement hedging the same risk or risks*

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

*Hedged item*

(10) If a *financial arrangement that you have hedges a risk in relation to:

(a) an asset or a part of an asset; or

(b) a liability or a part of a liability; or

(c) a firm commitment (within the meaning of the *accounting principles) or a part of such a commitment; or

(d) a highly probable forecast transaction (within the meaning of the accounting principles) or a part of such a transaction; or

(e) a net investment in a foreign operation (within the meaning of the accounting principles) or a part of such an investment; or

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(f) something prescribed by the regulations for the purposes of this paragraph;

the asset (or that part of the asset), the liability (or that part of the liability), the commitment (or that part of the commitment), the transaction (or that part of the transaction) or the investment (or that part of the investment) is a ***hedged item*** for the arrangement.

(11) If a *financial arrangement is a *hedging financial arrangement because of paragraph (4)(a), the anticipated dividend referred to in that subparagraph is a ***hedged item*** for the arrangement even if subsection (10) is not satisfied in relation to the anticipated dividend.

## 230-340 Generally whole arrangement must be hedging financial arrangement

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

*Partial hedges*

(2) If a *financial arrangement:

(a) is an options contract; and

(b) hedges risk only in part by reference to changes in the intrinsic value of the options contract;

the arrangement may be treated as a ***hedging financial arrangement*** to the extent to which the part of the arrangement referred to in paragraph (b) satisfies the requirements of subsection 230-335(1) or (3).

(3) If a *financial arrangement:

(a) is a forward contract; and

(b) has a spot price element and an interest element;

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the arrangement may be treated as a ***hedging financial arrangement*** to the extent to which the spot price element satisfies the requirements of subsection 230-335(1) or (3).

*Proportionate hedges*

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

*Separate financial arrangements if partial or proportionate hedge*

(5) If a part (or parts), or a proportion (or proportions), of a *financial arrangement is (or are) treated as a *hedging financial arrangement under subsection (2), (3) or (4):

(a) the part (or each of the parts), or the proportion (or each of the proportions), of the arrangement that is (or are) treated as a hedging financial arrangement is taken to be a separate financial arrangement for the purposes of this Division; and

(b) the remaining part or proportion (if any) of the arrangement is taken to be a separate financial arrangement for the purposes of this Division.

(6) Subsection (5) has effect even if there would not be separate *arrangements under subsection 230-55(4).

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

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

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

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

*Derivative financial arrangement*

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

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

*Foreign currency hedge*

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

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



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## 230-355 Recording requirements

(1) The requirement of this section is that you must make, or have in place, a record that:

(a) contains a description of the following:

(i) the *hedging financial arrangement in relation to which the election is made;

(ii) the nature of the risk or risks being hedged;

(iii) the *hedged item or items;

(iv) how you will assess the effectiveness of hedging the risk in reducing your exposure to changes in the fair value of the hedged item or items or cash flows or foreign currency exposure attributable to them;

(v) the risk management objective for, and the risk management strategy to be followed in, acquiring, creating or applying the arrangement; and

(b) contains any further details that the *accounting principles require, by way of documentation, for an arrangement to be recorded in a financial report as a hedging instrument; and

(c) sets out the terms of the determinations you make under section 230-360.

To avoid doubt, paragraph (b) applies even if the arrangement is not recorded in your financial report as a hedging instrument.

(2) To avoid doubt, the record may consist of a single document or 2 or more documents.

(3) The record must be made or in place:

(a) at, or soon after, the time when you create, acquire or apply the *hedging financial arrangement; or

(b) at such other time as is provided for in the regulations for the purposes of this paragraph.

(4) The description must be sufficiently precise and detailed that the following are clear:

(a) that the risk in respect of the particular *hedged item or items was the one hedged by the *hedging financial arrangement;

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



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(b) the extent to which the risk was hedged;

(c) that the rights and/or obligations comprising the hedging financial arrangement were in fact those created, acquired or applied for the purpose of hedging the risk.

(5) If a *financial arrangement is a *hedging financial arrangement under subsection 230-335(2) or (3), the following requirements must be met in addition to the requirements of subsections (1), (3) and (4):

(a) you must make or have in place, at, or soon before or soon after, the time when you create, acquire or apply the arrangement, a record that sets out:

(i) a statement of why, and the way in which, the arrangement operates commercially or economically as a hedge of the *hedged item or items; and

(ii) the reasons why the arrangement does not satisfy the requirements of the principles or standards referred to in paragraph 230-315(2)(a) to be a hedging instrument;

(b) you must, at the end of each income year during which you have the arrangement, make a record of the accumulated gains and/or losses (whether realised or unrealised) as at the end of that income year from the arrangement or arrangements relating to the hedged item or items that are yet to be included in your assessable income or allowed to you as deductions;

(c) you must have, at the time when you create, acquire or apply the arrangement, a record that sets out your risk management policies and practices;

(d) you must have in place, at the time when you create, acquire or apply the arrangement, internal risk management systems and controls that record the arrangement and the hedged item or items.

(6) For the purposes of paragraph (5)(b), you must assume that:

(a) all the gains from the *financial arrangement would be assessable income; and

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



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(b) all the losses from the financial arrangement would be allowed to you as deductions.

## 230-360 Determining basis for allocating gain or loss

(1) A requirement of this section is that you must determine the basis on which your gain or loss from the *hedging financial arrangement is to be allocated to an income year, or over 2 or more income years, for the purposes of this Division.

(2) It is also a requirement of this section that the basis that you determine must:

(a) fairly and reasonably correspond with the basis on which gains, losses or other amounts in relation to the *hedged item or items are recognised or allocated under this Act; and

(b) be objective; and

(c) be sufficiently precise and detailed that, when your gain, loss or other amount from the *hedged item or items is taken into account for the purposes of this Act, the following will be clear from the record made under section 230-355:

(i) the time at which the gain or loss from the *hedging financial arrangement is to be taken into account for the purposes of this Division;

(ii) the way in which that gain or loss will be dealt with under section 230-310.

Note: Paragraph (a) refers to an amount in relation to the hedged item or items being recognised or allocated under this Act. This would include an amount being allowed as a deduction or an amount being included in assessable income. If the hedged item were an asset, an amount referable to a part of the cost of the asset might, for example, be allowed as a deduction for a particular income year.

(3) To avoid doubt, the income years over which your gain or loss is to be allocated may include an income year that starts after you cease to have the *hedging financial arrangement.

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



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## 230-365 Effectiveness of the hedge

The requirement of this section is that:

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

(b) the fair value of the hedged item or items or cash flows relating to them and the fair value of the arrangement must be able to be reliably measured; and

(c) you must assess the hedging of the risk by the arrangement:

(i) on a regular basis in accordance with the *accounting principles; and

(ii) at least once in each 12 month period; and

(d) your assessment must be that the hedging of the risk will be effective (within the meaning of the principles or standards referred to in paragraph 230-315(2)(a)) in reducing your exposure to changes in the fair value of the hedged item or items or cash flows attributable to the hedged risk throughout the remainder of the period for which you expect to have the arrangement.

## 230-370 When election ceases to apply

(1) A *hedging financial arrangement election ceases to have effect from the start of an income year if you cease to be eligible under subsection 230-315(2) to make the election for that income year.

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

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



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

## 230-375 Balancing adjustment if election ceases to apply

(1) This section applies if a *hedging financial arrangement election ceases to have effect under subsection 230-370(1).

(2) You are taken, for the purposes of this Division, to have:
   (a) disposed of each *hedging financial arrangement to which the election applies for its fair value immediately before the election ceases to have effect; and
   (b) reacquired the arrangement at its fair value immediately after the election ceases to have effect.

(3) To avoid doubt, this Subdivision applies, for the purposes of working out the consequences of the disposal referred to in paragraph (2)(a), as if the *hedging financial arrangement were one to which the *hedging financial arrangement election applied at the time of the disposal.

## 230-380 Commissioner may determine that requirement met

*Commissioner may determine that requirement met*

(1) If (apart from this section) the requirements of sections 230-355 to 230-365 are not met in relation to a *hedging financial arrangement that you have, treat those requirements as having been so met if the Commissioner makes a determination under subsection (1A) in relation to the arrangement.

(1A) The Commissioner may make the determination if the Commissioner considers that this is appropriate, having regard to:
   (a) the respects in which the arrangement does not meet those requirements; and
   (b) the extent to which it does not meet those requirements; and
   (c) the reasons why it does not meet those requirements; and

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



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(d) if the Commissioner is considering whether to impose conditions under subsection (2)—the likelihood that you will comply with those conditions; and

(e) the objects of this Subdivision.

*Commissioner may impose additional record keeping requirements*

(2) The Commissioner may make a determination under subsection (1A) conditional on your keeping records in addition to those required by section 230-355.

(3) A determination under subsection (1A) ceases to have effect if you breach a condition imposed under subsection (2).

(4) Subsection (3) ceases to apply to you if the Commissioner determines that that subsection ceases to apply to you. The determination takes effect from the date specified in the determination.

(5) In deciding whether to make the determination under subsection (4), the Commissioner must have regard to:

(a) your record keeping practices; and

(b) your compliance history; and

(c) any changes that have been made to:

(i) your accounting systems and controls; and

(ii) your internal governance processes;

to ensure that breaches of the kind referred to in subsection (3) do not happen again; and

(d) any other relevant matter.

*Commissioner may determine matter under section 230-360*

(6) If:

(a) the Commissioner makes a determination under subsection (1A) in relation to a *hedging financial arrangement; and

(b) either or both of the following applies:

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



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(i) you fail to determine a matter in relation to the arrangement under section 230-360;

(ii) you determine a matter in relation to the arrangement under section 230-360 but the determination does not satisfy the requirements of subsection 230-360(2);

the Commissioner may determine that matter, in a way that satisfies the requirements of section 230-360. The Commissioner's determination has effect as if you had made the determination and recorded it under that section.

## 230-385 Consequences of failure to meet requirements

*When this section applies*

(1) This section applies if:

(a) your *hedging financial arrangement election applies to a *hedging financial arrangement; and

(b) you do not meet a requirement of section 230-355 or 230-360 or paragraph 230-365(c) in relation to the arrangement.

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

*Commissioner may determine matter under section 230-360*

(3) If:

(a) you fail to determine a matter in relation to the *hedging financial arrangement under section 230-360; or

(b) you determine a matter in relation to the arrangement under section 230-360 but the determination does not satisfy the requirements of subsection 230-360(2);

the Commissioner may determine that matter, in a way that satisfies the requirements of section 230-360. A reference in this Division to a determination made under that section is treated as including a reference to a determination under this subsection.

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



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*Election does not apply to hedging financial arrangements you start to have after failing to comply with requirements*

(4) Your *hedging financial arrangement election does not apply to a *hedging financial arrangement you start to have:

(a) after you fail to meet the requirement mentioned in paragraph (1)(b) in relation to the arrangement mentioned in that paragraph; and

(b) before a date (if any) determined by the Commissioner.

(5) The Commissioner may make a determination under paragraph (4)(b) only if satisfied that you are unlikely to fail again to meet a requirement of section 230-355 or 230-360 or paragraph 230-365(c) in relation to a *hedging financial arrangement.

(6) In deciding whether to make a determination under paragraph (4)(b), the Commissioner must have regard to:

(a) your record keeping practices; and

(b) your compliance history; and

(c) any changes that have been made to:

(i) your accounting systems and controls; and

(ii) your internal governance processes;

to ensure that failures of the kind mentioned in paragraph (1)(b) do not happen again; and

(d) any other relevant matter.

*Commissioner may still exercise powers under section 230-380*

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

## Subdivision 230-F—Reliance on financial reports

### Table of sections

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



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## 230-390 Objects of this Subdivision

The objects of this Subdivision are:

(a) to reduce administration and compliance costs by allowing you to align the tax treatment of your gains and losses from a *financial arrangement with the accounting treatment that applies to the arrangement; and

(b) to achieve those objects without your obtaining inappropriate tax benefits.

## 230-395 Election to rely on financial reports

*Election*

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

*Eligibility to make election*

(2) You are eligible to make an election to rely on financial reports for an income year if:

(a) you prepare a financial report for that income year in accordance with:

(i) the *accounting principles; or

(ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting made under a *foreign law that

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



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apply to the preparation of the financial report under a foreign law; and

(b) the financial report is audited in accordance with:

(i) the *auditing principles; or

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

(c) your auditor has not qualified the auditor's report on your financial report for that income year or any of the last 4 financial years in a respect that is relevant to the taxation treatment of *financial arrangements; and

(d) your accounting systems and controls and your internal governance processes are reliable; and

(e) no report of an audit or review conducted in the income year, or any of the preceding 4 income years, has included an adverse assessment of your accounting systems in a respect that is relevant to the taxation treatment of financial arrangements.

Note 1: Paragraph (b)—section 230-500 allows regulations to be made specifying particular foreign accounting and auditing standards as ones that are to be treated as comparable with Australian accounting and auditing principles for the purposes of this Division.

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

(3) Paragraph (2)(e) does not apply to a report of:

(a) an internal audit or review that you conduct; or

(b) an audit or review of a kind prescribed by the regulations for the purposes of this paragraph.

*Election irrevocable*

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

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

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



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

(1) This section applies if:

(a) you prepare a financial report for a year (the ***first year***); and

(b) you prepare a financial report for the subsequent year (the ***second year***); and

(c) your income year starts in the first year and ends in the second year; and

(d) both the financial report for the first year and the financial report for the second year are:

(i) prepared in accordance with paragraph 230-395(2)(a); and

(ii) audited in accordance with paragraph 230-395(2)(b); and

(e) the auditor's reports are unqualified for both the financial report for the first year and the financial report for the second year.

(2) Treat yourself as eligible to make an election for the income year under subsection 230-395(2).

(3) Work out the gain or loss you make from the arrangement for the income year as follows:

(a) firstly, work out the gain or loss you make from the arrangement for the first year in accordance with section 230-420 (treating the first year as an income year);

(b) next, work out how much of the gain or loss mentioned in paragraph (a) is attributable to the income year in accordance with subsection (4);

(c) next, work out the gain or loss you make from the arrangement for the second year in accordance with section 230-420 (treating the second year as an income year);

(d) next, work out how much of the gain or loss mentioned in paragraph (c) is attributable to the income year in accordance with subsection (4);

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



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(e) next:

(i) if the amounts worked out under paragraphs (b) and (d) are both gains—add them together to work out the gain from the arrangement for the income year; or

(ii) if the amounts worked out under paragraphs (b) and (d) are both losses—add them together to work out the loss from the arrangement for the income year; or

(iii) if one of the amounts worked out under paragraphs (b) and (d) is a loss and the other is a gain—subtract the loss from the gain. If the result is positive, this is the gain from the arrangement for the income year. If the result is negative, this is the loss from the arrangement for the income year.

(4) For the purposes of paragraphs (3)(b) and (d), work out how much of the gain or loss is attributable to the income year by:

(a) using a methodology that is reasonable; and

(b) using the same methodology for the first and second years.

(5) For the purposes of paragraph (4)(a), treat a methodology that attributes the gain or loss on a pro-rata basis as *not* being reasonable.

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

(1) Paragraph 230-395(2)(c) or (e) does not apply in relation to your *election to rely on financial reports for a particular income year or income years if the Commissioner determines that the paragraph does not apply to the election for that income year or those income years.

(2) In deciding whether to make the determination under subsection (1), the Commissioner must have regard to:

(a) the reasons for the non-compliance with the principles or standards concerned; and

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(b) the remedial action (if any) that you have undertaken to ensure that non-compliance with those principles or standards does not occur in future (such as changes to your accounting systems and controls or to your internal governance structures); and

(c) if you, or your activities, are subject to regulatory oversight or review—any opinions expressed by the regulator about the adequacy of remedial action of the kind referred to in paragraph (b); and

(d) any other relevant matter.

## 230-410 Financial arrangements to which the election applies

(1) An *election to rely on financial reports applies in relation to a *financial arrangement that you have if:

(a) the arrangement is a *Division 230 financial arrangement; and

(b) you start to have the arrangement in the income year in which you make the election or in a later income year; and

(c) the arrangement is recognised in financial reports of the kind referred to in paragraph 230-395(2)(a) that are audited as referred to in paragraph 230-395(2)(b); and

(d) if the arrangement is a financial arrangement under section 230-50—the arrangement is an asset or liability that you are required (whether or not as a result of a choice you make) by:

(i) the *accounting principles; or

(ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting that apply to the preparation of the financial report under a *foreign law;

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

(e) it is reasonably expected that the following is, or will be, the same:

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(i) the amount of the overall gain or loss you make from the arrangement (as determined in accordance with the financial reports);

(ii) the amount of the overall gain or loss you make from the arrangement (as determined in accordance with the provisions of this Division if the election under this subsection did not apply to the arrangement); and

(f) the differences between the results of the following methods would reasonably be expected not to be substantial:

(i) the method used in your financial reports to work out the amounts of the gain or loss you make from the arrangement for each income year;

(ii) the method that would be applied by this Division to work out the amounts of those gains or losses if the election did not apply to the arrangement.

This subsection has effect subject to section 230-415.

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

(3) Subsections (4), (5) and (6) apply if, but for this subsection, paragraphs (1)(c) and (d) would not be satisfied in relation to a *financial arrangement because the arrangement is an intra-group transaction for the purposes of:

(a) *accounting standard AASB 127 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or

(b) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that applies to the preparation of the financial report under a *foreign law.

Note: Financial arrangements between members of a consolidated group or MEC group are not covered by this subsection because the single

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entity rule in subsection 701-1(1) operates to treat them as not being financial arrangements for the purposes of this Division.

(4) Paragraphs (1)(c) and (d) are taken to be satisfied in relation to the *financial arrangement.

(5) Paragraph (1)(e) applies as if the reference in subparagraph (1)(e)(i) to the amount of the overall gain or loss you make from the *financial arrangement (as determined in accordance with the financial reports) were a reference to the amount of that overall gain or loss (as would be determined in accordance with the financial reports if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in subsection (3)).

(6) Paragraph (1)(f) applies as if the reference in subparagraph (1)(f)(i) to the method used in your financial reports to work out the amounts of the gain or loss you make from the arrangement for each income year were a reference to the method that would be used in your financial reports to work out those amounts if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in subsection (3).

(7) For the purposes of applying subparagraphs (1)(e)(ii) and (f)(ii) to a *financial arrangement, assume that you had made any election that:

(a) you could make under Subdivision 230-C or 230-D; and

(b) could apply to the arrangement.

(8) If:

(a) the *financial arrangement would not be a financial arrangement if the following provisions were disregarded:

(i) Division 9A of Part III of the *Income Tax Assessment Act 1936* (which deals with offshore banking units);

(ii) Part IIIB of that Act (which deals with Australian branches of foreign banks etc.); and

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



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(b) paragraphs (1)(c) and (d) would be satisfied in relation to the financial arrangement if the arrangement had been between 2 separate entities; and

(c) the *election to rely on financial reports is made by:

(i) if section 121EB of the *Income Tax Assessment Act 1936* applies—the OBU mentioned in that section (disregarding the operation of that section); or

(ii) if section 160ZZW of that Act applies—the bank mentioned in that section (disregarding the operation of that section);

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

## 230-415 Financial arrangements not covered by election

(1) An *election to rely on financial reports does not apply to a *financial arrangement if:

(a) the arrangement is an *equity interest; and

(b) you are the issuer of the equity interest.

(2) An *election to rely on financial reports does not apply to a *financial arrangement if:

(a) you are:

(i) an individual; or

(ii) an entity (other than an individual) that satisfies subsection 230-455(2), (3) or (4) for the income year in which you start to have the arrangement; and

(b) the arrangement is a *qualifying security; and

(c) you have not made an election under subsection 230-455(7).

(3) An *election to rely on financial reports does not apply to a *financial arrangement if:

(a) the election is made by the *head company of a *consolidated group or *MEC group; and

(b) the election specifies that the election is not to apply to financial arrangements in relation to *life insurance business

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carried on by a member of the consolidated group or MEC group; and

(c) the arrangement is one that relates to the life insurance business carried on by a member of the consolidated group or MEC group.

(4) An *election to rely on financial reports does not apply to a *financial arrangement if the arrangement is associated with a business of a kind specified in regulations made for the purposes of this subsection.

## 230-420 Effect of election to rely on financial reports

(1) If an *election to rely on financial reports applies to a *financial arrangement, the gain or loss you make from the arrangement for an income year is:

(a) the gain or loss that the principles or standards referred to in paragraph 230-395(2)(a) require you to recognise in profit or loss from that arrangement for that income year; or

(b) if subsection 230-410(3) applies to the arrangement—the gain or loss that the principles or standards referred to in paragraph 230-395(2)(a) would have required you to recognise in profit or loss from that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standard referred to in paragraph 230-410(3)(b); or

(c) if subsection 230-410(8) applies to the arrangement—the gain or loss that the principles or standards referred to in paragraph 230-410(1)(d) would have required you to recognise in profit or loss for the year from the asset or liability mentioned in paragraph 230-410(1)(d) if the arrangement had been between 2 separate entities.

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

(2) Subsection (3) applies if:

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(a) a *head company of a *consolidated group or *MEC group has a *financial arrangement; and

(b) an *election to rely on financial reports applies to the arrangement; and

(c) a subsidiary member of the group ceases to be a member of the group at a particular time (the ***leaving time***); and

(d) immediately after the leaving time, the subsidiary member has the arrangement.

(3) The gain or loss the group makes from the *financial arrangement for the income year in which the leaving time occurs is taken to be the gain or loss that the principles or standards referred to in paragraph 230-395(2)(a) would require the group to recognise in profit or loss from the arrangement for that income year if:

(a) the circumstances that existed in relation to the arrangement (including its value) immediately before the leaving time had continued to exist until the end of the income year; and

(b) any circumstances that arise in relation to the arrangement after the leaving time were disregarded.

## 230-425 When election ceases to apply

(1) An election under subsection 230-395(1) ceases to have effect from the start of an income year if you cease to be eligible to make an *election to rely on financial reports for that income year.

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

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

(3) An election under subsection 230-395(1) ceases to apply to a *financial arrangement from the start of an income year if the arrangement ceases to satisfy a requirement of paragraph 230-410(1)(c), (d), (e) or (f) during that income year.

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



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(4) If the election ceases to apply to a particular *financial arrangement under subsection (3), the election cannot subsequently apply to that arrangement (even if the requirements of paragraphs 230-410(1)(c), (d), (e) and (f) are satisfied once more in relation to the arrangement).

## 230-430 Balancing adjustment if election ceases to apply

(1) You must make balancing adjustments under subsection (2) if an election under subsection 230-395(1) ceases to have effect under subsection 230-425(1).

(2) The balancing adjustments under this subsection are the balancing adjustments you would make under Subdivision 230-G in relation to each of the *financial arrangements to which the election applied if you disposed of the arrangement for its fair value when the election ceases to have effect.

(3) You must make balancing adjustments under subsection (5) if an election under subsection 230-395(1) ceases to apply to a particular *financial arrangement under subsection 230-425(3).

(4) Subsection (3) does not apply to a *financial arrangement if:
  (a) the arrangement is not one that you are required (whether or not as a result of a choice you make) by the principles or standards referred to in paragraph 230-395(2)(a) to classify or designate, in your financial reports, as at fair value through profit or loss; and
  (b) the election under subsection 230-395(1) ceases to apply to the arrangement because the arrangement fails to satisfy the requirements of paragraph 230-410(1)(e) or (f); and
  (c) the arrangement ceases to satisfy the requirements of that paragraph because the arrangement becomes impaired for the purposes of those principles or standards.

(5) The balancing adjustment under this subsection is the balancing adjustment you would make under Subdivision 230-G if you

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



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disposed of the *financial arrangement for its fair value when the election ceases to apply to the arrangement.

(6) If a balancing adjustment is made under subsection (2) or (5) in relation to a *financial arrangement, you are taken, for the purposes of this Division, to have reacquired the arrangement at its fair value immediately after the election ceased to have effect or ceased to apply to the arrangement.

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

### Table of sections

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

### 230-435 When balancing adjustment made

*When balancing adjustment made*

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

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(d) an *arrangement that is a *Division 230 financial arrangement ceases to be a financial arrangement.

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

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

*Modifications for arrangements that are assets*

(3) If the *financial arrangement is an asset of yours at the time the event referred to in subsection (1) occurs, paragraphs (1)(a) and (c) do not apply unless the effect of the transfer is to transfer to the other entity substantially all the risks and rewards of ownership of the interest transferred.

(4) If a *financial arrangement is an asset of yours, for the purposes of applying this Subdivision to the arrangement, you are treated as transferring a right under the arrangement to another entity if:

(a) you retain the right but assume a new obligation; and

(b) your assumption of the new obligation has the same effect, in substance, as transferring the right to another entity; and

(c) the new obligation arises only to the extent to which the right to *financial benefits under the arrangement is satisfied; and

(d) you cannot sell or pledge the right (other than as security in relation to the new obligation); and

(e) you must, under the new obligation, provide financial benefits you receive in relation to the right to the entity to which you owe the new obligation without delay.

*Historic rate rollover of derivative financial arrangement*

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

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## 230-440 Exceptions

*Equity interests etc.*

(1) A balancing adjustment is not made under this Subdivision in relation to a *financial arrangement at a time if:

(a) the arrangement is a financial arrangement under section 230-50 (equity interests etc.); and

(b) neither Subdivision 230-C nor Subdivision 230-F apply to the arrangement immediately before that time.

*Financial arrangements to which hedging financial arrangement elections apply*

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

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

(3) A balancing adjustment is not made under this Subdivision in relation to the following events:

(a) a *financial arrangement being written off in whole or part as a bad debt;

(b) a financial arrangement that is a *derivative financial arrangement being settled or closed out for margining purposes;

(c) the ceasing of obligations or rights under a financial arrangement that is a *traditional security if:

(i) the ceasing occurs because the traditional security is converted into ordinary shares in, or transferred to, a company that is the issuer of the traditional security or a *connected entity; and

(ii) the traditional security was issued on the basis that it will or may convert into ordinary shares in, or be

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transferred to, the issuer of the traditional security or the connected entity;

(d) the ceasing of obligations or rights under a financial arrangement that is a traditional security if:

(i) the ceasing occurs because the traditional security is exchanged for ordinary shares in a company that is neither the issuer of the traditional security nor a connected entity; and

(ii) if the ceasing of the obligations or rights occurs because of a disposal—the disposal is to the issuer of the traditional security or a connected entity; and

(iii) the traditional security was issued on the basis that it will or may be exchanged for ordinary shares in the company.

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

*Subsidiary member leaving consolidated group or MEC group*

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

## 230-445 Balancing adjustment

*Complete cessation or transfer*

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

| *Method statement for balancing adjustment* |
|---|
| Step 1. Add up the following: |
| (a) the total of all the *financial benefits you have received under the *financial arrangement; |

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

(b) the total of the amounts that have been allowed to you as deductions, because of circumstances that have occurred before the transfer or cessation, for losses from the arrangement;

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

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

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

(e) the total of the amounts that will be allowed to you as deductions after the transfer or cessation because of sections 230-160 and 230-165 to the extent to which those amounts are attributable to the arrangement.

Step 2. Add up the following:

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

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

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

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

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

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

(e) the total of the amounts that will be included in your assessable income after the transfer or cessation because of sections 230-160 and 230-165 to the extent to which those amounts are attributable to the arrangement.

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



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

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

(2) If subparagraph 230-435(1)(c)(i) applies, you make the balancing adjustment by applying the method statement in subsection (1) but reduce:

(a) the amounts referred to in step 1; and

(b) the amounts referred to in step 2;

by applying the proportion referred to in subparagraph 230-435(1)(c)(i) to them.

*Transfer of specifically identified right or obligation under financial arrangement*

(3) If subparagraph 230-435(1)(c)(ii) applies, you make the balancing adjustment by applying the method statement in subsection (1) as if the references to:

(a) the amounts referred to in step 1; and

(b) the amounts referred to in step 2;

were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 230-435(1)(c)(ii).

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*Proportionate transfer of specifically identified right or obligation under financial arrangement*

(4) If subparagraph 230-435(1)(c)(iii) applies, you make the balancing adjustment by applying the method statement:

(a) as if the references to:

(i) the amounts referred to in step 1; and

(ii) the amounts referred to in step 2;

were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 230-435(1)(c)(iii); and

(b) by reducing those amounts by applying the proportion referred to in subparagraph 230-435(1)(c)(iii) to them.

*Attribution must reflect appropriate and commercially accepted valuation principles*

(5) Any attribution made under subsection (3) or paragraph (4)(a) must reflect appropriate and commercially accepted valuation principles that properly take into account:

(a) the nature of the rights and obligations under the *financial arrangement; and

(b) the risks associated with each *financial benefit, right and obligation under the arrangement; and

(c) the time value of money.

*Income year for which gain or loss is made*

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

*Treatment of bad debts in relation to financial arrangements*

(7) For the purposes of applying paragraph (b) of step 1 of the method statement in subsection (1) to a *financial arrangement, a bad debt deduction in relation to the arrangement to which

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subsection 230-25(3) applies is taken to be a deduction for a loss from the arrangement.

## Subdivision 230-H—Exceptions

### Table of sections

230-450 Short-term arrangements where non-money amount involved
230-455 Certain taxpayers where no significant deferral
230-460 Various rights and/or obligations
230-465 Ceasing to have a financial arrangement in certain circumstances
230-470 Forgiveness of commercial debts
230-475 Clarifying exceptions
230-480 Treatment of gains in form of franked distribution etc.
230-481 Registered emissions units

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

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

(a) the arrangement is a financial arrangement under section 230-45; and

(b) either:

(i) you acquired goods or other property (other than goods that are, or property that is, money or a *money equivalent) or services (other than services that are a money equivalent) from another entity and the *financial benefits you are to provide under the arrangement are consideration for those goods, that property or those services; or

(ii) you provided goods or other property (other than goods that are, or other property that is, money or a money equivalent) or services (other than services that are a money equivalent) to another entity and the financial benefits you are to receive under the arrangement are consideration for those goods, that property or those services; and

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(c) the period between the following is not more than 12 months:
  (i) the time when you are to provide or receive the consideration (or a substantial proportion of it);
  (ii) the time when you acquired or provided the property, goods or services (or a substantial proportion of them); and

(d) the arrangement is not a *derivative financial arrangement for any income year; and

(e) a *fair value election does not apply to the arrangement.

## 230-455 Certain taxpayers where no significant deferral

(1) This Division does not apply in relation to your gains or losses from a *financial arrangement for any income year if:

(a) you are:
  (i) an individual; or
  (ii) a superannuation entity (within the meaning of section 10 of the *Superannuation Industry (Supervision) Act 1993*), a *superannuation fund that is not such an entity, a managed investment scheme (within the meaning of the *Corporations Act 2001*) or an entity with a similar status to such a scheme under a *foreign law relating to corporate regulation; or
  (iii) an *ADI, a *securitisation vehicle, an entity that is required to register under the *Financial Sector (Collection of Data) Act 2001* or an entity that would be required to register under that Act if it were a corporation; or
  (iv) an entity other than an entity of a kind mentioned in subparagraph (i), (ii) or (iii); and

(b) where subparagraph (a)(ii) applies—you satisfy subsection (2) for the income year in which you start to have the arrangement; and

(c) where subparagraph (a)(iii) applies—you satisfy subsection (3) for the income year in which you start to have the arrangement; and

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



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(d) where subparagraph (a)(iv) applies—you satisfy subsection (4) for the income year in which you start to have the arrangement; and

(e) either:

(i) the arrangement is to end not more than 12 months after you start to have it; or

(ii) the arrangement is not a *qualifying security.

(2) An entity satisfies this subsection for an income year if:

(a) the value of the entity's assets (see subsection (5)) for the income year (worked out at the end of the income year) is less than $100 million if the income year is the one in which the entity comes into existence; or

(b) the value of the entity's assets for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than $100 million if the income year is an income year after the one in which the entity comes into existence.

(3) An entity satisfies this subsection for an income year if:

(a) the entity's *aggregated turnover for the income year (worked out at the end of the income year) is less than $20 million if the income year is the one in which the entity comes into existence; or

(b) the entity's aggregated turnover for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than $20 million if the income year is an income year after the one in which the entity comes into existence.

(4) An entity satisfies this subsection for an income year if:

(a) either:

(i) the entity's *aggregated turnover for the income year (worked out at the end of the income year) is less than $100 million if the income year is the one in which the entity comes into existence; or

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



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(ii) the entity's aggregated turnover for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than $100 million if the income year is an income year after the one in which the entity comes into existence; and

(b) either:

(i) the value of the entity's financial assets (see subsection (5)) for the income year (worked out at the end of the income year) is less than $100 million if the income year is the one in which the entity comes into existence; or

(ii) the value of the entity's financial assets for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than $100 million if the income year is an income year after the one in which the entity comes into existence; and

(c) either:

(i) the value of the entity's assets (see subsection (5)) for the income year (worked out at the end of the income year) is less than $300 million if the income year is the one in which the entity comes into existence; or

(ii) the value of the entity's assets for the immediately preceding income year (worked out at the end of that immediately preceding income year) is less than $300 million if the income year is an income year after the one in which the entity comes into existence.

(5) For the purposes of subsections (2) and (4), the value of the entity's assets or financial assets is to be determined in accordance with:

(a) if the entity applies *accounting standard AAS 25 in preparation of its financial reports—that accounting standard or another accounting standard prescribed by the regulations for the purposes of this paragraph; or

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



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(b) if paragraph (a) does not apply and the entity prepares its financial reports in accordance with the *accounting principles—the entity's financial reports; or

(c) if paragraphs (a) and (b) do not apply and the entity prepares its financial reports in accordance with an accounting standard comparable to accounting standard AAS 25 under a *foreign law—that comparable standard; or

(d) if paragraphs (a), (b) and (c) do not apply—commercially accepted valuation principles.

(6) Subsection (1) does not apply to your gains or losses from a *financial arrangement for an income year if:

(a) you have made an election under subsection (7) in that income year or an earlier income year; and

(b) you start to have the arrangement after the beginning of the income year in which you make the election.

(7) An election under this subsection is an election to have this Division apply to all of the *financial arrangements that you start to have in the income year in which the election is made or a later income year.

(8) An election under subsection (7) is irrevocable.

(9) This section does not apply in relation to your gains or losses from a *financial arrangement that you start to have after a time if you are not an individual and you failed to satisfy subsection (2), (3) or (4) (as the case may be) for an income year ending before that time.

## 230-460 Various rights and/or obligations

*Rights and/or obligations subject to an exception*

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

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



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

*Leasing or property arrangement*

(2) A right or obligation arising under:

(a) an *arrangement to which Division 242 (about luxury car leases) applies; or

(b) an arrangement to which Division 240 (about arrangements treated as a sale and loan) applies; or

(c) an arrangement that relates to an asset to which Division 250 (about assets put to tax preferred use) applies; or

(d) an arrangement that, in substance or effect, depends on the use of a specific asset that is:

(i) real property; or

(ii) goods or a personal chattel (other than money or a *money equivalent); or

(iii) intellectual property;

and gives a right to control the use of the asset; or

(e) an arrangement that is a licence to use:

(i) real property; or

(ii) goods or a personal chattel (other than money or a money equivalent); or

(iii) intellectual property;

is the subject of an exception.

*Interest in partnership or trust*

(3) A right carried by an interest in a partnership or a trust, or an obligation that corresponds to such a right, is the subject of an exception if:

(a) there is only one class of interest in the partnership or trust; or

(b) the interest is an *equity interest in the partnership or trust; or

(c) for a right or obligation relating to a trust—the trust is managed by a funds manager or custodian, or a responsible

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entity (as defined in the *Corporations Act 2001*) of a registered scheme (as so defined).

(4) Subsection (3) does not apply if, assuming that the *financial arrangement were a *Division 230 financial arrangement, a *fair value election, or an *election to rely on financial reports, would apply to it.

*Certain insurance policies*

(5) A right or obligation under a *life insurance policy is the subject of an exception unless:

(a) you are not a *life insurance company that is the insurer under the policy; and

(b) the policy is an annuity that is a *qualifying security.

(6) A right or obligation under a *general insurance policy is the subject of an exception unless:

(a) you are not a *general insurance company; and

(b) the policy is a *derivative financial arrangement.

*Certain workers' compensation arrangements*

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

*Certain guarantees and indemnities*

(8) A right or obligation under a guarantee or indemnity is the subject of an exception unless:

(a) assuming that the *financial arrangement were a *Division 230 financial arrangement, it would be the subject of a *fair value election or an *election to rely on financial reports; or

(b) the financial arrangement is a *derivative financial arrangement; or

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



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(c) the guarantee or indemnity is given in relation to a financial arrangement.

*Personal arrangements and personal injury*

(9) The following rights and obligations are the subject of an exception:

(a) a right to receive, or an obligation to provide, consideration for providing personal services;

(b) a right, or obligation, arising from the administration of a deceased person's estate;

(c) a right to receive, or an obligation to provide, a gift under a deed;

(d) a right to receive, or an obligation to provide, a *financial benefit by way of maintenance:

(i) to an individual who is or has been the *spouse of the person liable to provide the benefit; or

(ii) to or for the benefit of an individual who is or has been a child of the person liable to provide the benefit; or

(iii) to or for the benefit of an individual who is or has been a child of an individual who is or has been a spouse of the person liable to provide the benefit;

(e) a right to receive, or an obligation to provide, a financial benefit in relation to personal injury to an individual;

(f) a right to receive, or an obligation to provide, a financial benefit in relation to an injury to an individual's reputation.

(10) Without limiting paragraph (9)(e), that paragraph applies:

(a) even if the person to whom the *financial benefit is to be provided is not the individual who was injured; and

(b) even if the personal injury to the individual takes the form of:

(i) a wrong to the individual; or

(ii) illness of the individual.

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

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



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*Superannuation and pension benefits*

(11) A right to receive, or an obligation to provide, *financial benefits is the subject of an exception if the right or obligation arises from a person's membership of a superannuation or pension scheme, including:

(a) a right of a dependant of a member to receive financial benefits or an obligation to provide financial benefits to a dependant of a member; and

(b) a right or obligation arising from an interest in:

(i) a *complying superannuation entity; or

(ii) a *non-complying superannuation fund or *non-complying approved deposit fund; or

(iii) an *RSA.

*Interest in controlled foreign companies*

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

*Proceeds from certain business sales*

(13) A right to receive, or an obligation to provide, *financial benefits arising from the sale of:

(a) a business; or

(b) shares in a company that operates a business; or

(c) interests in a trust that operates a business;

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

*Farm management deposits*

(15) A right to receive, or an obligation to provide, *financial benefits is the subject of an exception if:

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



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(a) the right or obligation is the right or obligation of an *owner of a *farm management deposit; and
(b) the right or obligation relates to the deposit.

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

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

*Forestry managed investment scheme interests*

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

*Exploration benefits*

(17A) A right or obligation that arises because of the provision of an *exploration benefit under a *farm-in farm-out arrangement is the subject of an exception.

*Regulations may provide for exceptions*

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

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

(1) This section applies if:
(a) you cease to have a *financial arrangement (or part of a financial arrangement); and
(b) you make a loss from ceasing to have the arrangement (or that part of the arrangement); and

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



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(c) if the arrangement is a marketable security (within the meaning of section 70B of the *Income Tax Assessment Act 1936*):
  (i) you did not acquire the arrangement in the ordinary course of trading on a securities market (within the meaning of that section); and
  (ii) at the time you acquired the arrangement, it was not open to you to acquire an identical financial arrangement in the ordinary course of trading on a securities market; and
(d) if the arrangement is a marketable security—you did not dispose of the arrangement in the course of trading on a securities market; and
(e) it would be concluded that you ceased to have the arrangement wholly or partly because there was an apprehension or belief that the other party or other parties to the arrangement were, or would be likely to be, unable or unwilling to discharge all their liabilities to pay amounts under the arrangement.

(2) The amount of the loss is reduced by so much of that amount as is a loss of capital or a loss of a capital nature.

Note: However, the amount by which the loss is reduced is a capital loss.

(3) In applying paragraph (1)(e), you must have regard to:
(a) the financial position of the other party or parties to the *financial arrangement; and
(b) the perceptions of the financial position of the other party or parties to the arrangement; and
(c) other relevant matters.

## 230-470 Forgiveness of commercial debts

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

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



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(a) if section 245-90 (about agreements to forgo capital losses or deductions) applies—the debt's provisional net forgiven amount mentioned in that section; or

(b) if that section does not apply—the debt's *net forgiven amount.

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

## 230-475 Clarifying exceptions

*Exceptions*

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

(2) This section is not intended to limit, expand or otherwise affect the operation of sections 230-45 to 230-55 (which tell you what is covered by the concept of ***financial arrangement***) in relation to rights and/or obligations other than those dealt with in this section.

*Retirement village and residential or flexible care arrangements*

(3) The following rights and obligations are the subject of an exception:

(a) a right or obligation arising under a *retirement village residence contract;

(b) a right or obligation arising under a *retirement village services contract;

(c) a right or obligation arising under an *arrangement under which *residential care or *flexible care is provided.

(4) For the purposes of subsection (3):

(a) a ***retirement village residence contract*** is a contract that gives rise to a right to occupy *residential premises in a *retirement village; and

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



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(b) a ***retirement village services contract*** is a contract under which a resident of a retirement village is provided with general or personal services in the retirement village.

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

(1) This section applies if a gain you make from a *financial arrangement is in the form of:

(a) a *franked distribution (including a franked distribution that *flows indirectly to you); or

(b) a right to receive a franked distribution (including a franked distribution that will flow indirectly to you).

(2) This Division does not apply to the gain to the extent that the *franked distribution has a *franked part.

### 230-481 Registered emissions units

A *registered emissions unit is exempt from this Division.

## Subdivision 230-I—Other provisions

### Table of sections

230-485 Effect of change of residence—rules for particular methods
230-490 Effect of change of residence—disposal and reacquisition etc. after ceasing to be Australian resident where no further recognised gains or losses from arrangement
230-495 Effect of change of accounting principles or standards
230-500 Comparable foreign accounting and auditing standards
230-505 Financial arrangement as consideration for provision or acquisition of a thing
230-510 Non-arm's length dealings in relation to financial arrangement
230-515 Arm's length dealings in relation to financial arrangement—adjustment to gain or loss in certain situations
230-520 Disregard gains or losses covered by value shifting regime
230-522 Adjusting a gain or loss that gives rise to a hybrid mismatch
230-525 Consolidated financial reports
230-527 Elections—reporting documents of foreign ADIs

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



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

(1) The object of this section is to deal with your gains and losses for an income year in which you change residence by:

(a) allocating the gains and losses to your periods of Australian and foreign residence in that income year; and

(b) determining the assessability of the gains and the deductibility of the losses according to:

(i) your residency in each period; and

(ii) the sources of the gains and the connection of the losses with your assessable income.

(2) This section applies if:

(a) you are a foreign resident for part of an income year (the ***foreign residency period***) and an Australian resident for the other part of the income year (the ***Australian residency period***); and

(b) section 230-490 does not apply in respect of the change of residence.

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

*Realisation method*

(3) Subsection (4) applies if:

(a) you have a *financial arrangement at the time (the ***residence change time***):

(i) you cease to be an Australian resident; or

(ii) you become an Australian resident; and

(b) you apply the realisation method to determine the amount of a gain or loss you make from the arrangement.

(4) You are taken for the purposes of this Division:

(a) to have disposed of the arrangement just before the residence change time for its fair value just before that time; and

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



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(b) to have acquired the arrangement again at the residence change time for its fair value at that time.

*Accruals and hedging financial arrangement methods*

(5) Subsection (6) applies if:

(a) assuming that you disregarded this section and subsection 230-40(2), you would apply the accruals or hedging financial arrangement method to determine the amount of:

(i) a gain included in your assessable income under section 230-15 for the income year; or

(ii) a loss you can deduct under section 230-15 for the income year; and

(b) subsection (4) does not apply in relation to any gain or loss under the arrangement.

(6) Apply that method by apportioning the gain or loss on a reasonable basis between those periods so as to work out:

(a) a gain or loss from the arrangement for the foreign residency period; and

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

*Fair value, foreign exchange retranslation and financial reports methods*

(7) Subsection (8) applies if:

(a) assuming that you disregarded this section and subsection 230-40(2), you would apply the fair value or foreign exchange retranslation method or the method of relying on your financial reports to determine the amount of:

(i) a gain included in your assessable income under section 230-15 for the income year; or

(ii) a loss you can deduct under section 230-15 for the income year; and

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



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(b) subsection (4) does not apply in relation to any gain or loss under the arrangement.

(8) Apply that method to work out:

(a) a gain or loss from the arrangement for the foreign residency period; and

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

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

(1) This section applies if:

(a) you cease to be an Australian resident at a particular time (the ***residence change time***); and

(b) you have a *financial arrangement at the residence change time; and

(c) at the residence change time you expect that any gains and losses you make from the arrangement after that time will not be assessable or deductible under this Division.

(2) You are taken for the purposes of this Division:

(a) to have disposed of the arrangement just before that time for its fair value just before that time; and

(b) to have acquired the arrangement again at the residence change time for its fair value at that time.

### 230-495 Effect of change of accounting principles or standards

(1) This section applies if:

(a) one of these methods apply to take account of a gain or loss you make from a *financial arrangement:

(i) the fair value method provided for in Subdivision 230-C; or

(ii) the foreign exchange retranslation method provided for in Subdivision 230-D; or

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



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(iii) the method of relying on your financial reports provided for in Subdivision 230-F; and

(b) there is a change in, or in the application of, the relevant principles or standards (as mentioned in section 230-230 (fair value method), 230-280 (foreign exchange retranslation method) or 230-420 (method of relying on financial reports)) that apply in relation to the arrangement; and

(c) that change applies to a particular income year and later years; and

(d) as a result of the change, those principles or standards require you to recognise in your statement of financial position an amount (the ***equity amount***), in order to avoid the need to increase or decrease gains or losses recognised in profit or loss from the financial arrangement in respect of previous income years.

(2) If the equity amount is positive, include in your assessable income for the particular income year mentioned in paragraph (1)(c) so much of it as relates to the *financial arrangement mentioned in paragraph (1)(a).

(3) If the equity amount is negative, you are entitled to a deduction for the particular income year mentioned in paragraph (1)(c) equal to so much of it as relates to the *financial arrangement mentioned in paragraph (1)(a).

## 230-500 Comparable foreign accounting and auditing standards

The regulations may:

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

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

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



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

(1) This section applies if you start or cease to have a *Division 230 financial arrangement as consideration for the provision or acquisition of a thing.

(2) Work out the *market value of the thing at the time at which you (in fact) provide or acquire it. For the purposes of applying this Act to you, treat the amount:

(a) you obtain for providing the thing; or

(b) you provide for acquiring the thing;

as being that market value.

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

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

(a) the market value of the thing will be, or form part of, those financial benefits for the purposes of section 230-445; and

(b) in the case of a non arm's length transaction, the amount of those financial benefits may be affected by section 230-510.

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

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

(a) you start or cease to have the *financial arrangement as mentioned in subsection (1) under an arrangement (the ***starting or ceasing arrangement***); and

(b) the thing is itself a *Division 230 financial arrangement; and

(c) the starting or ceasing arrangement is *not* itself a Division 230 financial arrangement.

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

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



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(4) For the purposes of this section:

(a) treat yourself as providing a thing to another entity if:

(i) you have provided, or are to provide, the thing to the other entity; or

(ii) you cease to have, have ceased to have or are to cease to have, the thing; or

(iii) the other entity starts to have, has started having or is to start to have, the thing; and

(b) treat yourself as acquiring a thing if:

(i) another entity has provided, or is to provide, the thing to you; or

(ii) another entity ceases to have, has ceased to have or is to cease to have, the thing; or

(iii) you start to have, have started to have or are to start to have, the thing.

(5) For the purposes of this section, treat part of a *Division 230 financial arrangement as a Division 230 financial arrangement.

(6) Without limiting subsection (1), the thing provided, or the thing acquired, need not be a tangible thing and may take the form of services, conferring a right, incurring an obligation or extinguishing or varying a right or obligation.

(7) To avoid doubt, this section applies even if your starting or ceasing to have the *financial arrangement mentioned in subsection (1) is only part of the consideration for the provision or acquisition of the thing.

(8) For the purposes of this section, treat your starting or ceasing to have the *financial arrangement mentioned in subsection (1) as consideration for the provision or acquisition of the thing if that starting or ceasing is, in substance or effect, done for the provision or acquisition of the thing.

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

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



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

(1) This section applies if:

(a) a balancing adjustment is made under Subdivision 230-G in relation to a *Division 230 financial arrangement you have; and

(b) if the balancing adjustment was made because of paragraph 230-435(1)(b) or (d) (cessations without transfer)—the arrangement is not a *debt interest or loan.

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

(2) Subsection (3) applies if the parties to the dealing that resulted in you starting to have the arrangement were not dealing at *arm's length in relation to the dealing.

(3) For the purposes of this Division:

(a) disregard the amount of the *financial benefit (if any) that you provided or received in relation to you starting to have the arrangement; and

(b) instead, treat yourself as having provided or received a financial benefit in relation to you starting to have the arrangement that is equal to the amount of the financial benefit that you would have provided or received if the parties to the dealing mentioned in subsection (2) were dealing at *arm's length in relation to the dealing.

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

(4) Subsection (5) applies if the parties to a dealing that resulted in a change of an amount of a *financial benefit that you provide or receive under the *financial arrangement were not dealing at *arm's length in relation to the dealing.

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



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(5) For the purposes of this Division:

(a) disregard the amount of the *financial benefit (if any) that you provide or receive under the *financial arrangement as a result of the dealing; and

(b) instead, treat yourself as providing or receiving a financial benefit under the financial arrangement as a result of the dealing that is equal to the amount of the financial benefit that you would have provided or received if the parties to the dealing were dealing at *arm's length in relation to the dealing.

*Non-arm's length transaction resulting in balancing adjustment*

(6) Subsection (7) applies if the parties to the dealing that resulted in the balancing adjustment mentioned in subsection (1) being made were not dealing at *arm's length in relation to the dealing.

(7) For the purposes of this Division:

(a) disregard the amount of the *financial benefit (if any) that you provide or receive in relation to the balancing adjustment; and

(b) instead, treat yourself as providing or receiving a financial benefit in relation to the balancing adjustment that is equal to the amount of the financial benefit that you would have provided or received if the parties to the dealing mentioned in subsection (6) were dealing at *arm's length in relation to the dealing.

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

(1) This section applies if:

(a) disregarding this Division, a provision mentioned in subsection (2) makes an adjustment to an amount (including a nil amount) (the ***relevant amount***); and

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



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(b) the relevant amount is relevant in determining the amount of a gain or loss you make from a *Division 230 financial arrangement.

(2) The provisions are as follows:

(a) section 52A of the *Income Tax Assessment Act 1936*;

(c) Division 16J of Part III of the *Income Tax Assessment Act 1936*;

(d) Division 16K of Part III of the *Income Tax Assessment Act 1936*;

(e) item 3 of the table in subsection 245-65(1) of this Act;

(f) section 775-40 of this Act.

(3) In determining the amount of the gain or loss, treat the relevant amount as having been adjusted by the provision mentioned in subsection (2).

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

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

(1) Disregard a gain or loss under this Division from a *financial arrangement to the extent that it is attributable to:

(a) a shifting of value that has consequences under Division 723; or

(b) a *direct value shift that has consequences under Division 725; or

(c) an *indirect value shift that has consequences under Division 727; or

(d) a shifting of value that has consequences analogous to those under Division 725 or 727 under a repealed provision of this Act or of the *Income Tax Assessment Act 1936*.

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



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(2) Determine whether a shifting of value has the consequences mentioned in paragraph (1)(a) on the assumption that a *realisation event in respect of all or part of the *financial arrangement happens in the income year for the gain or loss.

## 230-522 Adjusting a gain or loss that gives rise to a hybrid mismatch

(1) This section applies if a provision of Division 832 would, apart from section 832-785, apply to make not allowable an amount (the ***relevant amount***) that is all or a part of the deduction for:

(a) a loss from a *Division 230 financial arrangement; or

(b) an amount treated under section 832-790 as a separate loss from a Division 230 financial arrangement.

(2) The following have effect:

(a) if (disregarding section 832-790) you made a loss from the *financial arrangement, and the relevant amount does not exceed the amount of the loss—the amount of the loss you made is reduced by the relevant amount;

(b) if (disregarding section 832-790) you made a loss from the financial arrangement, and the relevant amount exceeds the amount of the loss:

(i) you do not make a loss from the financial arrangement; and

(ii) instead, you make a gain from the financial arrangement equal to the amount of the excess;

(c) if (disregarding section 832-790) you made a gain from the financial arrangement—the amount of the gain is increased by the relevant amount.

(3) The effect of subsection (2) is to be disregarded for the purposes of paragraph (c) of step 1 and paragraph (c) of step 2 of subsection 230-445(1) (about balancing adjustments).

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



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## 230-525 Consolidated financial reports

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

(a) the other entity is a *connected entity of yours; and

(b) the report is a consolidated financial report that deals with both your affairs and the affairs of the connected entity; and

(c) the report properly reflects your affairs.

## 230-527 Elections—reporting documents of foreign ADIs

(1) So much of a Statement of Financial Performance and a Statement of Financial Position, given to *APRA by a foreign ADI (within the meaning of the *Banking Act 1959*) as required under section 13 of the *Financial Sector (Collection of Data) Act 2001*, as:

(a) cover the activities of an *Australian permanent establishment of the foreign ADI for the year; and

(b) are prepared in accordance with the recognition and measurement standards under the *accounting principles; and

(c) are audited in accordance with the *auditing principles;

are treated, for the purposes of the provisions mentioned in subsection (2), as being a financial report for a year:

(d) prepared by the foreign ADI in accordance with the accounting principles; and

(e) audited in accordance with the auditing principles.

(2) The provisions are as follows:

(a) sections 230-150 to 230-165 (election for portfolio treatment of fees);

(b) sections 230-210 to 230-220 (fair value election);

(c) sections 230-255 to 230-265 (foreign exchange retranslation election);

(d) sections 230-315 to 230-335 (hedging financial arrangement election);

(e) sections 230-395, 230-400, 230-410 and 230-430 (election to rely on financial reports).

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



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## Subdivision 230-J—Additional operation of Division

### Table of sections

230-530 Additional operation of Division

### 230-530 Additional operation of Division

*Foreign currency*

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

*Non-equity shares*

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

*Commodities held by traders*

(3) This Division also applies to a commodity that you hold as if the commodity were a right that constituted a *financial arrangement if:

(a) you are an entity that trades or deals both in:
(i) that commodity; and
(ii) financial arrangements whose values change in response to changes in the price or value of that commodity; and

(b) you hold that commodity for the purposes of dealing in the commodity; and

(c) a *fair value election or an *election to rely on financial reports applies to financial arrangements that you start to have when you start to have the commodity; and

(d) the commodity is an asset that you are required (whether or not as a result of a choice you make) by:
(i) the *accounting principles; or
(ii) if the accounting principles do not apply to the preparation of the financial report—comparable

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



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standards for accounting that apply to the preparation of the financial report under a *foreign law;

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

*Offsetting commodity contracts held by traders*

(4) This Division also applies to a contract to which you are a party as if the contract were a *financial arrangement if:

(a) you have a right to receive or an obligation to provide a commodity under the contract; and

(b) you have a practice of dealing in the commodity through the performance of offsetting contracts to receive and provide the commodity; and

(c) you do not have, as your sole or dominant purpose for entering into the contract, the purpose of receiving or delivering the commodity as part of your expected purchase, sale or usage requirements; and

(d) a *fair value election or an *election to rely on financial reports applies to financial arrangements that you start to have when you enter into the contract; and

(e) the contract is an asset or liability that you are required (whether or not as a result of a choice you make) by:

(i) the *accounting principles; or

(ii) if the accounting principles do not apply to the preparation of the financial report—comparable standards for accounting that apply to the preparation of the financial report under a *foreign law;

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

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



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# Division 235—Particular financial transactions

## Table of Subdivisions

Guide to Division 235
235-I Instalment trusts

## Guide to Division 235

### 235-1 What this Division is about

This Division is about the tax treatment of particular kinds of financial transactions.

## Subdivision 235-I—Instalment trusts

## Guide to Subdivision 235-I

### 235-805 What this Subdivision is about

An entity that invests in an asset through an instalment warrant, instalment receipt, or other similar arrangement, is treated for most income tax purposes as if it had invested in the asset directly.

A regulated superannuation fund that invests in an asset through a limited recourse borrowing is treated in the same way.

## Table of sections

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235-810 Object of this Subdivision
235-815 Application of Subdivision
235-820 Look-through treatment for instalment trusts
235-825 Meaning of ***instalment trust*** and ***instalment trust asset***

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



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235-830 What trusts are covered—instalment trust arrangements
235-835 Requirement for underlying investments to be listed or widely held
235-840 What trusts are covered—limited recourse borrowings by regulated superannuation funds
235-845 Interactions with other provisions

## Operative provisions

### 235-810 Object of this Subdivision

The object of this Subdivision is to ensure that, for most income tax purposes, the consequences of ownership of an *instalment trust asset flow to the entity that has the beneficial interest in the asset, instead of to the trustee.

### 235-815 Application of Subdivision

(1) This Subdivision applies to:
  (a) the entity that has the beneficial interest in an *instalment trust asset as the beneficiary of an *instalment trust; and
  (b) the trustee of the instalment trust.

(2) This Subdivision applies for the purposes of this Act, apart from:
  (a) Part VA of the *Income Tax Assessment Act 1936* (which is about tax file numbers); and
  (b) Subdivisions 12-E, 12-F and 12-H in Schedule 1 to the *Taxation Administration Act 1953* (which are about PAYG withholding).

*Joint investments*

(3) This Subdivision applies in relation to 2 or more entities that hold an interest in a trust as joint tenants, or as tenants in common, in the same way it applies in relation to a single entity that holds such an interest.

Note: Each investor that is treated by this Subdivision as jointly owning an instalment trust asset is treated for CGT purposes as owning a separate asset: see section 108-7.

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



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## 235-820 Look-through treatment for instalment trusts

(1) If an entity (the ***investor***) has a beneficial interest in an *instalment trust asset under an *instalment trust, the asset is treated as being the investor's asset (instead of being an asset of the trust).

Example: A dividend in respect of the asset is paid to the trustee. It is treated (but not for the purposes of the PAYG withholding provisions mentioned in paragraph 235-815(2)(b)) as if it had been paid directly to the investor.

(2) An act done in relation to an *instalment trust asset of an *instalment trust by the trustee of the trust is treated as if the act had been done by the investor (instead of by the trustee).

Example: A trustee disposes of the asset. Any capital gain or loss is made by the investor, not by the trustee.

(3) The investor is treated as having the *instalment trust asset in the same circumstances as the investor actually has the interest in the *instalment trust.

(4) Without limiting subsection (3), the circumstances include:

(a) whether the interest is held on capital account or on revenue account; and

(b) whether the interest is held as a joint tenant or tenant in common.

(5) Any consequence arising under the *GST Act for the trustee of the *instalment trust, as a result of anything done in relation to the *instalment trust asset, is treated as if it had arisen for the investor (instead of for the trustee), even if that consequence would not have arisen had the thing been done by or to the investor.

Example: If the trustee has a net input tax credit under the GST Act, the investor must apply the credit to reduce the investor's cost base for the instalment trust asset (even if the investor is not registered or required to be registered for GST purposes): see section 103-30.

## 235-825 Meaning of *instalment trust* and *instalment trust asset*

(1) A trust is an ***instalment trust*** if:

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



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(a) the trust is covered by section 235-830 (about instalment trust arrangements) and satisfies the requirements in section 235-835 (about requirements for underlying investments to be listed or widely held); or

(b) the trust is covered by section 235-840 (about limited recourse borrowings by *regulated superannuation funds).

(2) An ***instalment trust asset*** is an asset that is, or is part of, the underlying investment of an *instalment trust (as mentioned in section 235-830 or 235-840, as the case requires).

## 235-830 What trusts are covered—instalment trust arrangements

(1) This section covers a trust if, under an *arrangement:

(a) an entity (the ***investor***) makes a *borrowing, or is provided with credit; and

(b) to secure the borrowing or provision of credit, the trustee of the trust acquires an asset or assets (the ***underlying investment***); and

(c) the investor has a beneficial interest in the underlying investment as the sole beneficiary of the trust; and

(d) for a provision of credit—the credit was provided to the investor to acquire the asset, or one of the assets, that comprises the underlying investment; and

(e) the investor is entitled to the benefit of all income from the underlying investment; and

(f) the investor is entitled to acquire legal ownership of the underlying investment on discharging its obligations relating to the borrowing or provision of credit.

Note: For paragraph (c), the sole beneficiary of the trust may be 2 or more entities that have an interest in the trust as joint tenants or tenants in common: see subsection 235-815(3).

(2) However, this section does not cover a trust if the investor is a trustee of a *regulated superannuation fund and the *arrangement includes a *borrowing.

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



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(3) This section does not cover a trust if the underlying investment is subject to any charge, security or other encumbrance (apart from any charge securing the obligations relating to the *borrowing or provision of credit).

## 235-835 Requirement for underlying investments to be listed or widely held

(1) A trust satisfies the requirements in this section if:

(a) each asset that is, or is part of, the underlying investment is:

(i) a *share, a unit in a unit trust or a stapled security; or

(ii) an interest in an entity that holds an interest in a share, a unit in a unit trust or a stapled security either directly, or indirectly through one or more interposed entities; and

(b) each such share, unit or stapled security:

(i) is listed for quotation in the official list of an *approved stock exchange; or

(ii) meets the widely held requirement set out in the applicable item of the following table.

**Widely held requirements**

| Item | Column 1<br>Type of asset | Column 2<br>Widely held requirement |
|---|---|---|
| 1 | A *share in a company | The company is a *widely held company |
| 2 | A unit in a unit trust | The unit trust is a widely held unit trust as defined in section 272-105 in Schedule 2F to the *Income Tax Assessment Act 1936* |
| 3 | A stapled security | All companies involved are *widely held companies and all trusts involved are such widely held unit trusts |

(2) A *share, unit in a unit trust or a stapled security that fails the widely held requirement set out in the table in subsection (1) is treated as satisfying that requirement if the failure:

(a) is of a temporary nature only; and

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



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(b) is caused by circumstances outside the investor's control.

(3) In applying subsection (1), disregard an asset, or the cash proceeds from disposing of an asset, if:

(a) the trustee became entitled to the asset in respect of a *share, unit or stapled security that was, or was part of, the underlying investment just before the entitlement arose; and

(b) the asset is not a *share, unit in a unit trust, or stapled security; and

(c) if the asset is an interest in an entity, or a right, option or similar interest that gives the holder an entitlement to acquire an interest in an entity:

(i) an interest in the entity is listed for quotation in the official list of an *approved stock exchange; or

(ii) the entity meets a widely held requirement set out in column 2 of item 1 or 2 of the table in subsection (1); and

(d) the underlying investment comprises one or more other assets that are not disregarded under this subsection.

Example: Examples of the types of assets disregarded by this subsection are:

(a) assets that represent distributions and capital payments in respect of the underlying investment; and

(b) bonus rights issued in respect of the underlying investment.

(4) Despite subsections (1) to (3), the underlying investment does not satisfy the requirement in this section if an asset that is, or is part of, the underlying investment is an *ESS interest to which Subdivision 83A-B or 83A-C (about employee share schemes) applies.

## 235-840 What trusts are covered—limited recourse borrowings by regulated superannuation funds

This section covers a trust if:

(a) under an *arrangement, an asset or assets (the ***underlying investment***) is acquired by the trustee of the trust for the

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



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benefit of a trustee of a *regulated superannuation fund to secure a *borrowing; and

(b) until the borrowing is repaid, the arrangement is covered by:

(i) the exception in subsection 67A(1) of the *Superannuation Industry (Supervision) Act 1993* (which is about limited recourse borrowing arrangements); or

(ii) the exception in former subsection 67(4A) of that Act (which was about instalment warrants).

## 235-845 Interactions with other provisions

(1) Section 106-50 (about absolutely entitled beneficiaries) does not apply to an *instalment trust asset.

(2) Section 106-60 (about securities, charges and encumbrances) does not apply to an *instalment trust asset.

(3) Nothing in this Subdivision limits Division 247 (which is about capital protected borrowings).

Note: Division 247 may apply to an arrangement to which this Subdivision applies.

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



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# Division 240—Arrangements treated as a sale and loan

## Table of Subdivisions

Guide to Division 240
240-A Application and scope of Division
240-B The notional sale and notional loan
240-C Amounts to be included in notional seller's assessable income
240-D Deductions allowable to notional buyer
240-E Notional interest and arrangement payments
240-F The end of the arrangement
240-G Adjustments if total amount assessed to notional seller differs from amount of interest
240-H Application of Division 16E to certain arrangements
240-I Provisions applying to hire purchase agreements

## Guide to Division 240

### 240-1 What this Division is about

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

### 240-3 How the recharacterisation affects the notional seller

*Effect of notional sale*

(1) The consideration for the notional sale is either the price stated as the cost or value of the property or its arm's length value. If the notional seller is disposing of the property as trading stock, the

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



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normal consequences of disposing of trading stock follow. In particular, the notional seller will be assessed on the sale price.

(2) Where the property is not trading stock the notional seller's assessable income will include any profit made by the notional seller on the notional sale or on the sale of the property after a notional re-acquisition.

*Effect of notional loan*

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

*Other effects*

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

## 240-7 How the recharacterisation affects the notional buyer

*Effect of notional purchase*

(1) The cost of the acquisition is either the price stated as the cost or value of the property or its arm's length value. If the notional buyer is acquiring the property as trading stock, the normal consequences of acquiring trading stock follow. In particular, the notional buyer can usually deduct the purchase price.

(2) If the property is not trading stock, the notional buyer may be able to deduct amounts for the expenditure under Division 40 (about capital allowances).

*Effect of notional loan*

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

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



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*Other effects*

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

## Subdivision 240-A—Application and scope of Division

### Table of sections

**Operative provisions**

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

## Operative provisions

### 240-10 Application of this Division

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

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

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

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

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



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### 240-15 Scope of Division

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

(a) Parts 3-1 and 3-3 of this Act (capital gains tax); and

(b) Division 11A of Part III of the *Income Tax Assessment Act 1936* (certain payments to non-residents etc.).

## Subdivision 240-B—The notional sale and notional loan

### Table of sections

**Operative provisions**

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

## Operative provisions

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

(1) An entity is the ***notional seller*** if it is a party to the *arrangement and:

(a) actually owns the property; or

(b) is the owner of the property because of a previous operation of this Division.

(2) An entity is the ***notional buyer*** if it is a party to the *arrangement and, under the arrangement, has the *right to use the property.

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

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

(1) The *notional seller is taken to have disposed of the property by way of sale to the *notional buyer, and the notional buyer is taken to have acquired it, at the start of the *arrangement.

(2) The *notional buyer is taken to own the property until:

(a) the *arrangement ends; or

(b) the notional buyer becomes the *notional seller under a later arrangement to which this Division applies.

### 240-25 Notional loan by notional seller to notional buyer

(1) On entering into the *arrangement, the *notional seller is taken to have made a loan (the ***notional loan***) to the *notional buyer.

(2) The notional loan is for a period:

(a) starting at the start of the *arrangement; and

(b) ending on the day on which the arrangement is to cease to have effect or, if the arrangement is of indefinite duration, on the day on which it would be reasonable to conclude, having regard to the terms and conditions of the arrangement, that the arrangement will cease to have effect.

(3) The notional loan is of an amount (the ***notional loan principal***) equal to the consideration for the sale of the property less any amount paid, or credited by the *notional seller as having been paid, by the *notional buyer to the notional seller, at or before the start of the *arrangement, for the cost of the property.

Note: Section 240-80 affects the amount of the notional loan principal where the arrangement is an extension or renewal of another arrangement.

(4) The notional loan is subject to payment of interest.

(5) The consideration for the sale of the property by the *notional seller, and the cost of the acquisition of the property by the *notional buyer, are each taken to have been:

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



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(a) if an amount is stated to be the cost or value of the property for the purposes of the *arrangement and the notional seller and the notional buyer were dealing with each other at *arm's length in connection with the arrangement—the amount so stated; or

(b) otherwise—the amount that could reasonably have been expected to have been paid by the notional buyer for the purchase of the property if:

(i) the notional seller had actually sold the property to the notional buyer at the start of the arrangement; and

(ii) the notional seller and the notional buyer were dealing with each other at arm's length in connection with the sale.

(6) The notional loan principal is taken to be repaid, and the interest is taken to be paid, by the making of the payments under the *arrangement.

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

## Guide to Subdivision 240-C

### 240-30 What this Subdivision is about

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

(a) amounts (notional interest) on account of the interest for the notional loan that the notional seller is taken to have made to the notional buyer; and

(b) any profit made by the notional seller:

(i) on the notional sale of the property to the notional buyer; or

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



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(ii) on a sale of the property after any notional re-acquisition of the property by the notional seller.

## Table of sections

**Operative provisions**

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

# Operative provisions

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

*Notional interest*

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

*Profit on notional sale*

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

*Profit on actual sale after notional re-acquisition*

(3) If:
(a) the *notional seller is taken under this Division to have re-acquired the property from the *notional buyer; and
(b) the notional seller afterwards sells the property; and
(c) the consideration for the sale exceeds the cost of the re-acquisition;

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the excess is included in the notional seller's assessable income of the income year in which the sale occurred.

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

(1) The *arrangement payments that the *notional seller receives, or is entitled to receive, under the *arrangement:

(a) are not to be included in the *notional seller's assessable income of any income year; but

(b) are not taken to be *exempt income of the notional seller.

(2) However, those *arrangement payments are taken into account in calculating *notional interest that is included in the *notional seller's assessable income under section 240-35.

(3) A loss or outgoing incurred by the *notional seller in deriving any such *arrangement payments is not taken to be a loss or outgoing incurred by the notional seller in relation to gaining or producing *exempt income.

## Subdivision 240-D—Deductions allowable to notional buyer

## Guide to Subdivision 240-D

### 240-45 What this Subdivision is about

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

## Table of sections

**Operative provisions**

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

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



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240-55 Arrangement payments not to be deductions

## Operative provisions

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

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

(2) The *notional buyer is entitled to deduct *notional interest for *arrangement payment periods, and parts of arrangement payment periods, in the income year.

### 240-55 Arrangement payments not to be deductions

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

## Subdivision 240-E—Notional interest and arrangement payments

### Table of sections

**Operative provisions**

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

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



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## Operative provisions

### 240-60 Notional interest

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

**Calculating *notional interest**

Step 1. Add the *notional interest from previous *arrangement payment periods to the notional loan principal.

Step 2. Subtract any *arrangement payments that have already been made or that are due but that have not been made. The result is the ***outstanding notional loan principal*** as at the start of the *arrangement payment period.

Step 3. Work out the ***implicit interest rate*** for the *arrangement payment period, taking into account the *arrangement payments payable by the *notional buyer under the *arrangement and any *termination amounts.

Step 4. Multiply the outstanding notional loan principal by the implicit interest rate. The result is the ***notional interest*** for the *arrangement payment period.

(2) If only part of an *arrangement payment period occurs during an income year, the *notional interest for that part of the arrangement payment period is so much of the notional interest for that arrangement payment period as may appropriately be related to that income year in accordance with generally accepted accounting principles.

(3) In calculating the implicit interest rate, if any of the relevant amounts are not known at the start of the *arrangement, a reasonable estimate of the amount is to be made and is to be used

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



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for the purposes of calculating the implicit interest rate for each income year of the *notional seller.

(4) If a reasonable estimate cannot be made at that time, an estimate of the amount is to be made at the end of each income year of the *notional seller for the purposes of calculating the implicit interest rate for each income year of the notional seller.

## 240-65 Arrangement payments

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

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

(b) a *termination amount.

## 240-70 Arrangement payment periods

(1) An ****arrangement payment period*** is a period for which a payment under the *arrangement is allocated or expressed to be payable.

(2) However, if a period exceeds 6 months, the period is not an *arrangement payment period but each of the following parts of the period is a separate arrangement payment period:

(a) the part of the period beginning at the start of that period and ending 6 months later;

(b) each part of the period:

(i) beginning immediately after a part of the period that is an arrangement payment period under paragraph (a) or under a previous application of this paragraph; and

(ii) ending 6 months after the start of that later part or at the end of the period, whichever first occurs.

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



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## Subdivision 240-F—The end of the arrangement

### Table of sections

**Operative provisions**

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

## Operative provisions

### 240-75 When is the end of the arrangement?

(1) If the *arrangement is stated to cease to have effect at a particular time, it is taken for the purposes of this Division to end (even if it is extended or renewed) at the earlier of:

(a) that time; or

(b) the time at which the arrangement ceases to have effect (whether because the arrangement is terminated or for any other reason).

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

(2) An *arrangement is taken to have ended if it is extended or renewed.

(3) If the *arrangement is of indefinite duration, it ends at the time at which the arrangement ceases to have effect even if the *arrangement is renewed.

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

(4) An *arrangement is taken to have ended if it is reasonable to conclude, having regard to the terms and conditions of the *arrangement, that the arrangement has ceased to have effect.

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



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(5) An *arrangement is also taken to have ended if the property has been lost or destroyed.

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

(1) This section sets out what happens if, after the end of the *arrangement, the *notional buyer and *notional seller extend or renew the *arrangement.

(2) This Division applies as if the original *arrangement has ended and the extended arrangement or renewed arrangement is a separate arrangement (the ***new arrangement***).

(3) There is not, however, taken to be any disposal or acquisition as a result of the original arrangement ending or of the new arrangement starting and the *notional buyer does not cease to own the property.

(4) Also, the notional loan principal for the new loan is:

(a) if the *arrangement as extended or renewed states an amount as the cost or value of the property for the purposes of the extension or renewal and the *notional seller and the *notional buyer were dealing with each other at *arm's length in connection with the extension or renewal—the amount so stated; or

(b) otherwise—the amount that could reasonably have been expected to have been paid by the notional buyer for the purchase of the property if:

(i) the notional seller had actually sold the property to the notional buyer when the arrangement was extended or renewed; and

(ii) the notional seller and notional buyer were dealing with each other at arm's length in connection with the sale.

(5) Subdivision 240-G applies to the notional loan for the original arrangement. For that purpose, the notional loan principal for the new arrangement is taken to be a *termination amount paid to the *notional seller under the original arrangement.

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



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

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

(a) the amount paid is not included in the notional seller's assessable income;

(b) the notional buyer cannot deduct the payment;

(c) the notional buyer is taken to continue to own the property;

(d) the transfer to the notional buyer of legal title to the property is not taken to be a disposal of the property by the notional seller.

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

(1) This section applies if, at the end of the *arrangement:

(a) the arrangement is not extended or renewed in the way mentioned in subsection 240-80(1); and

(b) no amount is paid to the *notional seller by, or on behalf of, the *notional buyer to acquire the property; and

(c) the property is not lost or destroyed.

(2) The property is taken to have been disposed of by the *notional buyer by way of sale back to the *notional seller, and to have been acquired by the *notional seller, at the end of the *arrangement.

(3) The consideration for the sale of the property by the *notional buyer, and the cost of the acquisition of the property by the *notional seller, are each taken to be equal to the *market value of the property at the end of the *arrangement.

(4) Subsection (5) applies where the property is a *car and if it:

(a) had been bought from the *notional seller, when this Division first applied to an *arrangement in respect of the car, by the

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



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*notional buyer for a price equal to the notional loan principal; and

(b) had been first used by the notional buyer for any purpose in the *financial year in which that time occurred;

the cost of the car, for the purpose of working out its decline in value for that person under Division 40, would have been limited by section 40-230.

(5) Where an associate of the *notional buyer acquires the *car, the *cost of the car for the purposes of the application of Division 40 to the associate is taken to be whichever is the lesser of:

(a) the sum of:

(i) the amount that would have been the *adjustable value of the car at that time for the purposes of the application of that Division to the notional buyer if the notional buyer were not taken under this Division to have disposed of the car; and

(ii) any amount that is included in the notional buyer's assessable income under section 40-285 because the notional buyer is taken to have disposed of the car; or

(b) the cost of the acquisition of the car by the associate.

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

## Guide to Subdivision 240-G

### 240-100 What this Subdivision is about

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

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



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## Table of sections

**Operative provisions**

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

# Operative provisions

## 240-105 Adjustments for notional seller

(1) This section applies at the end of the *arrangement.

(2) If the sum of:

(a) all amounts (other than *termination amounts) that were paid or payable to the *notional seller under the *arrangement; and

(b) any termination amounts paid or payable to the notional seller;

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

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

(3) If the amount worked out using the formula in subsection (4) exceeds:

(a) all amounts (other than *termination amounts) that were paid or payable to the *notional seller under the *arrangement; and

(b) any termination amounts paid or payable to the notional seller;

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

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

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



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

Notional loan principal + Assessed notional interest

where:

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

## 240-110 Adjustments for notional buyer

(1) If:

(a) an amount is included in the *notional seller's assessable income of an income year under subsection 240-105(2); or

(b) an amount would have been so included if the notional seller had been subject to tax on assessable income;

the *notional buyer is entitled to deduct a corresponding amount in the notional buyer's income year.

(2) If:

(a) the *notional seller is entitled to deduct an amount for an income year under subsection 240-105(3); or

(b) the notional seller would have been so entitled if the *notional seller had been subject to tax on assessable income;

a corresponding amount is included in the notional buyer's assessable income for the notional buyer's income year.

(3) The *notional buyer is entitled to a deduction, and is required to include an amount in his or her assessable income only to the extent (if any) that the notional buyer would, apart from this Division, have been entitled to deduct *arrangement payments if no part of those payments were capital in nature.

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



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

### 240-112 Division 16E applies to certain arrangements

(1) Division 16E of Part III of the *Income Tax Assessment Act 1936* applies in relation to an arrangement (the ***assignment arrangement***) between the notional seller and another person (the ***holder***) to transfer the right to payments (the ***Division 240 payments***) under an arrangement that is treated as a sale and loan by this Division (the ***sale and loan arrangement***).

(2) In applying Division 16E, the following assumptions are to be made:

(a) the assignment arrangement is the qualifying security;

(b) the notional seller is the issuer;

(c) the qualifying security is issued when the assignment arrangement is entered into;

(d) the issue price is consideration provided to the notional seller under the assignment arrangement;

(e) the Division 240 payments are payments made by the notional seller under the assignment arrangement;

(f) no part of the payments represent periodic interest.

(3) This Subdivision does not apply if the assignment arrangement gives rise to a termination of the sale and loan arrangement for the purposes of this Division.

(4) To avoid doubt, Division 6A of Part III of the *Income Tax Assessment Act 1936* does not apply to an assignment arrangement to which this Subdivision applies.

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



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# Subdivision 240-I—Provisions applying to hire purchase agreements

## Table of sections

**Operative provisions**

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

## Operative provisions

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

(1) This section sets out special modifications of the effect of this Division that apply in relation to a *hire purchase agreement unless:

(a) the notional buyer would have been the owner or the *quasi-owner of the property if the *arrangement had been a sale of the property; and

(b) it is reasonably likely that the right, obligation or contingent obligation to acquire the property will be exercised by, or in respect of, the notional buyer.

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

(2) The modifications also apply if the *notional buyer:

(a) disposes of his or her interest in the property; or

(b) enters into a lease covered by Division 242 (about luxury car leases) under which he or she leases the property to another person.

*Modifications*

(3) For the purpose of the *capital allowance provisions, if, apart from the operation of this Division, an entity other than the *notional seller would own the property that is the subject of an agreement covered by this section, that entity is taken to be the owner of the property.

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



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

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



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# Division 242—Leases of luxury cars

## Table of Subdivisions

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

## Guide to Division 242

### 242-1 What this Division is about

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

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

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

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



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# Subdivision 242-A—Notional sale and loan

## Guide to Subdivision 242-A

### 242-5 What this Subdivision is about

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

## Table of sections

**Operative provisions**

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

## Operative provisions

### 242-10 Application

(1) This Division applies to a *car that:

(a) is leased (but not under a *short-term hire agreement or a *hire purchase agreement) for consideration; and

(b) was a *luxury car when the lessor first leased it; and

(c) is not *trading stock of the lessee; and

(d) is not a car covered by subsection 40-230(2) (about cars modified to carry individuals with a disability).

(2) The provisions of this Division do not have effect for the purposes of Division 11A of Part III of the *Income Tax Assessment Act 1936* (about withholding tax on dividends, interest and royalties).

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

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

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

## 242-15 Notional sale and acquisition

(1) This Act has effect as if:

(a) the *car had been disposed of (the ***notional sale***) by the lessor to the lessee; and

(b) the car had been acquired by the lessee;

at the start of the term of the lease.

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

(2) This Act also has effect as if the lessee owns the *car until:

(a) the lease (not including any extension or renewal of the lease) ends; or

(b) the lessee enters into a sublease of the car and this Division applies to the car in relation to the sublease.

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

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

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



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

(1) The consideration for the notional sale by the lessor, and the first element of the *cost of the *car for the lessee, are the car's *market value at the start of the term of the lease.

(2) If:

(a) the lease is a sublease; and

(b) the lessee is one or more of the following:

(i) an *associate of the lessor;

(ii) an employer of the lessor;

(iii) an employee of the lessor;

the first element of the *cost of the *car to the lessee is the sum of:

(c) the amount that would have been the car's *adjustable value at the start of the term of the lease for the purposes of applying this Act to the lessor if the lessor were not taken under this Division to have disposed of the car; and

(d) any amount that is included in the lessor's assessable income under section 40-285 as a balancing adjustment because the lessor is treated as having disposed of the car.

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

## 242-25 Notional loan by lessor to lessee

(1) This Act has effect as if, on the grant of the lease, the lessor had made a loan (the ***notional loan***) to the lessee:

(a) for a period equal to the term of the lease (not including the term of any extension or renewal); and

(b) of an amount (the ***notional loan principal***) equal to the consideration for the notional sale of the *car less any amount paid, or credited by the lessor as having been paid, by the lessee to the lessor, at or before the start of the term of the lease, for the first element of the *cost of the car to the lessee; and

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



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(c) subject to payment of interest.

Note: There is a further notional loan if the lease is extended or renewed: see section 242-80.

(2) This Act has effect as if the notional loan principal were repaid, and the interest were paid, by the making of the *luxury car lease payments.

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

## Guide to Subdivision 242-B

### 242-30 What this Subdivision is about

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

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

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

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

## Table of sections

**Operative provisions**

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

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



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## Operative provisions

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

*Accrual amounts*

(1) The lessor's assessable income for an income year includes:

(a) if a *luxury car lease payment period for the lease of a *car occurs wholly during that income year—the amount (an ***accrual amount***) worked out under subsection (2) for that luxury car lease payment period; and

(b) if part of a luxury car lease payment period for the lease of a car occurs during that income year—so much of the amount (also an ***accrual amount***) worked out under subsection (2) for that luxury car lease payment period as may appropriately be related to that income year in accordance with generally accepted accounting principles.

(2) The amount is:

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

where:

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

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

(a) the sum of the notional loan principal and the accrual amounts for earlier *luxury car lease payment periods; less

(b) the sum of the *luxury car lease payments that the lessee was required to make before the start of the relevant luxury car lease payment period.

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



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*Excessive periods*

(3) If, apart from this subsection, a *luxury car lease payment period for the lease of a *car would exceed 6 months, this Division applies as if each of the following were a separate luxury car lease payment period:

(a) the first 6 months of the original luxury car lease payment period;

(b) if the original luxury car lease payment period was not longer than 12 months—the remaining part of the original luxury car lease payment period;

(c) if the original luxury car lease payment period was longer than 12 months—each successive 6 month period in the original luxury car lease payment period;

(d) the period (if any) after the end of the last of the periods to which paragraph (c) applies.

## 242-40 Treatment of lease payments

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

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

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

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

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



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## Subdivision 242-C—Deductions allowable to lessee

## Guide to Subdivision 242-C

### 242-45 What this Subdivision is about

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

### Table of sections

**Operative provisions**

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

## Operative provisions

### 242-50 Extent to which deductions are allowable to lessee

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

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

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

(2) If part of a *luxury car lease payment period for the lease of a *car occurs during an income year of the lessee, the lessee can deduct so much of the accrual amount for that period as may appropriately be related to that income year in accordance with generally accepted accounting principles.

(3) The lessee can deduct an accrual amount, or part of an accrual amount, for a *luxury car lease payment period under subsection (1) or (2) for an income year only to the extent that the

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



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lessee could deduct the luxury car lease payments made for that year apart from this Division.

### 242-55 Lease payments not deductible

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

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

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

## Guide to Subdivision 242-D

### 242-60 What this Subdivision is about

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

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

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

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

## Table of sections

**Operative provisions**

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

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



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## Operative provisions

### 242-65 Adjustments for lessor

(1) This section applies at the following times:

(a) if the term of the lease is extended—when the extension takes effect;

(b) if the lease is renewed—when the renewal takes effect;

(c) when the lease (including any extension or renewal of the lease) ends.

(2) If the sum of all amounts (whether *luxury car lease payments, a *termination amount or any other payments) that were paid or payable to the lessor under the lease exceeds the amount worked out under subsection (4), the excess is included in the lessor's assessable income for the income year in which the relevant time occurs.

Note: Subsection 242-80(8) treats the amount of a notional loan that is taken to be made by an extended or renewed lease to be a termination amount paid under the previous lease.

(3) If the sum of all amounts (whether *luxury car lease payments, a *termination amount or any other payments) that were paid or payable to the lessor under the lease is less than the amount worked out under subsection (4), the lessor can deduct the difference for the income year in which the relevant time occurs.

(4) The amount for the purposes of subsections (2) and (3) is the sum of:

(a) the notional loan principal; and

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

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

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



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### 242-70 Adjustments for lessee

(1) If:

(a) an amount is included in the lessor's assessable income for an income year under subsection 242-65(2); or

(b) an amount would have been so included if the lessor had been subject to tax on assessable income;

the lessee can deduct a corresponding amount for the same income year.

(2) If:

(a) the lessor can deduct an amount for an income year under subsection 242-65(3); or

(b) the lessor could have deducted an amount under that subsection if the lessor had been subject to tax on assessable income;

a corresponding amount is included in the lessee's assessable income for the same income year.

(3) The lessee cannot deduct an amount for any income year under subsection (1), and an amount is not included in the lessee's assessable income of any income year under subsection (2), except to the extent (if any) that the lessee could deduct the *luxury car lease payments made apart from this Division.

## Subdivision 242-E—Extension, renewal and final ending of the lease

## Guide to Subdivision 242-E

### 242-75 What this Subdivision is about

When a luxury car lease ends (whether it expires or is terminated before its expiry date), one of 3 things will happen:

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(a) if the lease is extended or renewed—the original notional loan is treated as having been repaid and the lessor is treated as having made a new loan to the lessee; or

(b) if the lessee acquires the car from the lessor—the lessee continues to own the car for tax purposes, and the actual transfer and the termination payment to acquire the car are ignored for tax purposes; or

(c) if the lessee's right to use the car ends—the lessee is treated as having sold the car back to the lessor.

In each case, there may be adjustments under Subdivision 242-D to ensure that the right amount has been taxed over the term of the lease.

## Table of sections

**Operative provisions**

242-80 What happens if the term of the lease is extended or the lease is renewed
242-85 What happens if an amount is paid by the lessee to acquire the car
242-90 What happens if the lessee stops having the right to use the car

# Operative provisions

## 242-80 What happens if the term of the lease is extended or the lease is renewed

(1) The rules in this section have effect if, after the end of the lease (or the end of any extension of the lease term or renewal of the lease), the lessee continues to have the *right to use the *car because the term of the lease is extended (or further extended) or the lease is renewed (or further renewed).

(2) This Act has effect as if the lessee continued to be the owner of the *car until the end of the lease as extended or renewed.

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



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(3) However, this Act has effect as if the lessee stopped being the owner of the *car if:

(a) the lessee enters into a sublease in respect of the car; and

(b) this Division applies to the car in respect of that sublease.

(4) This Act has effect as if the notional loan that arose because of the grant of the lease, or because of the previous extension or renewal, had been repaid.

Note: Also, Subdivision 242-D (about balancing adjustments) will apply to the ending, extension or renewal.

(5) This Act has effect as if, on the grant of the extension or renewal, the lessor had made a new loan (the ***notional loan***) to the lessee:

(a) for the period of the extension of the term of the lease or the period of the renewed lease, as the case may be; and

(b) of an amount (the ***notional loan principal***) equal to the *car's *market value when the extension or renewal is granted; and

(c) subject to the payment of interest.

(6) This Act has effect as if the notional loan principal were repaid, and the interest were paid, by the making of the *luxury car lease payments under the lease as extended or renewed (or further extended or renewed).

(7) In determining whether subsection (1) applies to the lessee, disregard any period after the end of the lease (or the end of any extension of the lease term or renewal of the lease) and before the extension or renewal (or further extension or renewal) is granted and during which the lessee did not have the *right to use the *car if the extension or renewal (or further extension or renewal):

(a) has effect from the time immediately after the end of that term, extension or renewal; or

(b) otherwise results in substantial continuity of the leasing of the car to the lessee.

(8) The amount of the notional loan is treated, for the purposes of section 242-65 (about the lessor's balancing adjustments), as a

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



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*termination amount paid to the lessor under the lease or under the previous extension or renewal.

### 242-85 What happens if an amount is paid by the lessee to acquire the car

If, at the end of the lease or, if it is extended or renewed, at the end of any extension or renewal (the ***end time***), an amount is paid to the lessor by, or on behalf of, the lessee to acquire the *car, the following provisions have effect:

(a) the amount paid is not included in the lessor's assessable income;

(b) the lessee cannot deduct the payment;

(c) this Act has effect as if:

(i) the lessee continued to be the owner of the car until the lessee disposes of it; and

(ii) the transfer to the lessee of legal title to the car were not a disposal of the car by the lessor.

### 242-90 What happens if the lessee stops having the right to use the car

(1) If, at the end time:

(a) the lessee stops having the *right to use the *car; and

(b) no amount is paid to the lessor by, or on behalf of, the lessee to acquire the car;

the following provisions have effect.

Note: For ***end time***, see section 242-85.

(2) This Act has effect as if the *car:

(a) were sold by the lessee to the lessor; and

(b) were acquired by the lessor;

at the end time.

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



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(3) The consideration for the sale of the *car by the lessee, and the first element of the *cost of the car to the lessor, are the *market value of the car at the end time.

(4) If the *car is afterwards acquired by an *associate of the lessee or an employer or employee of the lessee, this Act has effect as if the first element of the *cost of the car as a *depreciating asset were the lesser of:

(a) the sum of:

(i) the amount that would have been the *adjustable value of the car at that time for the purposes of applying this Act to the lessee if the lessee were not treated under this Division as having disposed of the car; and

(ii) any amount that is included in the lessee's assessable income under section 40-285 as a balancing adjustment because the lessee is treated as having disposed of the car; and

(b) the cost of the acquisition of the car by the associate, employer or employee.

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

(5) For the purposes of paragraph (1)(a), the lessee is not treated as having stopped to have the *right to use the *car if:

(a) the term of the lease is extended (or further extended), or the lease is renewed (or further renewed), at a time after, but not immediately after, the end of that term, extension or renewal with effect from the time immediately after that end; or

(b) the extension or renewal (or further extension or renewal) otherwise results in substantial continuity of the leasing of the car to the lessee.

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



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# Division 243—Limited recourse debt

## Table of Subdivisions

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243-A Circumstances in which Division operates
243-B Working out the excessive deductions
243-C Amounts included in assessable income and deductions
243-D Special provisions

## Guide to Division 243

### 243-10 What this Division is about

This Division tells you when you must include an additional amount in your assessable income at the termination of a limited recourse debt arrangement. It also tells you what the additional amount is.

Basically, the Division applies where the capital allowance deductions that have been obtained for expenditure that is funded by the debt and the deductions are excessive having regard to the amount of the debt that was repaid.

The reason for the adjustment is to ensure that, where you have not been fully at risk in relation to an amount of expenditure, you do not get a net deduction if you fail to pay that amount.

## Subdivision 243-A—Circumstances in which Division operates

### Table of sections

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



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243-20 What is limited recourse debt?
243-25 When is a debt arrangement terminated?
243-30 What is the financed property and the debt property?

## Operative provisions

### 243-15 When does this Division apply?

(1) This Division applies if:

(a) *limited recourse debt has been used to wholly or partly finance or refinance expenditure; and

(b) at the time that the debt *arrangement is terminated, the debt has not been paid in full by the debtor; and

(c) the debtor can deduct an amount as a *capital allowance for the income year in which the termination occurs, or has deducted or can deduct an amount for an earlier income year, in respect of the expenditure or the *financed property.

Note: This Division does not apply to certain limited recourse debts that are used to refinance limited recourse debt to which this Division has applied (see subsection 243-50(4)).

(2) However, unless the net *capital allowance deductions have been excessive having regard to the amount of the debt that remains unpaid (see section 243-35), no amount is included in the debtor's assessable income under this Division although future deductions may be reduced.

(3) In working out if the debt has been paid in full, and in working out the unpaid amount of the debt, the following amounts are to be treated as if they were not payments in respect of the debt:

(a) any reduction in the debt as a result of the *financed property being surrendered or returned to the creditor at the termination of the debt;

(b) any payment to reduce the debt that is funded directly or indirectly by *non-arm's length limited recourse debt or by proceeds from the disposal of the debtor's interest in the financed property.

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However, any amounts accrued that are interest, *notional interest or in the nature of interest are taken not to be unpaid.

(4) In working out if the debt has been paid in full, and in working out the unpaid amount of the debt, payments are to be attributed first to the payment of any accrued amounts that are interest, *notional interest or in the nature of interest.

(5) A notional loan arising because of Division 240 (about arrangements treated as a sale and loan) is taken to be a debt that has been used to wholly or partly finance or refinance expenditure.

## 243-20 What is limited recourse debt?

(1) A ***limited recourse debt*** is an obligation imposed by law on an entity (the ***debtor***) to pay an amount to another entity (the ***creditor***) where the rights of the creditor as against the debtor in the event of default in payment of the debt or of interest are limited wholly or predominantly to any or all of the following:

(a) rights (including the right to money payable) in relation to any or all of the following:

(i) the *debt property or the use of the debt property;

(ii) goods produced, supplied, carried, transmitted or delivered, or services provided, by means of the debt property;

(iii) the loss or disposal of the whole or a part of the debt property or of the debtor's interest in the debt property;

(b) rights in respect of a mortgage or other security over the debt property or other property;

(c) rights that arise out of any *arrangement relating to the financial obligations of an end-user of the *financed property towards the debtor, and are financial obligations in relation to the financed property.

(2) An obligation imposed by law on an entity (the ***debtor***) to pay an amount to another entity (the ***creditor***) is also a ***limited recourse debt*** if it is reasonable to conclude that the rights of the creditor as

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against the debtor in the event of default in payment of the debt or of interest:

(a) are capable of being limited in the way mentioned in subsection (1); or

(b) are in substance or effect limited wholly or predominantly to rights (including the right to money payable) in relation to any or all of the following:

(i) the *debt property or the use of the debt property;

(ii) goods produced, supplied, carried, transmitted or delivered, or services provided, by means of the debt property;

(iii) the loss or disposal of the whole or a part of the debt property or of the debtor's interest in the debt property.

Note: Paragraph (b) could apply to a special purpose entity. For example, an entity's only significant asset is one that it financed by way of a bank loan. The bank's rights to recover the debt (if the entity defaults) are not contractually limited, however they are in effect limited to rights in relation to the asset.

(3) An obligation imposed by law on an entity (the ***debtor***) to pay an amount to another entity (the ***creditor***) is also a ***limited recourse debt*** if there is no *debt property and it is reasonable to conclude that the rights of the creditor as against the debtor in the event of default in payment of the debt or of interest are capable of being limited.

(3A) In reaching a conclusion for the purposes of subsection (2) or (3), have regard to the following:

(a) the debtor's assets (other than assets that are indemnities or guarantees provided in relation to the debt);

(b) any *arrangement to which the debtor is a party;

(c) except for the purposes of paragraph (2)(b)—whether all of the debtor's assets would be available for the purpose of discharging the debt (other than assets that are security for other debts of the debtor or any other entity);

(d) whether the debtor and creditor are dealing at *arm's length in relation to the debt.

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



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(4) A notional loan arising because of Division 240 (about arrangements treated as a sale and loan) under a *hire purchase agreement is also a ***limited recourse debt***.

(5) However, an obligation that is covered by subsection (1) is not a limited recourse debt if the creditor's recourse is not in practice limited due to the creditor's rights in respect of a mortgage or other security over property of the debtor (other than the financed property) the value of which exceeds, or is likely to exceed, the amount of the debt.

(6) Also, an obligation that is covered by subsection (1), (2) or (3) is not a limited recourse debt if, having regard to all relevant circumstances, it would be unreasonable for the obligation to be treated as limited recourse debt.

(7) A *limited recourse debt is a ***non-arm's length limited recourse debt*** if the debtor and creditor do not deal with each other at *arm's length in relation to the debt.

## 243-25 When is a debt arrangement terminated?

(1) A debt arrangement is taken to have terminated if:

(a) it is actually terminated; or

(b) the debtor's obligation to repay the debt is waived, novated or otherwise varied so as to reduce, transfer or extinguish the debt; or

(c) an agreement is entered into to waive, novate or otherwise vary the debtor's obligation to repay the debt so as to reduce, transfer or extinguish the debt; or

(d) the creditor ceases to have an entitlement to recover the debt from the debtor (other than as a result of an *arm's length assignment of some or all of the creditor's rights under the debt arrangement); or

(e) the debtor ceases to be the owner or the *quasi-owner of some or all of the *debt property because that property is surrendered to the creditor because of the debtor's failure to pay the whole or a part of the debt; or

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



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(f) the debtor ceases to be the owner of a beneficial interest in some or all of the debt property because the interest is surrendered to the creditor because of the debtor's failure to pay the whole or a part of the debt; or

(g) the debt becomes a bad debt.

(2) However, a debt arrangement that is a notional loan arising because of Division 240 (about arrangements treated as a sale and loan) is not taken to have terminated merely because it has been renewed or extended.

Note: Under Division 240, notional loans are taken to have ended if the relevant arrangement is renewed or extended.

(3) Where a debt is terminated under paragraph (1)(b) or (c) as a result of the debt being reduced, the remaining debt is taken to be a new debt to which section 243-15 applies.

### 243-30 What is the financed property and the debt property?

(1) Property is the ***financed property*** if the expenditure referred to in paragraph 243-15(1)(a) is on the property, is on the acquisition of the property, results in the creation of the property or is otherwise connected with the property.

(2) If the debt agreement is a notional loan arising under Division 240 (about arrangements treated as a sale and loan), the property that is the subject of the agreement is the ***financed property***.

(3) Property is the ***debt property*** if:

(a) it is the *financed property; or

(b) the property is provided as security for the debt.

## Subdivision 243-B—Working out the excessive deductions

### Table of sections

**Operative provisions**

243-35 Working out the excessive deductions

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



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## Operative provisions

### 243-35 Working out the excessive deductions

(1) The *capital allowance deductions have been excessive having regard to the amount of the debt that remains unpaid if the amount worked out under subsection (2) exceeds the amount worked out under subsection (4).

(2) This is how to work out the total net *capital allowance deductions:

**Working out the total net capital allowance deductions**

Step 1. Add up all of the debtor's *capital allowance deductions in respect of the expenditure or the *financed property (including deductions because of balancing adjustments) for the income year in which the termination occurs or an earlier income year.

Note: The amount of a capital allowance deduction may be reduced under section 707-415.

Step 2. Deduct from that any amount that is included in the assessable income of the debtor of any income year by virtue of a provision of this Act (other than this Division) as a result of the disposal of the *financed property the effect of which is to reverse a deduction covered by Step 1.

Step 3. Deduct from the result an amount equal to the sum of any amounts included in the entity's assessable income as a result of an earlier application of this Division to the debt.

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| | |
|---|---|
| Step 4. | Add to the result an amount equal to the sum of any deductions to which the entity is entitled under section 243-45 (repayments of the original debt after termination) or 243-50 (repayments of the replacement debt) because of payments in respect of the debt. |

(3) The reference in step 2 of the method statement in subsection (2) to an amount that is included in the assessable income of a taxpayer as a result of the disposal of the *financed property includes a reference to an amount that is included under section 26AG of the *Income Tax Assessment Act 1936* as a result of the disposal of the financed property.

Note: Division 20 deals with amounts included to reverse the effect of past deductions.

(4) This is how to work out the total net capital allowance deductions that would otherwise be allowable taking into account the amount of the debt that is unpaid:

**Working out the total net capital allowance deductions that would otherwise be allowable**

Work out the amount that would be worked out under subsection (2) if the deductions and the amounts included in assessable income had been calculated using the following assumptions:

(1) The original expenditure in respect of which deductions were calculated was reduced by the amount of the debt that was unpaid by the debtor when the debt was terminated. (In calculating the amount unpaid the following are to be disregarded:

(a) any reduction in the amount as a result of the *financed property being surrendered or returned to the creditor at the termination of the debt;

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



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(b) any reduction in the amount to the extent that it is funded directly or indirectly by *non-arm's length limited recourse debt or by the consideration for the disposal of the debtor's interest in the financed property.)

(2) Deductions for income years after the income year in which the termination occurred were also taken into account.

(3) The original expenditure in respect of which deductions were calculated was increased by any amount that is paid by the debtor as consideration for another person assuming a liability under the debt. (This assumption does not apply to the extent that the consideration is funded directly or indirectly by *non-arm's length limited recourse debt or by the consideration for the disposal of the debtor's interest in the *financed property.)

(4) Step 2 were omitted from subsection (2).

## Subdivision 243-C—Amounts included in assessable income and deductions

### Table of sections

**Operative provisions**

243-40 Amount included in debtor's assessable income
243-45 Deduction for later payments in respect of debt
243-50 Deduction for payments for replacement debt
243-55 Effect of Division on later capital allowance deductions
243-57 Effect of Division on later capital allowance balancing adjustments
243-58 Adjustment where debt only partially used for expenditure

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



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## Operative provisions

### 243-40 Amount included in debtor's assessable income

The debtor's assessable income for the income year in which the termination occurs is to include the excess referred to in subsection 243-35(1).

Note: Section 243-60 applies in relation to certain partnership debts.

### 243-45 Deduction for later payments in respect of debt

(1) This section applies if:

(a) an amount was included in the debtor's assessable income under section 243-40 or a deduction was reduced under section 243-55; and

(b) the debtor makes a payment to the creditor, after the termination of the debt arrangement, in respect of the debt (other than an amount to the extent to which it is a payment of interest, of *notional interest or in the nature of interest).

(2) This is how to work out the amount of the deduction:

**Working out the amount of the deduction**

Step 1. Work out the amount that would be worked out under subsection 243-35(2) if the debt were terminated immediately before the payment.

Step 2. Work out the amount that would have been worked out under subsection 243-35(4) at that time if the payment had been taken into account.

Step 3. The ***amount of the deduction*** is the amount (if any) by which the amount worked out under Step 2 exceeds the amount worked out under Step 1.

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(3) The amount can be deducted for the income year in which the payment is made.

*Limit on deductions*

(4) The total amounts deducted under this section in respect of a debt, and under section 243-50 in respect of a replacement debt, cannot exceed the sum of:
   (a) any amounts included in the debtor's assessable income under this Division in respect of the original debt; and
   (b) any amount by which deductions in respect of the original debt were reduced under section 243-55.

## 243-50 Deduction for payments for replacement debt

*Payments where debt refinanced*

(1) This section applies if:
   (a) an amount was included in the debtor's assessable income under section 243-40 or a deduction was reduced under section 243-55; and
   (b) an amount funded by a *non-arm's length limited recourse debt (the ***replacement debt***) was disregarded in calculations under subsection 243-35(4); and
   (c) the debtor makes a payment, after the termination of the original debt arrangement, in respect of the replacement debt (other than to the extent to which it is a payment of interest, of *notional interest or in the nature of interest).

(2) This is how to work out the amount of the deduction:

| **Working out the amount of the deduction** | |
|---|---|
| Step 1. | Work out the amount that would be worked out under subsection 243-35(2) if the replacement debt were terminated immediately before the payment. |

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| | |
|---|---|
| Step 2. | Work out the amount that would have been worked out under subsection 243-35(4) at that time if the payment had been made in respect of the original debt and it had been taken into account. |
| Step 3. | The ***amount of the deduction*** is the amount (if any) by which the amount worked out under Step 2 exceeds the amount worked out under Step 1. |

(3) The amount can be deducted for the income year in which the payment is made.

*Division not to apply to termination of replacement debt*

(4) This Division does not apply to termination of the replacement debt referred to in paragraph (1)(b).

*Limit on deductions*

(5) The total amounts deducted under section 243-45 in respect of the original debt, or under this section in respect of the replacement debt, cannot exceed the sum of:
  (a) any amounts included in the debtor's assessable income under this Division in respect of the original debt; and
  (b) any amount by which deductions in respect of the original debt were reduced under section 243-55.

## 243-55 Effect of Division on later capital allowance deductions

(1) This section applies where this Division (other than section 243-65) has applied in relation to a debt and the debtor is entitled to a *capital allowance deduction in respect of the expenditure or the *financed property in relation to a time or period after the termination of the debt.

(2) The *capital allowance deduction is reduced if the amount that would have been worked out under subsection 243-35(2) would

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have exceeded the amount worked out under subsection 243-35(4) if the following assumptions were applied in both subsections:

**Assumptions to be applied**

(1) That the debt was terminated at the time, or at the end of the period, referred to in subsection (1) of this section.

(2) That the amount unpaid at the time, or at the end of the period, is reduced by any amounts paid under a replacement debt.

(3) The debtor's *capital allowance deductions in respect of the expenditure or the *financed property were increased by the amount of the capital allowance deduction referred to in subsection (1) of this section.

(3) The deduction is to be reduced by the amount of the excess.

## 243-57 Effect of Division on later capital allowance balancing adjustments

(1) This section applies where this Division (other than section 243-65) has applied in relation to a debt and an amount is later included in the assessable income of an entity by virtue of a provision of this Act (other than this Division) as a result of the disposal of the *financed property the effect of which is to reverse a deduction covered by Step 1 in subsection 243-35(2).

(2) Any amount that would be included in the debtor's assessable income is reduced if the amount that would have been worked out under subsection 243-35(4) would have exceeded the amount worked out under subsection 243-35(2) if the following assumptions were applied in both subsections:

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**Assumptions to be applied**

(1) That the debt was terminated at the time of the disposal of the *financed property, referred to in subsection (1) of this section.

(2) The amount in Step 2 in subsection 243-35(2) were increased by the amount that would otherwise be included in the debtor's assessable income.

(3) The amount worked out under subsection 243-35(4) were reduced by any amount by which:

(a) the amount arising as a result of the disposal that is taken into account for the purposes of the provision mentioned in subsection (1);

exceeds:

(b) the unpaid amount of the debt immediately before the time of the disposal of the *financed property, referred to in subsection (1).

(3) The amount is to be reduced by the amount of the excess.

## 243-58 Adjustment where debt only partially used for expenditure

If the debt is only partially used to finance the expenditure, or the property, in respect of which the *capital allowance deductions referred to in Step 1 in subsection 243-35(2) are allowed, the amount of any deduction, any reduction in a deduction or any amount included in assessable income is to be so much as is reasonable taking into account the proportion of the debt that is used for that purpose.

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



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## Subdivision 243-D—Special provisions

### Table of sections

**Operative provisions**

243-60 Application of Division to partnerships
243-65 Application where partner reduces liability
243-70 Application of Division to companies ceasing to be 100% subsidiary
243-75 Application of Division where debt forgiveness rules also apply

## Operative provisions

### 243-60 Application of Division to partnerships

This Division applies to a partnership in respect of the partnership's debts and in respect of debts of a partner, and references to a debtor include a reference to a partnership.

### 243-65 Application where partner reduces liability

(1) This section applies to a debt in relation to a partner in a partnership if:

(a) in connection with an *arrangement, the partner's liability to pay the debt is reduced or eliminated and the partner's interest in the partnership ceases or is varied or transferred; and

(b) an excess would have been worked out under subsection 243-35(1) if, at the time when the debt is reduced or eliminated, the debt had been terminated and remained unpaid and this section had not applied.

(2) If this section applies to a debt in relation to a partner in a partnership, an amount is to be included in his or her assessable income.

(3) This is how to work out the amount to be included:

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



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**Working out the amount included**

Step 1. Work out which income years the partner was a member of the partnership and the partnership was entitled to a *capital allowance deduction in respect of the expenditure or the *financed property (including deductions because of balancing adjustments).

Step 2. For each of those income years, work out the proportion of net income of the partnership or the partnership loss (as the case requires) that was included in the assessable income of the partner or which the partner could deduct.

Step 3. For each of those income years, multiply the *capital allowance deductions in respect of the expenditure or the *financed property (including deductions because of balancing adjustments) of the partnership by the corresponding proportion worked out under Step 2. Sum all of the amounts.

Step 4. Divide the sum by the total of the *capital allowance deductions in respect of the expenditure or the *financed property (including deductions because of balancing adjustments) of the partnership for all of those income years.

Step 5. Work out the amount that would have been included in the partnership's assessable income under section 243-40 if the debt had been terminated and remained unpaid and this section had not applied.

Step 6. Multiply the amount worked out in Step 5 by the factor worked out in Step 4. The result is the amount to be included in the partner's assessable income.

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



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## 243-70 Application of Division to companies ceasing to be 100% subsidiary

(1) This section applies to a company if:

(a) the company ceases to be a *100% subsidiary in relation to at least one other company; and

(b) at that time, the company is the debtor for a *limited recourse debt that has not been paid in full by the company; and

(c) the creditor's rights under the debt are transferred or assigned to another entity.

(2) If this section applies, this Division applies as if the debt were terminated, and refinanced with *non-arm's length limited recourse debt, at the time the company ceased to be a *100% subsidiary of that other company.

## 243-75 Application of Division where debt forgiveness rules also apply

(1) This section is to remove doubt about how this Division and Division 245 apply where both apply to the same debt.

(2) Where both apply:

(a) this Division is to be applied first and is to be applied disregarding any operation of Division 245; and

(b) any amounts included in assessable income under this Division are taken into account under paragraph 245-85(1)(a).

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



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# Division 245—Forgiveness of commercial debts

## Table of Subdivisions

Guide to Division 245
245-A Debts to which operative rules apply
245-B What constitutes forgiveness of a debt
245-C Calculation of gross forgiven amount of a debt
245-D Calculation of net forgiven amount of a debt
245-E Application of net forgiven amounts
245-F Special rules relating to partnerships
245-G Record keeping

## Guide to Division 245

### 245-1 What this Division is about

When a creditor forgives a commercial debt you owe, you make a gain. This is usually not included in your assessable income. Instead, this Division offsets the forgiven amount against amounts that could otherwise reduce your taxable income in the same or a later income year. Those amounts are:

(a) your tax losses and net capital losses; and

(b) capital allowances and some similar deductions; and

(c) the cost bases of your CGT assets.

### 245-2 Simplified outline of this Division

(1) This Division applies to any commercial debt (or part of a commercial debt) you owe that is forgiven.

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



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Note: This Division does not apply if:
(a) the debt is waived and the waiver constitutes a fringe benefit; or
(b) the amount of the debt has been, or will be, included in your assessable income in any income year; or
(c) the debt is forgiven under an Act relating to bankruptcy; or
(d) the debt is forgiven by will; or
(e) the debt is forgiven for reasons of natural love and affection; or
(f) the debt is a tax-related liability.

(2) The net forgiven amount of a debt is worked out by reducing the value of your forgiven debt by:
(a) any consideration you provided for the forgiveness; and
(b) any amounts that this Act already brings to account because of the forgiveness.

(3) The net forgiven amounts of all your forgiven debts in an income year are added up. This total net forgiven amount is applied to reduce the following amounts (in the following order):
(a) your tax losses from previous income years;
(b) your net capital losses from previous income years;
(c) the deductions you would otherwise get in the income year, or in a later year, because of expenditure from a previous year (e.g. the capital allowance deductions you would get for the cost of a depreciating asset);
(d) the cost bases of your CGT assets.

(4) Any unapplied total net forgiven amount is disregarded.

(5) Special rules apply to debts of partnerships.

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



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# Subdivision 245-A—Debts to which operative rules apply

## Guide to Subdivision 245-A

### 245-5 What this Subdivision is about

This Division applies to a debt if you can deduct interest payable on the debt.

### Table of sections

**Application of Division**

245-10 Commercial debts
245-15 Non-equity shares
245-20 Parts of debts

## Application of Division

### 245-10 Commercial debts

Subdivisions 245-C to 245-G apply to a debt of yours if:

(a) the whole or any part of interest, or of an amount in the nature of interest, paid or payable by you in respect of the debt has been deducted, or can be deducted, by you; or

(b) interest, or an amount in the nature of interest, is not payable by you in respect of the debt but, had interest or such an amount been payable, the whole or any part of the interest or amount could have been deducted by you; or

(c) interest or an amount mentioned in paragraph (a) or (b) could have been deducted by you apart from the operation of a provision of this Act (other than paragraphs 8-1(2)(a), (b) and (c)) that has the effect of preventing a deduction.

Note: Paragraphs 8-1(2)(a), (b) and (c) prevent deductions for capital, private or domestic outgoings and for outgoings relating to exempt income or non-assessable non-exempt income.

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



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### 245-15 Non-equity shares

This Division applies to a *non-equity share issued by a company as if it were a debt to which section 245-10 applies that is owed by the company to the relevant shareholder.

### 245-20 Parts of debts

This Division applies to part of a debt in the same way as it applies to a whole debt.

Note: This Division treats interest, or an amount in the nature of interest, payable on a debt as being a separate debt if the interest or amount has accrued but has not been paid.

## Subdivision 245-B—What constitutes forgiveness of a debt

## Guide to Subdivision 245-B

### 245-30 What this Subdivision is about

A debt is ***forgiven*** if you no longer have to pay it.

However, this Division does not apply to some cases of forgiveness, such as bankruptcy.

## Table of sections

**Operative provisions**

245-35 What constitutes ***forgiveness*** of a debt
245-36 What constitutes ***forgiveness*** of a debt if the debt is assigned
245-37 What constitutes ***forgiveness*** of a debt if a subscription for shares enables payment of the debt
245-40 Forgivenesses to which operative rules do not apply
245-45 Application of operative rules if forgiveness involves an arrangement

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



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## Operative provisions

### 245-35 What constitutes *forgiveness* of a debt

A debt is ***forgiven*** if and when:

(a) the debtor's obligation to pay the debt is released or waived, or is otherwise extinguished other than by repaying the debt in full; or

(b) the period within which the creditor is entitled to sue for the recovery of the debt ends, because of the operation of a statute of limitations, without the debt having been paid.

### 245-36 What constitutes *forgiveness* of a debt if the debt is assigned

A debt is ***forgiven*** if and when the creditor assigns the right to receive payment of the debt to another entity (the ***new creditor***) and the following conditions are met:

(a) either the new creditor is the debtor's *associate or the assignment occurred under an *arrangement to which the new creditor and debtor were parties;

(b) the right to receive payment of the debt was not acquired by the new creditor in the ordinary course of *trading on a market, exchange or other place on which, or facility by means of which, offers to sell, buy or exchange securities (within the meaning of Division 16E of Part III of the *Income Tax Assessment Act 1936*) are made or accepted.

Note 1: Division 16E of Part III of the *Income Tax Assessment Act 1936* brings to account gains and losses on some securities on an accruals basis.

Note 2: This Division also applies if an assigned debt is subsequently forgiven by the new creditor. Section 245-61 tells you how to work out the value of the debt in that case.

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



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## 245-37 What constitutes *forgiveness* of a debt if a subscription for shares enables payment of the debt

If an entity subscribes for *shares in a company to enable the company to make a payment in or towards discharge of a debt it owes to the entity, the debt is ***forgiven*** when, and to the extent that, the company applies any of the money subscribed in or towards payment of the debt.

## 245-40 Forgivenesses to which operative rules do not apply

Subdivisions 245-C to 245-G do not apply to a *forgiveness of a debt if:

(a) the debt is waived and the waiver constitutes a *fringe benefit; or

Note: The waiver by an employer of a debt owed by an employee is usually a fringe benefit: see section 14 of the *Fringe Benefits Tax Assessment Act 1986*.

(b) the amount of the debt has been, or will be, included in the assessable income of the debtor in any income year; or

(c) the forgiveness is effected under an Act relating to bankruptcy; or

(d) the forgiveness is effected by will; or

(e) the forgiveness is for reasons of natural love and affection; or

(f) the debt is a *tax-related liability or a civil penalty under Division 290 in Schedule 1 to the *Taxation Administration Act 1953* (about penalties for promoters and implementers of tax avoidance schemes).

Note: If the forgiveness of your debt involved an arrangement which was entered into before 28 June 1996, see section 245-10 of the *Income Tax (Transitional Provisions) Act 1997*.

## 245-45 Application of operative rules if forgiveness involves an arrangement

(1) If:

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(a) the debtor and the creditor in relation to a debt enter into an *arrangement; and

(b) under the arrangement, the debtor's obligation to pay the debt is to cease at a particular future time; and

(c) the cessation of the obligation is to occur without the debtor incurring any financial or other obligation (other than an obligation that, having regard to the debtor's circumstances, is of a nominal or insignificant amount or kind);

Subdivisions 245-C to 245-G apply as if the debt were *forgiven when the arrangement is entered into.

(2) If, after the arrangement is entered into, the debt is forgiven, the later forgiveness is disregarded for the purposes of those Subdivisions.

## Subdivision 245-C—Calculation of gross forgiven amount of a debt

## Guide to Subdivision 245-C

### 245-48 What this Subdivision is about

The amount of forgiveness (called the gross forgiven amount) for the debtor reflects the loss that the creditor makes for tax purposes. It is worked out in 2 steps:

(a) the value of the debt when it was forgiven is worked out on the basis that you were solvent both then and when you incurred the debt; and

(b) the value of the debt is then offset by any consideration given for the forgiveness of the debt.

The difference between the value of the debt and the amount offset is the gross forgiven amount.

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



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If the debt was owed by several debtors, the gross forgiven amount is divided between them equally.

## Table of sections

**Working out the value of a debt**

245-50 Extent of forgiveness if consideration is given
245-55 General rule for working out the value of a debt
245-60 Special rule for working out the value of a non-recourse debt
245-61 Special rule for working out the value of a previously assigned debt

**Working out if an amount is offset against the value of the debt**

245-65 Amount offset against amount of debt

**Working out the gross forgiven amount**

245-75 ***Gross forgiven amount*** of a debt
245-77 Gross forgiven amount shared between debtors

# Working out the value of a debt

## 245-50 Extent of forgiveness if consideration is given

If any consideration is paid or given in respect of the *forgiveness of a debt, the debt that is forgiven is:

(a) the obligation that existed before the forgiveness to pay so much of the debt as is expressed, or is taken, to be forgiven; and

(b) the obligation that existed before the forgiveness to pay any part of the debt to which paragraph (a) does not apply but which ceases to be payable as a result of the payment or giving of the consideration.

Example: Daniel owes Samara $100. Samara agrees to accept $60 in full payment of the debt.

If their agreement specifies that Samara forgives the whole debt in return for $60, paragraph (a) provides that the forgiven debt is $100.

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



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If their agreement instead requires Daniel to repay $60 and specifies that Samara forgives the remaining $40, paragraph (a) would deal with the $40 and paragraph (b) would add the remaining $60, again producing a forgiven amount of $100.

In either case, the $60 Daniel pays is offset against the forgiven amount of $100 in working out the gross forgiven amount of the debt: see sections 245-65 and 245-75.

## 245-55 General rule for working out the value of a debt

(1) The value of your debt at the time (the ***forgiveness time***) when it is *forgiven is the amount that would have been its *market value (considered as an asset of the creditor) at the forgiveness time, assuming that:

(a) when you incurred the debt, you were able to pay all your debts (including that one) as and when they fell due; and

(b) your capacity to pay the debt is the same at the forgiveness time as when you incurred it.

(2) However, the value of the debt at the forgiveness time is the sum of the following amounts, if that sum is less than the amount applicable under subsection (1):

(a) what would have been the amount applicable under subsection (1) if there had been no change, from the time the debt was incurred until the forgiveness time, in any rate of interest, or rate of exchange between currencies, that affects the *market value of the debt;

(b) each amount:

(i) that you have deducted or can deduct as a result of the *forgiveness of the debt; and

(ii) that is attributable to such a change.

(3) Paragraph (1)(a) does not apply to the debt if:

(a) either:

(i) the creditor was an Australian resident at the forgiveness time; or

(ii) the *forgiveness of the debt was a *CGT event involving a *CGT asset that was *taxable Australian property; and

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



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(b) you and the creditor were not dealing with each other at *arm's length in respect of you incurring the debt; and

(c) the debt was not a *moneylending debt.

Note: This subsection reduces your gross forgiven amount to reflect the reduction in the creditor's loss on the forgiven debt under the capital gains tax regime.

(4) This section has effect subject to sections 245-60 and 245-61 (about non-recourse and assigned debts).

## 245-60 Special rule for working out the value of a non-recourse debt

(1) The value of a debt when it is *forgiven is the lesser of:

(a) the amount of the debt outstanding at that time; and

(b) the *market value at that time of the creditor's rights mentioned in paragraph (2)(b).

(2) Subsection (1) applies to a debt if:

(a) you incurred the debt directly in respect of financing:

(i) the acquisition of property by you; or

(ii) the construction or development of property by you;

(but not including the manufacture of goods); and

(b) the creditor's rights against you in the event of default in the payment of the debt or interest were, just before the debt was forgiven, limited to all or any of the following:

(i) rights (including the right to money payable) in relation to all or any of the matters mentioned in subsection (3);

(ii) rights in respect of a mortgage or other security over the property;

(iii) rights arising out of any *arrangement relating to the financial obligations, in relation to the property, of the *end user of the property to you.

(3) For the purposes of subparagraph (2)(b)(i), the matters are as follows:

(a) the property or the use of the property;

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



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(b) goods produced, supplied, carried, transmitted or delivered by means of the property;
(c) services provided by means of the property;
(d) the loss or *disposal of the whole or a part of the property or of your interest in the property.

### 245-61 Special rule for working out the value of a previously assigned debt

If your debt has been assigned as mentioned in section 245-36 and is later *forgiven by the new creditor, the value of that debt when it is later forgiven is:

(a) if the debt was not a *moneylending debt and the creditor and the new creditor were not dealing with each other at *arm's length in connection with the assignment—the *market value of the debt at the time of the assignment; or
(b) in any other case—the sum of:
  (i) the amount or market value of the consideration (if any) you paid or gave, or are required to pay or give, to the creditor in respect of the assignment; and
  (ii) the amount or market value of the consideration (if any) the new creditor paid or gave in respect of the assignment.

## Working out if an amount is offset against the value of the debt

### 245-65 Amount offset against amount of debt

(1) The table explains how to work out the amount (if any) that is offset against the value of a debt when it is forgiven (calculated under section 245-55, 245-60 or 245-61) in working out the *gross forgiven amount of the debt.

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



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| **Amount offset against value of debt** | | |
|---|---|---|
| **Item** | **Column 1**<br>**In this case:** | **Column 2**<br>**the amount offset is:** |
| 1 | the debt is a *moneylending debt, and neither of items 4 and 6 applies | the sum of:<br>(a) each amount that the debtor has paid; and<br>(b) the *market value, at the time of the *forgiveness, of each item of property (other than money) that the debtor has given; and<br>(c) the market value, at that time, of each obligation of the debtor to pay an amount, or to give such an item of property;<br>as a result of, or in respect of, the forgiveness of the debt. |
| 2 | the debt is *not* a *moneylending debt, and none of items 3, 4, 5 and 6 applies | the sum of:<br>(a) each amount that the debtor has paid, or is required to pay; and<br>(b) the *market value, at the time of the *forgiveness, of each item of property (other than money) that the debtor has given, or is required to give;<br>as a result of, or in respect of, the forgiveness of the debt. |
| 3 | the debt is *not* a *moneylending debt, the conditions in subsection (2) are met and none of items 4, 5 and 6 applies | the *market value of the debt at the time of the *forgiveness. |

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



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| **Amount offset against value of debt** | | |
|---|---|---|
| **Item** | **Column 1**<br>**In this case:** | **Column 2**<br>**the amount offset is:** |
| 4 | the debt is assigned as mentioned in section 245-36, and item 5 does not apply | the sum of:<br>(a) the amount or *market value of the consideration (if any) that the debtor has paid or given, or is required to pay or give, in respect of the assignment; and<br>(b) the amount or market value of the consideration (if any) paid or given by the new creditor in respect of the assignment. |
| 5 | the debt is assigned as mentioned in section 245-36, and:<br>(a) the debt is *not* a *moneylending debt; and<br>(b) the creditor and the new creditor were not dealing with each other at *arm's length in connection with the assignment | the *market value of the debt at the time of the assignment. |
| 6 | the debt is *forgiven by subscribing for *shares in a company as mentioned in section 245-37 | the amount worked out using the formula in subsection (3). |

(2) The conditions for the purposes of item 3 of the table in subsection (1) are:

(a) at least one of the following is satisfied:

(i) at the time when the debt was *forgiven, the creditor was an Australian resident;

(ii) the forgiveness of the debt was a *CGT event involving a *CGT asset that was *taxable Australian property; and

(b) at least one of the following is satisfied:

(i) there is no amount, and no property, covered by column 2 of item 2 of the table;

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



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(ii) the amount worked out under item 2 of the table is greater or less than the *market value of the debt at the time of the forgiveness and the debtor and creditor did not deal with each other at *arm's length in connection with the forgiveness.

(3) The formula for the purposes of item 6 of the table in subsection (1) is:

$$\frac{\text{Amount applied}}{\text{Amount subscribed}} \times \text{Market value of shares subscribed for}$$

where:

***amount applied*** means the amount applied by the company as mentioned in section 245-37.

***amount subscribed*** means the amount subscribed as mentioned in section 245-37.

***market value of shares subscribed for*** means the *market value of all the shares in the company that were subscribed for as mentioned in section 245-37, immediately after those shares were issued.

## Working out the gross forgiven amount

### 245-75 *Gross forgiven amount* of a debt

(1) The ***gross forgiven amount*** of a debt is:

(a) if section 245-65 does not apply to the debt—the value of the debt when it was *forgiven (worked out under section 245-55, 245-60 or 245-61); or

(b) if the value of the debt when it was forgiven exceeds the amount offset under section 245-65 in relation to the debt—the excess.

(2) If the value of the debt when it was *forgiven is equal to or less than the amount offset:

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



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(a) there is no ***gross forgiven amount*** in respect of the debt; and
(b) Subdivisions 245-D to 245-F (about how to work out the net forgiven amount of a debt and how to treat it) do not apply in respect of the debt.

### 245-77 Gross forgiven amount shared between debtors

If 2 or more entities were liable (except as partners in a partnership) to pay a debt, whether their liability was joint or several, or joint and several, this Subdivision applies as if each entity had a *gross forgiven amount worked out using the formula:

$$\frac{\text{*Gross forgiven amount in relation to the debt}}{\text{Number of entities liable to pay the debt}}$$

## Subdivision 245-D—Calculation of net forgiven amount of a debt

## Guide to Subdivision 245-D

### 245-80 What this Subdivision is about

The net forgiven amount of a debt is worked out by subtracting, from the gross forgiven amount of the debt, any amount that this Act already takes into account for the debtor because the debt was forgiven (for example, if some part of the forgiven amount is treated as the debtor's ordinary income).

If the debtor and creditor were companies under common ownership, they may agree to transfer some of the net forgiven amount from the debtor to the creditor. The creditor must apply that amount to reduce the capital loss or deduction it has because of the forgiveness.

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



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## Table of sections

**Operative provisions**

245-85 Reduction of gross forgiven amount
245-90 Agreement between companies under common ownership for creditor to forgo capital loss or deduction

# Operative provisions

## 245-85 Reduction of gross forgiven amount

(1) The *gross forgiven amount of your debt is reduced by the sum of the following amounts:

(a) any amount that, under a provision of this Act other than this Division, has been, or will be, included in your assessable income for any income year as a result of the *forgiveness of the debt;

(b) any amount by which, under a provision of this Act other than this Division, an amount you could otherwise have deducted for any income year has been, or will be, reduced as a result of the forgiveness of the debt (except a reduction under Division 727 (about indirect value shifting));

(c) any amount by which the *cost base of any of your *CGT assets has been, or will be, reduced under Part 3-1 or 3-3 as a result of the forgiveness of the debt.

Note: Paragraph (1)(c) does not cover a reduction under Division 727 (indirect value shifting) because that Division is not in Part 3-1 or 3-3.

(2) Subject to section 245-90, the amount remaining after reducing the *gross forgiven amount under subsection (1) is the ***net forgiven amount*** of the debt.

## 245-90 Agreement between companies under common ownership for creditor to forgo capital loss or deduction

(1) This section applies if:

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



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(a) a debt owed by a company to another company is *forgiven; and

(b) from the time when the debt was incurred until the time when the debt is forgiven, the companies were *under common ownership.

(2) If, apart from this subsection, the creditor would have made a *capital loss as a result of the *forgiveness of the debt:

(a) the debtor and creditor may agree that the creditor is to forgo so much of the loss as is stated in the agreement and does not exceed the amount that would be the net forgiven amount of the debt apart from this section (the ***provisional net forgiven amount*** of the debt); and

(b) if such an agreement is made:

(i) the creditor's capital loss is reduced by the agreed amount; and

(ii) the provisional net forgiven amount of the debt is also reduced by the agreed amount; and

(iii) the amount remaining after the reduction of the provisional net forgiven amount of the debt under subparagraph (ii) is the ***net forgiven amount*** of the debt.

(3) If, apart from this subsection, the creditor could deduct an amount in respect of the debt under section 8-1 (about general deductions) or section 25-35 (about bad debts) for the *forgiveness income year:

(a) the debtor and creditor may agree that the creditor is to forgo so much of the deduction as is stated in the agreement and does not exceed the amount that would be the net forgiven amount of the debt apart from this section (the ***provisional net forgiven amount*** of the debt); and

(b) if such an agreement is made:

(i) the amount the creditor can deduct is reduced by the agreed amount; and

(ii) the provisional net forgiven amount of the debt is also reduced by the agreed amount; and

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



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(iii) the amount remaining after the reduction of the provisional net forgiven amount of the debt under subparagraph (ii) is the ***net forgiven amount*** of the debt.

(4) Neither subsection (2) nor (3) applies in relation to an agreement unless the agreement:

(a) is in writing and signed by the public officer of each company; and

(b) is made before:

(i) the first of those companies lodges its *income tax return for the *forgiveness income year; or

(ii) any later day that the Commissioner determines in writing.

(5) A determination made under subparagraph (4)(b)(ii) is not a legislative instrument.

## Subdivision 245-E—Application of net forgiven amounts

## Guide to Subdivision 245-E

### 245-95 What this Subdivision is about

The total of the net forgiven amounts of all your debts forgiven in an income year is applied to reduce 4 classes of amounts that could otherwise reduce your taxable income in the same or a later income year. It is applied in the following order:

(a) to your tax losses from previous income years;

(b) to your net capital losses from previous income years;

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



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(c) to the deductions you would otherwise get in the income year, or in a later income year, because of expenditure from a previous year (for example, the capital allowance deductions you would get for expenditure on acquiring a depreciating asset);

(d) to the cost bases of your CGT assets.

You can choose the order in which the net forgiven amounts reduce the amounts within each class.

If all the amounts in the 4 classes are reduced to nil, any remaining net forgiven amounts are disregarded.

## Table of sections

**General operative provisions**

245-100 Subdivision not to apply to calculation of attributable income
245-105 How ***total net forgiven amount*** is applied

**Reduction of tax losses**

245-115 Total net forgiven amount is applied in reduction of tax losses
245-120 Allocation of total net forgiven amount in respect of tax losses

**Reduction of net capital losses**

245-130 Remaining total net forgiven amount is applied in reduction of net capital losses
245-135 Allocation of remaining total net forgiven amount in respect of net capital losses

**Reduction of expenditure**

245-145 Remaining total net forgiven amount is applied in reduction of expenditure
245-150 Allocation of remaining total net forgiven amount in respect of expenditures
245-155 How expenditure is reduced—straight line deductions
245-157 How expenditure is reduced—diminishing balance deductions
245-160 Amount applied in reduction of expenditure included in assessable income in certain circumstances

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



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**Reduction of cost bases of assets**

245-175 Remaining total net forgiven amount is applied in reduction of cost bases of CGT assets
245-180 Allocation of remaining total net forgiven amount among relevant cost bases of CGT assets
245-185 Relevant cost bases of investments in associated entities are reduced last
245-190 Reduction of the relevant cost bases of a CGT asset

**Unapplied total net forgiven amount**

245-195 No further consequences if there is any remaining unapplied total net forgiven amount

## General operative provisions

### 245-100 Subdivision not to apply to calculation of attributable income

This Subdivision does not apply to the calculation of:

(a) attributable income of a non-resident trust estate within the meaning of section 102AAB of the *Income Tax Assessment Act 1936*; or

(b) *attributable income of a *CFC.

### 245-105 How *total net forgiven amount* is applied

(1) Your ***total net forgiven amount*** for the *forgiveness income year is the total of the *net forgiven amounts of all your debts that are *forgiven in that year.

Note 1: The total net forgiven amount may be reduced under section 707-415.

Note 2: The total net forgiven amount of a partner in a partnership is affected by section 245-215.

(2) Your *total net forgiven amount is applied, in accordance with sections 245-115 to 245-195, for the *forgiveness income year.

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



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## Reduction of tax losses

### 245-115 Total net forgiven amount is applied in reduction of tax losses

The *total net forgiven amount is applied first, to the maximum extent possible, in reduction, in accordance with section 245-120, of your *tax losses (if any) for any income years, if the tax losses could, if you had enough assessable income, be deducted in:

(a) the *forgiveness income year; or

(b) a later income year.

### 245-120 Allocation of total net forgiven amount in respect of tax losses

(1) You may choose:

(a) the order in which your *tax losses are reduced; and

(b) the amount applied to reduce each of those losses;

so long as the *total net forgiven amount is applied, to the maximum extent possible, in reduction of those losses.

(2) If you do not make a choice for the purposes of subsection (1), the Commissioner may make the choice on your behalf in a reasonable way.

## Reduction of net capital losses

### 245-130 Remaining total net forgiven amount is applied in reduction of net capital losses

(1) The *total net forgiven amount (if any) remaining after being applied under section 245-115 is applied, to the maximum extent possible, in reduction, in accordance with section 245-135, of your *net capital losses (if any) specified in subsection (2).

(2) Those *net capital losses are your net capital losses for income years before the *forgiveness income year that you could apply in

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



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working out your *net capital gain for the forgiveness income year if you had enough capital gains.

### 245-135 Allocation of remaining total net forgiven amount in respect of net capital losses

(1) You may choose:

(a) the order in which your *net capital losses are reduced; and

(b) the amount applied in reduction of each of those losses;

so long as the *total net forgiven amount remaining is applied, to the maximum extent possible, in reduction of those losses.

(2) If you do not make a choice for the purposes of subsection (1), the Commissioner may make the choice on your behalf in a reasonable way.

## Reduction of expenditure

### 245-145 Remaining total net forgiven amount is applied in reduction of expenditure

(1) The *total net forgiven amount (if any) remaining after being applied under sections 245-115 and 245-130 is applied, to the maximum extent possible, in reduction, in accordance with sections 245-150, 245-155 and 245-157, of your expenditure that:

(a) is mentioned in the following table (other than expenditure covered by subsection (2)) and was incurred by you before the *forgiveness income year; and

(b) apart from this Subdivision, could be deducted by you for the forgiveness income year or a later income year if no event or circumstance (other than a *recoupment of the expenditure by you in the forgiveness income year) occurred that would affect its deductibility.

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



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**Table of expenditure**

| Item | Column 1<br>General description of expenditure | Column 2<br>Provision under which a deduction is available for the expenditure |
|---|---|---|
| 1 | Expenditure deductible under Division 40 (Capital allowances) | Division 40 of this Act |
| 2 | Expenditure incurred in *borrowing money to produce assessable income | Section 25-25 of this Act |
| 3 | Expenditure on scientific research | Subsection 73A(2) of the *Income Tax Assessment Act 1936* |
| 4 | Expenditure deductible under Division 355 (R&D) | Division 355 of this Act |
| 5 | Advance revenue expenditure | Subdivision H of Division 3 of Part III of the *Income Tax Assessment Act 1936* |
| 6 | Expenditure on acquiring a unit of industrial property to produce assessable income | Subsection 124M(1) of the *Income Tax Assessment Act 1936* |
| 7 | Expenditure on Australian films | Section 124ZAFA of the *Income Tax Assessment Act 1936* |
| 8 | Expenditure on assessable income-producing buildings and other capital works | Section 43-10 of this Act |

Note: If the asset to which the expenditure relates was disposed of, lost or destroyed before 28 June 1996 or the expenditure was recouped before 28 June 1996, see section 245-10 of the *Income Tax (Transitional Provisions) Act 1997*.

(2) Expenditure is covered by this subsection if:

(a) it was incurred in respect of an asset you *disposed of to an entity that you dealt with at *arm's length in respect of the disposal; and

(b) the disposal occurred during the *forgiveness income year before the *forgiveness of any debt owed by you, and the forgiveness resulted in a *net forgiven amount; and

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(c) no provision of this Act includes an amount in your assessable income, or allows you a deduction, as a result of the disposal.

## 245-150 Allocation of remaining total net forgiven amount in respect of expenditures

(1) You may choose:

(a) the order in which your expenditures are reduced; and

(b) the amount applied in reduction of each of those expenditures;

so long as that the *total net forgiven amount remaining is applied, to the maximum extent possible, in reduction of your expenditures.

(2) If you do not make a choice for the purposes of subsection (1), the Commissioner may make the choice on your behalf in a reasonable way.

## 245-155 How expenditure is reduced—straight line deductions

(1) This section applies in respect of the reduction under section 245-145 of an expenditure of yours, if:

(a) the amount that you could deduct, apart from this Subdivision, in respect of the expenditure is a percentage, fraction or proportion of an amount (the ***base amount***); and

(b) the base amount is worked out without regard to any amount or amounts you previously deducted in respect of that expenditure.

(2) The amount of the reduction of the expenditure must not exceed:

(a) the base amount; less

(b) the amount of that part of the expenditure in respect of which you have deducted (disregarding subsection (4)), or can deduct, an amount for any income year before the *forgiveness income year.

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



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(3) For the purpose of working out your deductions for the *forgiveness income year and later income years, any amount that is applied in reduction of your expenditure is taken to reduce the base amount.

(4) You are taken to have deducted the amount of the reduction in respect of the expenditure:
  (a) before the *forgiveness income year; and
  (b) for the purposes of any provision of this Act that includes an amount in your assessable income or allows you a deduction:
    (i) because of the *disposal, loss or destruction of the asset in respect of which the expenditure was incurred; or
    (ii) because of the *recoupment of any of the expenditure; or
    (iii) because use of the asset for a particular purpose has been otherwise terminated; or
    (iv) because a *balancing adjustment event occurs for that asset.

(5) The amount of that part of the expenditure in respect of which you have deducted (disregarding subsection (4), or can deduct, an amount for all income years (including income years before the *forgiveness income year) must not exceed the base amount as reduced under subsection (3).

## 245-157 How expenditure is reduced—diminishing balance deductions

Any amount applied in reduction under section 245-145 of an expenditure of yours is taken to have been deducted by you in respect of the expenditure before the *forgiveness income year, if the amount you could deduct, apart from this Subdivision, in respect of the expenditure is a percentage, fraction or proportion of an amount that is worked out after taking into account any amount previously deducted by you in respect of the expenditure.

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



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### 245-160 Amount applied in reduction of expenditure included in assessable income in certain circumstances

If:

(a) after the *forgiveness income year you *recoup an amount of expenditure that is subject to reduction under section 245-145; and

(b) as a result of the recoupment, this Act applies to disallow any amount you have deducted in respect of the expenditure;

an amount equal to the amount, or the sum of the amounts, applied under this Subdivision in reduction of the expenditure is included in your assessable income in the income year in which the expenditure is recouped.

## Reduction of cost bases of assets

### 245-175 Remaining total net forgiven amount is applied in reduction of cost bases of CGT assets

(1) The *total net forgiven amount (if any) remaining after being applied under sections 245-115, 245-130 and 245-145 is applied, to the maximum extent possible, in reduction, in accordance with sections 245-180 to 245-190, of the *cost base and *reduced cost base of your *CGT assets.

(2) Subsection (1) does not apply to the following *CGT assets:

(a) a *pre-CGT asset;

(b) a CGT asset you *acquire after the start of the *forgiveness income year;

(c) a *personal use asset;

(d) a *dwelling that was your main residence at any time before the forgiveness income year;

(e) goodwill;

(f) a right of yours covered by section 118-305 (which exempts from CGT certain rights relating to a superannuation fund or approved deposit fund);

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(g) a CGT asset that, throughout the period before the forgiveness income year when it was owned by you, was your *trading stock;

(h) a CGT asset if:

(i) expenditure by you (of a kind which is subject to reduction under section 245-145) relates to the asset; and

(ii) a *CGT event in relation to the asset would result in an amount being included in your assessable income, or in you being able to deduct an amount;

(i) if you are a foreign resident at the beginning of the forgiveness income year—an asset of yours that is not *taxable Australian property.

## 245-180 Allocation of remaining total net forgiven amount among relevant cost bases of CGT assets

(1) Subject to section 245-185, you may choose:

(a) your *CGT assets whose *cost base and *reduced cost base are subject to reduction under section 245-175; and

(b) the amount applied in reduction of the cost base and reduced cost base of each of those assets;

so long as the *total net forgiven amount remaining is applied, to the maximum extent possible, in reduction of the cost base and reduced cost base of such assets.

(2) If you do not make a choice for the purposes of subsection (1), the Commissioner may make the choice on your behalf in a reasonable way.

## 245-185 Relevant cost bases of investments in associated entities are reduced last

If your *CGT assets that are subject to reduction under section 245-175 include investments in, or in relation to, an *associate of yours (including *membership interests, or *debt interests, in your associate), the:

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(a) *cost base; and

(b) *reduced cost base;

of those assets are not subject to reduction under section 245-175 until the *total net forgiven amount (if any) remaining has been applied, to the maximum extent possible, in reduction of the cost bases of your other CGT assets.

## 245-190 Reduction of the relevant cost bases of a CGT asset

(1) Subject to subsection (3), if you choose to apply an amount in reduction of the *cost base and *reduced cost base of a particular *CGT asset, the cost base and reduced cost base of the asset, as at any time on or after the beginning of the *forgiveness income year, are reduced by that amount.

(2) The reduction by a particular amount of the *cost base and *reduced cost base of a particular *CGT asset is, for the purpose of working out the amount by which the *total net forgiven amount remaining is applied, taken to be a reduction by the particular amount (and not by the sum of the amounts by which those cost bases are reduced).

(3) The maximum amount by which the *cost base and *reduced cost base of a *CGT asset may be reduced is the amount that, apart from sections 245-175 to 245-185, would be the reduced cost base of the asset calculated as if a *CGT event had happened to the asset:

(a) subject to paragraph (b), on the first day of the *forgiveness income year; or

(b) if, after the beginning of that income year, an event occurred that would cause the reduced cost base of the asset to be reduced—on the day on which the event occurred;

and the asset had been *disposed of at its *market value on the day concerned.

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## Unapplied total net forgiven amount

### 245-195 No further consequences if there is any remaining unapplied total net forgiven amount

(1) If any part of the *total net forgiven amount remains after the application of that amount in making reductions under the preceding provisions of this Subdivision, the remaining part is disregarded.

(2) This section has effect subject to section 245-215 (about partnerships and transferring the remaining part to the partners).

## Subdivision 245-F—Special rules relating to partnerships

## Guide to Subdivision 245-F

### 245-200 What this Subdivision is about

Any part of a partnership's total net forgiven amount left over after applying it under Subdivision 245-E is divided between the partners. Each partner treats the partner's share as a net forgiven amount the partner has for the income year.

### Table of sections

**Operative provisions**

245-215 Unapplied total net forgiven amount of a partnership is transferred to partners

## Operative provisions

### 245-215 Unapplied total net forgiven amount of a partnership is transferred to partners

(1) This section applies if any part (the ***residual amount***) of the *total net forgiven amount in relation to a partnership in respect of the

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*forgiveness income year remains after the total net forgiven amount has been applied in accordance with Subdivision 245-E.

(2) If there is a *net income in relation to the partnership in respect of the *forgiveness income year:

(a) each partner is taken to have had a debt *forgiven during the forgiveness income year; and

(b) there is taken to be, in respect of the debt of each partner, a *net forgiven amount worked out in accordance with the following formula:

$$\frac{\text{Partner's share of net income}}{\text{Net income}} \times \text{Residual amount}$$

where:

***partner's share of net income*** means the part of the net income of the partnership for the forgiveness income year that is included in the partner's assessable income.

(3) If there is a *partnership loss in relation to the partnership in respect of the *forgiveness income year:

(a) each partner is taken to have had a debt *forgiven during the forgiveness income year; and

(b) there is taken to be, in respect of the debt of each partner, a *net forgiven amount worked out in accordance with the following formula:

$$\frac{\text{Partner's share of partnership loss}}{\text{Partnership loss}} \times \text{Residual amount}$$

where:

***partner's share of partnership loss*** means the part of the partnership loss that the partner has deducted or can deduct.

(4) The *total net forgiven amount of a partner for the *forgiveness income year as worked out under subsection 245-105(1) includes the *net forgiven amount worked out in relation to the partner under this section.

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



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(5) This section has effect in relation to a partnership irrespective of any agreement between the partners as to the operation of this section.

## Subdivision 245-G—Record keeping

### 245-265 Keeping and retaining records

(1) If you incur a debt, you must keep any records that are necessary to enable the following matters to be readily found out:

(a) the date on which you incurred the debt;

(b) the identity of the creditor;

(c) the amount of the debt;

(d) the terms of repayment of the debt;

(e) if the debt is not a *moneylending debt and you and the creditor were not dealing with each other at *arm's length in respect of the incurring of the debt—your capacity at the time when the debt was incurred to pay the debt when it falls due;

(f) if your debt is *forgiven—the date of the forgiveness and the amount offset under section 245-65 (if any) in respect of the debt.

Note: There is an administrative penalty if you do not keep or retain records as required by this section: see section 288-25 in Schedule 1 to the *Taxation Administration Act 1953*.

(2) If a company and another company that are *under common ownership cease to be under common ownership, each company must keep any records that are necessary to enable the following matters to be readily found out:

(a) the date on which the companies ceased to be under common ownership;

(b) the identity of each entity that was a *controller (for CGT purposes) of the company immediately before the companies ceased to be under common ownership;

(c) the identity of each entity that was a controller (for CGT purposes) of the company immediately after the companies ceased to be under common ownership.

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



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(3) You must keep the records required by subsection (1) or (2) in writing in the English language or so as to enable them to be readily accessible and convertible into writing in the English language.

(4) Subject to subsection (5), you must keep the records required by subsection (1) until:

(a) if paragraph (b) does not apply—the end of 5 years after the debt was *forgiven; or

(b) if the period within which the Commissioner may, under section 170 of the *Income Tax Assessment Act 1936*, amend your assessment for the income year to which the records relate, or in which a transaction or act to which the records relate was completed, is extended under subsection 170(7) of that Act—the later of:

(i) the end of the assessment period as so extended; and

(ii) the end of the period of 5 years mentioned in paragraph (a).

(5) Subsection (4) does not require you to keep records after the debt is paid.

(6) Subject to subsection (7), each company that keeps any records required by subsection (2) must retain the records until the end of the second income year after the income year in which the companies ceased to be *under common ownership.

(7) If a debt of one of the companies mentioned in subsection (2) was *forgiven at any time after the companies ceased to be *under common ownership and before the end of the second income year after the income year in which the cessation occurred, each company that keeps records required by that subsection must retain the records until the time specified in subsection (4).

(8) You commit an offence if you fail to comply with a provision of this section.

Penalty: 30 penalty units.

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



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(9) An offence against subsection (8) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(10) This section does not limit the application of any other provision of this Act relating to the keeping or retention of records.

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



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# Division 247—Capital protected borrowings

## Guide to Division 247

### 247-1 What this Division is about

Capital protection provided under a relevant capital protected borrowing to the extent that it is not provided by an explicit put option is treated (for the borrower) as if it were a put option.

An amount attributable to capital protection under any relevant capital protected borrowing is treated (for the borrower) as a payment for a put option.

## Table of sections

**Operative provisions**

247-5 Object of Division
247-10 What *capital protected borrowing* and *capital protection* are
247-15 Application of this Division
247-20 Treating capital protection as a put option
247-25 Number of put options
247-30 Exercise or expiry of option

## Operative provisions

### 247-5 Object of Division

The object of this Division is to ensure that amounts for *capital protection under all relevant *capital protected borrowings are treated (for the borrower) under this Act as a payment for a put option.

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



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## 247-10 What *capital protected borrowing* and *capital protection* are

(1) An *arrangement under which a *borrowing is made, or credit is provided, is a ***capital protected borrowing*** if the borrower is wholly or partly protected against a fall in the *market value of a thing (the ***protected thing***) to the extent that:

(a) the borrower uses the amount borrowed or credit provided to acquire the protected thing; or

(b) the borrower uses the protected thing as security for the borrowing or provision of credit.

(2) That protection is called ***capital protection***.

## 247-15 Application of this Division

(1) This Division applies to a *capital protected borrowing only if the protected thing is a beneficial interest in:

(a) a *share, a unit in a unit trust or a stapled security; or

(b) an entity that holds a beneficial interest in a share, unit in a unit trust or stapled security either directly, or indirectly through one or more interposed entities.

(2) This Division applies only to borrowers under *capital protected borrowings.

(3) This Division does not apply to a *capital protected borrowing if:

(a) an *ESS interest is acquired under the borrowing; and

(b) Subdivision 83A-B or 83A-C (about employee share schemes) applies to the ESS interest.

(4) This Division does not apply to a *capital protected borrowing entered into before 1 July 2007 (except to the extent that it is extended on or after that day) unless the *share, unit in a unit trust or stapled security is listed for quotation in the official list of an *approved stock exchange.

(5) This Division does not apply to a *capital protected borrowing entered into on or after 1 July 2007 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 protected thing is a beneficial interest in:
  (i) a *share, unit or stapled security that is not listed for quotation in the official list of an *approved stock exchange; or
  (ii) an entity that holds a beneficial interest in a share, unit in a unit trust or stapled security either directly, or indirectly through one or more interposed entities, that is not so listed; and

(b) one of these conditions is satisfied:
  (i) for a non-listed share—the company is not a *widely held company;
  (ii) for a non-listed unit—the trust is not a widely held unit trust as defined in section 272-105 in Schedule 2F to the *Income Tax Assessment Act 1936*;
  (iii) for a non-listed stapled security—any company involved is not a widely held company and any trust involved is not such a widely held unit trust.

## 247-20 Treating capital protection as a put option

(1) This section applies to a borrower if:

(aa) the borrower has an excess using the method statement in subsection (3) for:
  (i) a *capital protected borrowing entered into after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 2008 (the ***2008 Budget time***); or
  (ii) an extension of the capital protected borrowing; or

(a) the borrower has an amount that is reasonably attributable to the *capital protection as mentioned in subsection (2) for a capital protected borrowing entered into or extended on or after 1 July 2007 and at or before the 2008 Budget time; or

(b) the borrower has an amount that is reasonably attributable to the capital protection as mentioned in subsection (2) for a capital protected borrowing entered into or extended at or after 9.30 am, by legal time in the Australian Capital Territory, on 16 April 2003 and before 1 July 2007.

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



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Note: If a capital protected borrowing covered by paragraph (1)(a) or (b) is extended or otherwise changed after the 2008 Budget time, section 247-85 of the *Income Tax (Transitional Provisions) Act 1997* applies to the capital protected borrowing.

(2) For paragraphs (1)(a) and (b), the amount that is reasonably attributable to the *capital protection is worked out under Division 247 of the *Income Tax (Transitional Provisions) Act 1997*.

(3) This is the method statement.

*Method statement*

Step 1. Work out the total amount incurred by the borrower under or in respect of the *capital protected borrowing for the income year, ignoring amounts that are not in substance for *capital protection or interest.

Step 2. Work out the total interest that would have been incurred for the income year on a *borrowing or provision of credit of the same amount as under the *capital protected borrowing at the rate applicable under either or both of subsections (4) and (5A).

Step 3. If the step 1 amount exceeds the step 2 amount, the excess is reasonably attributable to the *capital protection for the income year.

Example: Amounts that would be ignored under step 1 include amounts that are in substance the repayment of a loan or credit, the payment of an application fee or brokerage commission and the payment of stamp duty or other tax.

(4) If:

(a) the *capital protected borrowing is at a fixed rate for all or part of the term of the capital protected borrowing; and

(b) that fixed rate is applicable to the capital protected borrowing for all or part of the income year;

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



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use the rate worked out under subsection (5) at the first time an amount covered by step 1 of the method statement in subsection (3) was incurred, in any income year, during the term of the capital protected borrowing or that part of the term.

(5) The rate (the ***adjusted loan rate***), at a particular time, is the sum of:
  (a) the Reserve Bank of Australia's Indicator Lending Rate for Standard Variable Housing Loans at that time; and
  (b) 100 basis points.

(5A) If:
  (a) the *capital protected borrowing is at a variable rate for all or part of the term of the capital protected borrowing; and
  (b) a variable rate is applicable to the capital protected borrowing for all or part of the income year;

use the average of the adjusted loan rates applicable during those parts of the income year when the capital protected borrowing is at a variable rate.

(6) If this section applies to a borrower, this Act applies as if:
  (a) the borrower's excess from the method statement in subsection (3); or
  (b) the amount that is reasonably attributable to *capital protection as mentioned in paragraph (1)(a) or (b);

(reduced by any amount the borrower incurred under or in respect of the *capital protected borrowing for an explicit put option) were incurred only for a put option granted by the lender or by another entity under the *arrangement.

## 247-25 Number of put options

(1) If a *capital protected borrowing specifies more than one occasion on which the *capital protection can be invoked, this Act applies as if there were a separate put option for each of those occasions. So much of the amount to which subsection 247-20(6) applies as is reasonably attributable to each option is taken to have been incurred for that option.

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



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(2) However, if a borrower may invoke the *capital protection under a *capital protected borrowing at any time up to the end of a period, or only at the end of a period, for which there is capital protection, this Act applies as if there were a single put option for that period.

## 247-30 Exercise or expiry of option

(1) If the *capital protection under a *capital protected borrowing is invoked:

(a) the borrower is taken to have exercised the put option; and

(b) any interest in a *share, unit in a unit trust or stapled security that is acquired by the lender or another entity under the *arrangement as a result of that capital protection being invoked is taken to have been disposed of by the borrower as a result of the exercise of the option.

(2) If the *capital protection under a *capital protected borrowing is not invoked on or before the last occasion on which it could have been, the put option is taken to have expired.

Note: If a borrower under a capital protected borrowing holds the protected things on capital account, the exercise or expiry of the put option may give rise to a capital gain or capital loss: see sections 104-25 (CGT event C2) and 134-1 (exercise of options).

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



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# Division 250—Assets put to tax preferred use

## Table of Subdivisions

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250-A Objects
250-B When this Division applies to you and an asset
250-C Denial of, or reduction in, capital allowance deductions
250-D Deemed loan treatment of financial benefits provided for tax preferred use
250-E Taxation of deemed loan
250-F Treatment of asset when Division ceases to apply to the asset
250-G Objections against determinations and decisions by the Commissioner

## Guide to Division 250

### 250-1 What this Division is about

This Division denies or reduces certain capital allowance deductions that would otherwise be available to you in relation to an asset if the asset is put to a tax preferred use in certain circumstances.

If the capital allowance deductions are denied or reduced, certain financial benefits in relation to the tax preferred use of the asset are assessed only to the extent of a notional gain component. This component is worked out on the basis of treating the arrangements under which the asset is put to a tax preferred use, and financial benefits are provided in relation to that tax preferred use, as a loan. Subdivision 250-E then applies to determine the amounts that are to be assessed.

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## Subdivision 250-A—Objects

### Table of sections

250-5 Main objects

### 250-5 Main objects

The main objects of this Division are:

(a) to deny or reduce your *capital allowance deductions in respect of an asset if the asset is put to a *tax preferred use and you have insufficient economic interest in the asset; and

(b) if your capital allowance deductions are denied or reduced, to treat the *arrangement for the tax preferred use of the asset as a loan that is taxed as a financial arrangement (on a compounding accruals basis).

## Subdivision 250-B—When this Division applies to you and an asset

### Table of sections

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250-10 When this Division applies to you and an asset
250-15 General test
250-20 First exclusion—small business entities
250-25 Second exclusion—financial benefits under minimum value limit
250-30 Third exclusion—certain short term or low value arrangements
250-35 Exceptions to section 250-30
250-40 Fourth exclusion—sum of present values of financial benefits less that amount otherwise assessable
250-45 Fifth exclusion—Commissioner determination

**Tax preferred use of asset**

250-50 ***End user*** of an asset
250-55 ***Tax preferred end user***
250-60 ***Tax preferred use*** of an asset
250-65 ***Arrangement period*** for tax preferred use

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



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250-70 New tax preferred use at end of arrangement period if tax preferred use continues
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**Financial benefits in relation to tax preferred use**

250-85 Financial benefits in relation to tax preferred use of an asset
250-90 Financial benefit provided directly or indirectly
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**Discount rate to be used in working out present values**

250-105 Discount rate to be used in working out present values

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250-110 Predominant economic interest
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250-120 Right to acquire asset test
250-125 Effectively non-cancellable, long term arrangement test
250-130 Meaning of ***effectively non-cancellable*** arrangement
250-135 Level of expected financial benefits test
250-140 When to retest predominant economic interest under section 250-135

## Overall test

### 250-10 When this Division applies to you and an asset

This Division applies to you and an asset at a particular time if:

(a) the general test in section 250-15 is satisfied in relation to you and the asset; and

(b) none of the exclusions in sections 250-20, 250-25, 250-30, 250-40 and 250-45 apply.

### 250-15 General test

This Division applies to you and an asset at a particular time if:

(a) the asset is being *put to a tax preferred use; and

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(b) the *arrangement period for the *tax preferred use of the asset is greater than 12 months; and

(c) *financial benefits in relation to the tax preferred use of the asset have been, will be or can reasonably be expected to be, *provided to you (or a *connected entity) by:

(i) a *tax preferred end user (or a connected entity); or

(ii) any *tax preferred entity (or a connected entity); or

(iii) any entity that is a foreign resident; and

(d) disregarding this Division, you would be entitled to a *capital allowance in relation to:

(i) a decline in the value of the asset; or

(ii) expenditure in relation to the asset; and

(e) you lack a *predominant economic interest in the asset at that time.

## 250-20 First exclusion—small business entities

This Division does not apply to you and an asset if:

(a) you are a *small business entity for the income year in which the *arrangement period for the *tax preferred use of the asset starts; and

(b) you choose to deduct amounts under Subdivision 328-D for the asset for that income year.

## 250-25 Second exclusion—financial benefits under minimum value limit

(1) This Division does not apply to you and an asset that is being *put to a tax preferred use under a particular *arrangement if, at the start of the *arrangement period, the total of the nominal values of all the *financial benefits that have been, or will be or can reasonably be expected to be, provided to you (or a *connected entity):

(a) by *members of the tax preferred sector; and

(b) in relation to the *tax preferred use of the asset or any other asset that is being, or is to be, put to a tax preferred use under the arrangement;

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



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does not exceed $5 million.

(2) The amount referred to in subsection (1) is indexed annually.

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

## 250-30 Third exclusion—certain short term or low value arrangements

*Certain short term or low value arrangements generally excluded*

(1) This Division does not apply to you and an asset that is being *put to a tax preferred use under a particular *arrangement if:

(a) the *arrangement period for the *tax preferred use of the asset does not exceed:

(i) 5 years if the asset is real property and the tax preferred use of the asset is a lease; or

(ii) 3 years in any other case; or

(b) at the start of the arrangement period, the total of the nominal values of all the *financial benefits that have been, will be or can reasonably be expected to be, provided to you (or a *connected entity):

(i) by *members of the tax preferred sector; and

(ii) in relation to the tax preferred use of the asset or any other asset that is being, or is to be, put to a tax preferred use under the arrangement;

does not exceed:

(iii) $50 million if the asset is real property and the tax preferred use of the asset is a lease; or

(iv) $30 million in any other case; or

(c) at the start of the arrangement period, the total of the values of all the assets that are put to a tax preferred use under the arrangement does not exceed:

(i) $40 million if the asset is real property and the tax preferred use of the asset is a lease; or

(ii) $20 million in any other case.

This subsection has effect subject to section 250-35.

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(2) The amounts referred to in paragraphs (1)(b) and (c) are indexed annually.

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

## 250-35 Exceptions to section 250-30

*Debt interests*

(1) Section 250-30 does not apply if the *arrangement (either alone or together with any arrangement in relation to the *tax preferred use of the asset or the provision of *financial benefits in relation to the tax preferred use of the asset) is a *debt interest.

(2) In applying subsection (1), disregard subsection 974-130(4).

*Member of tax preferred sector having certain rights in relation to the asset*

(3) Section 250-30 does not apply if:

(a) a *member of the tax preferred sector has:

(i) a right, obligation or contingent obligation to purchase or acquire the asset or a legal or equitable interest in the asset; or

(ii) a right to require the transfer of the asset or a legal or equitable interest in the asset; or

(iii) a residual or reversionary interest in the asset that will arise or become exercisable at or after the end of the *arrangement period; and

(b) the consideration for the purchase, acquisition or transfer of the right, obligation or interest is not fixed as the *market value of the asset at the time of the purchase, acquisition or transfer.

To avoid doubt, this subsection does not apply to the asset merely because your interest in the asset is one that ceases to exist after the passage of a particular period of time.

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



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*Member of tax preferred sector providing financing*

(4) Section 250-30 does not apply if a *member of the tax preferred sector provides financing, or support for financing, in relation to your interest in the asset (including by way of a loan, a guarantee, an indemnity, a security, hedging or undertaking to provide *financial benefits in the event of the termination of an *arrangement).

*Finance leases, non-cancellable operating leases, service concessions and similar arrangements*

(5) Section 250-30 does not apply if an *arrangement in relation to the *tax preferred use of the asset, or the provision of *financial benefits in relation to the tax preferred use of the asset, is or involves:

(a) a finance lease; or

(b) a non-cancellable operating lease; or

(c) a service concession or similar arrangement;

that generally accepted accounting principles, as in force at the start of the *arrangement period, require to be included as an asset or a liability in your balance sheet.

*Financial benefits irregular, not based on comparable market-based rates or not reflecting value of tax preferred use of asset*

(6) Section 250-30 does not apply if the *financial benefits that have been, or are to be provided, to you (or a *connected entity) by *members of the tax preferred sector in relation to the *tax preferred use of the asset:

(a) are not provided on a regular periodic basis (and at least annually); or

(b) are not based on comparable market-based rates; or

(c) do not reflect the value of the tax preferred use of the asset.

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



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*Special rules if tax preferred use is a lease or hire of the asset*

(7) If the *tax preferred use of the asset is a lease or hire of the asset (or the use of the asset under a lease or hire arrangement), section 250-30 does not apply if:

(a) the asset is so specialised that the *end user could not carry out one or more of its functions effectively without the asset; and

(b) you would be unlikely to be able to re-lease, re-hire or resell the asset to another person who is not a *member of the tax preferred end user group.

Note: For particular arrangements that are treated as leases, see section 250-80.

*Special rules if tax preferred use is not a lease or hire of the asset*

(8) If the *tax preferred use of the asset is not the lease or hire of the asset (or the use of the asset under a lease or hire arrangement), section 250-30 does not apply if:

(a) a *member of the tax preferred sector has a right, if particular circumstances occur, to manage, or to assume control over, the asset (other than temporarily for the purpose of ensuring public health or safety, protecting the environment or continuing the supply of an essential service); or

(b) the asset is so specialised that it is unlikely that it could effectively be put to any use other than the tax preferred use; or

(c) neither you (nor a *connected entity) has effective day to day control and physical possession of the asset.

Note: For particular arrangements that are treated as leases, see section 250-80.

## 250-40 Fourth exclusion—sum of present values of financial benefits less than amount otherwise assessable

(1) This Division does not apply to you and an asset that is being *put to a tax preferred use under a particular *arrangement if, when that

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*tax preferred use of the asset starts, the Division 250 assessable amount is less than the alternative assessable amount.

(2) For the purposes of subsection (1), the ***Division 250 assessable amount*** is the sum of the present values of all the amounts that would be likely to be included in your assessable income under this Division in relation to the *tax preferred use of the asset if this Division applied to you and the asset.

(3) This is how to work out the ***alternative assessable amount*** for the purposes of subsection (1):

*Method statement*

Step 1. Add up the present values of the amounts that would be included in your assessable income in relation to the *financial benefits *provided in relation to the tax preferred use of the asset during the *arrangement period if this Division did not apply to you and the asset.

Step 2. Add up the present values of the amounts that you would be able to deduct in relation to the asset, or expenditure in relation to the asset, under Division 40 or Division 43 in relation to the *arrangement period if this Division did not apply to you and the asset.

Step 3. Deduct the amount obtained in Step 2 from the amount obtained in Step 1. The result is the ***alternative assessable amount***.

(4) To avoid doubt, the amounts referred to in subsections (2) and (3) are all the amounts that would be likely to be included in your assessable income, or deducted, for all the income years during the whole, or a part, of which the asset is *put to the tax preferred use.

(5) The point in time to be used in determining, for the purposes of this section:

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



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(a) the present value of an amount that is included in your assessable income for an income year; or

(b) the present value of an amount that you would be able to deduct for an income year;

is the end of the income year.

### 250-45 Fifth exclusion—Commissioner determination

This Division does not apply to you and an asset at a particular time if:

(a) you request the Commissioner to make a determination under this subsection; and

(b) the Commissioner determines that it is unreasonable that the Division should apply to you and the asset at that time, having regard to:

(i) the circumstances because of which this Division would apply to you and the asset; and

(ii) any other relevant circumstances.

## Tax preferred use of asset

### 250-50 *End user* of an asset

(1) An entity (other than you) is an ***end user*** of an asset if the entity (or a *connected entity):

(a) uses, or effectively controls the use of, the asset; or

(b) will use, or effectively control the use of, the asset; or

(c) is able to use, or effectively control the use of, the asset; or

(d) will be able to use, or effectively control the use of, the asset.

(2) The control referred to in subsection (1) may be direct or indirect.

(3) For the purposes of subsection (1), disregard any temporary control of the asset that is for the purpose of ensuring public health or safety, protecting the environment or continuing the supply of an essential service.

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(4) To avoid doubt, an entity is taken to be an ***end user*** of an asset if the entity (or a *connected entity) holds rights as a lessee under a lease of the asset.

Note: For particular arrangements that are treated as leases, see section 250-80.

## 250-55 *Tax preferred end user*

An *end user of an asset is a ***tax preferred end user*** if:

(a) the end user (or a *connected entity) is a *tax preferred entity; or

(b) the end user is:

(i) an entity that is a foreign resident; or

(ii) an entity that is an Australian resident, to the extent that the entity carries on *business in a foreign country at or through a *permanent establishment of the entity in that country.

## 250-60 *Tax preferred use* of an asset

(1) An asset is ***put to a tax preferred use*** at a particular time if:

(a) an *end user (or a *connected entity) holds, at that time, rights as lessee under a lease of the asset; and

(b) either or both of the following subparagraphs is satisfied at that time:

(i) the asset is, or is to be, used by or on behalf of an end user who is a *tax preferred end user because of paragraph 250-55(a) (tax preferred entity);

(ii) the asset is, or is to be, used wholly or principally outside Australia and an end user of the asset is a tax preferred end user because of paragraph 250-55(b) (foreign resident or business).

If this subsection applies, the ***tax preferred use*** of the asset is the lease referred to in paragraph (a).

Note: For particular arrangements that are treated as leases, see section 250-80.

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



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(2) An asset is also ***put to a tax preferred use*** at a particular time if:

(a) at that time the asset is, or is to be, used (whether or not by you) wholly or partly in connection with:

(i) the production, supply, carriage, transmission or delivery of goods; or

(ii) the provision of services or facilities; and

(b) either or both of the following subparagraphs is satisfied at that time:

(i) some or all of the goods, services or facilities are, or are to be, produced for or supplied, carried, transmitted or delivered to or for an *end user who is a *tax preferred end user because of paragraph 250-55(a) (tax preferred entity) but is not an *exempt foreign government agency;

(ii) the asset is, or is to be, used wholly or principally outside Australia and an end user of the asset is a tax preferred end user because of paragraph 250-55(b) (foreign resident or business).

If this subsection applies, the ***tax preferred use*** of the asset is the production, supply, carriage, transmission, delivery or provision referred to in paragraph (a).

(3) To avoid doubt, the facilities referred to in subsection (2) include:

(a) hospital or medical facilities; or

(b) prison facilities; or

(c) educational facilities; or

(e) transport facilities; or

(f) the supply of water, gas or electricity; or

(g) housing or accommodation; or

(h) premises from which to operate a *business or other undertaking.

(4) If the asset is being *put to a tax preferred use:

(a) the ***members of the tax preferred end user group*** are:

(i) the *tax preferred end user; and

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(ii) the *connected entities of the tax preferred end user; and

(b) the ***members of the tax preferred sector*** are:

(i) the tax preferred end user (and connected entities); and

(ii) any *tax preferred entity (or a connected entity); and

(iii) any entity that is a foreign resident.

## 250-65 *Arrangement period* for tax preferred use

*Start of the arrangement period*

(1) The ***arrangement period*** for a particular *tax preferred use of an asset starts when that tax preferred use of the asset starts.

*End of the arrangement period*

(2) Subject to subsection (3), the ***arrangement period*** for a particular *tax preferred use of an asset is taken to end on the day that is the date on which the tax preferred use of the asset may reasonably be expected, or is likely, to end.

(3) The ***arrangement period*** for the *tax preferred use of the asset ends when this Division ceases to apply to you and the asset if that happens before the day referred to in subsection (2).

(4) In determining when a particular *tax preferred use of an asset is likely to end:

(a) regard must be had to:

(i) the terms of, and any other circumstances relating to, any *arrangement dealing with that tax preferred use of the asset; and

(ii) the terms of, and any other circumstances relating to, any arrangement dealing with the *provision of *financial benefits in relation to that tax preferred use of the asset; and

(b) it must be assumed that any right that an entity has to renew or extend such an arrangement will not be exercised (unless it is reasonable to assume that the right will be exercised

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



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because of the commercial consequences for the entity (or a *connected entity) of not exercising the right).

*Tax preferred uses of asset by entity and connected entity*

(5) For the purposes of this section:

(a) the *tax preferred use of an asset by an entity; and

(b) the tax preferred use of the asset by a *connected entity of that entity;

are taken to constitute a single tax preferred use of the asset.

## 250-70 New tax preferred use at end of arrangement period if tax preferred use continues

If:

(a) this Division applies to you and an asset because the asset is *put to a tax preferred use; and

(b) the *arrangement period for the *tax preferred use of the asset ends on a particular date (the ***termination date***); and

(c) the asset continues to be put to the tax preferred use after the termination date;

the tax preferred use of the asset after the termination date is taken to be a separate and distinct tax preferred use of the asset from the tax preferred use of the asset before the termination date.

Note: This means, among other things, that there is a new arrangement period for the tax preferred use after the termination date and that the arrangement is retested under section 250-15 against circumstances as they stand immediately after the termination date.

## 250-75 What constitutes a separate asset for the purposes of this Division

(1) This Division applies to:

(a) an improvement to land; or

(b) a fixture on land;

whether the improvement or fixture is removable or not, as if it were an asset separate from the land.

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

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

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

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

(4) This Division applies to an asset (the ***underlying asset***) in which:

(a) you have an interest; and

(b) one or more other entities also have an interest;

as if your interest in the underlying asset were itself the underlying asset.

## 250-80 Treatment of particular arrangements in the same way as leases

This Division applies to an *arrangement that:

(a) in substance or effect, depends on the use of a specific asset that is:

(i) real property; or

(ii) goods or a personal chattel (other than money or a money equivalent); and

(b) gives a right to control the use of the asset (other than temporarily for the purpose of ensuring public health or safety, protecting the environment or continuing the supply of an essential service); and

(c) is not a lease;

in the same way as it applies to a lease.

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



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Note: Even if this section applies to treat an arrangement in relation to an asset as a lease, the requirements in section 250-50 still need to be satisfied before an entity can be an end user of the asset.

## Financial benefits in relation to tax preferred use

### 250-85 Financial benefits in relation to tax preferred use of an asset

(1) For the purposes of this Division, the *financial benefits ***provided in relation to a tax preferred use of an asset*** include (but are not limited to):

(a) a financial benefit provided in relation to:

(i) bringing the asset into a state, condition or location in which it can be *put to the tax preferred use; or

(ii) the start of the *tax preferred use of the asset; and

(b) a financial benefit provided in relation to the end of the tax preferred use of the asset; and

(c) a financial benefit provided in relation to the termination or expiration of an *arrangement that deals with:

(i) the tax preferred use of the asset; or

(ii) the provision of financial benefits in relation to the tax preferred use of the asset; and

(d) a financial benefit provided in relation to the purchase or acquisition of the asset by, or transfer of the asset to, the *tax preferred end user (or a *connected entity).

(2) Without limiting paragraph (1)(b), if the asset has a *guaranteed residual value:

(a) the amount of the guaranteed residual value is taken to be a *financial benefit ***provided in relation to the tax preferred use of the asset***; and

(b) that financial benefit is taken to be provided when the relevant payment is made in relation to the guaranteed residual value.

(3) The asset has a ***guaranteed residual value*** if there is an *arrangement that provides to the effect that if:

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(a) on or after the end of the *arrangement period, you (or a *connected entity) sell or otherwise dispose of the asset to any person; and

(b) you (or a connected entity) receives in respect of the sale or disposal:

(i) no consideration; or

(ii) consideration that is less than an amount (the ***guaranteed amount***) specified in, or ascertainable under, the provision;

a *member of the tax preferred sector will pay to you (or a connected entity), or to someone else for your benefit (or for the benefit of a connected entity), an amount equal to:

(c) the guaranteed amount if subparagraph (b)(i) applies; or

(d) the amount by which the guaranteed amount exceeds the consideration if subparagraph (b)(ii) applies.

The amount of the guaranteed residual value is taken to be the guaranteed amount.

(4) If:

(a) an asset is *put to a tax preferred use; and

(b) an entity is an *end user of the asset because the entity manages the asset or the use to which the asset is put;

any *financial benefit that the entity (or a *connected entity) provides that is calculated by reference to the receipts, revenue or income generated by the use of the asset is also taken to be a financial benefit ***provided in relation to the tax preferred use of the asset***.

(5) For the purposes of this Division (other than this subsection), a *financial benefit provided by a *member of the tax preferred sector is taken not to be ***provided in relation to the tax preferred use of an asset*** to the extent to which the financial benefit merely passes on, or represents:

(a) financial benefits provided in relation to the use of the asset; or

(b) something derived from the use of the asset;

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



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by someone who is not a member of the tax preferred sector.

(6) For the purposes of this Division, disregard a *financial benefit *provided in relation to the tax preferred use of the asset to the extent to which it consists solely of routine maintenance of the asset.

(7) For the purposes of this Division, if a *financial benefit is provided in relation to the use of a number of assets, a separate financial benefit of an amount or value that is reasonably attributable to each asset is taken to be provided in relation to each asset.

(8) To avoid doubt, a *financial benefit may be ***provided in relation to a tax preferred use of an asset*** even though it is provided before the *tax preferred use of the asset starts.

(9) For the purposes of this Division:
  (a) a *financial benefit that is not an amount:
    (i) is taken to become due and payable when the entity providing the financial benefit becomes liable to provide the financial benefit; and
    (ii) is taken to be paid when it is provided; and
  (b) a financial benefit that is paid without becoming due and payable is taken to have become due and payable on the day on which it was paid.

## 250-90 Financial benefit provided directly or indirectly

For the purposes of this Division, a person (the ***provider***) is taken to provide a *financial benefit to a person (the ***recipient***) in relation to a *tax preferred use of an asset whether the financial benefit is provided to the recipient:
  (a) directly; or
  (b) indirectly (including indirectly through an entity that is not a *connected entity of the recipient and is not a connected entity of the provider).

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



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### 250-95 Expected financial benefits in relation to an asset put to tax preferred use

For the purposes this Division, the ***expected financial benefits*** at a particular time in relation to an asset that is *put to a tax preferred use are the *financial benefits that, at that time:

(a) have been; or

(b) will, assuming normal operating conditions, be; or

(c) can, assuming normal operating conditions, reasonably be expected to be;

*provided in relation to the tax preferred use of the asset by a *member of the tax preferred sector to someone who is not a member of the tax preferred sector.

Note: Paragraphs 250-85(1)(b), (c) and (d) provide for certain benefits provided in relation to the end of the tax preferred use of the asset or in relation to the purchase, disposal or transfer of the asset to be treated as financial benefits provided in relation to the tax preferred use of the asset.

### 250-100 Present value of financial benefit that has already been provided

For the purposes of this Division, the ***present value*** of a *financial benefit at a particular time is the nominal amount or value of the financial benefit if the financial benefit has been provided before that time.

## Discount rate to be used in working out present values

### 250-105 Discount rate to be used in working out present values

(1) For the purposes of section 250-40, the discount rate to be used in working out the present value of a future amount is the *long term bond rate for the *financial year in which the relevant *arrangement period starts.

(2) For the purposes of section 250-135 and Subdivisions 250-C and 250-D, the discount rate to be used in working out the present

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value of a future amount is a rate that reflects a constant periodic rate of return (worked out on a compounding basis) on the investment in:

(a) the asset referred to in subparagraph 250-15(d)(i) if that subparagraph applies; or

(b) the expenditure referred to in paragraph 250-15(d)(ii) if that subparagraph applies;

that is implicit in the *arrangements under which the asset is *put to a tax preferred use and *financial benefits are *provided in relation to that tax preferred use.

## Predominant economic interest

### 250-110 Predominant economic interest

You lack a ***predominant economic interest*** in an asset at a particular time only if one or more of the following sections apply to you and the asset at that time:

(a) section 250-115 (limited recourse debt test);

(b) section 250-120 (right to acquire asset test);

(c) section 250-125 (effectively non-cancellable, long term arrangement test);

(d) section 250-135 (level of expected financial benefits test).

### 250-115 Limited recourse debt test

(1) You lack a ***predominant economic interest*** in an asset at a particular time if more than the allowable percentage of the cost of your acquiring or constructing the asset is financed (directly or indirectly) by a *limited recourse debt or debts.

(2) For the purposes of subsection (1):

(a) the amount of a *limited recourse debt is to be reduced by the value of any * debt property (other than the *financed property) that is provided as security for the debt; and

(b) if the limited recourse debt finances the acquisition or construction of 2 or more assets, only the amount of the debt

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that is reasonably attributable to the asset referred to in subsection (1) is to be taken into account.

(3) For the purposes of subsection (1), the allowable percentage is:

(a) 80% if the asset is taken to be *put to a tax preferred use because of subparagraph 250-60(1)(b)(i) or (2)(b)(i) (end use by *tax preferred entities); or

(b) 55% if the asset is taken to be put to a tax preferred use because of subparagraph 250-60(1)(b)(ii) or (2)(b)(ii) (end use by foreign residents or businesses).

(4) This section does not apply to the asset if:

(a) you are a *corporate tax entity; and

(b) the *tax preferred use of the asset is not the lease or hire of the asset (and is not the use of the asset under a lease or hire arrangement); and

(c) the asset is *put to the tax preferred use wholly or principally in Australia; and

(d) no *member of the tax preferred sector provides financing, or support for financing, in relation to your interest in the asset (including by way of a loan, a guarantee, an indemnity, a security, hedging or undertaking to provide *financial benefits in the event of the termination of an *arrangement).

(5) Paragraph (4)(b) does not apply if:

(a) the asset is real property (or an interest in real property); and

(b) the *tax preferred use of the asset is a lease; and

(c) the space within the property that is occupied by tenants who are *members of the tax preferred sector is less than half of the total space within the property that is either occupied by tenants or available to be occupied by tenants.

(6) This section also does not apply to the asset if:

(a) you hold the asset as a trustee; and

(b) the asset is real property (or an interest in real property); and

(c) the *tax preferred use of the asset is a lease; and

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(d) the space within the property that is occupied by tenants who are *members of the tax preferred sector is less than half of the total space within the property that is either occupied by tenants or available to be occupied by tenants; and

(e) the asset is *put to the tax preferred use wholly or principally in Australia; and

(f) no member of the tax preferred sector provides financing, or support for financing, in relation to your interest in the asset (including by way of a loan, a guarantee, an indemnity, a security, hedging or undertaking to provide *financial benefits in the event of the termination of an *arrangement).

## 250-120 Right to acquire asset test

(1) You lack a ***predominant economic interest*** in an asset at a particular time if, at that time:

(a) the asset is to be transferred to a *member of the tax preferred sector after the end of the *arrangement period; and

(b) the consideration for the transfer is not fixed as the *market value of the asset at the time of the transfer.

(2) You also lack a ***predominant economic interest*** in an asset at a particular time if, at that time:

(a) a *member of the tax preferred end user group has, or will have:

(i) a right, obligation or contingent obligation to purchase or acquire the asset or a legal or equitable interest in the asset; or

(ii) a right to require the transfer of the asset or a legal or equitable interest in the asset; and

(b) the consideration for the purchase, acquisition or transfer is not fixed as the *market value of the asset at the time of the purchase, acquisition or transfer.

To avoid doubt, this section does not apply to the asset merely because your interest in the asset is one that ceases to exist after the passage of a particular period of time.

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



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## 250-125 Effectively non-cancellable, long term arrangement test

(1) You lack a ***predominant economic interest*** in an asset at a particular time if:

(a) any *arrangement that relates to:

(i) the *tax preferred use of the asset; or

(ii) the *financial benefits to be *provided by the *members of the tax preferred sector in relation to the tax preferred use of the asset;

is *effectively non-cancellable (see section 250-130); and

(b) the *arrangement period for the tax preferred use of the asset is:

(i) greater than 30 years; or

(ii) if the arrangement period is less than or equal to 30 years—75% or more of that part of the asset's *effective life that remains when the tax preferred use of the asset starts.

(2) Disregard section 40-102 in working out the asset's *effective life for the purposes of subparagraph (1)(b)(ii).

## 250-130 Meaning of *effectively non-cancellable* arrangement

(1) An *arrangement that relates to *financial benefits to be *provided by a *member of the tax preferred sector in relation to the tax preferred use of an asset is ***effectively non-cancellable*** if:

(a) the arrangement can be cancelled only with:

(i) your permission; or

(ii) the permission of a *connected entity of yours; or

(iii) an agent or entity acting on your behalf (or on behalf of a connected entity of yours); or

(b) the arrangement can be cancelled without the permission of an entity referred to in paragraph (a) but, if the arrangement were cancelled, the member of the tax preferred sector or another member of the tax preferred sector:

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(i) would be required to enter into a new arrangement for the *provision of financial benefits in relation to the tax preferred use of the asset; or

(ii) would incur a penalty and the magnitude of the penalty would be such as to discourage cancellation.

(2) For these purposes, if a *member of the tax preferred sector defaults under an *arrangement and the arrangement is cancelled, the arrangement is to be taken to have been cancelled without the permission of an entity referred to in paragraph (1)(a).

## 250-135 Level of expected financial benefits test

*Effective guarantee or indemnity for value of asset*

(1) You lack a ***predominant economic interest*** in an asset at a particular time if the asset has a *guaranteed residual value at that time.

*Likely financial benefits exceeding 70% limit*

(2) You also lack a ***predominant economic interest*** in an asset at a particular time if, at that time:

(a) the *arrangement under which the asset is *put to the tax preferred use (either alone or together with any other arrangement in relation to the *tax preferred use of the asset or the *provision of *financial benefits in relation to the tax preferred use of the asset) is a *debt interest; or

(b) the sum of the present values of the *expected financial benefits that *members of the tax preferred sector have provided, or are or are reasonably likely to provide, to you (or a *connected entity) in relation to the tax preferred use of the asset exceeds 70% of:

(i) the *market value of the asset if subparagraph 250-15(d)(i) applies; or

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(ii) so much of the market value of the asset as is attributable to the expenditure referred to subparagraph 250-15(d)(ii) if that subparagraph applies.

## 250-140 When to retest predominant economic interest under section 250-135

*Purpose for applying section*

(1) This section applies for the purposes of working out whether this Division applies to you and to an asset that is *put to a tax preferred use.

*No need to keep retesting if section 250-135 does not apply at start of tax preferred use of asset*

(2) If section 250-135 does not apply to you and the asset at the time when the *tax preferred use of the asset starts, that section is taken, subject to subsection (4), to continue not to apply to you and the asset.

Note: This subsection means that if section 250-135 does not apply to the arrangement when the tax preferred use of the asset starts, the arrangement does not need to be retested against section 250-135 until a change of the kind referred to in subsection (4) occurs.

*No need to keep retesting if section 250-135 does not apply when you do something to increase value of expected financial benefits*

(3) If:

(a) you (or a *connected entity), or a *member of the tax preferred sector, do something, or omit to do something, at a particular time that increases the value of the *expected financial benefits in relation to the *tax preferred use of the asset; and

(b) section 250-135 does not apply to the asset at that time;

that section is taken, subject to subsection (4), to continue not to apply to you and the asset.

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Note: This subsection means that if the arrangement is retested against section 250-135 at a particular time and section 250-135 does not apply to the arrangement on that retesting, the arrangement does not need to be again retested against section 250-135 until a change of the kind referred to in subsection (4) occurs.

*Retesting when you do something to increase the value of expected financial benefits*

(4) Subsection (2) or (3) ceases to apply to you and the asset if you (or a *connected entity), or a *member of the tax preferred sector, do something, or omit to do something, that increases the value of the *expected financial benefits in relation to the *tax preferred use of the asset.

*Certain financial benefits ignored when retesting*

(5) For the purposes of reapplying section 250-135 to the asset, disregard *financial benefits provided before subsection (2) or (3) of this section ceased to apply to the asset.

Note: If:

(a) subsection (2) or (3) ceases to apply to the asset at a particular time under this subsection; and

(b) the asset is retested at that time against section 250-135; and

(c) on the retesting, that section is found to apply to the asset at that time;

subsection (3) will start to apply to the asset again from that time because paragraph (3)(b) will have been satisfied.

*Clarification that retesting only required if you do something to increase value of expected benefits*

(6) To avoid doubt, subsection (2) or (3) does not cease to apply merely because the value of the *expected financial benefits in relation to the asset increase because of something other than action taken, or an omission made, by you (or a *connected entity) or a *member of the tax preferred sector.

Note: This subsection means that retesting under subsection (4) is not triggered by an increase in the value of expected financial benefits that happens because of external circumstances (circumstances external to

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activities and omissions of yours, your connected entities and members of the tax preferred sector).

## Subdivision 250-C—Denial of, or reduction in, capital allowance deductions

### Table of sections

250-145 Denial of capital allowance deductions
250-150 Apportionment rule

### 250-145 Denial of capital allowance deductions

(1) If this Division applies to you and an asset at a particular time, any condition that needs to be satisfied for you to be able to deduct an amount under a *capital allowance provision in relation to:

(a) a decline in the value of the asset; or

(b) expenditure in relation to the asset;

is taken not to be satisfied at that time.

(2) This section has effect subject to section 250-150.

### 250-150 Apportionment rule

(1) This section applies if:

(a) this Division applies to you and an asset that is *put to a tax preferred use; and

(b) it is reasonable to expect that, during the *arrangement period for the *tax preferred use of the asset, particular *financial benefits will be provided to you (or a *connected entity); and

(c) it is reasonable to expect that those financial benefits:

(i) will be provided in relation to a use of the asset that is not that tax preferred use and is not a private use; or

(ii) will be *provided in relation to that tax preferred use of the asset but will not be attributable, directly or indirectly, to financial benefits that are provided by *members of the tax preferred sector; and

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(d) the amount or value of those financial benefits is known or can reasonably be estimated; and

(e) you choose to have this section apply to the asset.

In applying paragraph (c), disregard financial benefits that are provided under an *arrangement that is a *debt interest.

(2) A choice under paragraph (1)(e) in relation to an asset:

(a) must be made before the due date for you to lodge your *income tax return for the income year in which the *arrangement period for the *tax preferred use of the asset starts; and

(b) must be made for the whole of the arrangement period for the tax preferred use of the asset; and

(c) must extend to all assets that are, or are to be, *put to a tax preferred use under the *arrangement under which the asset is put to that use; and

(d) is irrevocable.

The choice may extend to an asset referred to in paragraph (c) even if it is likely that paragraphs (1)(b) and (c) will not apply to that asset.

(3) If this section applies, section 250-145 applies to you and the asset only to the extent of the *disallowed capital allowance percentage.

(4) Subject to subsection (6), the ***disallowed capital allowance percentage*** is the following ratio (expressed as a percentage):

$$\frac{\text{Sum of present values of financial benefits that are subject to deemed loan treatment}}{\text{Market value of asset}}$$

(5) The Commissioner may, before the due date for you to lodge your *income tax return for the income year to which the *arrangement period for the *tax preferred use of the asset starts, approve an alternative method for working out the *disallowed capital allowance percentage for you and the asset.

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(6) If the Commissioner approves an alternative method under subsection (5), the ***disallowed capital allowance percentage*** is the percentage worked out in accordance with that alternative method.

## Subdivision 250-D—Deemed loan treatment of financial benefits provided for tax preferred use

### Table of sections

250-155 Arrangement treated as loan
250-160 Financial benefits that are ***subject to deemed loan treatment***
250-180 ***End value*** of asset
250-185 Financial benefits subject to deemed loan treatment not assessed

### 250-155 Arrangement treated as loan

*Loan with characteristics provided for in this section taken to exist*

(1) If this Division applies to you and an asset at a particular time in an income year, a *financial arrangement in the form of a loan (with the characteristics provided for in this section) is taken to exist at that time for the purposes of working out your taxable income for that income year.

Note: See Subdivision 250-E for the taxation treatment of the financial arrangement.

*Lender*

(2) You are taken to be the lender in relation to the loan.

*Amount lent and unpaid at the start of the arrangement period*

(3) The amount worked out under subsection (4) is taken to be the amount that you have lent, and that the borrower has not repaid, at the start of the *arrangement period.

(4) The amount is worked out by taking:
(a) the amount that, at the start of the *arrangement period, is:

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(i) the *adjustable value of the asset if subparagraph 250-15(d)(i) applies; or

(ii) the amount worked out under subsection (5) if subparagraph 250-15(d)(ii) applies; or

(b) if section 250-150 applies—the amount that, at the start of the arrangement period, is the *disallowed capital allowance percentage of:

(i) the adjustable value of the asset if subparagraph 250-15(d)(i) applies; or

(ii) the amount worked out under subsection (5) if subparagraph 250-15(d)(ii) applies;

and deducting the sum of all *financial benefits that are *subject to deemed loan treatment and that have become due and payable before the start of the arrangement period.

(5) If subparagraph 250-15(d)(ii) applies, the amount worked out under this subsection for the purposes of subsection (4) is:

| Item | If the expenditure referred to in that subparagraph is ... | the amount is ... |
|---|---|---|
| 1 | capital expenditure under Division 40 | the amount of the capital expenditure in respect of which a deduction has not been allowed (disregarding this Division) under the relevant Subdivision of Division 40 |
| 2 | capital expenditure under Division 43 | the *undeducted construction expenditure in relation to the capital expenditure |

*Amounts paid to you by borrower under the loan*

(6) Any *financial benefit that:

(a) a person provides; and

(b) is *subject to deemed loan treatment;

is taken to be an amount that the borrower pays you under the loan.

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



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Note 1: Section 250-160 tells you which financial benefits are subject to the deemed loan treatment.

Note 2: These benefits may be ones that are provided either to you or to a connected entity.

*Period of the loan*

(7) The *arrangement period is taken to be the period of the loan.

*Applying Subdivision 250-E to the loan*

(8) For the purposes of applying Subdivision 250-E to the loan:

(a) you are taken to have an overall gain from the loan and that overall gain is taken to be sufficiently certain at the time when you start to have the loan; and

(b) the amount of that overall gain is taken to be the sum of the *financial benefits that are *subject to the deemed loan treatment less the amount worked out under subsection (4); and

(c) you are taken:

(i) to start to have the loan at the start of the *arrangement period; and

(ii) to cease to have the loan at the end of the arrangement period; and

(d) any right that you (or a connected entity) have to a financial benefit that is subject to deemed loan treatment is taken to be a right that you have under the loan; and

(e) if a *connected entity transfers to another person a right to a financial benefit subject to deemed loan treatment:

(i) you are taken to transfer the right to that other person; and

(ii) any consideration that the connected entity receives in relation to the transfer is taken to be consideration that you receive in relation to the transfer; and

(f) if a right that a connected entity has to a financial benefit subject to deemed loan treatment ceases and the connected entity receives consideration in relation to that cessation—

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



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you are taken to receive that consideration in relation to the cessation; and

(g) you are taken to start to have the loan, or to cease to have the loan, as consideration for something if you start to have the rights to the financial benefits that are subject to deemed loan treatment, or cease to have those rights, as consideration for that thing; and

(h) in applying sections 250-265 to 250-275:

(i) the amount that you are taken, under subsections (3), (4) and (5), to have lent are the only financial benefits that you provide under the loan; and

(ii) the financial benefits you have received under the loan are taken to include financial benefits that are subject to deemed loan treatment that a person is, at the end of the arrangement period, liable to provide to you.

(9) If, under subsection 250-160(2), a particular percentage of a reasonable estimate of the *end value of the asset was taken to be a *financial benefit that is *subject to the deemed loan treatment, subsection 250-275(1) applies to the loan at the end of the *arrangement period as if you had received under the loan a financial benefit equal to the relevant percentage of the end value of the asset.

## 250-160 Financial benefits that are *subject to deemed loan treatment*

*General rule*

(1) Subject to subsections (3) and (4), a *financial benefit is ***subject to deemed loan treatment*** if:

(a) the financial benefit:

(i) has been; or

(ii) will, assuming normal operating conditions, be; or

(iii) can, assuming normal operating conditions, reasonably be expected to be;

provided to you (or a *connected entity); and

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



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(b) the financial benefit has been, will be or can reasonably be expected to be *provided directly or indirectly by a *member of the tax preferred sector in relation to the *tax preferred use of the asset; and

(c) the right to receive, or the obligation to provide, the financial benefit is *cash settlable; and

(d) the financial benefit has not been, will not be or can be expected not to be provided by one of your connected entities.

Note: Paragraph (d) stops a financial benefit passing between you and any of your connected entities from being counted twice.

*End value also taken to be financial benefit subject to deemed loan treatment*

(2) The relevant percentage of a reasonable estimate of the *end value of the asset is also taken to be a *financial benefit that is ***subject to deemed loan treatment*** if:

(a) the asset is not to be purchased or acquired by, or transferred to, a *member of the tax preferred sector at the end of the *arrangement period under a legally enforceable *arrangement; or

(b) the asset:

(i) is, or is to become, a *privatised asset; or

(ii) would be, or would become, a privatised asset if it were a *depreciating asset; or

(iii) would be a privatised asset if the asset were a depreciating asset and paragraphs 58-5(2)(a) and 58-5(4)(a) were not limited to acquisitions of depreciating assets that occurred on or after 1 July 2001.

The relevant percentage is the *disallowed capital allowance percentage if section 250-150 applies. Otherwise it is 100%.

Note: See section 250-180 for how to work out the end value of the asset.

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



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*Financial benefits only subject to deemed loan treatment to the extent to which they represent a return on investment*

(3) The *financial benefit is ***subject to deemed loan treatment*** only to the extent to which it reasonably represents a return of, or on, an investment in the asset (as distinct, for example, from representing consideration for the provision of services or the recovery of production costs), having regard to:

(a) the *market value of the asset; and

(b) the discount rate applicable under subsection 250-105(2); and

(c) your costs in relation to funding your interest in the asset; and

(d) any other relevant matter.

The regulations may provide rules to be applied in determining the extent to which a financial benefit reasonably represents a return of or on an investment in the asset.

*Only financial benefits provided after Division starts applying to you and the asset*

(4) If the *tax preferred use of the asset starts before this Division starts applying to you and the asset, only *financial benefits provided after this Division starts applying to you and the asset are ***subject to deemed loan treatment***.

## 250-180 *End value* of asset

(1) The ***end value*** of an asset is worked out in accordance with this section.

(2) If the asset has a *guaranteed residual value, the ***end value*** of the asset is:

(a) the amount of the guaranteed residual amount if subparagraph 250-15(d)(i) applies; or

(b) so much of the amount referred to in paragraph (a) as is attributable to the expenditure referred to in subparagraph 250-15(d)(ii) if that subparagraph applies.

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



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(3) If the asset does not have a *guaranteed residual value and is a *depreciating asset, the ***end value*** of the asset is:

(a) if subparagraph 250-15(d)(i) applies—the amount that would have been the *adjustable value of the asset at the end of the *arrangement period if:

(i) this Division had not applied to you and the asset; and

(ii) the decline in the asset's value were worked out on the basis of the asset's *effective life and using the *prime cost method; or

(b) if subparagraph 250-15(d)(ii) applies—so much of the amount referred to in paragraph (a) as is attributable to the expenditure referred to in that subparagraph.

(4) Disregard section 40-102 in working out the asset's *effective life for the purposes of subparagraph (3)(a)(ii).

(5) If neither subsection (2) nor subsection (3) applies and an estimate of the value of the asset is recognised for accounting purposes, the ***end value*** of the asset is:

(a) the value of the relevant asset at the end of the *arrangement period that would be recognised for accounting purposes if subparagraph 250-15(d)(i) applies; or

(b) so much of the value of referred to in paragraph (a) as is attributable to the expenditure referred to subparagraph 250-15(d)(ii) if that subparagraph applies.

The ***end value*** must not, however, exceed the amount worked out under subsections 250-155(4) and (5) (amount taken to have been lent).

(6) If none of subsections (2), (3) and (5) apply to the asset, the ***end value*** of the asset is:

(a) a reasonable estimate of the *market value of the asset at the end of the *arrangement period if subparagraph 250-15(d)(i) applies; or

(b) so much of the estimate referred to in paragraph (a) as is attributable to the expenditure referred to in subparagraph 250-15(d)(ii) if that subparagraph applies.

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



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The ***end value*** must not, however, exceed the amount worked out under subsections 250-155(4) and (5) (amount taken to have been lent).

### 250-185 Financial benefits subject to deemed loan treatment not assessed

A *financial benefit is not included in your assessable income if the financial benefit:

(a) is *provided to you in relation to the tax preferred use of the asset; and

(b) is provided directly or indirectly by a *member of the tax preferred sector; and

(c) is *subject to deemed loan treatment.

The financial benefit is not assessable income and is not *exempt income.

## Subdivision 250-E—Taxation of deemed loan

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# Guide to Subdivision 250-E

## 250-190 What this Subdivision is about

This Subdivision is about the tax treatment of gains and losses from the financial arrangement that you are taken to have under section 250-155.

You recognise gains and losses from the financial arrangement, as appropriate, over the life of the financial arrangement and ignore distinctions between income and capital. You use a compounding accruals method to recognise the gain or loss.

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

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



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A balancing adjustment is made if you transfer particular rights or obligations or particular rights or obligations cease.

## Application and objects of Subdivision

### 250-195 Application of Subdivision

This Subdivision applies for the purposes of working out the amount of the gain or loss that is to be included in your assessable income or allowed as a deduction in relation to the *financial arrangement that is taken to exist under section 250-155.

### 250-200 Objects of this Subdivision

The objects of this Subdivision are:

(a) to properly recognise gains and losses from the *financial arrangement by allocating them to appropriate periods of time; and

(b) to minimise tax deferral.

## Tax treatment of gains and losses from financial arrangements

### 250-205 Gains are assessable and losses deductible

*Gains*

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

*Losses*

(2) You can deduct a loss you make from the *financial arrangement, but only to the extent that:

(a) you make it in gaining or producing your assessable income; or

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

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



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### 250-210 Gain or loss to be taken into account only once under this Act

*Purpose of this section*

(1) The purpose of this section is to ensure that your gains that are assessable under this Subdivision, and your losses that are deductible under this Subdivision, are taken into account only once under this Act in working out your taxable income.

*Gain or loss*

(2) If a gain or loss is, or is to be, included in your assessable income or allowable as a deduction to you for an income year under this Subdivision, the gain or loss is not to be (to any extent):

(a) included in your assessable income; or

(b) allowable as a deduction to you;

under any other provisions of this Act for the same or any other income year.

*Associated financial benefits*

(3) If the amount or value of a *financial benefit is taken into account in working out whether you make, or the amount of, a gain or loss that is, or is to be, included in your assessable income or allowable as a deduction for you for an income year under this Subdivision, the benefit is not to be (to any extent):

(a) included in your assessable income; or

(b) allowable as a deduction to you;

under any other provision of this Act for the same or any other income year.

## Method to be applied to take account of gain or loss

### 250-215 Methods for taking gain or loss into account

The methods that can be applied to take account of a gain or loss you make from the *financial arrangement you have are:

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



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(a) the accruals method provided for in sections 250-235 to 250-255; or

(b) a balancing adjustment provided for in sections 250-265 to 250-275.

A gain or loss is not taken into account under the method referred to in paragraph (a) to the extent to which the gain or loss is taken into account under sections 250-265 to 250-275.

## General rules

### 250-220 Consistency in working out gains or losses (integrity measure)

*Object of section*

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

*Consistent treatment for particular financial arrangement*

(2) If:

(a) this Subdivision provides that a particular method applies to gains or losses you make from the *financial arrangement; and

(b) that method allows you to choose the particular manner in which you apply that method;

you must use that manner consistently for the arrangement for all income years.

*Consistent treatment for financial arrangements of essentially the same nature*

(3) If:

(a) this Subdivision provides that a particular method applies to gains or losses you make from 2 or more *financial arrangements; and

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(b) that method allows you to choose the particular manner in which you apply that method;

you must use that same manner consistently for all of those financial arrangements that are essentially of the same nature.

### 250-225 Rights and obligations include contingent rights and obligations

To avoid doubt:

(a) a right is treated as a right for the purposes of this Division even it is subject to a contingency; and

(b) an obligation is treated as an obligation for the purpose of this Division even if it is subject to a contingency.

## The accruals method

### 250-230 Application of accruals method

The accruals method provided for in sections 250-235 to 250-255 applies to a gain or loss you make from the *financial arrangement if:

(a) the gain or loss is an overall gain or loss from the arrangement; and

(b) the gain or loss is sufficiently certain at the time when you start to have the arrangement.

### 250-235 Overview of the accruals method

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

(a) you use section 250-240 to work out the period over which the gain or loss is to be spread; and

(b) you use section 250-245 to work out how to allocate the gain or loss to particular intervals within the period over which the gain or loss is to be spread; and

(c) if an interval to which part of the gain or loss is allocated straddles 2 income years, you use section 250-250 to work

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out how to allocate that part of the gain or loss allocated between those 2 income years.

## 250-240 Applying accruals method to work out period over which gain or loss is to be spread

If you have a sufficiently certain overall gain or loss from the *financial arrangement, the period over which the gain or loss is to be spread is the period that:

(a) starts when you start to have the arrangement; and

(b) ends when you will cease to have the arrangement.

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

## 250-245 How gain or loss is spread

*How to spread gain or loss*

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

*Compounding accruals or approximation*

(2) The gain or loss is to be spread using:

(a) compounding accruals (with the intervals to which parts of the gain or loss are allocated complying with subsection (3)); or

(b) a method whose results approximate those obtained using the method referred to in paragraph (a) (having regard to the length of the period over which the gain or loss is to be spread).

*Intervals to which parts of gain or loss allocated*

(3) The intervals to which parts of the gain or loss are allocated must:

(a) not exceed 12 months; and

(b) all be of the same length.

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Paragraph (b) does not apply to the first and last intervals. These may be shorter than the other intervals.

*Assumption of continuing hold arrangement for the rest of its life*

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

## 250-250 Allocating gain or loss to income years

(1) You are taken, for the purposes of section 250-205, to make, for an income year, a gain or loss equal to a part of a gain or loss if:
  (a) that part of the gain or loss is allocated to an interval under section 250-245; and
  (b) that interval falls wholly within that income year.

(2) If:
  (a) a part of a gain or loss is allocated to an interval under section 250-245; and
  (b) that interval straddles 2 income years;

  you are taken, for purposes of section 250-205, to make a gain or loss equal to so much of that part of the gain or loss as is allocated between those income years on a reasonable basis.

(3) If:
  (a) a *consolidated group or *MEC group has a *financial arrangement; and
  (b) a subsidiary member of the group ceases to be a member of the group at a particular time (the ***exit time***); and
  (c) immediately after the exit time, the subsidiary member has the financial arrangement;

  an income year of the group is taken, for the purposes of applying this section to the group and the financial arrangement, to end at the exit time.

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



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## 250-255 When to re-estimate

*When re-estimation necessary*

(1) You re-estimate a gain or loss from the *financial arrangement under subsection (4) if circumstances arise that materially affect:

(a) the amount or value; or

(b) the timing;

of *financial benefits that were taken into account in working out the amount of the gain or loss. You must re-estimate the gain or loss as soon as reasonably practicable after you become aware of the circumstances referred to in paragraph (b).

(2) Without limiting subsection (1), the following are circumstances of the kind referred to in paragraph (1)(b):

(a) a material change in market conditions that are relevant to the amount or value of the *financial benefits to be received or provided under the *financial arrangement;

(b) cash flows that were previously estimated becoming known and the difference between the cash flows that become known and the cash flows that were previously estimated is not insignificant;

(c) a right to, or a part of a right to, a financial benefit under the arrangement is written off as a bad debt.

(3) You do not re-estimate a gain or loss from a *financial arrangement under subsection (4) merely because of any one or more of the following:

(a) a change in the credit rating, or the creditworthiness, of a party or parties to the financial arrangement;

(b) the impairment (within the meaning of the *accounting standards) of the arrangement or a debt that forms part of the arrangement.

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*Nature of re-estimation*

(4) Making a re-estimation in relation to a gain or loss under this subsection involves:

(a) a fresh determination of the amount of the gain or loss; and

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

*Basis for re-estimation*

(5) You may make the fresh allocation of the gain or loss under subsection (4) on either of the following bases:

(a) by maintaining the rate of return being used and adjusting the amount to which you apply the rate of return to the present value of the estimated future cash flows discounted at the maintained rate of return;

(b) adjusting the rate of return and maintaining the amount to which you apply the rate of return.

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

(6) If you adopt a particular basis under subsection (5) for a gain or loss from the *financial arrangement, you must use the same basis for all the re-estimations you make under this section in relation to your gains and losses from all your financial arrangements.

*Balancing adjustment if rate of return maintained*

(7) If you make a fresh allocation of the gain or loss on the basis referred to in paragraph (5)(a), you must make the following balancing adjustment:

(a) if you re-estimate a gain and the amount to which you apply the rate of return increases—you make a gain from the

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*financial arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;

(b) if you re-estimate a gain and the amount to which you apply the rate of return decreases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the decrease;

(c) if you re-estimate a loss and the amount to which you apply the rate of return increases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;

(d) if you re-estimate a loss and the amount to which you apply the rate of return decreases—you make a gain from the arrangement, the income year in which you make the re-estimation, equal to the amount of the decrease.

## 250-260 Re-estimation if balancing adjustment on partial disposal

*Re-estimation if balancing adjustment on partial disposal*

(1) You also re-estimate a gain or loss from a *financial arrangement under subsection (2) if a balancing adjustment is made in relation to the financial arrangement under sections 250-265 to 250-275 because you transfer to another person:

(a) a proportionate share of all of your rights and/or obligations under a *financial arrangement; or

(b) a right or obligation that you have under a financial arrangement to a specifically identified *financial benefit; or

(c) a proportionate share of a right or obligation that you have under a financial arrangement to a specifically identified financial benefit.

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

*Nature of re-estimation*

(2) Making a re-estimation in relation to a gain or loss under this subsection involves:

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



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

*Basis for re-estimation*

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

## Balancing adjustment

### 250-265 When balancing adjustment made

*When balancing adjustment made*

(1) A balancing adjustment is made under section 250-275 if:
(a) you transfer to another person all of your rights and/or obligations under the *financial arrangement; or
(b) all of your rights and/or obligations under the financial arrangement otherwise substantially cease; or

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(c) you transfer to another person:

(i) a proportionate share of all of your rights and/or obligations under the financial arrangement; or

(ii) a right or obligation that you have under the financial arrangement to a specifically identified *financial benefit; or

(iii) a proportionate share of a right or obligation that you have under the financial arrangement to a specifically identified financial benefit.

*Modifications for arrangements that are assets*

(2) The following modifications are made if the *financial arrangement is an asset of yours at the time the event referred to in subsection (1) occurs:

(a) paragraphs (1)(a) and (c) do not apply unless the effect of the transfer is to transfer to the other person substantially all the risks and rewards of ownership of the interest transferred;

(b) for the purposes of applying section 250-275 to the arrangement, you are treated as transferring a right under the arrangement to another person if:

(i) you retain the right but assume a new obligation; and

(ii) your assumption of the new obligation has the same effect, in substance, as transferring the right to another person; and

(iii) the new obligation arises only to the extent to which the right to *financial benefits under the financial arrangement is satisfied; and

(iv) you cannot sell or pledge the right (other than as security in relation to the new obligation); and

(v) you must, under the new obligation, provide financial benefits you receive in relation to the right to the person to whom you owe the new obligation without delay.

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## 250-270 Exception for subsidiary member leaving consolidated group

A balancing adjustment is not made under section 250-275 in relation to a subsidiary member of a*consolidated group or a *MEC group that has the *financial arrangement ceasing to be a member of the group.

## 250-275 Balancing adjustment

*Complete cessation or transfer*

(1) Use the following method statement to make the balancing adjustment if paragraph 250-265(1)(a) or (b) applies:

*Method statement for balancing adjustment*

Step 1. Add up the following:

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

(b) the amount or value of any other consideration you receive in relation to the transfer or cessation referred to in subsection 250-265(1);

(c) the total of the amounts that have been allowed to you as deductions, because of circumstances that have occurred before the transfer or cessation, for losses from the arrangement;

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

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



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Step 2. Add up the following:

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

(b) the amount or value of any other consideration you provide in relation to the transfer or cessation referred to in subsection 250-265(1);

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

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

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

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



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

(2) If subparagraph 250-265(1)(c)(i) applies, you make the balancing adjustment by applying the method statement in subsection (1) but reduce:

(a) the amounts referred to in paragraphs (a), (c) and (d) in step 1; and

(b) the amounts referred to in paragraphs (a), (c) and (d) in step 2;

by applying the proportion referred to in subparagraph 250-265(1)(c)(i) to them.

*Transfer of specifically identified right or obligation under financial arrangement*

(3) If subparagraph 250-265(1)(c)(ii) applies, you make the balancing adjustment by applying the method statement in subsection (1) as if the references to:

(a) the amounts referred to in paragraphs (a), (c) and (d) in step 1; and

(b) the amounts referred to in paragraphs (a), (c) and (d) in step 2;

were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 250-265(1)(c)(ii).

*Proportionate transfer of specifically identified right or obligation under financial arrangement*

(4) If subparagraph 250-265(1)(c)(iii) applies, you make the balancing adjustment by applying the method statement:

(a) as if the references to:

(i) the amounts referred to in paragraphs (a), (c) and (d) in step 1; and

(ii) the amounts referred to in paragraphs (a), (c) and (d) in step 2;

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were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 250-265(1)(c)(iii); and

(b) by reducing those amounts by applying the proportion referred to in subparagraph 250-265(1)(c)(iii) to them.

*Attribution must reflect appropriate and commercially accepted valuation principles*

(5) Any attribution made under subsection (3) or paragraph (4)(a) must reflect appropriate and commercially accepted valuation principles that properly take into account:

(a) the nature of the rights and obligations under the *financial arrangement; and

(b) the risks associated with each *financial benefit, right and obligation under the arrangement; and

(c) the time value of money.

*Income year for which gain or loss is made*

(6) The gain or loss you are taken to make under subsection (1), (2), (3) or (4) is a gain or loss for the income year in which the event referred to in subsection 250-265(1) occurs.

## Other provisions

### 250-280 Financial arrangement received or provided as consideration

(1) If:

(a) this Subdivision applies in relation to your gains and losses from the *financial arrangement; and

(b) you start to have the financial arrangement (or a part of the financial arrangement) as consideration (or as part of the consideration) for:

(i) something (the ***thing provided***) that you provided, or are to provide, to someone else; or

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(ii) something (the ***thing acquired***) that someone else has provided, or is to provide, to you; and

(c) the thing provided or the thing acquired is not money;

the amount of the benefit (or that part of the benefit) that you obtained for the thing provided, or gave for the thing acquired, is taken, for the purposes of applying this Act to you, to be the *market value of the financial arrangement (or that part of the financial arrangement) at the time when you start to have the financial arrangement.

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

Note 2: The market value is to be used instead of the nominal value of the financial benefits to be provided under the financial arrangement.

(2) If subsection (1) applies, you are taken to have received, or provided, as consideration for starting to have the *financial arrangement (or the part of the financial arrangement), *financial benefits whose value is equal to the market value of the financial arrangement (or that part of the financial arrangement) at the time when you started to have the financial arrangement.

(3) If, but for this subsection:

(a) subsection (2) would apply to your starting to have a *financial arrangement; and

(b) subsection (1) or (4) would also apply to your starting to have the financial arrangement;

subsection (2) applies to your starting to have the financial arrangement and subsection (1) or (4) does not.

(4) If:

(a) this Subdivision applies in relation to your gains and losses from the *financial arrangement; and

(b) you cease to have the financial arrangement (or a part of the financial arrangement) as consideration (or as part of the consideration) for:

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(i) something (the ***thing acquired***) that someone else provides, or is to provide, to you; or

(ii) something (the ***thing provided***) that you provided, or are to provide, to someone else; and

(c) the thing acquired or the thing provided is not money;

the amount of the benefit (or that part of the benefit) that you provided for the thing acquired, or obtained for the thing provided, is taken, for the purposes of applying this Act to you, to be the *market value of the financial arrangement (or that part of the financial arrangement) at the time when you cease to have the financial arrangement (or that part of the financial arrangement).

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

Note 2: The market value is to be used instead of the nominal value of the financial benefits to be provided under the financial arrangement.

(5) If subsection (4) applies, you are taken to have provided, or received, as consideration for ceasing to have the *financial arrangement (or the part of the financial arrangement), *financial benefits whose value is equal to the market value of the financial arrangement (or that part of the financial arrangement) at the time when you ceased to have the financial arrangement.

(6) If, but for this subsection:

(a) subsection (5) would apply to your ceasing to have a *financial arrangement; and

(b) subsection (1) or (4) would also apply to your ceasing to have the financial arrangement;

subsection (5) applies to your ceasing to have the financial arrangement and subsection (1) or (4) does not.

(7) Without limiting subsections (1) and (4), the thing provided, or the thing acquired, need not be a tangible thing and may take the form of services, conferring a right, incurring an obligation or extinguishing or varying a right or obligation.

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



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## Subdivision 250-F—Treatment of asset when Division ceases to apply to the asset

### Table of sections

250-285 Treatment of asset after Division ceases to apply to the asset
250-290 Balancing adjustment under Subdivision 40-D in some circumstances

### 250-285 Treatment of asset after Division ceases to apply to the asset

(1) For the purposes of Division 40, if:

(a) this Division applies to you and an asset; and

(b) the *arrangement period for the *tax preferred use of the asset ends at a particular time; and

(c) the asset would have had an *adjustable value at that time, for the purposes of Division 40, if this Division had never applied to the asset;

the adjustable value of the asset, immediately after the end of the arrangement period, is taken to be equal to the amount worked out using the following method statement:

*Method statement*

Step 1. Work out whether section 250-150 applies.

Step 2. If section 250-150 does not apply, the amount is the *end value of the asset at the end of the arrangement period.

Step 3. If section 250-150 does apply, the amount is worked out by:

(a) multiplying the *end value of the asset at the end of the *arrangement period by the *disallowed capital percentage; and

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(b) then multiplying the adjustable value of the asset at the end of the arrangement period (worked out under section 40-85) by 100% minus the disallowed capital percentage); and

(c) then adding the amount obtained under paragraph (a) and the amount obtained under paragraph (b).

(2) If:

(a) this Division applies to you and an asset; and

(b) the *arrangement period for the *tax preferred use of the asset ends; and

(c) a net amount is included in your assessable income in relation to the *financial benefits that are *subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

the *cost base, and the *reduced cost base, of the asset are each taken to be reduced at the end of the arrangement period by an amount equal to the difference between:

(d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and

(e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

(3) If:

(a) this Division applies to you and an asset; and

(b) the *arrangement period for the *tax preferred use of the asset ends; and

(c) a net amount is allowed to you as a deduction in relation to the *financial benefits that are *subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

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the *cost base, and the *reduced cost base, of the asset are each taken to be reduced at the end of the arrangement period by an amount equal to the sum of:

(d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and

(e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

(4) If:

(a) this Division applies to you and an asset; and

(b) the *arrangement period for the *tax preferred use of the asset ends; and

(c) a net amount is included in your assessable income in relation to the *financial benefits that are *subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

then, in determining the profit or loss on the sale of the asset, a deduction equal to the difference between the following is taken to have been allowed for expenditure by you in connection with the asset:

(d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and

(e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

(5) If:

(a) this Division applies to you and an asset; and

(b) the *arrangement period for the *tax preferred use of the asset ends; and

(c) a net amount is allowed to you as a deduction in relation to the *financial benefits that are *subject to the deemed loan treatment (taking into account the adjustments under Subdivision 250-E in relation to the financial benefits that are subject to the deemed loan treatment);

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then, in determining the profit or loss on the sale of the asset, a deduction equal to the sum of the following is taken to have been allowed for expenditure by you in connection with the asset:

(d) the total amounts or values of the financial benefits that were subject to deemed loan treatment; and

(e) the net amount referred to in paragraph (c).

Note: See subsection (6) in relation to the application of paragraph (d).

(6) In applying paragraphs (2)(d), (3)(d), (4)(d) and (5)(d), disregard subsection 250-160(2) (reasonable estimate of end value treated as financial benefit subject to deemed loan treatment).

## 250-290 Balancing adjustment under Subdivision 40-D in some circumstances

(1) This section applies if:

(a) this Division applies to you and an asset; and

(b) the *arrangement period for the *tax preferred use of the asset ends because a particular event happens; and

(c) the event would have been a *balancing adjustment event for the asset for the purposes of Subdivision 40-D if this Division had not applied to you and the asset when the event happened.

(2) A balancing adjustment is made under Subdivision 40-D as if:

(a) the event were a *balancing adjustment event for the asset; and

(b) the *adjustable value of the asset, just before the event happened, were the adjustable value worked out under subsection 250-285(1); and

(c) sections 40-290, 40-291, 40-292 and 40-293 did not apply.

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



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## Subdivision 250-G—Objections against determinations and decisions by the Commissioner

### Table of sections

250-295 Objections against determinations and decisions by the Commissioner

### 250-295 Objections against determinations and decisions by the Commissioner

(1) This section applies to a determination by the Commissioner under section 250-45.

(2) This section also applies to a decision by the Commissioner under subsection 250-150(5).

(3) A person who is dissatisfied with a determination or decision to which this section applies may object against the determination or decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

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



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# Division 253—Financial claims scheme for account-holders with insolvent ADIs

## Table of Subdivisions

253-A Tax treatment of entitlements under financial claims scheme

# Subdivision 253-A—Tax treatment of entitlements under financial claims scheme

## Guide to Subdivision 253-A

### 253-1 What this Subdivision is about

This Act applies to a payment of an entitlement under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* as if the payment were made by the ADI under the agreement for the account concerned.

Special rules prevent the arising and payment of such an entitlement from creating inappropriate capital gains or losses affecting assessable income.

## Table of sections

**Operative provisions**

253-5 Payment of entitlement under financial claims scheme treated as payment from ADI
253-10 Disposal of rights against ADI to APRA and meeting of financial claims scheme entitlement have no CGT effects
253-15 Cost base of financial claims scheme entitlement and any remaining part of account that gave rise to entitlement

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



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## Operative provisions

### 253-5 Payment of entitlement under financial claims scheme treated as payment from ADI

(1) This Act applies to you as if an amount paid to you, or applied for your benefit, to meet your entitlement under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* connected with an account with an *ADI had been paid to you by the ADI under the terms and conditions of the agreement for keeping the account.

Note: This section has effect subject to more detailed provisions about:
(a) entitlements relating to retirement savings accounts (see section 306-25); and
(b) entitlements relating to farm management deposits (see Subdivision 393-C).

(2) To avoid doubt, subsection (1) does not affect the operation of Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: Division 21 in Schedule 1 to the *Taxation Administration Act 1953* contains special provisions about how Part 2-5 in that Schedule operates in relation to the meeting of entitlements under Division 2AA of Part II of the *Banking Act 1959*.

### 253-10 Disposal of rights against ADI to APRA and meeting of financial claims scheme entitlement have no CGT effects

Disregard a *capital gain or *capital loss you make:
(a) because of the operation of section 16AI of the *Banking Act 1959*; or
(b) because your entitlement under Subdivision C of Division 2AA of Part II of that Act is met.

Note: Section 16AI of the *Banking Act 1959* reduces the right of an account-holder who has a protected account with a declared ADI to be paid an amount by the ADI, by the account-holder's entitlement under Subdivision C of Division 2AA of Part II of that Act to be paid an amount by APRA in connection with the account.

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



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## 253-15 Cost base of financial claims scheme entitlement and any remaining part of account that gave rise to entitlement

(1) This section applies if an entitlement arises under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* in connection with an account-holder's account with an *ADI.

(2) The *cost base and *reduced cost base of the *CGT asset consisting of the entitlement are each the amount of the entitlement.

(3) The *cost base of the *CGT asset representing the part (if any) of the account-holder's right to be paid an amount by the *ADI in connection with the account that remains after the reduction of that right by section 16AI of the *Banking Act 1959* (by the amount of the entitlement) is the difference (if any) between:

(a) the cost base of the right as it was immediately before the reduction; and

(b) the amount of the entitlement.

The *reduced cost base is worked out similarly.

(4) This section has effect despite:

(a) Division 110 (Cost base and reduced cost base); and

(b) subsections 112-30(2), (3), (4) and (5) (which are about apportioning a *cost base if a *CGT event happens to only part of a *CGT asset).

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



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