



# **Income Tax Assessment (1936 Act) Regulation 2015**

**Select Legislative Instrument No. 155, 2015**

made under the

*Income Tax Assessment Act 1936*

## **Compilation No. 4**

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## About this compilation

### This compilation

This is a compilation of the *Income Tax Assessment (1936 Act) Regulation 2015* that shows the text of the law as amended and in force on 10 August 2019 (the **compilation date**).

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

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Part 1—Preliminary

### 1 Name

This is the *Income Tax Assessment (1936 Act) Regulation 2015*.

### 3 Authority

This instrument is made under the *Income Tax Assessment Act 1936*.

### 4 Definitions

In this instrument:

**159N rebate maximum amount** means \$445.

**159N rebate reduction rate** means 0.015.

**159N rebate reduction threshold** means \$37,000.

**Act** means the *Income Tax Assessment Act 1936*.

**associate** has the same meaning as in section 318 of the Act.

**base rebate amount**, for a rebate under section 160AAAA or 160AAAB of the Act, has the meaning given by subsection 9(2) of this instrument.

**compulsory acquisition** has the meaning given by subsection 20(5).

**disabled persons' car parking permit** has the meaning given by subsection 8(2).

**disabled persons' car parking space** has the meaning given by subsection 8(2).

**lowest marginal tax rate**, in relation to a year of income, means the rate that is:

- (a) the lowest rate specified in the table in Part I of Schedule 7 to the *Income Tax Rates Act 1986*, in the application of the table to that year; and
- (b) expressed as a decimal fraction.

**ordinary capital gains** has the meaning given by subsection 17(2).

**permanent establishment** has the meaning given by subsection 17(2).

**rebatable benefit amount** has the meaning given by subsection 13(4).

**rebate threshold**, for a rebate under section 160AAAA or 160AAAB of the Act, has the meaning given by section 9 of this instrument.

**resident investment vehicle** has the meaning given by the *Income Tax Assessment Act 1997*.

**roll-over relief** has the meaning given by section 20.

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***second lowest marginal tax rate***, in relation to a year of income, means the rate that is:

- (a) the second lowest rate specified in the table in Part I of Schedule 7 to the *Income Tax Rates Act 1986*, in the application of the table to that year; and
- (b) expressed as a decimal fraction.

***tax-free threshold*** has the same meaning as in the *Income Tax Rates Act 1986*.

## Part 2—Liability to taxation—general

### 5 Class of persons serving with an armed force under the control of the United Nations

For subsection 23AB(2) of the Act, members of the Australian Federal Police who are members of the force, created by the United Nations, for keeping peace in Cyprus are a prescribed class of persons.

### 6 Defence Force members performing certain overseas duty—eligible duty

- (1) For subsection 23AD(2) of the Act, duty:
  - (a) with an organisation specified in column 1 of an item of the table in subsection (3); and
  - (b) after the day specified in column 3 of that item;
 is declared to be eligible duty if the duty is in an area specified in column 2 of the item.
- (2) For subparagraph 23AD(3)(b)(iii) of the Act, the latest time before the day specified in column 4 of the item (if any) is prescribed in relation to that eligible duty.
- (3) The table is:

<b>Eligible duty</b>				
<b>Item</b>	<b>Column 1 Organisation</b>	<b>Column 2 Area</b>	<b>Column 3 After the day</b>	<b>Column 4 Before the day</b>
1	Australian Defence Force on Operation Accordion	The land area, territorial waters, airspace and superjacent airspace of the following countries: (a) Bahrain; (b) Qatar; (c) the United Arab Emirates	30 June 2014	
2	Australian Defence Force on Operation Augury	The following areas: (a) the land area and superjacent airspace of Afghanistan; (b) the land area, territorial waters, airspace and superjacent airspace of the following countries: (i) Jordan; (ii) the United Arab Emirates	3 July 2014	
3	Australian Defence Force	The land area and superjacent airspace of Afghanistan	31 December 2014	

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Eligible duty				
Item	Column 1 Organisation	Column 2 Area	Column 3 After the day	Column 4 Before the day
	on Operation Highroad			
4	Australian Defence Force on Operation Manitou	<p>The sea (including adjacent ports and the area within a 10 kilometres radius of such ports) and superjacent airspace of the following:</p> <ul style="list-style-type: none"> <li>(a) the Gulf of Aden;</li> <li>(b) the Gulf of Aqaba;</li> <li>(c) the Gulf of Oman;</li> <li>(d) the Gulf of Suez;</li> <li>(e) the Indian Ocean north of latitude 15°S and west of longitude 70°E;</li> <li>(f) the Persian Gulf;</li> <li>(g) the Red Sea;</li> <li>(h) the Strait of Hormuz</li> </ul>	14 May 2015	
5	Australian Defence Force on Operation Okra	<p>The following areas:</p> <ul style="list-style-type: none"> <li>(a) the land area, territorial waters, airspace and superjacent airspace of the following countries: <ul style="list-style-type: none"> <li>(i) Albania;</li> <li>(ii) Bahrain;</li> <li>(iii) Bosnia and Herzegovina;</li> <li>(iv) Bulgaria;</li> <li>(v) Croatia;</li> <li>(vi) Cyprus;</li> <li>(vii) Czech Republic;</li> <li>(viii) Estonia;</li> <li>(ix) Hungary;</li> <li>(x) Iraq;</li> <li>(xi) Jordan;</li> <li>(xii) Kuwait;</li> <li>(xiii) Montenegro;</li> <li>(xiv) Poland;</li> <li>(xv) Romania;</li> <li>(xvi) Qatar;</li> <li>(xvii) Syria;</li> <li>(xviii) Turkey east of longitude 35°E;</li> <li>(xix) the United Arab Emirates;</li> </ul> </li> <li>(b) the waters and superjacent</li> </ul>	9 September 2015	



## Section 6

<b>Eligible duty</b>				
<b>Item</b>	<b>Column 1 Organisation</b>	<b>Column 2 Area</b>	<b>Column 3 After the day</b>	<b>Column 4 Before the day</b>
		airspace of the Persian Gulf		
5A	Australian Defence Force on Operation Steadfast	The land area, territorial waters, airspace and superjacent airspace of Iraq	9 September 2018	
6	United Nations—Assistance Mission in Afghanistan (Operation Palate II)	The land area and superjacent airspace of Afghanistan	26 June 2005	1 January 2017

## Section 7

## Part 3—Income

## 7 Annuities and superannuation pensions—Life Tables

For the definition of *life expectation factor* in subsection 27H(4) of the Act, the following table has effect.

Life Tables		
Item	Column 1 For an annuity ...	Column 2 these Life Tables are prescribed ...
1	first commencing to be payable before 1 September 1988	the Australian Life Tables 1975–1977.
2	first commencing to be payable: (a) on or after 1 September 1988; and (b) before 1 May 1993	the Australian Life Tables 1980–1982.
3	first commencing to be payable: (a) on or after 1 May 1993; and (b) before 1 July 1993	the Australian Life Tables 1985–1987.
4	first commencing to be payable on or after 1 July 1993	the Australian Life Tables that are most recently published before the year in which the annuity first commences to be payable.

## Part 4—Deductions

### 8 Excluded car parking facilities

- (1) For paragraph 51AGA(1)(e) of the Act, the provision to an employee of car parking facilities for a car during a period is taken to be excluded from section 51AGA of the Act if, during the period:
- (a) the employee:
    - (i) is entitled under the law of a State or Territory to the use of a disabled persons' car parking space; and
    - (ii) is the driver of, or is a passenger in, the car; and
  - (b) a valid disabled persons' car parking permit is displayed on the car.
- (2) In this instrument:

***disabled persons' car parking permit*** means a permit, label or other document:

- (a) issued by the appropriate authority in a State or Territory; and
- (b) authorising the parking of a car in a disabled persons' car parking space.

***disabled persons' car parking space*** means a car parking space:

- (a) in a public car parking area; and
- (b) designated for the exclusive use of disabled persons.

## Part 5—Rebates

### Division 1—Tax rebate for low income aged persons and pensioners

#### 9 Key concepts

##### *Purpose of this section*

- (1) This section defines concepts that are relevant to working out:
- (a) whether:
    - (i) a taxpayer who is an individual is entitled to a rebate under section 160AAAA of the Act for a year of income; or
    - (ii) a taxpayer that is a trustee is entitled to a rebate under section 160AAAB of the Act for a year of income in respect of a beneficiary who is an individual; and
  - (b) the amount of the rebate.

##### *Base rebate amount*

- (2) The **base rebate amount**, for the rebate, is:
- (a) the amount in the item of the following table that applies to the individual mentioned in subparagraph (1)(a)(i) or (ii); or
  - (b) if more than one item of the table applies to the individual—whichever amount in the applicable items gives the taxpayer the greatest rebate entitlement.

Base rebate amount		
Item	Column 1 Class of individual	Column 2 Base rebate amount
1	An individual who, at any time during the year, is not a spouse of another individual	\$2 230
2	An individual who, at any time during the year, is a spouse of another individual	\$1 602
3	A member of an illness-separated couple (within the meaning of the <i>Social Security Act 1991</i> )	\$2 040

Note: For the purposes of subsection 11(2), the base rebate amount may be affected by section 12.

- (3) For the purposes of items 1 and 2 of the table in subsection (2), spouses living separately and apart on a permanent basis are treated as not being spouses of each other.

##### *Rebate threshold*

- (4) The **rebate threshold**, for the rebate, is:

- (a) the amount worked out using the formula in subsection (5); or
- (b) if that amount is greater than the 159N rebate reduction threshold—the amount worked out using the formula in subsection (6) of this section.

(5) For the purposes of paragraph (4)(a), the formula is:

$$\text{Tax-free threshold} + \left( \frac{\text{159N rebate maximum amount} + \text{Base rebate amount for the rebate}}{\text{Lowest marginal tax rate}} \right)$$

Note: For the purposes of subsection 11(2), the base rebate amount may be affected by section 12.

(6) For the purposes of paragraph (4)(b), the formula is:

$$\frac{\left( \text{Lowest marginal tax rate} \times \text{Tax-free threshold} \right) + \text{159N rebate maximum amount} + \text{Base rebate amount for the rebate} + \text{Amount worked out using the formula in subsection (7)}}{\text{159N rebate reduction rate} + \text{Second lowest marginal tax rate}}$$

Note: For the purposes of subsection 11(2), the base rebate amount may be affected by section 12.

(7) For the purposes of the formula in subsection (6), the formula in this subsection is:

$$\text{159N rebate reduction threshold} \times \left( \frac{\text{159N rebate reduction rate}}{\text{Second lowest marginal tax rate}} - \text{Lowest marginal tax rate} \right)$$

### *Rounding*

- (8) The amount worked out under subsection (5) or (6) must be rounded up to the nearest whole dollar, if the amount is not an amount of whole dollars.

## **10 Entitlement to rebate**

- (1) For subsection 160AAAA(3) or 160AAAB(3) of the Act, the amount is ascertained in accordance with the following formula:

$$\frac{\text{Base rebate amount for the rebate}}{0.125} + \text{Rebate threshold for the rebate}$$

### *Rounding*

- (2) The amount worked out under subsection (1) must be rounded up to the nearest whole dollar, if the amount is not an amount of whole dollars.

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### 11 Amount of rebate

- (1) For subsection 160AAAA(1) or 160AAAB(1) of the Act, the amount of the rebate is ascertained in accordance with subsection (2) of this section (as affected by section 12 of this instrument).
- (2) The amount of the rebate is:
  - (a) the base rebate amount for the rebate; or
  - (b) if:
    - (i) in the case of a rebate under section 160AAAA—the rebate income of the taxpayer; or
    - (ii) in the case of a rebate under section 160AAAB—the rebate income of the beneficiary;exceeds the rebate threshold for the rebate—the base rebate amount for the rebate, reduced by 12.5 cents for each \$1 of the amount of the excess.

Note: The base rebate amount and the rebate threshold may be affected by section 12.

### 12 Transfer of unused base rebate amount from individual taxpayer to spouse or spouse's trustee

- (1) This section applies if:
  - (a) either:
    - (i) an individual (referred to in this section as the *individual* and the *taxpayer*) is entitled to a rebate under section 160AAAA of the Act for a year of income; or
    - (ii) a trustee (referred to in this section as the *first trustee* and the *taxpayer*) is entitled to a rebate under section 160AAAB of the Act for a year of income in respect of a beneficiary who is an individual (referred to in this section as the *individual*); and
  - (b) the base rebate amount for the rebate exceeds:
    - (i) if subparagraph (a)(i) applies—the tax payable by the taxpayer in respect of income of the year; or
    - (ii) if subparagraph (a)(ii) applies—the tax payable by the taxpayer in respect of the individual for the year;(disregarding any credits or rebates); and
- Note: See subsection (5).
- (c) a person is at any time in the year the individual's spouse; and
- (d) the spouse (whether or not the same person as the first trustee):
  - (i) is entitled to a rebate of tax (the *spouse's rebate*) under section 160AAAA of the Act for the year; or
  - (ii) is a beneficiary in respect of whom a trustee (whether or not the same person as the individual or the first trustee) is entitled to a rebate of tax (the *spouse's trustee's rebate*) under section 160AAAB of the Act for the year; and
- (e) the amount of the spouse's rebate, or the spouse's trustee's rebate, is less than the base rebate amount for that rebate.

- (2) For the purposes of paragraph (1)(c), spouses living separately and apart on a permanent basis are treated as not being spouses of each other.
- (3) For the purposes of subsection 11(2) (but not section 10):
- (a) the base rebate amount for the taxpayer's rebate is reduced by the amount of the excess mentioned in paragraph (1)(b) of this section; and
  - (b) the base rebate amount for the spouse's rebate, or the spouse's trustee's rebate, is increased by:
    - (i) the amount of the excess mentioned in paragraph (1)(b) of this section; or
    - (ii) if the conditions in subsection (4) are met—the greater of the amount worked out using the following formula and nil:

$$\text{Base rebate amount for the taxpayer's rebate} - \left( \left( \begin{array}{c} \text{Taxpayers's} \\ \text{taxable income} \\ \text{mentioned in} \\ \text{paragraph (4)(a)} \end{array} - \$6\,000 \right) \times 0.15 \right)$$

Note: Changing the base rebate amount may also change the rebate threshold: see subsections 9(4) to (7).

- (4) For the purposes of subparagraph (3)(b)(ii), the conditions are:
- (a) that the following is greater than \$6 000:
    - (i) if subparagraph (1)(a)(i) applies—the taxpayer's taxable income for the year;
    - (ii) if subparagraph (1)(a)(ii) applies—the taxpayer's taxable income in relation to the individual for the year; and
  - (b) that each rate of tax payable by the taxpayer is a rate set out in Part I of Schedule 7 to the *Income Tax Rates Act 1986*.

*Certain pensions treated as assessable income*

- (5) For the purposes of this section, the amount of the taxpayer's assessable income of the year is to be calculated as if a pension the taxpayer receives at any time in the year were assessable income, if:
- (a) the taxpayer receives the pension under:
    - (i) Part 2.3, 2.4 or 2.5 of the *Social Security Act 1991*; or
    - (ii) Division 4 or 5 of Part III of the *Veterans' Entitlements Act 1986*; and
  - (b) the pension payments are exempt payments under Subdivision 52-A or 52-B of the *Income Tax Assessment Act 1997*.

## Division 2—Rebate in respect of certain benefits etc.

### 13 Amount of rebate

- (1) For subsection 160AAA(3) of the Act, the amount of the taxpayer's rebate in respect of a year of income is ascertained in accordance with this section.
- (2) Subject to subsection (3), the amount of the rebate is the amount worked out in accordance with the following formula:

$$0.15 \times \left( \text{Rebatable benefit amount} - \$6\,000 \right)$$

- (3) The amount of the rebate is the amount worked out using the following formula, if the taxpayer's rebatable benefit amount is greater than the threshold at the upper conclusion of the lowest marginal tax rate:

$$0.15 \times \left( \text{Rebatable benefit amount} - \$6\,000 \right) + 0.15 \times \left( \text{Rebatable benefit amount} - \text{Threshold at the upper conclusion of the lowest marginal tax rate} \right)$$

- (4) The **rebatable benefit amount** is the amount of rebatable benefit included in the taxpayer's assessable income of the year, rounded down to the nearest whole dollar.
- (5) The amount worked out under subsection (2) or (3) must be rounded up to the nearest whole dollar, if the amount is not an amount of whole dollars.



## Part 6—Returns and assessments

### 14 Amendment of assessments

For a provision of the table in subsection 170(1) of the Act mentioned in column 1 of an item of the following table, the circumstance set out in column 2 of the item is prescribed in relation to amending an assessment of an entity (the **assessed entity**) for a year of income (the **assessment year**).

**Note:** If a circumstance in an item of the table exists, the Commissioner may amend the assessment within 4 years after the day on which the Commissioner gives notice of the assessment to the assessed entity, unless a longer amendment period applies.

<b>Amendment circumstances</b>		
<b>Item</b>	<b>Column 1 Provision of the table in subsection 170(1) of the Act</b>	<b>Column 2 Circumstance</b>
1	(a) Paragraph (f) of item 1; or (b) paragraph (e) of item 2; or (c) paragraph (d) of item 3	All of the following apply: (a) there has been a transaction in the assessment year that: (i) involves associates; and (ii) has income tax consequences; (b) the parties were not dealing with each other at arm's length in relation to the transaction; (c) the period during which the Commissioner may amend an assessment in relation to one of the parties is at least 4 years; (d) the transaction is relevant to an amount in the assessed entity's assessment
2	(a) Paragraph (f) of item 1; or (b) paragraph (e) of item 2; or (c) paragraph (d) of item 3	All of the following apply: (a) a private company is taken to have paid a dividend to an entity, as described in section 109C, 109D, 109E or 109F of the Act, in the assessment year; (b) the entity is: (i) a shareholder of the company; or (ii) an associate of a shareholder of the company; or (iii) a former shareholder of the company; or (iv) an associate of a former shareholder of the company; (c) the period during which the Commissioner may amend an assessment in relation to the company is at least 4 years; (d) the dividend is relevant to an amount in the assessed entity's assessment
3	(a) Paragraph (f) of item 1; or	All of the following apply: (a) the effect of section 109XB of the Act is that an amount is

## Section 14

<b>Amendment circumstances</b>		
<b>Item</b>	<b>Column 1 Provision of the table in subsection 170(1) of the Act</b>	<b>Column 2 Circumstance</b>
	(b) paragraph (d) of item 3	<p>included as a dividend in the assessable income of:</p> <p>(i) a shareholder of a company; or</p> <p>(ii) an associate of a shareholder of a company;</p> <p>in the assessment year as described in subsection 109XA(1), (2) or (3) of the Act;</p> <p>(b) the period during which the Commissioner may amend an assessment in relation to both the trustee and the company is at least 4 years;</p> <p>(c) the dividend is relevant to an amount in the assessed entity's assessment</p>
4	<p>(a) Paragraph (f) of item 1; or</p> <p>(b) paragraph (e) of item 2; or</p> <p>(c) paragraph (d) of item 3</p>	<p>Both of the following apply:</p> <p>(a) in the assessment year:</p> <p>(i) an entity acquired an ESS interest to which Subdivision 83A-B of the <i>Income Tax Assessment Act 1997</i> applies; and</p> <p>(ii) subsection 83A-35(5) of that Act (integrity rule about share trading and investment companies) does not apply to the ESS interest; and</p> <p>(iii) the entity that provided the ESS interest is not a small business entity in relation to which item 2 or 3 of the table in subsection 170(1) of the Act applies;</p> <p>(b) the ESS interest is relevant to an amount in the assessed entity's assessment</p>
5	<p>(a) Paragraph (f) of item 1; or</p> <p>(b) paragraph (e) of item 2; or</p> <p>(c) paragraph (d) of item 3</p>	<p>Both of the following apply in the assessment year:</p> <p>(a) the assessed entity has not identified income (ordinary or statutory) from one or more foreign transactions for the purposes of, or in the course of, an assessment;</p> <p>(b) the income has not been received from a resident investment vehicle</p>
6	<p>(a) Paragraph (f) of item 1; or</p> <p>(b) paragraph (e) of item 2; or</p> <p>(c) paragraph (d) of item 3</p>	<p>Both of the following apply in the assessment year:</p> <p>(a) subsection 345(5) of the Act (transfer under a scheme) may be applicable to the assessed entity;</p> <p>(b) not all of the relevant information regarding the application of that subsection can be obtained from a resident investment vehicle</p>
7	<p>(a) Paragraph (f) of item 1; or</p> <p>(b) paragraph (e) of item 2; or</p> <p>(c) paragraph (d) of item 3</p>	<p>Both of the following apply:</p> <p>(a) paragraph 448(1A)(f) of the Act (provision of services under a scheme) may be applicable to the assessed entity;</p> <p>(b) not all of the relevant information regarding the application of that paragraph can be obtained from a resident investment vehicle</p>

## Section 14

<b>Amendment circumstances</b>		
<b>Item</b>	<b>Column 1 Provision of the table in subsection 170(1) of the Act</b>	<b>Column 2 Circumstance</b>
8	(a) Paragraph (f) of item 1; or (b) paragraph (e) of item 2; or (c) paragraph (d) of item 3	Any of the following provisions applies in relation to the assessed entity in the assessment year: (a) section 45A of the Act (streaming of dividends and capital benefits); (b) section 45B of the Act (schemes to provide certain benefits); (c) subsection 102AE(7) of the Act (excluded income for minors); (d) section 177E of the Act (stripping of company profits); (e) section 177EA of the Act (franking debit creation and franking credit cancellation schemes); (f) Division 270 in Schedule 2F to the Act (scheme to take advantage of deductions); (g) subsection 26-50(7) of the <i>Income Tax Assessment Act 1997</i> (expenses for a leisure facility or boat); (h) any of sections 165-180 to 165-205 (rules affecting the operation of tests for changing ownership of a company), or Division 175 (use of a company's tax losses or deductions to avoid income tax), of the <i>Income Tax Assessment Act 1997</i> ; (i) Subdivision 207-F of the <i>Income Tax Assessment Act 1997</i> (cancellation of gross-up or tax offset where the imputation system has been manipulated)
9	Paragraph (f) of item 1	The assessed entity makes a request under section 131-5 in Schedule 1 to the <i>Taxation Administration Act 1953</i> in relation to any of the following: (a) an excess concessional contributions determination, or excess non-concessional contributions determination, for a financial year that corresponds to the assessment year; (b) a notice of assessment of an amount of Division 293 tax payable for the assessment year

## **Part 7—Public officers**

### **15 Appointment of public officer**

A notice mentioned in paragraph 252(1)(c) of the Act must include a declaration that any information in the notice is true and correct.

## Part 8—Attribution of income in respect of controlled foreign companies

### 16 Interpretation

In this Part, words and phrases have the same meanings as they have in Part X of the Act.

### 17 Items of designated concession income

- (1) For paragraph (a) of the definition of **designated concession income** in subsection 317(1) of the Act, in relation to a listed country mentioned in column 1 of an item of the following table:
- (a) the kind of income or profits to which columns 2, 3 and 4 of the item apply is specified; and
  - (b) the kind of feature mentioned in column 4 of the item is specified in relation to income or profits of that kind.

Designated concession income				
Item	Column 1 Country	Column 2 Income or profits	Column 3 derived by ...	Column 4 and that is ...
1	Canada	All passive income and tainted services income	an entity that operates in Canada as an international banking centre under Canadian law	not subject to tax in Canada in a tax accounting period
2	Canada	All passive income	a company that operates in Canada as an investment corporation, or as a mutual fund corporation, under Canadian tax law	not taxed in Canada at the normal company tax rate
3	France	All passive income	a company that operates in France as a <i>société d'investissement à capital variable (SICAV)</i> under French law	not subject to tax in France in a tax accounting period
4	France	All income or profits	a company that: (a) is treated as a resident of France for the purposes of the tax law of France; and (b) has elected to be taxed on a tonnage basis rather than on income or profits	not used as the basis for establishing the amount of taxable income, taxable profits, tax base or tax liability of the entity under the tax law of France

Section 17

<b>Designated concession income</b>				
<b>Item</b>	<b>Column 1 Country</b>	<b>Column 2 Income or profits</b>	<b>Column 3 derived by ...</b>	<b>Column 4 and that is ...</b>
5	Germany	All passive income in carrying on business outside Germany at or through a permanent establishment	a company that is treated as a resident of Germany for the purposes of the tax law of Germany	not subject to tax in Germany in a tax accounting period
6	Germany	Ordinary capital gains in respect of shares in companies	either: (a) a company that is treated as a resident of Germany for the purposes of the tax law of Germany; or (b) any company in carrying on business in Germany at or through a permanent establishment of the company in Germany	not taxed in Germany at the normal company tax rate
7	Germany	All income or profits	a company that: (a) is treated as a resident of Germany for the purposes of the tax law of Germany; and (b) has elected to be taxed on a tonnage basis rather than on income or profits	not used as the basis for establishing the amount of taxable income, taxable profits, tax base or tax liability of the entity under the tax law of Germany
8	Japan	All income or profits derived from Japanese governmental bonds	an entity in carrying on business in Japan at or through a permanent establishment of the entity in that country	not subject to tax in Japan in a tax accounting period
9	New Zealand	Ordinary capital gains in respect of tainted assets	either: (a) a company that is treated as a resident of New Zealand for the purposes of the tax law of New Zealand; or (b) any entity in carrying on business in New Zealand at or through a permanent establishment of the entity in New Zealand	not subject to tax in New Zealand in a tax accounting period

## Section 17

<b>Designated concession income</b>				
<b>Item</b>	<b>Column 1 Country</b>	<b>Column 2 Income or profits</b>	<b>Column 3 derived by ...</b>	<b>Column 4 and that is ...</b>
10	United Kingdom	Ordinary capital gains in respect of shares in companies if: (a) the CGT assets of the companies; or (b) the underlying CGT assets of the companies held through one of more non-resident entities that are associates; include CGT assets having the necessary connection with Australia	a company that is treated as a resident of the United Kingdom for the purposes of the tax law of the United Kingdom	not subject to tax in the United Kingdom in a tax accounting period as a consequence of the substantial shareholding exemption available under the tax law of the United Kingdom
11	United Kingdom	All income or profits	a company that: (a) is treated as a resident of the United Kingdom for the purposes of the tax law of the United Kingdom; and (b) has elected to be taxed on a tonnage basis rather than on income or profits	not used as the basis for establishing the amount of taxable income, taxable profits, tax base or tax liability of the entity under the tax law of the United Kingdom
12	United Kingdom	All passive income	an entity that operates in the United Kingdom as an open-ended investment company under the law of the United Kingdom	not taxed in the United Kingdom at the normal company tax rate
13	United States of America	All income or profits derived from tax-exempt governmental bonds	either: (a) a company that is treated as a resident of the United States of America for the purposes of the tax law of the United States of America; or (b) any entity in carrying on business in the United States of America at or through a permanent establishment of the entity in that country	not subject to tax in the United States of America in a tax accounting period

## Section 17

Designated concession income				
Item	Column 1 Country	Column 2 Income or profits	Column 3 derived by ...	Column 4 and that is ...
14	United States of America	All passive income	an entity that operates in the United States of America as a regulated investment company under the tax law of the United States of America	not taxed in the United States of America at the normal company tax rate

Note: Section 324 of the Act explains the meaning of the expression *subject to tax*.  
Section 325 of the Act explains when taxation occurs in a country at the country's normal company tax rate.

(2) In this instrument:

**ordinary capital gains** means gains or profits of a capital nature that:

- (a) arise from the sale or disposal of all or part of a CGT asset; and
- (b) are not gains or profits that would not be capital gains but for a provision of Australian tax law.

**permanent establishment**, in relation to an entity that carries on business in a listed country:

- (a) if:
  - (i) there is a double tax agreement in relation to the country; and
  - (ii) section 23AH of the Act applies to the entity;
 has the same meaning as in the agreement; or
- (b) otherwise—has the meaning given by subsection 6(1) of the Act.

*Passive income*

- (3) For the purposes of working out, in applying subsection (1) to income derived by an entity, whether the income is passive income of the entity:
  - (a) the reference in paragraph 446(1)(k) of the Act to net gains that accrued to the company in the statutory accounting period in respect of the disposal of tainted assets is treated as being a reference to capital gains that accrued to the company in the statutory accounting period in respect of tainted assets; and
  - (b) if section 23AH of the Act (about foreign branch income of Australian companies) applies to the entity—each reference, as appropriate, in Part X of the Act to a statutory accounting period is treated as a reference to a year of income; and
  - (c) if Division 6AAA of Part III of the Act (about non-resident trust estates) applies to the entity:
    - (i) each reference, as appropriate, in Part X of the Act to a company is treated as being a reference to the entity; and
    - (ii) each reference, as appropriate, in Part X to a statutory accounting period is treated as being a reference to a year of income.



**18 Accruals tax laws**

For the definition of **accruals tax law** in subsection 317(1) of the Act, in relation to a listed country mentioned in column 1 of an item of the following table, the law mentioned in column 2 of the item is declared to be an accruals tax law.

<b>Accruals tax law</b>		
<b>Item</b>	<b>Column 1 Listed country</b>	<b>Column 2 Law</b>
1	Canada	Sections 90 to 95 (inclusive) of the Income Tax Act of Canada
2	France	Article 209B of the General Tax Code of France
3	Germany	Sections 7 to 14 (inclusive) of the Foreign Tax Act of Germany
4	Japan	Articles 40-4 to 40-6 (inclusive) and 66-6 to 66-9 (inclusive) of the Special Taxation Measures Law of Japan
5	New Zealand	Sections CQ 1 to CQ 3 (inclusive) and sections EX 1 to EX 27 (inclusive) of the Income Tax Act 2007 of New Zealand
6	United Kingdom	Part 9A of the Taxation (International and Other Provisions) Act 2010 of the United Kingdom
7	United Kingdom	Chapter 3A of Part 2 of the Corporation Tax Act 2009 of the United Kingdom
8	United States of America	Subpart F of Part III of subchapter N of Chapter 1 of the Internal Revenue Code of the United States of America

**19 Listed countries**

For the definition of **listed country** in subsection 320(1) of the Act, each of the following is declared to be a listed country for the purposes of Part X of the Act:

- (a) Canada;
- (b) France;
- (c) Germany;
- (d) Japan;
- (e) New Zealand;
- (f) United Kingdom;
- (g) United States of America.

**20 Capital gains regarded as subject to tax**

- (1) For subsection 324(2) of the Act, gains or profits, or other amounts, of a capital nature derived by an entity that:
  - (a) are not subject to tax in a listed country in a particular tax accounting period; and
  - (b) would have been subject to tax in the listed country in the tax accounting period apart from the availability of roll-over relief;
 are to be treated, for the purposes of Part X of the Act, as if they were subject to tax in the listed country in the tax accounting period.

## Section 20

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- (2) For paragraph 324(2)(b) of the Act, the feature mentioned in paragraph (1)(b) of this section is specified in relation to the gains or profits.

### *Meaning of roll-over relief*

- (3) **Roll-over relief** is the deferral of tax liability in the tax accounting period under a tax law of the listed country because of a circumstance specified in subsection (4), (6), (7) or (8).
- (4) For the purposes of subsection (3), the circumstance is that an entity:
- (a) is taken to have disposed of all or part of a CGT asset because of an act, transaction or event as a result of which the entity has received an amount of money or a replacement CGT asset:
    - (i) by way of compensation for the compulsory acquisition, or for the loss or destruction, of the original CGT asset; or
    - (ii) under a policy of insurance against the risk of loss or destruction of the original CGT asset; and
  - (b) after receiving an amount of money mentioned in paragraph (a), in order to achieve a deferral of tax liability under the tax law of the listed country, is required:
    - (i) to incur expenditure in acquiring a CGT asset in place of the original CGT asset; or
    - (ii) to incur expenditure of a capital nature in repairing or restoring the original CGT asset.
- (5) A **compulsory acquisition**, of a CGT asset, is a compulsory acquisition of that asset by:
- (a) the government of a country, whether a federal, State or municipal government (however described); or
  - (b) an authority of such a government.
- (6) For the purposes of subsection (3), the circumstance is that a company disposes of a CGT asset to another company, and the transferee is a member of the same wholly-owned group (within the meaning of the *Income Tax Assessment Act 1997*) as the transferor.
- (7) For the purposes of subsection (3), the circumstance is that:
- (a) a company redeems or cancels all the shares of a particular class in the company; and
  - (b) an entity holds shares of that class in the company; and
  - (c) the company issues to the entity other shares in the company in substitution for the redeemed or cancelled shares; and
  - (d) the market value of the new shares immediately after they were issued is not less than the market value of the redeemed or cancelled shares immediately before the redemption or cancellation; and
  - (e) the entity did not receive any consideration (other than the new shares) in respect of the redemption or cancellation.
- (8) For the purposes of subsection (3), the circumstance is that:
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- (a) an entity owns an option to acquire shares in a company or a right, issued by a company, to acquire shares in the company or to acquire an option to acquire shares in the company; and
- (b) any of the shares:
  - (i) are consolidated and divided into new shares of a larger amount; or
  - (ii) are subdivided into shares of a smaller amount; and
- (c) as a result of the consolidation or subdivision:
  - (i) the original option is cancelled; or
  - (ii) the original right is cancelled; and
- (d) the company issues to the entity:
  - (i) another option relating to the new shares in substitution for the original option; or
  - (ii) another right relating to the new shares, in substitution for the original right; and
- (e) the market value of the new option or the new right, immediately after it was issued, is not less than the market value of the original option or original right immediately before its cancellation; and
- (f) the entity did not receive any consideration in respect of the cancellation, other than the new option or right.

## **21 State foreign taxes that are treated as federal foreign taxes**

For section 323 of the Act, a foreign tax imposed in Switzerland that is a cantonal tax on income referred to in paragraph 3(b) of Article 2 of the Swiss convention (within the meaning of the *International Tax Agreements Act 1953*) is to be treated, for the purposes of Part X of the Act, as if it were an additional federal foreign tax of Switzerland.

## Part 9—Application and transitional provisions

### 22 Application of this instrument

This instrument applies in relation to:

- (a) the 2015-16 year of income; and
- (b) later years of income.

### 23 Application of the *Income Tax and Other Laws (Repeal and Consequential Amendments) Regulation 2015*

The amendments made by the *Income Tax and Other Laws (Repeal and Consequential Amendments) Regulation 2015* apply in relation to:

- (a) the 2015-16 year of income; and
- (b) later years of income.

### 24 Transitional—how certain new provisions of this instrument apply to existing eligible duty certificates

- (1) This section applies to a certificate issued under paragraph 23AD(1)(a) of the Act that is in force immediately before the commencement of Schedule 3 to the *Tax and Superannuation Laws Amendment (2016 Measures No. 2) Regulation 2016*.
- (2) For that certificate, items 4 and 5 of the table in subsection 6(3) of this instrument (as inserted by that Schedule) apply, on and after that commencement, as if:
  - (a) the areas in column 2 of each of those items; and
  - (b) the day in column 3 of each of those items;were the same as they were in those items as in force immediately before that commencement.

### 25 Application of the *Income Tax Assessment (1936 Act) Amendment (Defence Force Eligible Duty) Regulations 2017*

- (1) The amendment made by item 4 of Schedule 1 to the *Income Tax Assessment (1936 Act) Amendment (Defence Force Eligible Duty) Regulations 2017* applies in relation to duty on or after 28 April 2016.
- (2) The amendment made by item 7 of that Schedule applies in relation to duty on or after 14 November 2016.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions	
Income Tax Assessment (1936 Act) Regulation 2015	9 Sept 2015 (F2015L01415)	10 Sept 2015 (s 2(1) item 1)		
Tax and Superannuation Laws Amendment (2016 Measures No. 2) Regulation 2016	9 May 2016 (F2016L00710)	Sch 3: 10 May 2016 (s 2(1) item 5)	—	
Treasury Laws Amendment (Fair and Sustainable Superannuation) Regulations 2017	27 Mar 2017 (F2017L00321)	Sch 8 (item 1): 1 July 2018 (s 2(1) item 5)	—	
Income Tax Assessment (1936 Act) Amendment (Defence Force Eligible Duty) Regulations 2017	23 May 2017 (F2017L00592)	24 May 2017 (s 2(1) item 1)	—	
Income Tax Assessment (1936 Act) Amendment (Operation Steadfast Eligible Duty) Regulations 2019	9 Aug 2019 (F2019L01041)	10 Aug 2019 (s 2(1) item 1)	—	

  

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Treasury Laws Amendment (Personal Income Tax Plan) Act 2018	47, 2018	21 June 2018	Sch 1 (items 2–4): 1 July 2018 (s 2(1) item 2)	—

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

Provision affected	How affected
<b>Part 1</b>	
s 2 .....	rep LA s 48D
s 4 .....	am Act No 47, 2018
<b>Part 2</b>	
s 6 .....	am F2016L00710; F2017L00592; F2019L01041
<b>Part 6</b>	
s 14 .....	am F2017L00321
<b>Part 9</b>	
s 24 .....	ad F2016L00710
s 25 .....	ad F2017L00592