

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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Income Tax Assessment Bill 1996  
Income Tax (Transitional Provisions) Bill 1996  
Income Tax (Consequential Amendments) Bill 1996

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SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved by the Government

(Circulated by authority of the Treasurer,  
the Hon Peter Costello, MP)

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## General Outline and financial impact

### 1. Commencement date

- Income Tax Assessment Bill, amendments (D1) - (D44)
- Income Tax (Consequential Amendments) Bill, amendments (D1) - (D41)
- Income Tax (Transitional Provisions) Bill, amendments (D1) - (D71)

**Proposal:** To defer the commencement of the Bills, by 12 months, to the 1997-98 income year.

**Amendment announced:** 22 August 1996, by the Assistant Treasurer.

**Financial impact:** A one-off cost to the revenue of \$8m in the 1996-97 income year.

**Compliance cost impact:** The compliance cost reductions that will be delivered by the Bills will be deferred by one year.

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### 2. Tracing

- Income Tax Assessment Bill, amendments (T1) - (T32)

**Proposal:** To streamline the requirements for proving continuity of beneficial ownership of a company, which is a precondition for claiming deductions for prior and current year losses.

**Amendment announced:** 22 August 1996 by the Assistant Treasurer.

**Date of effect:** 1 July 1997, to apply to the 1997-98 income year (and later years).

**Financial impact:** None.

**Compliance cost impact:** The amendments should achieve a significant reduction in compliance costs for listed public companies and their wholly owned subsidiaries.

### 3. Other amendments

- Income Tax Assessment Bill, amendments (M1) - (M41)
- Income Tax (Consequential Amendments) Bill, amendments (M1) - (M9)
- Income Tax (Transitional Provisions) Bill, amendment (M1)

**Proposal:** A number of small, unrelated technical amendments to ensure that the Bills accurately reflect the existing law and to correct minor errors. None of the amendments will involve any change in policy.

**Amendments announced:** The Assistant Treasurer announced the following amendments on 22 August:

- Income Tax Assessment Bill, amendments (M4) - (M6), (M37) and (M38)
- Income Tax (Consequential Amendments) Bill, amendment (M3)
- Income Tax (Transitional Amendments) Bill, amendment (M1)

The remaining amendments have not previously been announced.

**Date of effect:** 1 July 1997, to apply to the 1997-98 income year (and later years).

**Financial impact:** None.

**Compliance cost impact:** None.

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# 1

## **Date of Commencement**

This chapter explains the changes that defer the commencement of this package of Bills to the 1997-98 income year.

## Summary

- 1.1 The amendments covered by this chapter will defer the application of the *Income Tax Assessment Act 1996*, by one year, to the 1997-98 income year.
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## Background

- 1.2 The current commencement date of each of the 3 Bills is 1 July 1996. [*Income Tax Assessment Bill 1996*, clause 2; *Income Tax (Consequential Amendments) Bill 1996*, clause 1-5; *Income Tax (Transitional Provisions) Bill 1996*, clause 1-5]
  - 1.3 The *Income Tax Assessment Act 1996* is currently proposed to apply to assessments for the 1996-97 income year and later income years. [*Income Tax (Transitional Provisions) Bill 1996*, clause 4-1]
  - 1.4 Each of the 3 Bills contains numerous references throughout to the 1995-96 and 1996-97 income years.
  - 1.5 Additionally, Division 43 of the *Income Tax Assessment Bill* contains several references to 1 July 1996. Division 43 deals with expenditure on capital works and the Bill proposes to provide simpler rules for buildings begun on or after 1 July 1996.
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## Explanation of the amendments

- 1.6 The commencement date of each of the 3 Bills will be deferred to 1 July 1997. [*Income Tax Assessment Bill 1996*, Amendment (D1); *Income Tax (Consequential Amendments) Bill 1996*, Amendment (D1); *Income Tax (Transitional Provisions) Bill 1996*, Amendment (D1).]
- 1.7 The application of the *Income Tax Assessment Act 1996* will be deferred, by one year, so that it applies to assessments for the 1997-98 income year and to assessments for subsequent income years. [*Income Tax (Transitional Provisions) Bill 1996*, Amendment (D2)]
- 1.8 The numerous references to 1 July 1996 and to the 1995-96 and 1996-97 income years will be changed to 1 July 1997 and the 1996-97 and 1997-98 income years as a consequence of the deferral of the commencement date of the new law. [*Income Tax Assessment Bill 1996*, Amendments (D1) to (D44); *Income Tax (Consequential Amendments) Bill 1996*, Amendments (D1) to (D41); *Income Tax (Transitional Provisions) Bill 1996*, Amendments (D1) to (D71)].
- 1.9 Consequently, any references in the Explanatory Memorandum based on these commencement dates are similarly affected by these changes.

## 2

# **Tracing the beneficial ownership of shares in a listed public company**

This chapter explains the new provisions introducing streamlined arrangements designed to assist listed public companies trace who owns their shares.

### *Note on the arrangement of the amendments*

**Amendments (T1) to (T3)** will make minor consequential changes to the Income Tax Assessment Bill 1996 by inserting signposts in Division 165 directing listed public companies to Division 166.

**Amendment (T4)** will add new Division 166 to the Bill. The contents of new Division 166 are explained below in detail.

**Amendment (T5)** is a minor consequential amendment omitting a term that will now be defined in the Dictionary.

**Amendment (T6)** proposes the addition of new subdivision 960-H dealing with the concept of an abnormal trading in shares. That concept is explained in the discussion below on Division 166.

**Amendments (T7) to (T32)** propose to include a number of new definitions in section 995-1, which is in the Dictionary of defined terms. These are explained in the discussion below on new Division 166. Where appropriate the definitions are highlighted in that discussion

## Introduction

- 2.1 These amendments will provide an alternative test for establishing the continuity of beneficial ownership of the shares of listed public companies and their wholly owned subsidiaries. The purpose of the new test is to substantially streamline the requirements for testing whether there has been continuity of ownership.
- 2.2 The new test will differ from the standard test for continuity of beneficial ownership test (contained in Division 165 of the Income Tax Assessment Bill) in two significant aspects.
- First, testing for beneficial ownership will be periodic rather than at all times during the loss year and the income year of recoupment or, as in the case of current year losses, during the income year.
  - Secondly, when a company is required to establish who are its ultimate beneficial owners the following rules will apply:
    - all registered shareholdings of the company that are less than 1% will be taken to be owned by a notional shareholder; and
    - direct or indirect holdings of a complying superannuation fund, complying approved deposit fund or certain types of company will be deemed to be beneficially held by that fund or company.

This means the notional shareholder, fund or company will beneficially own the relevant shares for the purposes of establishing if the company has maintained majority ownership.



## Summary of new Division 166

### Deducting tax losses of earlier income years [*Subdivision 166-A*]

- 2.3 For prior year losses, a listed public company (**LPC**) and its wholly owned subsidiaries will satisfy the continuity of beneficial ownership test if their majority ownership at the beginning of the loss year (***start of the test period***) is the same as at:
- the end of each income year that occurs between the beginning of the loss year and the end of the income year of recoupment (**the test period**); and
  - the time of any abnormal trading in the company's shares during the test period.
- 2.4 If majority ownership is not the same the company can apply the same business test.
- 2.5 An LPC is a company whose shares are listed on a stock exchange and which satisfies the definition of a public company in the income tax law. For the purposes of these provisions, the term also includes wholly owned subsidiaries of LPCs. An abnormal trading in the shares of an LPC is taken to be an abnormal trading in its wholly owned subsidiaries.
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### Working out the taxable income and tax loss for the income year of change [*Subdivision 166-B*]

- 2.6 For current year losses, an LPC and its wholly owned subsidiaries will satisfy the continuity of beneficial ownership test if there is no abnormal trading in the company's shares during an income year (***the test period***).
- 2.7 If there is abnormal trading, but the company has maintained majority ownership as between the start of the income year (***start of the test period***) and the time of the abnormal trading, the company will also be taken to have satisfied the continuity of beneficial ownership test.
- 2.8 If majority ownership is not the same, the company can apply the same business test.
- 2.9 If the company is required to calculate its taxable income under the current year loss provisions, the income year is divided up into periods according to when there is a failure to maintain majority ownership.

## **Tests for finding out whether the LPC has maintained the same owners** **[Subdivision 166-D]**

- 2.10 These tests apply to both prior year and current year losses.
- 2.11 If there is *substantial continuity of ownership* as between the start of the test period and another time (*test time*) during the test period then a company is taken to have maintained majority ownership.
- 2.12 Substantial continuity of ownership occurs when:
- the same persons (not companies) control or are able to control the voting power in the company both at the start of the test period and immediately after the other test time;
  - the same persons (not companies) beneficially own the rights to more than 50% of the company's dividends both at the start of the test period and immediately after the other test time; and
  - the same persons (not companies) beneficially own the rights to more than 50% of the company's capital distributions both at the start of the test period and immediately after the other test time.
- 2.13 The ownership rights, namely voting control, rights to dividends and rights to capital, can be held directly or indirectly through one or more interposed entities. There is provision for tracing through interposed entities to disclose the ultimate beneficial owners.
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## **How to treat shareholdings of less than 1% [Subdivision 166-F]**

- 2.14 When testing for ownership at a particular time, a company will not be required to trace through to the ultimate beneficial owners where the registered shareholding is less than 1%. Consistent with the ownership tests in Division 165, each ownership right is dealt with separately.
- 2.15 Registered shareholdings of less than 1% are taken to be beneficially owned by a notional shareholder. The voting rights, rights to dividends and rights to capital attached to those shares are taken to be the rights of that notional shareholder. Shares that are part of a substantial shareholding for the purposes of the Corporations Law are excluded.
- 2.16 This notional shareholder rule will also apply to an interposed entity which is itself a LPC and that the company applying the ownership test is otherwise required to trace through. Beneficial ownership in the company doing the tracing will be based on the assumption that less than 1% shareholdings in the interposed LPC are owned by a notional shareholder.
- 2.17 The rule will not apply where its application disguises an actual change of beneficial ownership.

## How to treat interposed superannuation funds, approved deposit funds and special companies [Subdivision 166-G]

- 2.18 A company will not be required to trace through an interposed complying superannuation fund, complying approved deposit fund or certain types of company to the ultimate beneficial owners.
- 2.19 If the fund or company has more than 50 members, the fund, rather than the ultimate beneficial owners, will be taken to hold the respective ownership rights. If the fund has less than 50 members each member will be taken to have a fixed proportion of the ownership rights.

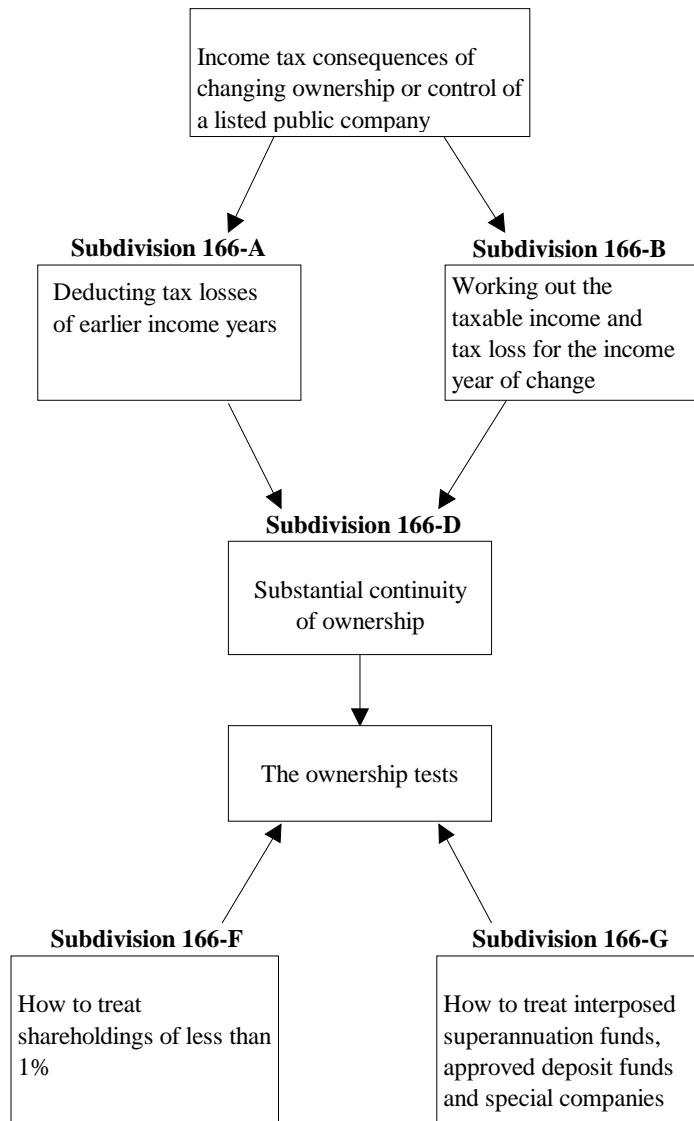
### Map of Division 166

Section 166-1 gives you the main idea of this Division.

The two Subdivisions modify the equivalent Subdivisions in Division 165.

This Subdivision has the tests to work out whether a listed public company has maintained ownership as between two points in time. It also provides the way for measuring ownership.

These two Subdivisions modify the ownership tests.



## Background to the legislation

### Prior year losses

- 2.20 A precondition for a company deducting a loss of an earlier year is that the company must have the same majority ownership at all times during the loss year and the income year. Another criterion is that no person must control the voting power during the income year who did not control the voting throughout the loss year.
- 2.21 If these conditions are not satisfied, the loss may still be deductible if the company satisfies the same business test. The company must carry on the same business at all times during the income year that it carried on immediately before the disqualifying change in ownership or control.
- 2.22 Ownership is measured by reference to the
- voting control;
  - rights to dividends; and
  - rights to capital
- that comes with beneficial ownership of shares in a company.
- 2.23 The test provides for the tracing of beneficial ownership through interposed entities to the persons (not companies) having that ownership. There are various rules to overcome arrangements that seek to defeat the concept of beneficial ownership.
- 2.24 For public companies the test is satisfied if it is considered reasonable to assume the test is satisfied.
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### Current year losses

- 2.25 A company is required to calculate its taxable under the current year loss provisions if, during an income year, it:
- experiences a change in majority ownership or voting control;
  - does not maintain the same business; and
  - incurs a loss in a period whether before or after the disqualifying change of ownership or control.
- 2.26 Ownership is measured in the same way as for prior year losses.
- 2.27 The same business test requires a company to carry on the same business throughout the rest of the income year as it carried on immediately before the disqualifying change of ownership or control.
- 2.28 If the current year loss provisions apply, the income year is divided into periods marked by a disqualifying change of ownership or control (except where the same business test is maintained after the change).
- 2.29 The company will have a taxable income and a tax loss for the income year.

- 2.30 The taxable income for the income year is the sum of the taxable incomes for each period. Broadly, the taxable income or tax loss for a period is calculated as if the period was an income year. A tax loss for a period cannot be offset against the taxable incomes of other periods. Rather, the tax losses are aggregated and become the tax loss for the income year and carried forward as a prior year loss.
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## Explanation of the amendments

### Prior year losses

#### Modifications to apply to listed public companies and their subsidiaries

- 2.31 The modifications will apply to:
- a company that is a listed public company (**LPC**) at all times during the loss year, the income year and any intervening period [*subclause 166-5(1) and Amendment (T29)*]; and
  - a company that is a wholly owned company (a **100% subsidiary**) of a LPC (being a LPC for that period) provided it is wholly owned for the same period [*subclauses 166-10(1) to 166-10(3)*].

#### What is a listed public company?

- 2.32 A company is an LPC if its shares are quoted on an approved stock exchange (as defined in section 470 of the *Income Tax Assessment Act 1936 (the 1936 Act)*) and the company satisfies what is generally known as the 20/75 rule [*clause 995-1, new definition of 'listed public company', Amendment (T16)*].
- 2.33 An approved stock exchange includes certain stock exchanges in other countries.
- 2.34 The 20/75 rule requires that more than 20 people directly or indirectly have at least 75% of the ownership rights in the company. That is, those people must:
- control at least 75% of the voting power in the company; and
  - have the right to receive at least 75% of both any dividend the company may pay and any capital the company may distribute.

#### What is a 100% subsidiary?

- 2.35 Broadly, a company is a 100% subsidiary of another company (the holding company) if the holding company holds all the shares in that company. The shareholding can be direct or indirect through other companies in which the holding company owns all the shares. A company will not be a 100% subsidiary if a person is in a position to affect the rights of the holding company in relation to its shareholding in that other company. *100% subsidiary* is defined in clause 975-505.

#### What is being modified?

- 2.36 These provisions will modify the application of the continuity of beneficial ownership test in Subdivision 165-A for these companies. The provisions do not modify the test in clause 165-15 for finding out whether a company has experienced a change in the control of the voting power. Continuity of voting control is one of the other preconditions a company must satisfy before it can deduct a prior year loss and this precondition remains unaffected.

### **The modifications to the continuity of beneficial ownership test**

- 2.37 The modifications provide an alternative way for a LPC (and its 100% subsidiaries) to satisfy the continuity of beneficial ownership test which is contained in clause 165-12.
- 2.38 That test will be satisfied if there is the same majority ownership at the beginning of the loss year and at the following points in time during the period (called the *test period*) consisting of the loss year, the income year recoupment and any intervening period:
- the time of any abnormal trading in the shares of the company; and
  - the end of any income years in that period (including the end of the income year of recoupment) [*clause 166-5*].
- 2.39 This is known as maintaining substantial continuity of ownership and is worked out under clause 166-145.
- 2.40 When testing at the time of any abnormal trading what is compared is the ownership as affected by that abnormal trading.
- 2.41 If a company has not maintained substantial continuity of ownership it will fail the continuity of beneficial ownership test in clause 165-12.
- 2.42 The requirement to test for continuity of ownership when there is abnormal trading is based on the fact that such trading is indicative of a significant change of beneficial ownership in the company. Testing at the end of each income year allows for the detection of a disqualifying change of ownership that may have occurred even in the absence of abnormal trading. For example, this may occur where there are changes in indirect beneficial ownership of shares in a company.
- 2.43 For a 100% subsidiary of a LPC, an abnormal trading in the shares of that LPC is taken to be abnormal trading in the 100% subsidiary [*subclause 166-10(4)*].

### **What is abnormal trading?**

- 2.44 There are two ways of determining whether abnormal trading in a company's shares has occurred. The first method is a general factual test where a number of factors must be weighed to determine whether the trading is, on balance, abnormal. Trading in this context means an issue, redemption or transfer of shares in a LPC or other dealing in the LPC's shares [*clause 960-220 and Amendments (T6), (T7) and (T31)*].
- 2.45 All relevant factors (including the four factors specified in the definition of abnormal trading) must be taken into account when determining if a trading is abnormal. The specific factors listed in the definition are:
- the timing of the trading when compared to normal trading for shares in the company;
  - the number of shares traded by comparison to the normal number of shares traded (eg, voluminous trading in shares may indicate the possibility of a significant change in the underlying beneficial ownership of the company);

- any connection between the trading in shares and any other trading (eg, two or more lots of trading may be linked and may indicate a meaningful change in the underlying beneficial ownership of the company); and
- any connection between the trading and a tax loss or other deduction of the company (eg. where shares are bought because the company has prior year losses). [*subclause 960-225(1)*]

2.46 The second method deems abnormal trading to have occurred in four sets of circumstances, as explained below [*subclause 960-225(2)*].

#### **Trading of 5% or more in one transaction**

2.47 There is abnormal trading if 5% or more of the shares in a company are traded in one transaction [*clause 960-230*]. The size of such a transaction is enough to indicate that there may have been a significant change in the underlying ownership of the company.

#### **More than 5% traded over two or more transactions**

2.48 There is abnormal trading if an entity (or an entity and its associates) has acquired and/or redeemed 5% or more of the shares in a company in two or more transactions. However, this is only if the company knows or reasonably suspects that the acquisitions or redemption's have occurred and that they would not have been made if the company did not have a tax loss or other deduction. This rule is similar in nature to the first but looks to the situation where the possibility of a significant change in underlying ownership is disguised in a number of transactions [*subclause 960-235(1)*].

2.49 If an abnormal trading is deemed to have taken place by this rule, the time of the trading is the time of the transaction that pushes the trading over 5% [*subclause 960-235(2)*].

#### **Suspected acquisition or merger**

2.50 Under this rule, there is an abnormal trading in shares if the trading is part of a proposed takeover of the company or a proposed merger with another company. However, the trading will only be abnormal if the company knows or reasonably suspects this to be the case. The abnormal trading will be taken to occur at the time of the trading [*clause 960-240*].

#### **More than 20% change in a 60 day period**

2.51 The final rule is that if more than 20% of a company's shares are traded within a 60 day period there is abnormal trading. As discussed previously, trading in a company's shares can be the issue, redemption or transfer of shares. If there is a turnover of more than 20% of a company's shares because of one of these events or in combination, then there is abnormal trading [*subclause 960-245(1)*].

2.52 The abnormal trading is deemed to occur at the end of the 60 day period [*subclause 960-245(2)*].



### **Effect of modifications**

- 2.53 The modifications effectively eliminate the need to test for beneficial ownership on an ongoing basis for the whole of the loss year and the income year of recoupment. What will be required is testing periodically with a comparison of beneficial ownership as between the start of the loss year and at the end of each income year and the time of any abnormal trading.
- 2.54 If there is not substantial continuity of ownership as between the start of the loss year and any one of the times the company is required to test during the test period, the company fails the continuity of beneficial ownership test [*subclause 165-10(3)*].
- 2.55 Under the modified rules in Division 166, the outcome of a disqualifying change of beneficial ownership in the intervening period between the loss year and the income year is different from that under the standard continuity of beneficial ownership test in Division 165.
- 2.56 Such a disqualifying change will result in the outright failure of the continuity of beneficial ownership test under Division 166.
- 2.57 In contrast, under Division 165 such a disqualifying change of beneficial ownership would cause a company to fail the test only if majority ownership is not maintained as between the loss year and the income year. That is, if the majority owners in the loss year were to reacquire their ownership during the intervening period (ie. before the start of the income year), then potentially the Division 165 test can be satisfied.

### **What is substantial continuity of ownership?**

- 2.58 The modified continuity of beneficial ownership test requires a company to compare ownership as between two points in time. For prior year losses the first point in time is the start of the loss year. The second point in time is either the time of any abnormal trading in the company's shares or the end of any income year occurring in the test period. What is compared are the persons who have the ownership rights at those points in time. The ownership rights are:
- control or ability to control the voting power in the company;
  - rights to receive any dividends the company may pay; and
  - rights to any distribution of capital of the company [*clause 166-145 and Amendments (T21) and (T28)*].
- 2.59 Each of the rights are compared individually. There is substantial continuity of ownership if at the two points in time there are the same persons (for each of the rights) who:
- control the voting power;
  - have more than 50% of the dividend rights; and
  - have more than 50% of the capital rights [*clauses 166-150, 166-155 and 166-160 and Amendments (T17) and (T18)*].
- 2.60 Control of voting power, dividend and capital rights can be direct or indirect and are traced through interposed entities in exactly the same way as for the alternative tests in Subdivision 165-D [*clause 995-1, new definition of 'indirectly', Amendment (T14)*].

The objective is to disclose the ultimate beneficial owners. A company cannot be such a beneficial owner and like other entities must be traced through.

- 2.61 New Subdivisions 166-F and 166-G will provide relief in certain circumstances from the requirement to identify the ultimate beneficial owners. These Subdivisions are discussed below.
- 2.62 The rules affecting the operation of the alternative test in Division 165 (generally designed to overcome arrangements affecting beneficial ownership) also apply. Those rules have been modified to the extent they assume comparison of periods of time as opposed to points in time as occurs in the modified continuity of beneficial ownership test in new Division 166 [*clause 166-165*].

### **The same business test**

- 2.63 A company that fails the continuity of beneficial ownership test can then apply the same business test. The same business test for the purposes of Division 166 is the same one that applies for the purposes of Division 165 and is found at Subdivision 165-E. The test is applied in the same way in that a company must satisfy the test in respect of the income year of recoupment. The company compares the business carried on in that year with the business carried on immediately before a particular point in time [*subclause 166-5(4) and Amendment (T25)*].
- 2.64 The point in time is the first time there is no substantial continuity of ownership. This can be either the first abnormal trading or income year end in the test period where the company has not maintained majority ownership [*subclause 166-5(5) and Amendment (T30)*].

### **A company can chose that modifications are not to apply**

- 2.65 A company can choose for the modifications not to apply in respect of a particular year of income. That is, a company can choose to apply the standard continuity of beneficial ownership test in Subdivision 165-A [*subclause 166-15(1)*].
- 2.66 The company is not required to formally notify the Commissioner of that choice.
- 2.67 There may be circumstances where the application of the tracing concessions in Subdivisions 166-F and 166-G results in a company not satisfying the requirements of the continuity of beneficial ownership test but would otherwise satisfy the equivalent test in the normal provisions.
- 2.68 The company must make the choice on or before the day it lodges its return for the income year or such later date that the Commissioner allows [*subclause 166-15(2)*].

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## **Current year losses**

- 2.69 As for prior year losses, the modifications will apply to LPCs and their 100% subsidiaries [*subclause 166-20(1) and clause 166-30*]. These companies will be required to meet the relevant definitions for the income year. The income year is the test

period for the purposes of the current year loss provisions in new Subdivision 166-B [*subclause 166-20(1) & Amendment (T29)*].

### **What are the modifications?**

- 2.70 A company will be taken to have satisfied the continuity of beneficial ownership test of the current year loss provisions in two cases. Satisfying the test is one of the preconditions for a company not being required to calculate its taxable income under the current year loss provisions in Subdivision 165-B.
- 2.71 The first case is where there is no abnormal trading in a company's shares during an income year [*subclause 166-20(2)*].
- 2.72 The second case is where there is abnormal trading but a company has maintained majority ownership as between the start of the income year and immediately after the time of the abnormal trading (there is 'substantial continuity of ownership') [*subclause 166-20(3)*].
- 2.73 Conversely, if there is abnormal trading and not substantial continuity of ownership then a company is taken to have failed the continuity of beneficial ownership test [*subclause 166-20(4)*].
- 2.74 Each time there is abnormal trading a company must test for substantial continuity of ownership. As with prior year losses, for a 100% subsidiary of an LPC an abnormal trading in the shares of that LPC is taken to be abnormal trading in the 100% subsidiary [*subclause 166-30(4)*].
- 2.75 When testing at the time of any abnormal trading what is compared is the ownership as affected by that abnormal trading.
- 2.76 Abnormal trading is comprehensively defined [*Subdivision 960-H*] and its meaning has already been discussed in relation to the prior year loss modifications.
- 2.77 Similarly, the concept of substantial continuity of ownership as between two points in time is also set out [*Subdivision 166-D*] and is discussed in relation to the prior year loss provisions. The operation of the provisions is exactly the same for current year losses as it is for prior year losses.
- 2.78 For the modifications to the current year loss provisions, the only requirement to test for substantial continuity of ownership is when there is abnormal trading in a company's shares. With the current year loss provisions only relevant to the one income year, there is no requirement to test at the end of income years.
- 2.79 However, as with prior year losses another precondition a company must satisfy if the current year loss provisions are not to apply - continuity of voting control - remains unaffected.

### **The same business test**

- 2.80 If there is abnormal trading in the company's shares and no substantial continuity of ownership then the company can apply the same business test. A company compares the business carried on for the rest of the income year following that

abnormal trading with the business carried on immediately before the abnormal trading [*subclauses 166-20(5) and (6) and Amendments (T25 and (T30))*].

2.81 The same business test is the same test used in Subdivision 165-E.

**When a company is required to work out its taxable income and tax loss in a special way**

2.82 A company that does not maintain majority ownership throughout the income year and does not satisfy the same business test is required to calculate its taxable income (and tax loss) for the income year in a special way.

2.83 The company will calculate these amounts under clauses 165-45 to 165-90. These provisions operate for the standard continuity of beneficial ownership test. Some minor modifications are made to take into account the differences in the operation of the modified continuity of beneficial ownership test.

2.84 The first step in the calculation is to divide the income year into periods. Under the modified rules the income year is divided up as follows:

- start at the beginning of the income year;
- each time there is:
  - abnormal trading and no substantial continuity of ownership as between the start of a period and the time of the abnormal trading; or
  - a change in voting control;

a period ends and a new one begins [*clause 166-25*].

2.85 Under subclause 165-45(4) what would otherwise be two or more successive periods can be treated as one period if a company satisfies the same business test for those periods when the periods are combined. Broadly, the company must carry on the same business during the combined periods that it did immediately before the end of the first of those periods.

2.86 Once the income year is divided into periods the next step is to calculate the taxable income and tax loss for the income year under subdivision 165-B starting at clause 165-50.

**A company can chose that modifications are not to apply**

2.87 As with prior year losses, a company can choose that the modifications are not to apply in respect of a particular year of income. That is, a company chooses to decide whether it has to calculate its income in a special way under the normal rules in Subdivision 165-B [*subclause 166-35(1)*].

2.88 The company is not required to formally notify the Commissioner of that choice.

2.89 The company must make the choice on or before the day it lodges its return for the income year or such later date that the Commissioner allows [*subclause 166-35(2)*].

## Tracing concession - less than 1% shareholdings

### Overview

- 2.90 Under the modified continuity of beneficial ownership test, a company is required to show substantial continuity of ownership as between two points in time. Ownership is measured at a particular point in time by reference to the direct or indirect control of voting power, and direct or indirect rights to both dividends and capital of the company. In establishing this ownership a company is required to trace through interposed entities to the ultimate persons (not companies) who have that voting control, dividend or capital right.
- 2.91 The ownership test is applied for both the prior and current year loss provisions.
- 2.92 The concession in new Subdivision 165-F in given circumstances will provide relief from the requirement to trace through to those ultimate beneficial owners. New Subdivision 165-G (details of which are below) will also provide a similar relief.
- 2.93 Broadly, a company will not be required to trace beyond a registered holder of shares whose shareholding is less than 1%. The total of such holdings will be taken to be held by a notional single entity. There will be some exclusions from this notional holding.
- 2.94 In addition, when a company is required to trace through an interposed entity that is itself a listed public company then a similar rule will apply to that interposed listed public company.

### LPC must have 'shareholdings of less than 1%'

- 2.95 For the first modification of the ownership tests, a company must have less than 1% shareholdings [*clause 166-220*].
- 2.96 As discussed previously, Division 166 will apply not only to LPCs but also to their 100% subsidiaries. It is unlikely that the first modification to the ownership test will be relevant to 100% subsidiaries. In almost all cases the holding company will directly hold 100% of the shares in the subsidiary or through a small number of other 100% subsidiaries.
- 2.97 Conversely, the second modification to the ownership test dealing with interposed LPCs will be the critical one for the 100% subsidiaries because this is the case for their entire share ownership.
- 2.98 In Subdivision 166-F, the LPC or 100% subsidiary (as the case may be) to which the continuity of beneficial ownership test is being applied is identified as the **head company** [*Amendment (T13)*]. This label ensures that an LPC as the head company is clearly distinguished from the interposed LPC when that modification is applied.

### **Notional shareholder of head company taken to own all shareholdings of less than 1%**

- 2.99 For the purposes of applying the ownership tests at a particular time, a single notional entity (the *notional shareholder*) [Amendment (T20)] is taken to be the ultimate beneficial owner of all shares of a head company in aggregate that:
- carry voting power of less than 1% (*voting shareholding of less than 1%*);
  - have rights to less than 1% of dividends payable (*dividend shareholding of less than 1%*); and
  - have rights to less than 1% of any distributions of capital (*capital shareholding of less than 1%*).
- 2.100 The notional shareholder is taken to control the voting power in the head company that is attached to those shares or has the right to the dividends or capital attached to those shares [subclause 166-230(1)].
- 2.101 The entity is a person (other than a company) for the purposes of the test.
- 2.102 To avoid doubt, persons who actually control the voting power or have the rights to dividends or capital in the head company when interposed entities are traced through are taken not to have the control or rights [subclause 166- 230(3)].
- 2.103 The two main outcomes of the notional shareholder rule are:
- a company will not be required to trace through interposed entities to the ultimate beneficial owner if the registered holder of the LPCs holds shares that have less than 1% of the ownership rights; and
  - transactions between registered holders (both continuing and new) that do not result in a holding of 1% or more are effectively ignored.

The notional shareholder is treated as a continuing shareholder.

### **Shareholdings of less than 1% defined**

- 2.104 Consistent with the continuity of beneficial ownership test, each of the ownership rights, namely control of voting power, rights to dividends and rights to capital are treated separately when defining shareholdings of less than 1%.
- 2.105 For a company that has only one class of shares there will be no real distinction. The same shares will be included in the less than 1% shareholding for each of the ownership rights.
- 2.106 A shareholding of less than 1% is one where all the shares held by a registered holder carry between them less than 1% of the particular ownership right. However, any shares that are part of a substantial shareholding are to be excluded from a shareholding of less than 1% [clause 166-240 and Amendments (T9), (T12) and (T32)].
- 2.107 The substantial shareholder exclusion will ensure that a beneficial owner of shares with a large holding in an LPC cannot disguise that holding or its subsequent disposal. Disguising a disposal may be motivated by a desire to ensure a

disqualifying change of beneficial ownership that might have actually occurred is not detected so that a deduction for a loss is not disallowed.

- 2.108 For example, a large holding could be disguised by breaking it up into small parcels of less than 1% using interposed nominees or other entities to own the holding indirectly. If the interposed entities were disposed of rather than the shares in the LPC, the notional shareholder rule would allow the change to go undetected.
- 2.109 The Corporations Law requires disclosure of substantial shareholdings to similarly prevent the disguising of substantial beneficial ownership as part of its acquisitions and takeovers code. Those rules will be used to define *substantial shareholding*.
- 2.110 The definition is applied at the time the ownership test is being applied.

### **Shares part of a substantial shareholding**

- 2.111 The Corporations Law contains rules that require persons beneficially owning a substantial shareholding in a company to disclose that matter to the company. In the common situation where shares are held by nominees or other registered holders without any beneficial interest in the shares, these rules ensure an LPC has knowledge of its beneficial owners.
- 2.112 A person has a substantial shareholding when he or she is entitled to not less than 5% of the voting shares in the company. Entitlement is a fundamental concept of the Corporations Law. Broadly, a person is entitled to shares of a company if he or she has a relevant interest in the shares or associates of the person have a relevant interest in the shares. *Relevant interest* in shares broadly equates to beneficial ownership of shares as set out in the income tax law [*Amendment (T24)*].
- 2.113 A person who reaches the 5% threshold is required to give notice within two days to the company of that substantial shareholding under section 709 of the Corporations Law. Any variation, up or down, of 1% or more must also be notified (section 710) as must a change in entitlement that causes a person to stop being a substantial shareholder (section 711).
- 2.114 The notices are required to disclose the person with the substantial shareholding, the associates and the particulars of the relevant shares (including the registered holder).
- 2.115 For the purposes of the notional shareholder rule, shares become part of a substantial shareholding when:
- an initial substantial shareholder notice identifies the shares as part of a substantial shareholding; or
  - a subsequent notice identifies the shares as part of an increased substantial whichever happens first [*subclause 160-245(1) and Amendment (T22)*].
- 2.116 Conversely, shares stop being part of a substantial shareholding when:
- a subsequent notice discloses the shares as no longer being part of a substantial shareholding because the shareholding has decreased; or

- a notice discloses that a person has ceased to be a substantial shareholder and the shares were part of that former substantial shareholding;

whichever happens first [subclause 160-245(2) and Amendment (T22)].

### **Consequence of notional shareholder**

- 2.117 The notional shareholder is taken to be the beneficial owner of shares carrying the respective ownership rights at each time the beneficial ownership test is applied. The notional shareholder will be a continuing shareholder who can be taken into account when a company is required to show substantial continuity of ownership.
- 2.118 For example, XYZ Ltd has only one class of share. At the beginning of the loss year, because of the various shareholdings of less than 1%, XYZ Ltd's notional shareholder is taken to beneficially own 46% of the company's shares under subsection 166-230(1). Also, beneficial owner B holds 20% of the company's shares. During the income year there is abnormal trading in XYZ Ltd's shares. Immediately after the abnormal trading the notional shareholder is taken to beneficially own 36% while B still owns 20%. There is substantial continuity of ownership for the purposes of section 166-145 because majority ownership, between B and the notional shareholder (66% then 56%), has been maintained.

### **Notional shareholder taken to own minimum shareholding**

- 2.119 A notional shareholder's holding could increase from the start of the test period to another time of testing for ownership. Such an increase is indicative of a change in beneficial ownership of shares. This is because the increase will have most likely resulted from a disposal by a large beneficial owner of shares outside of the notional shareholder pool to a number of new shareholders each holding less than 1%.
- 2.120 Consequently, for each of the ownership rights the notional shareholder will be taken to have rights no greater than those rights it had at the start of the test period [clause 166-235].

### **Notional shareholder rule not to apply if ownership rights split**

- 2.121 The notional shareholder rule will not apply to the head company if at the ownership test time all the voting shares in the company do not have the right to receive 75% of any dividends the company may pay or capital it may distribute [clause 160-250].
- 2.122 The substantial shareholder exclusion relies on the rules in the Corporations Law. Those rules identify substantial shareholdings based on voting shares. There may be circumstances where a company's share capital structure separates the voting rights from the other ownership rights, namely, dividend and capital. In these circumstances the notional shareholder rule could operate to disguise large indirect holdings of dividend and capital rights and changes in beneficial ownership of those rights. The substantial shareholder exclusion would not apply.
- 2.123 An LPC that only has one class of share and no variation of rights will not need to consider this provision.



**Notional shareholder rule not to apply if company would otherwise fail the continuity of beneficial ownership test**

- 2.124 The notional shareholder rule as it applies to both a head company and an interposed LPC will not apply if the Commissioner considers it reasonable to assume the head company would not satisfy the continuity of beneficial ownership test for current and prior year losses [*clause 166-255*].
- 2.125 As discussed previously, changes of beneficial ownership of holdings of less than 1% are effectively ignored. There will be circumstances where such changes if taken into account would mean there would not be substantial continuity of beneficial ownership as between two points in time.
- 2.126 Matters the Commissioner will take into account include:
- the size of the notional shareholder holdings;
  - the period between the two points in time being compared; and
  - changes of beneficial ownership outside the notional shareholder holding.

**Notional shareholder of interposed company taken to own all shareholdings of less than 1%**

- 2.127 Where an LPC is interposed between the head company and the ultimate beneficial owner of shares in the head company and there are less than 1% shareholdings in the interposed LPC the notional shareholder rule will apply to that interposed LPC (*interposed company*) [*clause 166-225 and Amendment (T15)*].
- 2.128 The interposed company rule will operate for the purposes of applying the ownership tests to the head company. The interposed company must be interposed between the head company and at least one person (not being a company) for each of the ownership rights held indirectly, namely:
- control of voting power;
  - right to receive any dividends payable; and
  - right to any distributions of capital.
- 2.129 The ownership tests are applied to the head company on the basis that the notional shareholder rules apply to the interposed company. That is, a single notional shareholder is taken to be the ultimate beneficial owner of all shares in the interposed company in aggregate that:
- carry voting power of less than 1% (*voting shareholding of less than 1%*);
  - have rights to less than 1% of dividends payable (*dividend shareholding of less than 1%*); and
  - have rights to less than 1% of any distributions of capital (*capital shareholding of less than 1%*).
- 2.130 The notional shareholder is taken to control the voting in the interposed company head company that is attached to those shares or has the right to the dividends or capital attached to those shares [*subclause 166-230(2)*].

- 2.131 For example, the head company XYZ Ltd has a shareholder, ABC Ltd, an LPC. Both companies have one class of share. ABC Ltd holds 60% of XYZ Ltd. At a test time for XYZ Ltd, because of its less than 1% shareholdings ABC Ltd, as an interposed company, has a notional shareholder with 40% of the ownership rights. For the purposes of XYZ Ltd applying the ownership tests, ABC Ltd's notional shareholder would be taken to beneficially own shares with 24% (40% of 60%) of the ownership rights in XYZ Ltd.
- 2.132 In circumstances where the interposed company holds shares other than in its own right, such as nominee or trustee, the notional shareholder rule would have no effect.
- 2.133 The interposed company notional shareholder is a separate entity from the head company notional shareholder.
- 2.134 The notional shareholder rules for the interposed company apply in the same way as for the head company subject to one exception. Thus:
- the interposed company is taken to be a person other than a company;
  - the ultimate beneficial owners are taken not to have the particular rights taken to be held by the notional shareholder;
  - shareholdings of less than 1% for each ownership rights are defined in the same way including the substantial shareholder exclusions;
  - the notional shareholder will be taken to have ownership rights no greater than those rights it had at the start of the test period; and
  - the rule will not apply if the Commissioner considers it reasonable to assume the head company would not satisfy the continuity of beneficial ownership test for current and prior year losses.
- 2.135 The exception is the non application of the notional shareholder rule unless the voting shares of a company have the rights to more than 75% of any dividends payable and distribution of capital. This provision only applies in the case of the head company notional shareholder.

## **Tracing concession - treatment of interposed superannuation funds, approved deposit funds and special companies**

### **Overview**

- 2.136 When applying the ownership tests, a company will not have to trace through complying superannuation funds, complying approved deposit funds and certain types of companies that are interposed between it and the persons who are the beneficial owners of the company having the voting control, rights to dividends or capital in the company.

### **Interposed entities: complying superannuation fund**

- 2.137 A complying superannuation fund means a complying superannuation fund within the meaning of section 45 of the Superannuation Industry (Supervision) Act 1993 [clause 995-1, new definitions of superannuation fund and complying superannuation fund and Amendments (T11) and (T28)].

### **Interposed entities: complying approved deposit fund**

- 2.138 A complying approved deposit fund means a complying approved deposit fund within the meaning of section 47 of the Superannuation Industry (Supervision) Act 1993 [*clause 995-1, new definitions of approved deposit fund and complying approved deposit fund and Amendments (T8) and (T11)*].

### **Interposed entities: special company**

- 2.139 A broad characteristic of special companies is the difficulties associated with quantifying the ownership rights that flow from another company through the special company to its members.
- 2.140 The definition of special company lists four specific types of company and also provides for other types company to be included in the definition by way of regulation. The four types of special company are:
- a mutual affiliate company (as defined by section 121AC of the 1936 Act);
  - a mutual insurance company (as defined by section 121AB of the 1936 Act);
  - an Australian trade union; and
  - a sporting club (established for the encouragement of a sport or a game and not carried on for the profit of its members) [*Clause 995-1, new definition of special company, and Amendments (T10), (T19), (T23), (T26) and (T27)*].
- 2.141 For the concession to apply, the fund or special company must maintain that status at all times during the income year of the company in which the ownership test is being applied [*paragraphs 166-265(1)(c) and 166-270(1)(c)*].
- 2.142 Also the fund or special company must be interposed between the LPC and at least one person (not being a company) who holds indirectly each of the ownership rights, namely:
- control of voting power [*subclause 166-265(1)*];
  - the right to receive any dividends payable; and
  - the right to any distributions of capital [*subclause 166-270(1)*].

### **Where fund or special company has more than 50 members**

- 2.143 If the interposed fund or special company has more than 50 members then the ownership test is applied as if that fund or special company had:
- control of the voting power [*subclause 166-265(2)*]; or
  - the right to dividends or distributions of capital [*subclause 166-270(2)*] that the persons would have otherwise had.
- 2.144 The interposed company is treated as a person other than a company for this purpose.
- 2.145 To avoid doubt the persons who have the actual control or rights are taken not to have that control or right for the purposes of this concession. The exception is where the rule on less than 50 members bestows upon those persons such control or rights [*subclauses 166-265(4) and 166-270(4)*].

**Where fund or special company has 50 members or less**

- 2.146 In the case where the fund or special company has 50 or less members each of the members will be taken to have an equal fixed proportion of:
- the voting power [*subclause 166-265(3)*]; or
  - the right to dividends or distributions of capital [*subclause 166-270(3)*].
- 2.147 The notional shareholder rule takes precedence over the rule on interposed funds and special companies. This is relevant where a fund or special company was a registered holder of shares in an LPC and the shareholding was less than 1%. In that situation the holding would be included in the notional shareholder pool rather than dealt with under this Subdivision.

# 3

## **Miscellaneous Amendments**

This chapter gives you amendments of the following Bills:

- Income Tax Assessment Bill 1996
- Income Tax (Transitional Provisions) Bill 1996
- Income Tax (Consequential Amendments) Bill 1996

These amendments correct minor errors in these Bills.

## Amendments of the Income Tax Assessment Bill 1996

### Amendments (M1) to (M3)

**Provision being amended:** Clause 6-1, which is a diagram showing the components of assessable and exempt income.

**Amendments will:** Clarify that the diagram is a Guide and not an operative provision.

**Reason for amendments:** To remove doubt about the status of the diagram.

### Amendments (M4) to (M6)

**Provision being amended:** Clause 6-5, which explains in what circumstances income according to ordinary concepts is assessable income.

**Amendments will:** Clarify that ordinary income is generally assessable in the income year you derive it. However, a specific provision may vary when an amount of ordinary income is assessable.

**Reason for amendments:** Recommended by the Joint Committee of Public Accounts to meet concerns that the clause does not make a clear distinction between the assessable income of one year and the next.

### Amendments (M7) to (M10)

**Provision being amended:** Clause 10-5, which lists all the amounts that the law expressly includes in assessable income.

**Amendments will:**

- relocate the listing for *receipts of a co-operative company* (amendments M7 and M8);
- omit, from the listing for **reimbursements**, the reference to *electricity* and substitute *electricity connections* (amendment M9).
- omit, under the heading **termination of employment**, the reference to *leave* and substitute *leave payments* (amendment M10).

**Reasons for amendments:**

- Amendments M7 and M8 - to put the listing in its correct alphabetical order;
- Amendments M9 and M10 - to correct an error in the existing reference.

### Amendments (M11) and (M12)

**Provision being amended:** Clause 11-5, which lists entities that are exempt from tax regardless of the nature of their income.

**Amendments will:**

- omit, from the listing for **employees and employers**, the reference to an employer's income from the CRAFT scheme (amendment M11);
- insert, under a new listing for **superannuation and related business**, a reference to the constitutionally protected funds of those businesses (amendment M12).

**Reasons for amendments:**

- Amendment M11 - the reference is not an example of an exempt entity but an example of income that is exempt only if it is derived by certain entities.

Income of that kind is listed in clause 11-15, which already lists employer's income from the CRAFT scheme;

- Amendment M12 - to correct an unintended omission.

### Amendments (M13) to (M16)

**Provision being amended:** Clause 11-15, which lists income that is exempt only if it is derived by certain entities.

**Amendments will:**

- insert, under the listing for foreign aspects of income taxation, a reference to the income of an OBU's off-shore investment trusts, being income to which subsection 121D(6) applies (amendment M13);
- insert, under the listing for foreign aspects of income taxation (in the reference to Papua New Guinea pension) the qualifying words Papua New Guinea resident (amendment M14);
- omit, under the listing for life assurance, references to income from a policy premium (amendment M15) and income from a reinsurance recovery and refund of the premium (amendment M16).

**Reasons for amendments:**

- Amendment M13 - to correct an unintended omission;
- Amendment M14 - to identify the entity in whose hands the income is exempt;
- Amendments M15 and M16 - there is an administrative arrangement, for the benefit of taxpayers, under which income of this kind is not treated as exempt for the purposes of calculating a tax loss, although it is generally treated as exempt for other purposes.

### Amendments (M17) to (M21)

**Provision being amended:** Clause 12-5, which lists all the rules about specific kinds of deductions.

**Amendments will:**

- reverse, under the listing for **car expenses**, the order of the references to *'12% of original value' method* and *substantiation of car expenses* (amendment M17);
- change the listing **electricity** to **electricity connections** (amendment M18);
- reverse, under the listing for **non-resident trust estates**, the order of the references to *modified application of trading stock provisions* and *modified application of depreciation provisions* (amendment M19);
- reverse, under the listing for **primary production**, the order of the references to *income equalisation deposits* and *horticultural plants, establishment costs of* (amendment M20);
- change, under the listing for **primary production**, the reference to *electricity* to *electricity connections* (amendment M21).

**Reasons for amendments:**

- *Amendments M17, M19 and M20* - to put the listings and references in their correct alphabetical order;
- *Amendments M18 and M21* - to ensure consistency of entries across the checklists in Division 10 to 13.

### Amendment (M22)

**Provision being amended:** Clause 26-55, which limits how much can be deducted under certain provisions of the *Income Tax Assessment Act 1936*.

**Amendment will:** Insert a reference to Division 3 of Part XII of the *Income Tax Assessment Act 1936*, to the extent that Division 3 provides for deductions by a leasing company.

**Reason for amendment:** Division 3 was added to the Income Tax Assessment Act in 1995. Drought investment allowance (for leasing companies) is limited - it cannot give rise to a carry forward loss.

### Amendment (M23)

**Provision being amended:** Clause 36-25, which lists the special rules in the law about tax losses and where those rules can be found.

**Amendment will:** Insert a reference to the rules about companies transferring surplus amounts of tax losses.

**Reason for amendment:** To correct an omission.

### Amendment (M24)

**Provision being amended:** Clause 40-10, which is one of the provisions in the guide to the capital allowance deductions.

**Amendment will:** State that in some cases expenditure may be written off immediately, whereas in other cases it must be written off over a period of years, and that the rule varies depending on the nature of the expenditure.

**Reason for amendment:** To remove the suggestion that there is an option to write-off any capital expenditure, regardless of its nature, immediately or over a number of years.

### Amendment (M25) to (M31)

**Provision being amended:** Clause 40-30, which summarises the key features of each capital allowance.

**Amendments will:**

- insert a summary of the **drought investment allowance** (amendment M25).
- clarify that, for expenditure on **electricity connections** to be deductible:
  - the electricity facilities must be used in a business for producing assessable income on land (amendment M26);
  - the taxpayer must have an interest in the land (amendment M27);
- correct the reference to where the rules on expenditure on **grapevines** are located (amendment M28);
- insert a summary of the **horticultural plants** deductions (amendment M29);
- clarify that, for expenditure on **telephone lines** to be deductible, the taxpayer must have an interest in land (amendment M30);
- clarify that, for expenditure on access roads used in **timber operations** to be deductible, the taxpayer must be in a milling business (amendment M31).

**Reasons for amendments:**

- *Amendments M25 and M29* - to correct an omission.



- *Amendments M26, M27, M28, M30 and M31* - to correct the summaries.

#### **Amendments (M32) and (M33)**

***Provision being amended:*** Clause 43-55, which disallows a deduction for capital works if avoidance arrangements are entered into with tax exempt entities.

***Amendments will:***

- expand the class of tax exempt entities to include State and Territory bodies (STBs) whose income is exempt (amendment M32); and
- insert a transitional provision to ensure that the application of clause 43-55 to STBs does not extend to arrangements entered into before 1 July 1994 (amendment M33).

***Reasons for amendments:***

- Amendment M32 - Taxation Laws Amendment Act (No.2) 1995 added these bodies to the category of tax exempt entities.
- *Amendment M33* - the addition of STBs to the category of tax exempt entities applied from 1 July 1994.

#### **Amendment (M34)**

***Provision being amended:*** Clause 43-85, which establishes the deduction base for capital works constructed by a speculative builder.

***Amendment will:*** Substitute speculative builder for the term spec builder.

***Reason for amendment:*** The abbreviated term is too imprecise.

#### **Amendments (M35) and (M36)**

***Provision being amended:*** Clause 165-205, is one of the company loss provisions. It deals with the effect of the death of a beneficial owner of shares on the test for finding out if a company has maintained the same owners.

***Amendments will:*** Ensure that, if shares of a person who dies are held by the trustee of their estate or a beneficiary of that estate, the shares are taken to be owned by the person who died.

***Reason for amendments:*** This is the rule under the existing law.

#### **Amendment (M37)**

***Provision being amended:*** Clause 330-95, which identifies mining and quarrying expenditure which cannot be deducted under the mining and quarrying provisions.

***Amendment will:*** Omit the reference to depreciation.

***Reason for amendment:*** Recommended by the Joint Committee of Public Accounts.

#### **Amendments (M38) and (M39)**

***Provision being amended:*** Clause 330-495, which tells you how to calculate the written down value of property that is disposed of, lost or destroyed or which you stop using for the purposes of the Division.

***Amendments will:***

- omit the reference to the nature of the expenditure (amendment M38); and
- omit *Note 1* to the clause (amendment M39).

Reasons for amendments:

- *Amendment M38* - Recommended by the Joint Committee of Public Accounts.
- *Amendment M39* - Unnecessary because of amendment M38.

#### **Amendment (M40)**

***Provision being amended:*** Clause 900-95, which explains the meaning of *business travel expense* in the provisions dealing with the substantiation of such expenses.

***Amendment will:*** Omit *\*salary and wages* and substitutes *salary or wages*.

***Reason for amendment:*** Adopts an existing term that is not defined.

#### **Amendment (M41)**

***Provision being amended:*** Clause 995-1, which is the Dictionary of definitions.

***Amendment will:*** Insert, in the definition of *leasing company*, a reference to section 680 of the *Income Tax Assessment Act 1936*. Section 680 defines leasing company for the purpose of the drought investment allowance provisions in the 1936 Act.

***Reason for amendment:*** *Leasing company* has a separate meaning in the drought investment allowance provisions.

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## **Amendments of the Income Tax (Transitional Provisions) Bill 1996**

#### **Amendment (M1)**

***Provision being amended:*** Clause 330-65, which applies to balancing adjustments for expenditure under the mining and quarrying provisions of Division 330 of the Income Tax Assessment Bill 1996. The clause deals with roll over relief available under the *Income Tax Assessment Act 1936*.

***Amendment will:*** Omit references to the nature of the expenditure.

***Reason for amendment:*** To complement amendment (M38) of the Income Tax Assessment Bill 1996.

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## Amendments of the Income Tax (Consequential Amendments) Bill 1996

### Amendments (M1) and (M2)

**Provision being amended:** Schedule 1 to the Bill, which contains consequential amendments of the *Income Tax Assessment Act 1936*.

**Amendments will:** Insert new item 1A, which will amend section 6 of the 1936 Act. Section 6 contains most of the definitions which apply generally in the 1936 Act. The amendment will clarify that definitions in the 1936 Act do *not* apply to the proposed *Income Tax Assessment Act 1996*, except as provided in the 1996 Act.

**Reason for amendments:** To remove any doubt about how definitions in the 1936 Act affect the interpretation of the 1996 Act.

### Amendment (M3)

**Provision being amended:** Schedule 1 to the Bill, which contains consequential amendments of the *Income Tax Assessment Act 1936*.

**Amendment will:** Insert new item 5A, which will amend subsection 18(1) of the 1936 Act. Subsection 18(1) allows a taxpayer to adopt a substituted accounting period (SAP). The amendment will clarify that a SAP adopted under the 1936 Act will also apply for the purposes of the 1996 Act.

**Reason for amendment:** Recommended by the Joint Committee of Public Accounts.

### Amendment (M4)

**Provision being amended:** Item 66 of Schedule 1 to the Bill, which in turn contains consequential amendments of section 79C of the *Income Tax Assessment Act 1936*. Section 79C identifies allowable deductions which cannot contribute to a loss.

**Amendment will:** Add, at the end of section 79C, an additional dot point to the note which explains what allowable deductions cannot contribute to a loss under clause 26-55 of the Income Tax Assessment Bill. Clause 26-55 replaces section 79C. The additional point refers to the drought investment allowance deduction of a leasing company.

**Reason for amendment:** The drought investment allowance was enacted in 1995.

### Amendment (M5)

**Provision being amended:** Schedule 1 to the Bill, which contains consequential amendments of the *Income Tax Assessment Act 1936*.

**Amendment will:** Insert new item 78A, which will amend subsection 82AD(4) of the 1936 Act. Subsection (4) provides that section 82AC shall be disregarded in determining whether a development allowance deduction is allowable to a leasing company. This amendment will replace the reference to section 82AC with a reference to section 26-55.

**Reason for amendment:** Section 26-55 replaces section 82AC in the 1996 Act.

#### **Amendment (M6)**

**Provision being amended:** Item 253 of Schedule 1 to the Bill, which in turn will amend section 266 of the *Income Tax Assessment Act 1936*. Section 266 allows the Governor-General to make regulations for the purposes of that Act.

**Amendment will:** Ensure that each reference in section 266 to *this Act* (ie. the 1936 Act) is followed by a reference to the *Income Tax Assessment Act 1996*. The overall effect of the amendment is to extend the Income Tax Regulations made under the 1936 Act (and the regulation making power) so that they will apply also for the purposes of the new law.

**Reason for amendment:** The existing amendment of section 266 fails to add a reference to the 1996 Act after all of the references to the 1936 Act.

#### **Amendments (M7) and (M8)**

**Provision being amended:** Schedule 1 to the Bill, which contains consequential amendments of the *Income Tax Assessment Act 1936*.

**Amendments will:**

- restrict the application of section 640 of the 1936 Act to the 1996-97, and prior, income years; and
- replace references in the 1936 Act to section 640 with references to its replacement under the 1996 Act (section 26-55).

**Reason for amendments:** To correct an omission.

#### **Amendment (M9)**

**Provision being amended:** Schedule 3 to the Bill, which contains consequential amendments of Commonwealth Acts.

**Amendment will:** Insert new items 57A, 57B and 57C, which will amend section 22 of the *Development Allowance Authority Act 1992*. Section 22 refers to section 82AC, which has been rewritten as clause 26-55 of the 1996 Bill. This amendment will add a reference to section 26-55.

**Reason for amendment:** To correct an omission.

# 4

## **Explanatory Memorandum Erratum**

This Chapter lists the corrections to errors made in the original Explanatory Memorandum for this package of Bills

## Explanatory Memorandum Erratum

The following items correct errors in the Explanatory Memorandum for the:

*Income Tax Assessment Bill 1996*

*Income Tax (Consequential Amendments) Bill 1996*

*Income Tax (Transitional Provisions) Bill 1996:*

1. page 10, omit

1996-97	1997-8	1998-99	1999-00	2000-01
\$10m gain	\$5m gain	nil	\$4m cost	\$7m cost

, substitute

1997-98	1998-99	1999-00	2000-01	2001-02
\$10m gain	\$5m gain	nil	\$4m cost	\$7m cost

2. page 19, last paragraph, line 3: omit "[*clause 995-(2)*]", substitute "[*clause 995-1(2)*]".
3. page 59, line 4: omit "Losses and foreign income [*Schedule 1, item 70 of the Income Tax (Consequential Amendments) Bill 1996*]", substitute "Losses and foreign income [*Schedule 1, item 67 of the Income Tax (Consequential Amendments) Bill 1996*]".
4. page 82: omit "Inter-corporate dividend rebate [*Schedule 1, item 16 of the Income Tax (Consequential Amendments) Bill 1996*]", substitute "Inter-corporate dividend rebate [*Schedule 1, item 22 of the Income Tax (Consequential Amendments) Bill 1996*]".
5. page 83: omit "Dividend stripping [*Schedule 1, items 17 to 21 of the Income Tax (Consequential Amendments) Bill 1996*]", substitute "Dividend stripping [*Schedule 1, items 23 to 28 of the Income Tax (Consequential Amendments) Bill 1996*]".
6. page 83: omit "Section 63CA [*Schedule 1, items 50 and 76 of the Income Tax (Consequential Amendments) Bill 1996*]", substitute "Section 63CA [*Schedule 1, items 47 and 74 of the Income Tax (Consequential Amendments) Bill 1996*]".
7. page 131: omit "Consequential amendments - record keeping [*clause 264*]", substitute "Record keeping [*Schedule 1, item 252 of the Income Tax (Consequential Amendments) Bill 1996*]".
8. page 135, table, row 1: omit "*Division 2A -*".
9. page 135, table, row 2, column 1: omit "*Section of existing Assessment Act*", substitute "*Section of Schedule 2A of existing Assessment Act*".
10. page 135, table, row 4: omit "*Division 2B -*".
11. page 135, table, row 5, column 1: omit "*Section of existing Assessment Act*", substitute "*Section of Schedule 2B of the existing Assessment Act*".
12. page 135, table, row 6, column 2, line 1: omit "900-145 (*What is a travel record?*)", substitute "900-140 (*What this Subdivision is about*)".
13. page 135, table, row 6, column 2, line 2: omit "900-146", substitute "900-145".

14. page 135, table, row 6, column 2, line 4: omit "*deducting*", substitute "*Deducting*".
15. page 136, table, row 1, column 1: omit "*Definition, and location in existing Act*", substitute "*Definition, and location in Schedule 2A in existing Act*".
16. page 136, table, row 1, column 1, line 4: omit "**Car expense**", substitute "*Car expense*".
17. page 136, table, row 2, column 2, line 2: omit "Clause 28-164", substitute "Clause 28-165".
18. page 154, paragraph 6, lines 3 to 5: omit "*[Schedule 2, Part 1, items 2 and 3 - new sections 14ZAAM and 14ZAXA of the Taxation Administration Act 1953]*", substitute "*[Schedule 2, Part 1, items 3 and 4 - new sections 14ZAAM and 14ZAXA of the Taxation Administration Act 1953]*".
19. page 154, last paragraph, dot point 1, line 1 and dot point 2, line 3: omit "*[Schedule 2, Part 2, items 1 and 2]*", substitute "*[Schedule 2, Part 2, items 5 and 6]*".
20. page 155: omit "Losses: Inter-corporate dividend rebate *[Schedule 1, item 16]*", substitute "Losses: Inter-corporate dividend rebate *[Schedule 1, item 22]*".
21. page 155: omit "Losses: Dividend stripping *[Schedule 1, items 17 to 21]*", substitute "Losses: Dividend stripping *[Schedule 1, items 23 to 28]*".
22. page 155: omit "Losses: Section 63CA *[Schedule 1, items 50 and 76]*", substitute "Losses: Section 63CA *[Schedule 1, items 47 and 74]*".
23. page 155: omit "Losses and foreign income *[Schedule 1, item 70]*", substitute "Losses and foreign income *[Schedule 1, item 67]*".
24. page 155: omit "Record keeping *[Schedule 1, Item 264]*", substitute "Capital Works: Record keeping *[Schedule 1, item 252]*".
25. page 173, new law column at old law reference 124ZA(15): omit "43-30", substitute "43-15".
26. page 174, new law column at old law reference 124ZF(10): omit "43-30", substitute "43-15".