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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Tax Laws Amendment (Transfer of
Provisions) Bill 2010**

No. , 2010

(Treasury)

**A Bill for an Act to amend the law relating to
taxation, and for related purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **taxation, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Tax Laws Amendment (Transfer of*
6 *Provisions) Act 2010*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	1 July 2010.	1 July 2010
3. Schedule 2	Immediately after the commencement of the provision(s) covered by table item 4.	1 July 2010
4. Schedules 3 to 5	1 July 2010.	1 July 2010

1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not be
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

1

2

Schedule 1—Collection and recovery of tax

3

Part 1—Main amendments

4

Income Tax Assessment Act 1936

5

1 After section 169

6

Insert:

7

169AA Consolidated assessments

8

(1) This section applies if 2 or more persons (the *recipients*) are in receipt of income, or of profits or gains of a capital nature, for or on behalf of:

9

10

11

(a) a non-resident; or

12

(b) a person absent from Australia.

13

(2) The Commissioner may, if it appears to him or her to be expedient to do so:

14

15

(a) consolidate all or any of the assessments of the income, profits or gains; and

16

17

(b) declare one of the recipients to be the agent of the non-resident or absent person in respect of the consolidated assessment; and

18

19

20

(c) require the agent to pay income tax on the amount assessed.

21

(3) If the Commissioner does so, the agent is liable to pay the tax.

22

2 Part VI

23

Repeal the Part.

24

Income Tax Assessment Act 1997

25

3 After Division 4

26

Insert:

1 **Division 5—How to work out when to pay your income tax**

2 **Table of Subdivisions**

3 Guide to Division 5
4 5-A How to work out when to pay your income tax

5 **Guide to Division 5**

6 **5-1 What this Division is about**

7 If your assessed income tax liability exceeds the credits available
8 to you under the PAYG system, this Division explains *when* you
9 must pay the excess to the Commissioner.

10 If your assessment is amended so that you must pay income tax, or
11 pay more income tax than under the previous assessment, this
12 Division explains:

- 13 (a) *when* you must pay the additional tax; and
14 (b) *when* any associated interest charges must be paid.

15 Note: For provisions about the collection and recovery of
16 income tax and other tax-related liabilities, see Part 4-15
17 in Schedule 1 to the *Taxation Administration Act 1953*.

18 **Subdivision 5-A—How to work out when to pay your income**
19 **tax**

20 **Table of sections**

21 5-5 When income tax is payable
22 5-10 When shortfall interest charge is payable
23 5-15 General interest charge payable on unpaid income tax or shortfall interest
24 charge

25 **5-5 When income tax is payable**

26 *Scope*

- 27 (1) This section tells you when income tax you must pay for a
28 ^{*}financial year is due and payable.

1 Note: The Commissioner may defer the time at which the income tax is due
2 and payable: see section 255-10 in Schedule 1 to the *Taxation*
3 *Administration Act 1953*.

4 (2) The income tax is only due and payable if the Commissioner
5 makes an *assessment of your income tax for the year.

6 (3) However, if the Commissioner does make an *assessment of your
7 income tax for the year, the tax may be taken to have been due and
8 payable at a time before your assessment was made.

9 Note: This is to ensure that general interest charge begins to accrue from the
10 same date for all like entities. General interest charge on unpaid
11 income tax is calculated from when the tax is due and payable, not
12 from when the assessment is made: see section 5-15.

13 *Original assessments—self-assessment entities*

14 (4) If you are a *self-assessment entity, the income tax is due and
15 payable on the first day of the sixth month after the end of the
16 income year.

17 Example: If your income year is the same as the financial year, your income tax
18 would be due and payable on 1 December.

19 *Original assessments—other entities*

20 (5) If you are *not* a *self-assessment entity, the income tax is due and
21 payable 21 days after the day (the **return day**) on or before which
22 you are required to lodge your *income tax return with the
23 Commissioner.

24 Note: For rules about income tax returns and when they are due, see Part IV
25 of the *Income Tax Assessment Act 1936*.

26 (6) However, if you lodge your return *on or before* the return day and
27 the Commissioner gives you a notice of *assessment (other than an
28 amended assessment) *after* the return day, the income tax is due
29 and payable 21 days after the Commissioner gives you the notice.

30 *Amended assessments*

31 (7) If the Commissioner amends your *assessment, any extra income
32 tax resulting from the amendment is due and payable 21 days after
33 the day on which the Commissioner gives you notice of the
34 amended assessment.

Schedule 1 Collection and recovery of tax
Part 1 Main amendments

- 1 Note: Shortfall interest charge may be payable, on any amount of extra
2 income tax payable as a result of the amended assessment, for each
3 day in the period that:
4 (a) starts at the time income tax was due and payable on your
5 original assessment; and
6 (b) ends the day before the day on which the Commissioner gives
7 you notice of the amended assessment.

8 **5-10 When shortfall interest charge is payable**

9 An amount of *shortfall interest charge that you are liable to pay is
10 due and payable 21 days after the day on which the Commissioner
11 gives you notice of the charge.

12 Note: Shortfall interest charge is imposed if the Commissioner amends an
13 assessment and the amended assessment results in an increase in some
14 tax payable. For provisions about liability for shortfall interest charge,
15 see Division 280 in Schedule 1 to the *Taxation Administration Act*
16 *1953*.

17 **5-15 General interest charge payable on unpaid income tax or**
18 **shortfall interest charge**

19 If an amount of income tax or *shortfall interest charge that you are
20 liable to pay remains unpaid after the time by which it is due to be
21 paid, you are liable to pay the *general interest charge on the
22 unpaid amount for each day in the period that:

- 23 (a) starts at the beginning of the day on which the amount was
24 due to be paid; and
25 (b) finishes at the end of the last day on which, at the end of the
26 day, any of the following remains unpaid:
27 (i) the income tax or shortfall interest charge;
28 (ii) general interest charge on any of the income tax or
29 shortfall interest charge.

30 Note 1: The general interest charge is worked out under Part IIA of the
31 *Taxation Administration Act 1953*.

32 Note 2: Shortfall interest charge is worked out under Division 280 in
33 Schedule 1 to that Act.

34 **4 Subsection 995-1(1)**

35 Insert:

1 *self-assessment entity* means a full self-assessment taxpayer
2 (within the meaning of subsection 6(1) of the *Income Tax*
3 *Assessment Act 1936*).

4 **5 Subsection 995-1(1)**

5 Insert:

6 *statutory demand* has the same meaning as in the *Corporations Act*
7 *2001*.

8 ***Taxation Administration Act 1953***

9 **6 Before subsection 255-10(1) in Schedule 1**

10 Insert:

11 *Deferrals for particular taxpayers*

12 **7 After subsection 255-10(2) in Schedule 1**

13 Insert:

14 *Deferrals for classes of taxpayers*

15 (2A) The Commissioner, having regard to the circumstances of the case,
16 may, by notice published on the Australian Taxation Office
17 website, defer the time at which amounts of *tax-related liabilities
18 are, or would become, due and payable by a class of taxpayers
19 (whether or not the liabilities have already arisen).

20 (2B) If the Commissioner does so, that time is varied accordingly.

21 Note: General interest charge and any other relevant penalties, if applicable
22 for any unpaid amounts of the liabilities, will begin to accrue from the
23 time as varied. See, for example, paragraph 5-15(a) of the *Income Tax*
24 *Assessment Act 1997*.

25 (2C) A notice published under subsection (2A) is not a legislative
26 instrument.

27 *Deferral does not affect time for giving form*

28 **8 Subsection 255-10(3) in Schedule 1**

29 Omit “subsection (1)”, substitute “this section”.

1 **9 At the end of Division 255 in Schedule 1**

2 Add:

3 **Subdivision 255-D—Security deposits**

4 **Table of sections**

5	255-100	Commissioner may require security deposit
6	255-105	Notice of requirement to give security
7	255-110	Offence

8 **255-100 Commissioner may require security deposit**

- 9 (1) The Commissioner may require you to give security for the due
10 payment of an existing or future *tax-related liability of yours if:
11 (a) the Commissioner has reason to believe that:
12 (i) you are establishing or *carrying on an *enterprise in
13 Australia; and
14 (ii) you intend to carry on that enterprise for a limited time
15 only; or
16 (b) the Commissioner reasonably believes that the requirement is
17 otherwise appropriate, having regard to all relevant
18 circumstances.

19 Note: A requirement to give security under this section is *not* a tax-related
20 liability. As such, the collection and recovery provisions in this Part
21 do not apply to it.

- 22 (2) The Commissioner may require you to give the security:
23 (a) by way of a bond or deposit (including by way of payments
24 in instalments); or
25 (b) by any other means that the Commissioner reasonably
26 believes is appropriate.

- 27 (3) The Commissioner may require you to give security under this
28 section:

- 29 (a) at any time the Commissioner reasonably believes is
30 appropriate; and
31 (b) as often as the Commissioner reasonably believes is
32 appropriate.

33 Example: The Commissioner may require additional security if he or she
34 reasonably believes that the original security requirement
35 underestimated the amount of the likely tax-related liability.

1 **255-105 Notice of requirement to give security**

2 *Commissioner must give notice of requirement to give security*

- 3 (1) If the Commissioner requires you to give security under
4 section 255-100, he or she must give you written notice of the
5 requirement.

6 *Content of notice*

- 7 (2) The notice must:
- 8 (a) state that you are required to give the security to the
9 Commissioner; and
 - 10 (b) explain why the Commissioner requires the security; and
 - 11 (c) set out the amount of the security; and
 - 12 (d) describe the means by which you are required to give the
13 security under subsection 255-100(2); and
 - 14 (e) specify the time by which you are required to give the
15 security; and
 - 16 (f) explain how you may have the Commissioner's decision to
17 require you to give the security reviewed.
- 18 (3) To avoid doubt, a single notice may relate to security for the
19 payment of 2 or more existing or future *tax-related liabilities, but
20 must comply with subsection (2) in relation to each of them.

21 *When notice is given*

- 22 (4) Despite section 29 of the *Acts Interpretation Act 1901*, a notice
23 under subsection (1) is taken to be given at the time the
24 Commissioner leaves or posts it.

25 Note: Section 28A of the *Acts Interpretation Act 1901* may be relevant to
26 giving a notice under subsection (1).

27 *Miscellaneous*

- 28 (5) A failure to comply with this section does not affect the validity of
29 the requirement to give the security under section 255-100.

30 **255-110 Offence**

31 You commit an offence if:

Schedule 1 Collection and recovery of tax
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- 1 (a) the Commissioner requires you to give security under
2 section 255-100; and
3 (b) you fail to give that security as required.
4 Penalty: 100 penalty units.

5 **10 At the end of Part 4-15 in Schedule 1**

6 Add:

7 **Division 268—Estimates and recovery of PAYG**
8 **withholding liabilities**

9 **Table of Subdivisions**

10		Guide to Division 268
11	268-A	Object
12	268-B	Making estimates
13	268-C	Liability to pay estimates
14	268-D	Reducing and revoking estimates
15	268-E	Late payment of estimates
16	268-F	Miscellaneous

17 **Guide to Division 268**

18 **268-1 What this Division is about**

19 This Division enables the Commissioner to make an estimate of
20 amounts not paid as required by Part 2-5 (Pay as you go (PAYG)
21 withholding), and to recover the amount of the estimate.

22 If you are given an estimate, you are liable to pay the amount of
23 the estimate. That liability is distinct from your liability to pay the
24 amounts required by Part 2-5. However, you can ensure that the
25 Commissioner does not require you to pay more than the amounts
26 not paid under that Part.

27 Other Divisions of this Part provide for the recovery of amounts
28 payable under this Division.

1 **Subdivision 268-A—Object**

2 **Table of sections**

3 268-5 Object of Division

4 **268-5 Object of Division**

5 The object of this Division is to enable the Commissioner to take
6 prompt and effective action to recover amounts not paid as
7 required by Part 2-5 (Pay as you go (PAYG) withholding).

8 **Subdivision 268-B—Making estimates**

9 **Table of sections**

10 268-10 Commissioner may make estimate

11 268-15 Notice of estimate

12 **268-10 Commissioner may make estimate**

13 *Estimate*

14 (1) The Commissioner may estimate the unpaid and overdue amount
15 of a liability (the *underlying liability*) of yours under
16 section 16-70.

17 Note: Section 16-70 requires you to pay to the Commissioner amounts you
18 have withheld under the Pay as you go withholding rules.

19 *Amount of estimate*

20 (2) The amount of the estimate must be what the Commissioner thinks
21 is reasonable.

22 (3) In making the estimate, the Commissioner may have regard to
23 anything he or she thinks relevant.

24 Example: The Commissioner may have regard to information about amounts
25 you withheld under the Pay as you go rules before the period in
26 relation to which the underlying liability arose.

27 *Only one estimate for each liability*

28 (4) While the estimate is in force, the Commissioner cannot make
29 another estimate relating to the underlying liability.

- 1 (5) For the purposes of subsection (4), the estimate is in force if:
2 (a) the Commissioner has given you notice of the estimate; and
3 (b) the estimate has not been revoked; and
4 (c) your liability to pay the estimate has not been discharged.

5 **268-15 Notice of estimate**

6 *Commissioner must give notice of estimate*

- 7 (1) The Commissioner must give you written notice of the estimate.

8 *Content of notice*

- 9 (2) The notice must:
10 (a) identify the underlying liability; and
11 (b) specify the date of the estimate; and
12 (c) set out the amount of the estimate; and
13 (d) state that the amount of the estimate is due and payable; and
14 (e) explain how you may have the amount of the estimate
15 reduced or the estimate revoked.
- 16 (3) To avoid doubt, a single notice may relate to 2 or more estimates,
17 but must comply with subsection (2) in relation to each of them.

18 *When notice is given*

- 19 (4) Despite section 29 of the *Acts Interpretation Act 1901*, a notice
20 under subsection (1) is taken to be given at the time the
21 Commissioner leaves or posts it.

22 Note: Section 28A of the *Acts Interpretation Act 1901* may be relevant to
23 giving a notice under subsection (1).

24 **Subdivision 268-C—Liability to pay estimates**

25 **Table of sections**

26	268-20	Nature of liability to pay estimate
27	268-25	Accuracy of estimate irrelevant to liability to pay
28	268-30	Estimate provable in bankruptcy or winding up

1 **268-20 Nature of liability to pay estimate**

2 *Liability to pay amount of estimate*

- 3 (1) You must pay to the Commissioner the amount of the estimate if
4 the Commissioner gives you notice of the estimate in accordance
5 with section 268-15. The amount is due and payable when the
6 Commissioner gives you the notice.

7 Note: The amount of the estimate may be reduced, or the estimate revoked,
8 under Subdivision 268-D.

9 *Liability to pay amount of estimate is distinct from underlying*
10 *liability*

- 11 (2) Your liability to pay the amount of the estimate is separate and
12 distinct from the underlying liability. It is separate and distinct for
13 all purposes.

14 Example: The Commissioner may take:

- 15 (a) proceedings to recover the unpaid amount of the estimate; or
16 (b) proceedings to recover the unpaid amount of the underlying
17 liability; or
18 (c) proceedings of both kinds.

19 *Discharging one liability discharges other liabilities*

- 20 (3) Despite subsection (2), if, at a particular time, one of the liabilities
21 to which this subsection applies is discharged, to the extent of an
22 amount, for either of the following reasons, each of the other
23 liabilities to which this subsection applies is discharged to the
24 extent of the same amount:

- 25 (a) an amount is paid or applied towards discharging the
26 liability;
27 (b) the liability is discharged because of section 269-40 (Effect
28 of director paying penalty or company discharging liability).

- 29 (4) Subsection (3) applies to whichever of the following liabilities are
30 in existence at the particular time:

- 31 (a) your liability to pay the amount of the estimate;
32 (b) the underlying liability;
33 (c) a liability of yours under a judgment, to the extent that it is
34 based on a liability referred to in paragraph (a) or (b).

- 1 (5) Subsection (3) does not discharge a liability to a greater extent than
2 the amount of the liability.

3 **268-25 Accuracy of estimate irrelevant to liability to pay**

- 4 You are liable to pay the unpaid amount of the estimate even if:
5 (a) the underlying liability never existed or has been discharged
6 in full; or
7 (b) the unpaid amount of the underlying liability is less than the
8 unpaid amount of the estimate.

9 Note 1: Section 268-40 revokes the estimate if you give the Commissioner a
10 statutory declaration, or file an affidavit, to the effect that the
11 underlying liability never existed.

12 Note 2: Subdivision 268-D provides ways in which you can challenge the
13 estimate or its amount.

14 **268-30 Estimate provable in bankruptcy or winding up**

- 15 (1) Your liability (the *estimate liability*) to pay the unpaid amount of
16 the estimate is provable in a bankruptcy or winding up, even if the
17 estimate was made after:
18 (a) the date of the bankruptcy; or
19 (b) the relevant date (within the meaning of the *Corporations Act*
20 *2001*).

- 21 (2) However, the estimate liability is provable only to the extent that
22 the underlying liability would be provable if the unpaid amount of
23 the underlying liability were the same as the unpaid amount of the
24 estimate.

25 Example: Subsection (2) prevents proof of the estimate liability if the underlying
26 liability could not be proved because, for example, of when it arose.

- 27 (3) Subsections (1) and (2) do not apply if:
28 (a) the underlying liability has already been admitted to proof;
29 and
30 (b) the proof has not been set aside.

- 31 (4) If the estimate liability has been admitted to proof at a particular
32 amount, the underlying liability is provable only to the extent the
33 unpaid amount of the underlying liability exceeds that particular
34 amount.

- 1 (5) To the extent that a liability is provable because of this section, it is
2 taken, for the purposes of the *Bankruptcy Act 1966*, to be provable
3 in bankruptcy under that Act.

4 **Subdivision 268-D—Reducing and revoking estimates**

5 **Table of sections**

6	268-35	How estimate may be reduced or revoked—Commissioner’s powers
7	268-40	How estimate may be reduced or revoked—statutory declaration or affidavit
8		
9	268-45	How estimate may be reduced or revoked—rejection of proof of debt
10	268-50	How estimate may be reduced—amount paid or applied
11	268-55	When reduction or revocation takes effect
12	268-60	Consequences of reduction or revocation—refund
13	268-65	Consequences of reduction or revocation—statutory demand changed or set aside
14		
15	268-70	Consequences of reduction or revocation—underlying liability

16 **268-35 How estimate may be reduced or revoked—Commissioner’s**
17 **powers**

18 *Reduction*

- 19 (1) The Commissioner may at any time reduce the amount of the
20 estimate, but is not obliged to consider whether or not to do so.
- 21 (2) If the Commissioner reduces the amount of the estimate under
22 subsection (1), he or she must give you a written notice that:
23 (a) identifies the underlying liability; and
24 (b) sets out the reduced amount of the estimate.

25 Note: The estimate is taken always to have had effect as reduced: see
26 section 268-55.

27 *Revocation*

- 28 (3) The Commissioner may at any time revoke the estimate, but is not
29 obliged to consider whether or not to do so.
- 30 (4) If the Commissioner revokes the estimate under subsection (3), he
31 or she must give you a written notice that:
32 (a) identifies the underlying liability; and

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Part 1 Main amendments

1 (b) states that the estimate has been revoked.
 2 Note: The estimate is taken never to have been made: see section 268-55.

3 *Matters for Commissioner to consider*

- 4 (5) In exercising his or her power under this section to reduce the
 5 amount of the estimate, or to revoke the estimate, the
 6 Commissioner must have regard to:
 7 (a) the following principles:
 8 (i) the estimate is of the unpaid amount of the underlying
 9 liability as at a particular time;
 10 (ii) the purpose of reducing the amount of the estimate is to
 11 bring it closer to the unpaid amount of the underlying
 12 liability as at the time the estimate was made;
 13 (iii) reductions of the unpaid amount of the underlying
 14 liability that happen after the time the estimate was
 15 made are dealt with by section 268-20 (Nature of
 16 liability to pay estimate) and so should not be taken into
 17 account in exercising such a power; and
 18 (b) the effects of sections 268-55 and 268-70 (effect of reduction
 19 or revocation on liabilities).

20 **268-40 How estimate may be reduced or revoked—statutory**
 21 **declaration or affidavit**

22 *Scope*

23 (1) This section applies as set out in the following table:
 24

Statutory declaration or affidavit			
Item	This section applies if ...	and ...	within ...
1	the Commissioner gives you notice of the estimate	you give the Commissioner a statutory declaration for the purposes of this section	(a) 7 days after the Commissioner gives you the notice; or (b) a longer period allowed by the Commissioner.
2	you are a party to proceedings before a court	you: (a) file an affidavit for the	(a) 14 days after you first take a

Statutory declaration or affidavit

Item	This section applies if ...	and ...	within ...
	that relate to the recovery of the unpaid amount of the estimate	purposes of this section; and (b) serve a copy on the Commissioner	procedural step as a party to the proceedings; or (b) a longer period allowed by the court.
3	(a) the estimate is of the unpaid amount of a liability of a company; and (b) the Commissioner serves on the company a *statutory demand relating to the company's liability to pay the unpaid amount of the estimate; and (c) an application is made to a court under section 234, 459P, 462 or 464 of the <i>Corporations Act 2001</i> for the company to be wound up	the company: (a) files an affidavit for the purposes of this section; and (b) serves a copy on the applicant	(a) 14 days after notice of the application was served on the company; or (b) a longer period allowed by the court.

1 Example: For the purposes of item 2 of the table, taking a procedural step as a
2 party to proceedings includes entering an appearance, filing a notice of
3 intention to defend, or applying to set aside judgment entered in
4 default of appearance.

5 Note 1: Section 459C of the *Corporations Act 2001* creates a presumption that
6 a company is insolvent, and may be wound up, if the company fails to
7 comply with a statutory demand.

8 Note 2: See section 268-90 for what the statutory declaration or affidavit must
9 contain and who must make, swear or affirm it.

10 *Reduction*

11 (2) The amount of the estimate is reduced if the statutory declaration is
12 to the effect, or the affidavit verifies facts sufficient to prove, that a
13 specified lesser amount is the unpaid amount of the underlying
14 liability.

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1 Example: Subsection (2) will apply if the statutory declaration etc. is to the
2 effect that the underlying liability has been discharged in full (and
3 therefore the unpaid amount of the liability is nil).

4 (3) The amount of the reduction is the amount by which the unpaid
5 amount of the estimate (just before the reduction) exceeds the
6 amount specified.

7 Note: The effect of subsection (3) is to reduce the unpaid amount of the
8 estimate to the amount specified.

9 *Revocation*

10 (4) The estimate is revoked if the statutory declaration is to the effect,
11 or the affidavit verifies facts sufficient to prove, that the underlying
12 liability never existed.

13 **268-45 How estimate may be reduced or revoked—rejection of proof**
14 **of debt**

15 *Scope*

- 16 (1) This section applies if:
17 (a) the Commissioner lodges a proof of debt relating to the
18 unpaid amount of the estimate; and
19 (b) section 268-95 applies to an entity (your *supervising entity*)
20 in relation to you.

21 *Rejection of proof of debt*

- 22 (2) Your supervising entity may give the Commissioner a statutory
23 declaration to the effect that:
24 (a) the underlying liability has been discharged in full; or
25 (b) the unpaid amount of the underlying liability is a specified,
26 lesser amount; or
27 (c) the underlying liability never existed.

28 Note: See section 268-90 for what the statutory declaration must contain and
29 who must make it.

- 30 (3) If your supervising entity does so, he or she may reject the proof of
31 debt (in whole or in part) on the ground made out in the statutory
32 declaration.

1 (4) If the Commissioner appeals, or applies for review of, your
2 supervising entity's decision to reject the proof of debt, nothing in
3 subsection (2) or (3) prevents evidence being adduced to contradict
4 statements in the declaration.

5 Note: Such evidence might also be relevant to a prosecution for an offence,
6 such as an offence against section 11 of the *Statutory Declarations Act*
7 *1959* (False declarations).

8 *Revocation or reduction of estimate*

9 (5) The following table applies in relation to the outcome following all
10 (if any) appeals from, and applications for review of, your
11 supervising entity's decision to reject the proof of debt. (If there
12 are no appeals or applications for review, the outcome is your
13 supervising entity's decision as originally made.)
14

Rejecting proof of debt

Item	If the outcome is that ...	then ...
1	the proof is rejected in whole on the ground that the estimate has been discharged in full	the amount of the estimate is reduced by the unpaid amount of the estimate (just before the reduction).
2	the proof is rejected in part	the amount of the estimate is reduced by so much of the unpaid amount of the estimate (just before the reduction) as is rejected.
3	the proof is rejected in whole on the ground that the underlying liability never existed	the estimate is revoked.

15 Note 1: The effect of item 1 of the table is to reduce the unpaid amount of the
16 estimate to nil.

17 Note 2: The effect of item 2 of the table is to reduce the unpaid amount of the
18 estimate to the amount admitted to proof.

19 **268-50 How estimate may be reduced—amount paid or applied**

20 (1) This section applies if:
21 (a) an amount is paid or applied towards discharging your
22 liability to pay the amount of the estimate; and

1 (b) the amount paid or applied exceeds the unpaid amount of the
2 underlying liability as at the time just before the payment or
3 application.

4 (2) The amount of the estimate is reduced so that it does not exceed
5 the unpaid amount, at the time mentioned in paragraph (1)(b), of
6 the underlying liability.

7 **268-55 When reduction or revocation takes effect**

8 *Scope*

- 9 (1) This section applies for the purposes of the following:
10 (a) Subdivision 268-C (Liability to pay estimates);
11 (b) section 268-60 (refund of overpayments);
12 (c) Subdivision 268-E (Late payment of estimates);
13 (d) Division 269 (Penalties for directors of non-complying
14 companies).

15 *When reduction or revocation takes effect*

- 16 (2) If the amount of the estimate is reduced, the estimate has effect,
17 and is taken always to have had effect, as if the original amount of
18 the estimate had been the reduced amount.
- 19 (3) If the estimate is revoked, the estimate is taken never to have been
20 made.

21 **268-60 Consequences of reduction or revocation—refund**

- 22 (1) This section applies if:
23 (a) an amount is paid or applied towards discharging your
24 liability to pay the amount of the estimate; and
25 (b) the amount paid or applied exceeds the unpaid amount of the
26 estimate as at the time just before the payment or application.

27 Example: You pay an amount towards discharging the estimate and the estimate
28 is later reduced to a lesser amount.

29 Note: Section 268-50 provides for the reduction of the amount of the
30 estimate in the case of overpayment.

- 31 (2) The Commissioner must pay you the excess.

1 Note: See Division 3A of Part IIB of this Act for the rules about how the
2 Commissioner must pay you. Division 3 of that Part allows the
3 Commissioner to apply the amount owing as a credit against tax debts
4 that you owe the Commonwealth.

5 **268-65 Consequences of reduction or revocation—statutory demand**
6 **changed or set aside**

7 *Scope*

- 8 (1) This section applies if:
9 (a) the estimate is of the unpaid amount of a liability of a
10 company; and
11 (b) the Commissioner has served a *statutory demand on the
12 company relating to the company's liability to pay the unpaid
13 amount of the estimate; and
14 (c) the amount of the estimate is later reduced, or the estimate is
15 revoked.

16 *Statutory demand changed*

- 17 (2) The *statutory demand is changed accordingly.
18 (3) The *statutory demand is taken to have had effect (as so changed)
19 from the time the Commissioner served it on the company.

20 *Statutory demand set aside*

- 21 (4) The *statutory demand is set aside if subsection (2) reduces the
22 amount of the debt (or the total of the amounts of the debts) below
23 the statutory minimum (within the meaning of the *Corporations*
24 *Act 2001*).

25 **268-70 Consequences of reduction or revocation—underlying**
26 **liability**

27 Reduction of the amount of the estimate, or revocation of the
28 estimate, does not affect the Commissioner's rights or remedies in
29 relation to the underlying liability (except to the extent that this
30 Division expressly provides otherwise).

1 **Subdivision 268-E—Late payment of estimates**

2 **Table of sections**

3	268-75	Liability to pay the general interest charge
4	268-80	Effect of paying the general interest charge

5 **268-75 Liability to pay the general interest charge**

- 6 (1) This section applies if your liability to pay the amount of the
7 estimate remains undischarged at the end of 7 days after the
8 Commissioner gives you notice of the estimate.
- 9 (2) You are liable to pay the *general interest charge on the unpaid
10 amount of the estimate for each day in the period that:
- 11 (a) started at the beginning of the day by which the underlying
12 liability was due to be paid; and
- 13 (b) finishes at the end of the last day on which, at the end of the
14 day, any of the following remains unpaid:
- 15 (i) the amount of the estimate;
- 16 (ii) general interest charge on any of the amount of the
17 estimate.

18 Note: The general interest charge is worked out under Part IIA of this Act.

19 **268-80 Effect of paying the general interest charge**

20 *Scope*

- 21 (1) If you are liable to pay the *general interest charge under
22 section 268-75 in relation to the estimate, this section applies to the
23 following liabilities:
- 24 (a) your liability to pay the general interest charge;
- 25 (b) a liability of yours to pay a general interest charge, under a
26 corresponding provision of Subdivision 16-B, because the
27 underlying liability remains undischarged;
- 28 (c) liability under a judgment, to the extent that it is based on a
29 liability referred to in paragraph (a) or (b);
- 30 (d) a liability of yours to pay interest carried by a judgment debt,
31 to the extent that the judgment debt is based on:
- 32 (i) the liability to pay the estimate; or

- 1 (ii) the liability to pay the general interest charge under
2 section 268-75 on an unpaid amount of the estimate.

3 *Discharging one liability discharges other liabilities*

- 4 (2) If, at a particular time, an amount is paid or applied towards
5 discharging one of the liabilities, each of the other liabilities that is
6 in existence at that time is discharged to the extent of the same
7 amount.
- 8 (3) However, this section does not discharge a liability to a greater
9 extent than the amount of the liability.
- 10 (4) If, because a judgment debt carries interest, section 8AAH of this
11 Act reduces the amount of a *general interest charge payable as
12 mentioned in paragraph (1)(b) of this section, the amount of the
13 reduction is taken, for the purposes of subsection (2) of this
14 section, to have been applied towards discharging your liability to
15 the charge.

16 **Subdivision 268-F—Miscellaneous**

17 **Table of sections**

18	268-85	Effect of judgment on liability on which it is based
19	268-90	Requirements for statutory declaration or affidavit
20	268-95	Liquidators, receivers and trustees in bankruptcy
21	268-100	Division not to limit or exclude Corporations or Bankruptcy Act

22 **268-85 Effect of judgment on liability on which it is based**

23 *Estimate payable despite judgment*

- 24 (1) The unpaid amount of the estimate, or of the underlying liability,
25 does not stop being payable merely because a judgment has been
26 given by, or entered in, a court.

27 *Division applies to liability under judgment*

- 28 (2) This Division applies in relation to liability under a judgment, to
29 the extent that it is based on your liability to pay the amount of the
30 estimate, in the same way as this Division applies to that estimate
31 liability.

- 1 (3) This Division applies in relation to liability under a judgment, to
2 the extent that it is based on the underlying liability, in the same
3 way as this Division applies to the underlying liability.
- 4 (4) Subsections (2) and (3) do not apply for the purposes of the
5 following:
6 (a) section 268-20 (Nature of liability to pay estimate);
7 (b) section 268-30 (Estimate provable in bankruptcy or winding
8 up);
9 (c) section 268-45 (rejection of proof of debt).
- 10 *Judgment conclusive as to amount of liability*
- 11 (5) Nothing in this Division affects the conclusiveness of a judgment
12 as to the amount of a liability on which it is based.

13 **268-90 Requirements for statutory declaration or affidavit**

14 *Scope*

- 15 (1) This section applies to a statutory declaration given, or an affidavit
16 filed, for the purposes of section 268-40 or 268-45 in relation to the
17 estimate.

18 *Content*

- 19 (2) The statutory declaration or affidavit must verify the following
20 facts:
21 (a) whichever of the following are applicable:
22 (i) the sum of all amounts you withheld under Division 12
23 during the relevant period, or the fact that you did not
24 withhold any such amounts during the period;
25 (ii) the sum of all amounts you were required to pay under
26 Division 13 (Alienated personal services payments)
27 during the relevant period, or the fact that you were not
28 required to pay any such amounts during the period;
29 (iii) the sum of all amounts you were required to pay under
30 Division 14 (non-cash benefits and accruing gains)
31 during the relevant period, or the fact that you were not
32 required to pay any such amounts during the period;

1 (b) what has been done to comply with Division 16 (Payer's
2 obligations and rights) in relation to the amounts referred to
3 in paragraph (a).

4 *Maker or deponent*

5 (3) The statutory declaration or affidavit must be made, sworn or
6 affirmed by:
7 (a) an individual specified in the following table; or
8 (b) your liquidator, receiver or trustee in bankruptcy (if and as
9 applicable).
10

Who must make the statutory declaration or swear or affirm the affidavit

Item	A statutory declaration or affidavit in relation to an estimate of a liability of ...	must be made, sworn or affirmed by ...
1	an individual	that individual.
2	a body corporate	(a) in the case of a company that has a director or a company secretary (within the meaning of the <i>Corporations Act 2001</i>)—a director of the company or the company secretary; or (b) in the case of an *Australian government agency—an individual prescribed by the regulations; or (c) in any case—the public officer of the body corporate (for the purposes of the <i>Income Tax Assessment Act 1936</i>).
3	a body politic	an individual prescribed by the regulations.
4	a partnership	a partner of the partnership.
5	any other unincorporated association or body of persons	(a) a member of the association's or body's committee of management; or (b) the public officer of the association or body (for the purposes of the <i>Income Tax Assessment Act 1936</i>).

Schedule 1 Collection and recovery of tax
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Who must make the statutory declaration or swear or affirm the affidavit

Item	A statutory declaration or affidavit in relation to an estimate of a liability of ...	must be made, sworn or affirmed by ...
6	a trust	(a) the trustee of the trust; or (b) the public officer of the trust (for the purposes of the <i>Income Tax Assessment Act 1936</i>).
7	a [*] superannuation fund or an [*] approved deposit fund	(a) the trustee of the fund; or (b) if the fund does not have a trustee—the entity managing the fund.

- 1 (4) If the entity specified in the table in subsection (3) is not an
2 individual, the table is taken to specify the individual who, under
3 that subsection, would be eligible to make a statutory declaration in
4 relation to an estimate of a liability of that entity.

5 **268-95 Liquidators, receivers and trustees in bankruptcy**

6 *Scope*

- 7 (1) This section applies to an entity (your *supervising entity*), in
8 relation to you, if:
9 (a) the entity is your liquidator, receiver, trustee in bankruptcy or
10 administrator, or the administrator of a deed of company
11 arrangement executed by you; or
12 (b) your property is vested in the entity, or the entity has control
13 of your property.
- 14 (2) For the purposes of this Division, this section applies to an entity in
15 relation to a partnership if it applies to the entity in relation to a
16 partner of the partnership.

17 *Notices from the Commissioner*

- 18 (3) For the purposes of this Division, a notice given by the
19 Commissioner to your supervising entity is taken to have been
20 given to you.

- 1 (4) You must give your supervising entity a copy of any notice given
2 to you by the Commissioner under this Division. You must do so
3 as soon as practicable, and in any event within 7 days, after:
- 4 (a) if the Commissioner gave you the notice before the day when
5 your property vested in, or control of your property passed to,
6 the supervising entity—that day; or
- 7 (b) if subsection (2) applies and the Commissioner gave you the
8 notice before the day when the relevant partner’s property
9 vested in, or control of the relevant partner’s property passed
10 to, the supervising entity—that day; or
- 11 (c) otherwise—the day when the Commissioner gave you the
12 notice.
- 13 (5) If the Commissioner gives you and your supervising entity a notice
14 at different times, each notice is taken to have been given at the
15 later of those times.

16 *Action taken by your supervising entity*

- 17 (6) For the purposes of this Division, a statutory declaration given to
18 the Commissioner by your supervising entity is taken to have been
19 given by you.
- 20 (7) For the purposes of this Division, an affidavit filed by your
21 supervising entity is taken to have been filed by you.
- 22 (8) For the purposes of item 2 in the table in subsection 268-40(1)
23 (recovery proceedings), a procedural step taken by your
24 supervising entity is taken to have been taken by you.

25 *Multiple supervising entities*

- 26 (9) If you have 2 or more supervising entities, anything this Division
27 provides for to be done by or in relation to your supervising entity
28 may be done by or in relation to any of them.

29 **268-100 Division not to limit or exclude Corporations or Bankruptcy**
30 **Act**

31 This Division is not intended to limit or exclude the operation of
32 Chapter 5 of the *Corporations Act 2001* (External administration),
33 or the *Bankruptcy Act 1966*, to the extent that Chapter or Act can
34 operate concurrently with this Division.

1 Note: Section 268-30 and Subdivision 268-D affect the operation of
2 Chapter 5 of the *Corporations Act 2001* and the *Bankruptcy Act 1966*.

3 **Division 269—Penalties for directors of non-complying**
4 **companies**

5 **Table of Subdivisions**

6		Guide to Division 269
7	269-A	Object and scope
8	269-B	Obligations and penalties
9	269-C	Discharging liabilities
10	269-D	Miscellaneous

11 **Guide to Division 269**

12 **269-1 What this Division is about**

13 The directors of a company have a duty to ensure that the company
14 either:

15 (a) meets its obligations under Subdivision 16-B
16 (obligation to pay withheld amounts to the
17 Commissioner) and Division 268; or

18 (b) goes promptly into voluntary administration under
19 the *Corporations Act 2001* or into liquidation.

20 The directors' duties are enforced by penalties.

21 Note: The duties this Division imposes on the directors of the
22 company are in addition to the similar duties imposed on
23 the public officer of the company. See subsection 252(1)
24 of the *Income Tax Assessment Act 1936*.

25 **Subdivision 269-A—Object and scope**

26 **Table of sections**

27	269-5	Object of Division
28	269-10	Scope of Division

1 **269-5 Object of Division**

2 The object of this Division is to ensure that a company either:

- 3 (a) meets its obligations under Subdivision 16-B (obligation to
4 pay withheld amounts to the Commissioner) and
5 Division 268; or
6 (b) goes promptly into voluntary administration under the
7 *Corporations Act 2001* or into liquidation.

8 Note: The directors' duties are enforced by penalties on the directors. A
9 penalty recovered under this Division is applied towards meeting the
10 company's obligation.

11 **269-10 Scope of Division**

12 (1) This Division applies as set out in the following table:
13

Obligations that directors must cause company to comply with		
Item	This Division applies if, on a particular day (the <i>initial day</i>), a company registered under the <i>Corporations Act 2001</i> ...	and the company is obliged to pay to the Commissioner on or before a particular day (the <i>due day</i>) ...
1	withholds an amount under Division 12	that amount in accordance with Subdivision 16-B.
2	receives an *alienated personal services payment	an amount in respect of that alienated personal services payment in accordance with Division 13 and Subdivision 16-B.
3	provides a *non-cash benefit	an amount in respect of that benefit in accordance with Subdivision 16-B.
4	is given notice of an estimate under Division 268	the amount of the estimate.

14 Note: In a case covered by item 2, 3 or 4 of the table, the due day is the same
15 as the initial day.

16 (2) This Division applies in relation to an amount that the company
17 purports to withhold under Division 12, but is not required to
18 withhold, as if the company were required to withhold the amount.

19 **Subdivision 269-B—Obligations and penalties**

20 **Table of sections**

Schedule 1 Collection and recovery of tax
Part 1 Main amendments

1	269-15	Directors' obligations
2	269-20	Penalty
3	269-25	Notice
4	269-30	Remission of penalty before end of notice period
5	269-35	Defences

6 **269-15 Directors' obligations**

7 *Directors' obligations*

- 8 (1) The directors (within the meaning of the *Corporations Act 2001*) of
9 the company (from time to time) on or after the initial day must
10 cause the company to comply with its obligation.
- 11 (2) The directors of the company (from time to time) continue to be
12 under their obligation until:
- 13 (a) the company complies with its obligation; or
14 (b) an administrator of the company is appointed under
15 section 436A, 436B or 436C of the *Corporations Act 2001*;
16 or
17 (c) the company begins to be wound up (within the meaning of
18 that Act).

19 *Instalment arrangements*

- 20 (3) The Commissioner must not commence, or take a procedural step
21 as a party to, proceedings to enforce an obligation, or to recover a
22 penalty, of a director under this Division if an *arrangement that
23 covers the company's obligation is in force under section 255-15
24 (Commissioner's power to permit payments by instalments).

25 Note 1: The arrangement may also cover other obligations of the company.

26 Note 2: Subsection (3) does not prevent the Commissioner from giving a
27 director a notice about a penalty under section 269-25.

28 **269-20 Penalty**

29 *Penalty for director on or before due day*

- 30 (1) You are liable to pay to the Commissioner a penalty if:
31 (a) at the end of the due day, the directors of the company are
32 still under an obligation under section 269-15; and

1 (b) you were under that obligation at or before that time (because
2 you were a director).

3 Note: Paragraph (1)(b) applies even if you stopped being a director before
4 the end of the due day: see subsection 269-15(2).

5 (2) The penalty is due and payable at the end of the due day.

6 Note: The Commissioner must not commence proceedings to recover the
7 penalty until the end of 21 days after the Commissioner gives you
8 notice of the penalty under section 269-25.

9 *Penalty for new director*

10 (3) You are also liable to pay to the Commissioner a penalty if:

11 (a) after the due day, you became a director of the company and
12 began to be under an obligation under section 269-15; and

13 (b) 14 days later, you are still under that obligation.

14 (4) The penalty is due and payable at the end of that 14th day.

15 Note: The Commissioner must not commence proceedings to recover the
16 penalty until the end of 21 days after the Commissioner gives you
17 notice of the penalty under section 269-25.

18 *Amount of penalty*

19 (5) The amount of a penalty under this section is equal to the unpaid
20 amount of the company's liability under its obligation.

21 Note 1: See section 269-40 for the effect on your penalty of the company
22 discharging its obligation, or of another director paying his or her
23 penalty.

24 Note 2: See section 269-45 for your rights of indemnity and contribution.

25 **269-25 Notice**

26 *Commissioner must give notice of penalty*

27 (1) The Commissioner must not commence proceedings to recover
28 from you a penalty payable under this Subdivision until the end of
29 21 days after the Commissioner gives you a written notice under
30 this section.

31 *Content of notice*

32 (2) The notice must:

- 1 (a) set out what the Commissioner thinks is the unpaid amount
2 of the company's liability under its obligation; and
3 (b) state that you are liable to pay to the Commissioner, by way
4 of penalty, an amount equal to that unpaid amount because of
5 an obligation you have or had under this Division; and
6 (c) explain the main circumstances in which the penalty will be
7 remitted.

- 8 (3) To avoid doubt, a single notice may relate to 2 or more penalties,
9 but must comply with subsection (2) in relation to each of them.

10 *When notice is given*

- 11 (4) Despite section 29 of the *Acts Interpretation Act 1901*, a notice
12 under subsection (1) is taken to be given at the time the
13 Commissioner leaves or posts it.

14 Note 1: Section 28A of the *Acts Interpretation Act 1901* may be relevant to
15 giving a notice under subsection (1).

16 Note 2: Section 269-50 of this Act is also relevant to giving a notice under
17 subsection (1).

18 **269-30 Remission of penalty before end of notice period**

19 A penalty of yours under this Division is remitted if the directors of
20 the company stop being under the relevant obligation under
21 section 269-15:

- 22 (a) before the Commissioner gives you notice of the penalty
23 under section 269-25; or
24 (b) within 21 days after the Commissioner gives you notice of
25 the penalty under that section.

26 **269-35 Defences**

27 *Scope*

- 28 (1) This section applies in relation to:
29 (a) proceedings to recover from you a penalty payable under this
30 Division; or
31 (b) proceedings against you in relation to a right referred to in
32 paragraph 269-45(2)(b) (directors jointly and severally liable
33 as guarantors).

1 *Illness*

- 2 (2) It is a defence in the proceedings if it is proved that, because of
3 illness or for some other good reason, it would have been
4 unreasonable to expect you to take part, and you did not take part,
5 in the management of the company at any time when:
6 (a) you were a director of the company; and
7 (b) the directors were under the relevant obligations under
8 section 269-15.

9 *All reasonable steps*

- 10 (3) It is a defence in the proceedings if it is proved that:
11 (a) you took all reasonable steps to ensure that the directors
12 complied with their relevant obligations under
13 section 269-15; or
14 (b) there were no such steps that you could have taken.
- 15 (4) In determining what are reasonable steps for the purposes of
16 subsection (3), have regard to:
17 (a) when, and for how long, you were a director and took part in
18 the management of the company; and
19 (b) all other relevant circumstances.

20 *Power of courts to grant relief*

- 21 (5) Section 1318 of the *Corporations Act 2001* does not apply to an
22 obligation or liability of a director under this Division.

23 **Subdivision 269-C—Discharging liabilities**

24 **Table of sections**

25 269-40 Effect of director paying penalty or company discharging liability
26 269-45 Directors' rights of indemnity and contribution

27 **269-40 Effect of director paying penalty or company discharging**
28 **liability**

29 *Liabilities*

- 30 (1) This section applies to the following liabilities:

- 1 (a) the liability of the company under its obligation referred to in
2 section 269-10;
3 (b) the liability of each director (or former director) to pay a
4 penalty under this Division in relation to the liability of the
5 company referred to in paragraph (a);
6 (c) a liability under a judgment, to the extent that it is based on a
7 liability referred to in paragraph (a) or (b).

8 *Discharging one liability discharges other liabilities*

- 9 (2) If an amount is paid or applied at a particular time towards
10 discharging one of the liabilities, each of the other liabilities in
11 existence at that time is discharged to the extent of the same
12 amount.
13 (3) If, because of section 268-20 (Nature of liability to pay estimate),
14 one of the liabilities is discharged at a particular time to the extent
15 of a particular amount, each of the other liabilities in existence at
16 that time is discharged to the extent of the same amount.
17 (4) This section does not discharge a liability to a greater extent than
18 the amount of the liability.

19 **269-45 Directors' rights of indemnity and contribution**

- 20 (1) This section applies if you pay a penalty under this Division in
21 relation to a liability of the company under an obligation referred
22 to in section 269-10.
23 (2) You have the same rights (whether by way of indemnity,
24 subrogation, contribution or otherwise) against the company or
25 anyone else as if:
26 (a) you made the payment under a guarantee of the liability of
27 the company; and
28 (b) under the guarantee you and every other person who has
29 paid, or from whom the Commissioner is entitled to recover,
30 a penalty under this Division in relation to the company's
31 obligation were jointly and severally liable as guarantors.

32 **Subdivision 269-D—Miscellaneous**

33 **Table of sections**

- 1 269-50 How notice may be given
2 269-55 Division not to limit or exclude Corporations Act

3 **269-50 How notice may be given**

4 The Commissioner may give you a notice under section 269-25 by
5 leaving it at, or posting it to, an address that appears, from
6 information held by the Australian Securities and Investments
7 Commission, to be, or to have been within the last 7 days, your
8 place of residence or *business.

9 **269-55 Division not to limit or exclude Corporations Act**

10 To avoid doubt, this Division is not intended to limit or exclude the
11 operation of Chapter 5 of the *Corporations Act 2001* (External
12 administration), to the extent that Chapter can operate concurrently
13 with this Division.

1

2

Part 2—Consequential amendments

3

Administrative Decisions (Judicial Review) Act 1977

4

11 Paragraph (ea) of Schedule 1

5

Repeal the paragraph.

6

12 After paragraph (ga) of Schedule 1

7

Insert:

8

(gaa) decisions of the Commissioner of Taxation under
Subdivision 268-B or section 268-35 in Schedule 1 to the
Taxation Administration Act 1953;

9

10

11

12

13

Note: Subdivision 268-B and section 268-35 empower the
Commissioner to make, reduce and revoke estimates of certain
liabilities.

14

Corporations Act 2001

15

13 Subsection 443BA(2) (definition of *unpaid amount*)

16

Repeal the definition.

17

Higher Education Support Act 2003

18

14 Paragraph 154-60(a)

19

Omit “, and Division 1 of Part VI,”.

20

15 After paragraph 154-60(a)

21

Insert:

22

(aa) Division 5 of the *Income Tax Assessment Act 1997*; and

23

16 Section 154-60 (note)

24

Repeal the note.

25

Income Tax Assessment Act 1936

26

17 Subsection 102AAM(14)

1 Repeal the subsection.

2 **18 At the end of Subdivision B of Division 6AAA of Part III**

3 Add:

4 **102AAN Collection etc. of interest**

5 Sections 170, 172, 174, 254 and 255 of this Act, and Division 5 of
6 the *Income Tax Assessment Act 1997* (How to work out when to
7 pay your income tax), apply to interest payable under
8 section 102AAM in the same way as they apply to income tax.

9 **19 Subsection 159GZZZZH(4)**

10 Omit “204,”.

11 **20 Subsection 159GZZZZH(4)**

12 After “former sections”, insert “204,”.

13 **21 At the end of section 159GZZZZH**

14 Add:

15 (5) Division 5 of the *Income Tax Assessment Act 1997* (How to work
16 out when to pay your income tax) applies to tax payable under this
17 section in the same way as that Division applies to income tax.

18 **22 Subsection 163B(8)**

19 Repeal the subsection, substitute:

20 *Collection etc. of additional tax*

21 (8) Former sections 204, 205, 206, 215, 216, 258 and 259, and
22 sections 254 and 255, apply to additional tax payable under this
23 section in the same way as they apply to income tax.

24 **23 Subsection 163B(10) (definition of *instalment taxpayer*)**

25 Before “Division 1C”, insert “former”.

26 **24 Subsection 163B(10) (definition of *relevant entity*)**

27 Before “Division 1B”, insert “former”.

28 **25 Subsection 254(2)**

1 Repeal the subsection, substitute:

2 (2) Subsection (1) applies to the following in the same way as it
3 applies to tax:

4 (a) the general interest charge under:

5 (i) section 163AA, former section 170AA, former
6 subsection 204(3), former subsection 221AZMAA(1),
7 former subsection 221AZP(1), former subsection
8 221YD(3) or former section 221YDB of this Act;

9 (ii) section 5-15 of the *Income Tax Assessment Act 1997*;

10 (b) additional tax under former Part VII of this Act;

11 (c) shortfall interest charge.

12 Note 1: The general interest charge is worked out under Part IIA of the
13 *Taxation Administration Act 1953* and shortfall interest charge is
14 worked out under Division 280 in Schedule 1 to that Act.

15 Note 2: Subsection 8AAB(4) of that Act lists the provisions that apply the
16 general interest charge.

17 **26 Subsection 255(4)**

18 Repeal the subsection, substitute:

19 (4) This section applies to the following in the same way as it applies
20 to tax:

21 (a) the general interest charge under:

22 (i) section 163AA, former section 170AA, former
23 subsection 204(3), former subsection 221AZMAA(1),
24 former subsection 221AZP(1), former subsection
25 221YD(3) or former section 221YDB of this Act;

26 (ii) section 5-15 of the *Income Tax Assessment Act 1997*;

27 (b) additional tax under former Part VII of this Act;

28 (c) shortfall interest charge.

29 Note 1: The general interest charge is worked out under Part IIA of the
30 *Taxation Administration Act 1953* and shortfall interest charge is
31 worked out under Division 280 in Schedule 1 to that Act.

32 Note 2: Subsection 8AAB(4) of that Act lists the provisions that apply the
33 general interest charge.

34 ***Income Tax Assessment Act 1997***

35 **27 Subsection 3-5(3) (note to question 3)**

1 Omit “sections 204, 213 and 219 of the *Income Tax Assessment Act*
2 *1936*”, substitute “Division 5 of this Act”.

3 **28 Sections 214-165 and 292-400**

4 Repeal the sections.

5 **29 Subsection 721-10(2) (table item 5)**

6 Repeal the item, substitute:

3	section 5-5 of the <i>Income Tax Assessment Act 1997</i> (income tax, and other amounts treated in the same way as income tax under that section)	the *financial year to which the income tax etc. relates
---	---	--

5	section 197-70 of the <i>Income Tax Assessment Act 1997</i> (untainting tax)	the *franking period of the *head company in which the *untainting tax became due and payable
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7 **30 Subsection 721-10(2) (table item 25)**

8 Repeal the item.

9 **31 At the end of subsection 721-10(2)**

10 Add:

11 Note: The other amounts referred to in item 3 of the table are:

12 (a) interest payable under section 102AAM of the *Income Tax*
13 *Assessment Act 1936* (distributions from certain non-resident
14 trust estates); and

15 (b) tax payable under section 159GZZZZH of that Act (Tax payable
16 where infrastructure borrowing certificate cancelled).

17 **32 Subsection 995-1(1) (definition of *full self-assessment***
18 ***taxpayer*)**

19 Repeal the definition.

20 ***Income Tax (Transitional Provisions) Act 1997***

21 **33 Section 214-115**

22 Repeal the section.

1 ***Social Security Act 1991***

2 **34 Section 1061ZZFG**

3 Omit “, and section 204, of the *Income Tax Assessment Act 1936*,”
4 substitute “of the *Income Tax Assessment Act 1936*, Division 5 of the
5 *Income Tax Assessment Act 1997*”.

6 ***Student Assistance Act 1973***

7 **35 Section 12ZN**

8 Omit “and section 204 of the *Income Tax Assessment Act 1936*,”
9 substitute “of the *Income Tax Assessment Act 1936*, Division 5 of the
10 *Income Tax Assessment Act 1997*”.

11 ***Taxation Administration Act 1953***

12 **36 Section 8AAA**

13 Omit “(Most of the provisions are in the *Income Tax Assessment Act*
14 *1936*.)”.

15 **37 Subsection 8AAB(4) (table items 9 and 30)**

16 Repeal the items.

17 **38 Subsection 8AAB(5) (after table item 2)**

18 Insert:

2AA 5-15 *Income Tax Assessment Act 1997*
A

19 **39 Subsection 8AAB(5) (after table item 17L)**

20 Insert:

17M 268-75 in *Taxation Administration Act 1953*
Schedule 1

21 **40 Paragraph 45-130(1)(b) in Schedule 1**

22 Omit “*full self-assessment taxpayer”, substitute “*self-assessment
23 entity”.

24 **41 Subparagraph 45-130(1)(c)(i) in Schedule 1**

1 Omit “*full self-assessment taxpayer”, substitute “self-assessment
2 entity”.

3 **42 Subsection 250-5(2) in Schedule 1 (example)**

4 Omit “Division 1 of Part VI of the *Income Tax Assessment Act 1936*”,
5 substitute “Division 5 of the *Income Tax Assessment Act 1997*”.

6 **43 Subsection 250-10(1) in Schedule 1 (table items 55 and 65
7 to 85)**

8 Repeal the items.

9 **44 Subsection 250-10(1) in Schedule 1 (at the end of the
10 table)**

11 Add:

100	interest payable under section 102AAM (about distributions from non-resident trust estates)	5-5 of the <i>Income Tax Assessment Act 1997</i>
105	tax payable under section 159GZZZZH (Tax payable where infrastructure borrowing certificate cancelled)	5-5 of the <i>Income Tax Assessment Act 1997</i>

12 **45 Subsection 250-10(2) in Schedule 1 (after table item 36)**

13 Insert:

36A	compulsory repayment amount under the <i>Higher Education Support Act 2003</i>	5-5	<i>Income Tax Assessment Act 1997</i>
37	income tax	5-5	<i>Income Tax Assessment Act 1997</i>

14 **46 Subsection 250-10(2) in Schedule 1 (after table item 137)**

15 Insert:

138	estimate of payable amounts	268-20 in Schedule 1	<i>Taxation Administration Act 1953</i>
139	penalty under Subdivision 269-B	269-20 in Schedule 1	<i>Taxation Administration Act 1953</i>

16 **47 Subsection 255-10(1) in Schedule 1 (note)**

17 Omit “paragraph 204(3)(a) of the *Income Tax Assessment Act 1936*”,
18 substitute “paragraph 5-15(a) of the *Income Tax Assessment Act 1997*”.

1 **48 Subsection 255-20(1) in Schedule 1 (note)**

2 Omit “paragraph 204(3)(a) of the *Income Tax Assessment Act 1936*”,
3 substitute “paragraph 5-15(a) of the *Income Tax Assessment Act 1997*”.

4 **49 Subsection 280-100(3) in Schedule 1 (note)**

5 Omit “section 204 of the *Income Tax Assessment Act 1936*”, substitute
6 “Division 5 of the *Income Tax Assessment Act 1997*”.

7 **50 Subsection 280-100(3) in Schedule 1 (note)**

8 Omit “That section”, substitute “That Division”.

9 **51 Subsection 340-10(2) in Schedule 1 (table item 3)**

10 Before “subsection 204(3)”, insert “former”.

11 **52 Subsection 340-10(2) in Schedule 1 (after paragraph (a) in**
12 **the cell at table item 3, column headed “Provision(s)”**)

13 Insert:

14 (aa) section 5-15 in the *Income Tax Assessment Act 1997*; or

1

2 **Part 3—Application, transitional and saving**
3 **provisions**

4 **Division 1—Preliminary**

5 **53 Meaning of *commencement time***

6 In this Part:

7 *commencement time* means the time this item commences.

8 **Division 2—Division 5 of the Income Tax Assessment**
9 **Act 1997**

10 ***Income Tax (Transitional Provisions) Act 1997***

11 **54 After Division 4**

12 Insert:

13 **Division 5—How to work out when to pay your income tax**

14 **Table of Subdivisions**

15 5-A How to work out when to pay your income tax

16 **Subdivision 5-A—How to work out when to pay your income**
17 **tax**

18 **Table of sections**

19 5-5 Application of Division 5 of the *Income Tax Assessment Act 1997*

20 5-7 References in tax sharing agreements to former section 204

21 5-10 General interest charge

22 **5-5 Application of Division 5 of the *Income Tax Assessment Act 1997***

23 Division 5 of the *Income Tax Assessment Act 1997*, as originally
24 enacted, applies in relation to income tax or shortfall interest
25 charge you must pay for:

26 (a) the 2010-11 financial year; or

1 (b) a later financial year.

2 **5-7 References in tax sharing agreements to former section 204**

- 3 (1) A reference in an agreement to section 204 of the *Income Tax*
4 *Assessment Act 1936* is taken, from the commencement of this
5 section, to be a reference to section 5-5 of the *Income Tax*
6 *Assessment Act 1997*, if:
7 (a) paragraph 721-25(1)(a) of the *Income Tax Assessment Act*
8 *1997* applies to the agreement; and
9 (b) the agreement was in force just before the commencement of
10 this section.
- 11 (2) This section applies in relation to tax to which Division 5 of the
12 *Income Tax Assessment Act 1997* applies.

13 **5-10 General interest charge**

- 14 (1) This section applies if, just before the commencement of this
15 section, you were liable, under subsection 204(3) (the *old*
16 *provision*) of the *Income Tax Assessment Act 1936*, to pay the
17 general interest charge on an unpaid amount (the *liability*) of any
18 tax or shortfall interest charge.
- 19 (2) On that commencement, the old provision ceases to apply to the
20 liability.
- 21 (3) From that commencement, section 5-15 (the *new provision*) of the
22 *Income Tax Assessment Act 1997*, as originally enacted, applies to
23 the liability as if:
24 (a) the liability remained unpaid at that time; and
25 (b) so much of the charge under the old provision as remained
26 unpaid at that time had been imposed under the new
27 provision and remained unpaid at that time.

28 **55 At the end of Part 3-90**

29 Add:

1 **Division 721—Liability for payment of tax where head**
2 **company fails to pay on time**

3 **Table of Subdivisions**

4 721-A Application of Division

5 **Subdivision 721-A—Application of Division**

6 **Table of sections**

7 721-25 References in tax sharing agreements to former table item 25

8 **721-25 References in tax sharing agreements to former table item 25**

- 9 (1) A reference in an agreement to item 25 of the table in subsection
10 721-10(2) of the *Income Tax Assessment Act 1997* is taken, from
11 the commencement of this section, to be a reference to item 3 of
12 that table, if:
- 13 (a) paragraph 721-25(1)(a) of that Act applies to the agreement;
 - 14 and
 - 15 (b) the agreement was in force just before the commencement of
16 this section.
- 17 (2) This section applies in relation to tax to which Division 5 of the
18 *Income Tax Assessment Act 1997* applies.

19 **56 Transitional provision**

20 Despite the repeal of section 204 of the *Income Tax Assessment Act*
21 *1936* by this Schedule, that section (other than subsection 204(3))
22 continues to apply, from the commencement time, to income tax or
23 shortfall interest charge to which Division 5 of the *Income Tax*
24 *Assessment Act 1997*, as inserted by this Schedule, does not apply.

25 **Division 3—Security deposits**

26 **57 Security deposits**

27 If, just before the commencement time, a security requirement is in
28 force under section 213 of the *Income Tax Assessment Act 1936*, the
29 requirement has effect, from the commencement time, as if it had been
30 made under section 255-100 in Schedule 1 to the *Taxation*
31 *Administration Act 1953*, as added by this Schedule.

1 **Division 4—Estimates**

2 **58 Estimates**

3 *New estimate*

- 4 (1) Section 268-10 in Schedule 1 to the *Taxation Administration Act 1953*,
5 as added by this Schedule, applies in relation to an amount you became
6 liable to pay to the Commissioner under section 16-70 in Schedule 1 to
7 that Act before, on or after the commencement time.

8 *Existing estimate*

- 9 (2) Subitem (3) applies to an estimate that:
10 (a) was made under section 222AGA of the *Income Tax*
11 *Assessment Act 1936* (whether or not notice of it has been
12 sent to you or your trustee); and
13 (b) was in force just before the commencement time.
- 14 (3) The estimate remains in force, from the commencement time, as if it
15 had been made under section 268-10 in Schedule 1 to the *Taxation*
16 *Administration Act 1953*, as added by this Schedule.

17 **59 Bankruptcy or winding up**

18 Section 268-30 in Schedule 1 to the *Taxation Administration Act 1953*,
19 as added by this Schedule, applies whether the date of the bankruptcy,
20 or the relevant date, referred to in that section occurred before, on or
21 after the day on which the commencement time occurred.

22 **60 Reducing and revoking estimates**

- 23 (1) Section 268-40 in Schedule 1 to the *Taxation Administration Act 1953*,
24 as added by this Schedule, applies in relation to:
25 (a) a notice given by the Commissioner before, on or after the
26 commencement time; or
27 (b) proceedings that relate to the recovery of the unpaid amount
28 of an estimate commenced before, on or after the
29 commencement time; or
30 (c) an application made under section 234, 459P, 462 or 464 of
31 the *Corporations Act 2001* before, on or after the
32 commencement time.

- 1 (2) Section 268-45 in Schedule 1 to the *Taxation Administration Act 1953*,
2 as added by this Schedule, applies in relation to a proof of debt lodged
3 before, on or after the commencement time.

4 **61 General interest charge**

5 *New charge*

- 6 (1) Section 268-75 in Schedule 1 to the *Taxation Administration Act 1953*,
7 as added by this Schedule, applies in relation to an estimate of which
8 the Commissioner sends notice:
9 (a) on or after the commencement time; or
10 (b) no more than 7 days before the commencement time.

11 *Existing charge*

- 12 (2) Subitems (3) and (4) apply if, just before the commencement time, you
13 were liable, under Subdivision E of Division 8 of Part VI of the *Income*
14 *Tax Assessment Act 1936* (the **old Subdivision**), to pay the general
15 interest charge on an unpaid amount of an estimate.
- 16 (3) At the commencement time, the old Subdivision stops applying to the
17 liability.
- 18 (4) From the commencement time, Subdivision 268-E in Schedule 1 to the
19 *Taxation Administration Act 1953* (the **new Subdivision**) applies to the
20 liability as if:
21 (a) the liability remained unpaid at the commencement time; and
22 (b) so much of the charge under the old Subdivision as remained
23 unpaid at that time:
24 (i) had been imposed under the new Subdivision; and
25 (ii) remained unpaid at that time.

26 **62 Payment agreements**

- 27 (1) This item applies in relation to an agreement that:
28 (a) was made under section 222ALA of the *Income Tax*
29 *Assessment Act 1936*; and
30 (b) was in force just before the commencement time.
- 31 (2) The agreement has effect, from the commencement time, as if the
32 agreement were an arrangement made under section 255-15 in
33 Schedule 1 to the *Taxation Administration Act 1953*.

1 **63 Savings—regulations relating to government bodies**

- 2 (1) This item applies in relation to regulations:
3 (a) made for the purposes of paragraph 222AGF(7)(c),
4 222AHE(5)(c) or 222AIH(4)(c) of the *Income Tax*
5 *Assessment Act 1936*; and
6 (b) in force just before the commencement time.
- 7 (2) The regulations have effect from the commencement time as if they had
8 been made for the purposes of paragraph (b) of item 2, and item 3, of
9 the table in subsection 268-90(3) in Schedule 1 to the *Taxation*
10 *Administration Act 1953*, as added by this Schedule.

11 **Division 5—Directors' obligations**

12 **64 Application—Division 269 in Schedule 1 to the *Taxation***
13 ***Administration Act 1953***

14 Subject to item 65, Division 269 in Schedule 1 to the *Taxation*
15 *Administration Act 1953*, as added by this Schedule, applies in relation
16 to an amount payable by a company to the Commissioner before, on or
17 after the commencement time.

18 **65 Transitional—penalties**

19 *No doubling-up of penalties*

- 20 (1) Subsection 269-20(1) in Schedule 1 to the *Taxation Administration Act*
21 *1953*, as added by this Schedule, does not apply if the due day referred
22 to in that subsection occurs before the commencement time.
- 23 (2) Subsection 269-20(3) in Schedule 1 to that Act, as added by this
24 Schedule, does not apply if the 14th day referred to in that subsection
25 occurs before the commencement time.

26 *New provisions apply to existing penalties*

- 27 (3) Subitem (4) applies in relation to a penalty that, just before the
28 commencement time, was payable under Division 9 of Part VI of the
29 *Income Tax Assessment Act 1936*.
- 30 (4) Division 269 in Schedule 1 to the *Taxation Administration Act 1953*
31 (other than section 269-20) has effect, from the commencement time, as
32 if the penalty were payable under Subdivision 269-B in that Schedule.

1 *Penalties remitted because of payment agreement*

- 2 (5) Subitem (6) applies if:
- 3 (a) a penalty payable by a director of a company was remitted
4 under section 222APF of the *Income Tax Assessment Act*
5 *1936* because the company made an agreement with the
6 Commissioner as mentioned in paragraph 222APB(1)(b); and
- 7 (b) on or after the commencement time, the company
8 contravenes the agreement such that the director would have
9 been liable to pay a penalty under section 222AQA if that
10 section had continued to apply.
- 11 (6) Division 269 in Schedule 1 to the *Taxation Administration Act 1953*
12 (other than section 269-20) has effect, from the commencement time, as
13 if the penalty:
- 14 (a) had not been remitted; and
15 (b) were payable under Subdivision 269-B in that Schedule.

16 **Division 6—Provisions relating to former provisions of**
17 **the Income Tax Assessment Act 1936**

18 **66 Inoperative provisions**

- 19 (1) This item applies if:
- 20 (a) just before the commencement time, a person was liable to
21 pay an amount to the Commissioner under:
- 22 (i) former section 220AAE, 220AAM or 220AAR of the
23 *Income Tax Assessment Act 1936*; or
24 (ii) former subsection 221YHZD(1) or (1A) of that Act; or
25 (iii) former subsection 221YN(1) of that Act; or
- 26 (b) the Commissioner has reason to suspect that, just before the
27 commencement time, a person was so liable.
- 28 (2) Despite the repeal of Divisions 8 and 9 of Part VI of the *Income Tax*
29 *Assessment Act 1936* by this Schedule, but subject to item 62 of this
30 Schedule, those Divisions continue to apply, after the commencement
31 time, in relation to the liability or suspected liability, as if the repeal had
32 not happened.
- 33 (3) Subsection 268-90(2) in Schedule 1 to the *Taxation Administration Act*
34 *1953*, as added by this Schedule, is taken to require a statutory

Schedule 1 Collection and recovery of tax
Part 3 Application, transitional and saving provisions

- 1 declaration or affidavit to which that subsection applies to verify any
2 facts:
- 3 (a) that relate to the liability, or suspected liability; and
 - 4 (b) that the declaration or affidavit would have been required to
5 verify if subsection 222AHE(4), 222AID(4) or 222AIH(3) of
6 the *Income Tax Assessment Act 1936*, as in force just before
7 the commencement time, had applied to the declaration or
8 affidavit.

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Schedule 2—Forgiveness of commercial debts

Part 1—Main amendments

Income Tax Assessment Act 1936

1 Schedule 2C

Repeal the Schedule.

Income Tax Assessment Act 1997

2 After Division 243

Insert:

Division 245—Forgiveness of commercial debts

Table of Subdivisions

	Guide to Division 245
245-A	Debts to which operative rules apply
245-B	What constitutes forgiveness of a debt
245-C	Calculation of gross forgiven amount of a debt
245-D	Calculation of net forgiven amount of a debt
245-E	Application of net forgiven amounts
245-F	Special rules relating to partnerships
245-G	Record keeping

Guide to Division 245

245-1 What this Division is about

When a creditor forgives a commercial debt you owe, you make a gain. This is usually not included in your assessable income. Instead, this Division offsets the forgiven amount against amounts that could otherwise reduce your taxable income in the same or a later income year. Those amounts are:

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- (a) your tax losses and net capital losses; and
- (b) capital allowances and some similar deductions;
and
- (c) the cost bases of your CGT assets.

245-2 Simplified outline of this Division

(1) This Division applies to any commercial debt (or part of a commercial debt) you owe that is forgiven.

- Note: This Division does not apply if:
- (a) the debt is waived and the waiver constitutes a fringe benefit; or
 - (b) the amount of the debt has been, or will be, included in your assessable income in any income year; or
 - (c) the debt is forgiven under an Act relating to bankruptcy; or
 - (d) the debt is forgiven by will; or
 - (e) the debt is forgiven for reasons of natural love and affection; or
 - (f) the debt is a tax-related liability.

(2) The net forgiven amount of a debt is worked out by reducing the value of your forgiven debt by:

- (a) any consideration you provided for the forgiveness; and
- (b) any amounts that this Act already brings to account because of the forgiveness.

(3) The net forgiven amounts of all your forgiven debts in an income year are added up. This total net forgiven amount is applied to reduce the following amounts (in the following order):

- (a) your tax losses from previous income years;
- (b) your net capital losses from previous income years;
- (c) the deductions you would otherwise get in the income year, or in a later year, because of expenditure from a previous year (e.g. the capital allowance deductions you would get for the cost of a depreciating asset);
- (d) the cost bases of your CGT assets.

(4) Any unapplied total net forgiven amount is disregarded.

(5) Special rules apply to debts of partnerships.

1 **Subdivision 245-A—Debts to which operative rules apply**

2 **Guide to Subdivision 245-A**

3 **245-5 What this Subdivision is about**

4

5 This Division applies to a debt if you can deduct interest payable on the debt.
--

6 **Table of sections**

7 **Application of Division**

8	245-10	Commercial debts
9	245-15	Non-equity shares
10	245-20	Parts of debts

11 **Application of Division**

12 **245-10 Commercial debts**

13 Subdivisions 245-C to 245-G apply to a debt of yours if:

- 14 (a) the whole or any part of interest, or of an amount in the
15 nature of interest, paid or payable by you in respect of the
16 debt has been deducted, or can be deducted, by you; or
- 17 (b) interest, or an amount in the nature of interest, is not payable
18 by you in respect of the debt but, had interest or such an
19 amount been payable, the whole or any part of the interest or
20 amount could have been deducted by you; or
- 21 (c) interest or an amount mentioned in paragraph (a) or (b) could
22 have been deducted by you apart from the operation of a
23 provision of this Act (other than paragraphs 8-1(2)(a), (b) and
24 (c)) that has the effect of preventing a deduction.

25 Note: Paragraphs 8-1(2)(a), (b) and (c) prevent deductions for capital,
26 private or domestic outgoings and for outgoings relating to exempt
27 income or non-assessable non-exempt income.

1 **245-15 Non-equity shares**

2 This Division applies to a *non-equity share issued by a company
3 as if it were a debt to which section 245-10 applies that is owed by
4 the company to the relevant shareholder.

5 **245-20 Parts of debts**

6 This Division applies to part of a debt in the same way as it applies
7 to a whole debt.

8 Note: This Division treats interest, or an amount in the nature of interest,
9 payable on a debt as being a separate debt if the interest or amount has
10 accrued but has not been paid.

11 **Subdivision 245-B—What constitutes forgiveness of a debt**

12 **Guide to Subdivision 245-B**

13 **245-30 What this Subdivision is about**

14 A debt is *forgiven* if you no longer have to pay it.

15 However, this Division does not apply to some cases of
16 forgiveness, such as bankruptcy.

17 **Table of sections**

18 **Operative provisions**

19	245-35	What constitutes <i>forgiveness</i> of a debt
20	245-36	What constitutes <i>forgiveness</i> of a debt if the debt is assigned
21	245-37	What constitutes <i>forgiveness</i> of a debt if a subscription for shares enables
22		payment of the debt
23	245-40	Forgivenesses to which operative rules do not apply
24	245-45	Application of operative rules if forgiveness involves an arrangement

25 **Operative provisions**

26 **245-35 What constitutes *forgiveness* of a debt**

27 A debt is *forgiven* if and when:

- 1 (a) the debtor's obligation to pay the debt is released or waived,
2 or is otherwise extinguished other than by repaying the debt
3 in full; or
4 (b) the period within which the creditor is entitled to sue for the
5 recovery of the debt ends, because of the operation of a
6 statute of limitations, without the debt having been paid.

7 **245-36 What constitutes *forgiveness* of a debt if the debt is assigned**

8 A debt is *forgiven* if and when the creditor assigns the right to
9 receive payment of the debt to another entity (the *new creditor*)
10 and the following conditions are met:

- 11 (a) either the new creditor is the debtor's *associate or the
12 assignment occurred under an *arrangement to which the new
13 creditor and debtor were parties;
14 (b) the right to receive payment of the debt was not acquired by
15 the new creditor in the ordinary course of *trading on a
16 market, exchange or other place on which, or facility by
17 means of which, offers to sell, buy or exchange securities
18 (within the meaning of Division 16E of Part III of the *Income*
19 *Tax Assessment Act 1936*) are made or accepted.

20 Note 1: Division 16E of Part III of the *Income Tax Assessment Act 1936*
21 brings to account gains and losses on some securities on an accruals
22 basis.

23 Note 2: This Division also applies if an assigned debt is subsequently forgiven
24 by the new creditor. Section 245-61 tells you how to work out the
25 value of the debt in that case.

26 **245-37 What constitutes *forgiveness* of a debt if a subscription for
27 shares enables payment of the debt**

28 If an entity subscribes for *shares in a company to enable the
29 company to make a payment in or towards discharge of a debt it
30 owes to the entity, the debt is *forgiven* when, and to the extent that,
31 the company applies any of the money subscribed in or towards
32 payment of the debt.

33 **245-40 Forgivenesses to which operative rules do not apply**

34 Subdivisions 245-C to 245-G do not apply to a *forgiveness of a
35 debt if:

Schedule 2 Forgiveness of commercial debts
Part 1 Main amendments

- 1 (a) the debt is waived and the waiver constitutes a *fringe
2 benefit; or
- 3 Note: The waiver by an employer of a debt owed by an employee is
4 usually a fringe benefit: see section 14 of the *Fringe Benefits Tax*
5 *Assessment Act 1986*.
- 6 (b) the amount of the debt has been, or will be, included in the
7 assessable income of the debtor in any income year; or
- 8 (c) the forgiveness is effected under an Act relating to
9 bankruptcy; or
- 10 (d) the forgiveness is effected by will; or
- 11 (e) the forgiveness is for reasons of natural love and affection; or
- 12 (f) the debt is a *tax-related liability or a civil penalty under
13 Division 290 in Schedule 1 to the *Taxation Administration*
14 *Act 1953* (about penalties for promoters and implementers of
15 tax avoidance schemes).
- 16 Note: If the forgiveness of your debt involved an arrangement which was
17 entered into before 28 June 1996, see section 245-10 of the *Income*
18 *Tax (Transitional Provisions) Act 1997*.

19 **245-45 Application of operative rules if forgiveness involves an**
20 **arrangement**

- 21 (1) If:
- 22 (a) the debtor and the creditor in relation to a debt enter into an
23 *arrangement; and
- 24 (b) under the arrangement, the debtor's obligation to pay the debt
25 is to cease at a particular future time; and
- 26 (c) the cessation of the obligation is to occur without the debtor
27 incurring any financial or other obligation (other than an
28 obligation that, having regard to the debtor's circumstances,
29 is of a nominal or insignificant amount or kind);
- 30 Subdivisions 245-C to 245-G apply as if the debt were *forgiven
31 when the arrangement is entered into.
- 32 (2) If, after the arrangement is entered into, the debt is forgiven, the
33 later forgiveness is disregarded for the purposes of those
34 Subdivisions.

1 **Subdivision 245-C—Calculation of gross forgiven amount of a**
2 **debt**

3 **Guide to Subdivision 245-C**

4 **245-48 What this Subdivision is about**

5 The amount of forgiveness (called the gross forgiven amount) for
6 the debtor reflects the loss that the creditor makes for tax purposes.
7 It is worked out in 2 steps:

- 8 (a) the value of the debt when it was forgiven is
9 worked out on the basis that you were solvent both
10 then and when you incurred the debt; and
- 11 (b) the value of the debt is then offset by any
12 consideration given for the forgiveness of the debt.

13 The difference between the value of the debt and the amount offset
14 is the gross forgiven amount.

15 If the debt was owed by several debtors, the gross forgiven amount
16 is divided between them equally.

17 **Table of sections**

18 **Working out the value of a debt**

- 19 245-50 Extent of forgiveness if consideration is given
20 245-55 General rule for working out the value of a debt
21 245-60 Special rule for working out the value of a non-recourse debt
22 245-61 Special rule for working out the value of a previously assigned debt

23 **Working out if an amount is offset against the value of the debt**

- 24 245-65 Amount offset against amount of debt

25 **Working out the gross forgiven amount**

- 26 245-75 *Gross forgiven amount* of a debt
27 245-77 Gross forgiven amount shared between debtors

Working out the value of a debt

245-50 Extent of forgiveness if consideration is given

If any consideration is paid or given in respect of the *forgiveness of a debt, the debt that is forgiven is:

- (a) the obligation that existed before the forgiveness to pay so much of the debt as is expressed, or is taken, to be forgiven; and
- (b) the obligation that existed before the forgiveness to pay any part of the debt to which paragraph (a) does not apply but which ceases to be payable as a result of the payment or giving of the consideration.

Example: Daniel owes Samara \$100. Samara agrees to accept \$60 in full payment of the debt.

If their agreement specifies that Samara forgives the whole debt in return for \$60, paragraph (a) provides that the forgiven debt is \$100.

If their agreement instead requires Daniel to repay \$60 and specifies that Samara forgives the remaining \$40, paragraph (a) would deal with the \$40 and paragraph (b) would add the remaining \$60, again producing a forgiven amount of \$100.

In either case, the \$60 Daniel pays is offset against the forgiven amount of \$100 in working out the gross forgiven amount of the debt: see sections 245-65 and 245-75.

245-55 General rule for working out the value of a debt

(1) The value of your debt at the time (the *forgiveness time*) when it is *forgiven is the amount that would have been its *market value (considered as an asset of the creditor) at the forgiveness time, assuming that:

- (a) when you incurred the debt, you were able to pay all your debts (including that one) as and when they fell due; and
- (b) your capacity to pay the debt is the same at the forgiveness time as when you incurred it.

(2) However, the value of the debt at the forgiveness time is the sum of the following amounts, if that sum is less than the amount applicable under subsection (1):

- (a) what would have been the amount applicable under subsection (1) if there had been no change, from the time the debt was incurred until the forgiveness time, in any rate of

- 1 interest, or rate of exchange between currencies, that affects
2 the *market value of the debt;
- 3 (b) each amount:
- 4 (i) that you have deducted or can deduct as a result of the
5 *forgiveness of the debt; and
6 (ii) that is attributable to such a change.
- 7 (3) Paragraph (1)(a) does not apply to the debt if:
- 8 (a) either:
- 9 (i) the creditor was an Australian resident at the
10 forgiveness time; or
11 (ii) the *forgiveness of the debt was a *CGT event involving
12 a *CGT asset that was *taxable Australian property; and
- 13 (b) you and the creditor were not dealing with each other at
14 *arm's length in respect of you incurring the debt; and
15 (c) the debt was not a *moneylending debt.
- 16 Note: This subsection reduces your gross forgiven amount to reflect the
17 reduction in the creditor's loss on the forgiven debt under the capital
18 gains tax regime.
- 19 (4) This section has effect subject to sections 245-60 and 245-61
20 (about non-recourse and assigned debts).

21 **245-60 Special rule for working out the value of a non-recourse debt**

- 22 (1) The value of a debt when it is *forgiven is the lesser of:
- 23 (a) the amount of the debt outstanding at that time; and
24 (b) the *market value at that time of the creditor's rights
25 mentioned in paragraph (2)(b).
- 26 (2) Subsection (1) applies to a debt if:
- 27 (a) you incurred the debt directly in respect of financing:
- 28 (i) the acquisition of property by you; or
29 (ii) the construction or development of property by you;
30 (but not including the manufacture of goods); and
- 31 (b) the creditor's rights against you in the event of default in the
32 payment of the debt or interest were, just before the debt was
33 forgiven, limited to all or any of the following:
- 34 (i) rights (including the right to money payable) in relation
35 to all or any of the matters mentioned in subsection (3);

- 1 (ii) rights in respect of a mortgage or other security over the
2 property;
3 (iii) rights arising out of any *arrangement relating to the
4 financial obligations, in relation to the property, of the
5 *end user of the property to you.
- 6 (3) For the purposes of subparagraph (2)(b)(i), the matters are as
7 follows:
8 (a) the property or the use of the property;
9 (b) goods produced, supplied, carried, transmitted or delivered
10 by means of the property;
11 (c) services provided by means of the property;
12 (d) the loss or *disposal of the whole or a part of the property or
13 of your interest in the property.

14 **245-61 Special rule for working out the value of a previously**
15 **assigned debt**

16 If your debt has been assigned as mentioned in section 245-36 and
17 is later *forgiven by the new creditor, the value of that debt when it
18 is later forgiven is:

- 19 (a) if the debt was not a *moneylending debt and the creditor and
20 the new creditor were not dealing with each other at *arm's
21 length in connection with the assignment—the *market value
22 of the debt at the time of the assignment; or
23 (b) in any other case—the sum of:
24 (i) the amount or market value of the consideration (if any)
25 you paid or gave, or are required to pay or give, to the
26 creditor in respect of the assignment; and
27 (ii) the amount or market value of the consideration (if any)
28 the new creditor paid or gave in respect of the
29 assignment.

30 **Working out if an amount is offset against the value of the debt**

31 **245-65 Amount offset against amount of debt**

- 32 (1) The table explains how to work out the amount (if any) that is
33 offset against the value of a debt when it is forgiven (calculated
34 under section 245-55, 245-60 or 245-61) in working out the *gross
35 forgiven amount of the debt.

1

Amount offset against value of debt		
Item	Column 1 In this case:	Column 2 the amount offset is:
1	the debt is a *moneylending debt, and neither of items 4 and 6 applies	the sum of: (a) each amount that the debtor has paid; and (b) the *market value, at the time of the *forgiveness, of each item of property (other than money) that the debtor has given; and (c) the market value, at that time, of each obligation of the debtor to pay an amount, or to give such an item of property; as a result of, or in respect of, the forgiveness of the debt.
2	the debt is <i>not</i> a *moneylending debt, and none of items 3, 4, 5 and 6 applies	the sum of: (a) each amount that the debtor has paid, or is required to pay; and (b) the *market value, at the time of the *forgiveness, of each item of property (other than money) that the debtor has given, or is required to give; as a result of, or in respect of, the forgiveness of the debt.
3	the debt is <i>not</i> a *moneylending debt, the conditions in subsection (2) are met and none of items 4, 5 and 6 applies	the *market value of the debt at the time of the *forgiveness.
4	the debt is assigned as mentioned in section 245-36, and item 5 does not apply	the sum of: (a) the amount or *market value of the consideration (if any) that the debtor has paid or given, or is required to pay or give, in respect of the assignment; and (b) the amount or market value of the consideration (if any) paid or given by the new creditor in

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Amount offset against value of debt		
Item	Column 1	Column 2
	In this case:	the amount offset is:
		respect of the assignment.
5	the debt is assigned as mentioned in section 245-36, and: (a) the debt is <i>not</i> a *moneylending debt; and (b) the creditor and the new creditor were not dealing with each other at *arm's length in connection with the assignment	the *market value of the debt at the time of the assignment.
6	the debt is *forgiven by subscribing for *shares in a company as mentioned in section 245-37	the amount worked out using the formula in subsection (3).

- 1 (2) The conditions for the purposes of item 3 of the table in
 2 subsection (1) are:
 3 (a) at least one of the following is satisfied:
 4 (i) at the time when the debt was *forgiven, the creditor
 5 was an Australian resident;
 6 (ii) the forgiveness of the debt was a *CGT event involving
 7 a *CGT asset that was *taxable Australian property; and
 8 (b) at least one of the following is satisfied:
 9 (i) there is no amount, and no property, covered by column
 10 2 of item 2 of the table;
 11 (ii) the amount worked out under item 2 of the table is
 12 greater or less than the *market value of the debt at the
 13 time of the forgiveness and the debtor and creditor did
 14 not deal with each other at *arm's length in connection
 15 with the forgiveness.
- 16 (3) The formula for the purposes of item 6 of the table in
 17 subsection (1) is:
 18
$$\frac{\text{Amount applied}}{\text{Amount subscribed}} \times \text{Market value of shares subscribed for}$$

 19 where:

1 **amount applied** means the amount applied by the company as
2 mentioned in section 245-37.

3 **amount subscribed** means the amount subscribed as mentioned in
4 section 245-37.

5 **market value of shares subscribed for** means the *market value of
6 all the shares in the company that were subscribed for as
7 mentioned in section 245-37, immediately after those shares were
8 issued.

9 **Working out the gross forgiven amount**

10 **245-75 Gross forgiven amount of a debt**

- 11 (1) The **gross forgiven amount** of a debt is:
- 12 (a) if section 245-65 does not apply to the debt—the value of the
13 debt when it was *forgiven (worked out under
14 section 245-55, 245-60 or 245-61); or
- 15 (b) if the value of the debt when it was forgiven exceeds the
16 amount offset under section 245-65 in relation to the debt—
17 the excess.
- 18 (2) If the value of the debt when it was *forgiven is equal to or less
19 than the amount offset:
- 20 (a) there is no **gross forgiven amount** in respect of the debt; and
21 (b) Subdivisions 245-D to 245-F (about how to work out the net
22 forgiven amount of a debt and how to treat it) do not apply in
23 respect of the debt.

24 **245-77 Gross forgiven amount shared between debtors**

25 If 2 or more entities were liable (except as partners in a
26 partnership) to pay a debt, whether their liability was joint or
27 several, or joint and several, this Subdivision applies as if each
28 entity had a *gross forgiven amount worked out using the formula:

29
$$\frac{\text{*Gross forgiven amount in relation to the debt}}{\text{Number of entities liable to pay the debt}}$$

1 **Subdivision 245-D—Calculation of net forgiven amount of a**
2 **debt**

3 **Guide to Subdivision 245-D**

4 **245-80 What this Subdivision is about**

5 The net forgiven amount of a debt is worked out by subtracting,
6 from the gross forgiven amount of the debt, any amount that this
7 Act already takes into account for the debtor because the debt was
8 forgiven (for example, if some part of the forgiven amount is
9 treated as the debtor's ordinary income).

10 If the debtor and creditor were companies under common
11 ownership, they may agree to transfer some of the net forgiven
12 amount from the debtor to the creditor. The creditor must apply
13 that amount to reduce the capital loss or deduction it has because of
14 the forgiveness.

15 **Table of sections**

16 **Operative provisions**

17	245-85	Reduction of gross forgiven amount
18	245-90	Agreement between companies under common ownership for creditor to
19		forgo capital loss or deduction

20 **Operative provisions**

21 **245-85 Reduction of gross forgiven amount**

- 22 (1) The *gross forgiven amount of your debt is reduced by the sum of
23 the following amounts:
- 24 (a) any amount that, under a provision of this Act other than this
25 Division, has been, or will be, included in your assessable
26 income for any income year as a result of the *forgiveness of
27 the debt;
 - 28 (b) any amount by which, under a provision of this Act other
29 than this Division, an amount you could otherwise have
30 deducted for any income year has been, or will be, reduced as

- 1 a result of the forgiveness of the debt (except a reduction
2 under Division 727 (about indirect value shifting));
3 (c) any amount by which the *cost base of any of your *CGT
4 assets has been, or will be, reduced under Part 3-1 or 3-3 as a
5 result of the forgiveness of the debt.

6 Note: Paragraph (1)(c) does not cover a reduction under Division 727
7 (indirect value shifting) because that Division is not in Part 3-1 or 3-3.

- 8 (2) Subject to section 245-90, the amount remaining after reducing the
9 *gross forgiven amount under subsection (1) is the ***net forgiven***
10 ***amount*** of the debt.

11 **245-90 Agreement between companies under common ownership for**
12 **creditor to forgo capital loss or deduction**

- 13 (1) This section applies if:

- 14 (a) a debt owed by a company to another company is *forgiven;
15 and
16 (b) from the time when the debt was incurred until the time when
17 the debt is forgiven, the companies were *under common
18 ownership.

- 19 (2) If, apart from this subsection, the creditor would have made a
20 *capital loss as a result of the *forgiveness of the debt:

- 21 (a) the debtor and creditor may agree that the creditor is to forgo
22 so much of the loss as is stated in the agreement and does not
23 exceed the amount that would be the net forgiven amount of
24 the debt apart from this section (the ***provisional net forgiven***
25 ***amount*** of the debt); and
26 (b) if such an agreement is made:
27 (i) the creditor's capital loss is reduced by the agreed
28 amount; and
29 (ii) the provisional net forgiven amount of the debt is also
30 reduced by the agreed amount; and
31 (iii) the amount remaining after the reduction of the
32 provisional net forgiven amount of the debt under
33 subparagraph (ii) is the ***net forgiven amount*** of the debt.

- 34 (3) If, apart from this subsection, the creditor could deduct an amount
35 in respect of the debt under section 8-1 (about general deductions)

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- 1 or section 25-35 (about bad debts) for the *forgiveness income
2 year:
- 3 (a) the debtor and creditor may agree that the creditor is to forgo
4 so much of the deduction as is stated in the agreement and
5 does not exceed the amount that would be the net forgiven
6 amount of the debt apart from this section (the *provisional*
7 *net forgiven amount* of the debt); and
- 8 (b) if such an agreement is made:
- 9 (i) the amount the creditor can deduct is reduced by the
10 agreed amount; and
- 11 (ii) the provisional net forgiven amount of the debt is also
12 reduced by the agreed amount; and
- 13 (iii) the amount remaining after the reduction of the
14 provisional net forgiven amount of the debt under
15 subparagraph (ii) is the *net forgiven amount* of the debt.
- 16 (4) Neither subsection (2) nor (3) applies in relation to an agreement
17 unless the agreement:
- 18 (a) is in writing and signed by the public officer of each
19 company; and
- 20 (b) is made before:
- 21 (i) the first of those companies lodges its *income tax
22 return for the *forgiveness income year; or
- 23 (ii) any later day that the Commissioner determines in
24 writing.
- 25 (5) A determination made under subparagraph (4)(b)(ii) is not a
26 legislative instrument.

27 **Subdivision 245-E—Application of net forgiven amounts**

28 **Guide to Subdivision 245-E**

29 **245-95 What this Subdivision is about**

30 The total of the net forgiven amounts of all your debts forgiven in
31 an income year is applied to reduce 4 classes of amounts that could
32 otherwise reduce your taxable income in the same or a later income
33 year. It is applied in the following order:

- 34 (a) to your tax losses from previous income years;

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(b) to your net capital losses from previous income years;

(c) to the deductions you would otherwise get in the income year, or in a later income year, because of expenditure from a previous year (for example, the capital allowance deductions you would get for expenditure on acquiring a depreciating asset);

(d) to the cost bases of your CGT assets.

You can choose the order in which the net forgiven amounts reduce the amounts within each class.

If all the amounts in the 4 classes are reduced to nil, any remaining net forgiven amounts are disregarded.

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Table of sections

General operative provisions

- 245-100 Subdivision not to apply to calculation of attributable income
- 245-105 How *total net forgiven amount* is applied

Reduction of tax losses

- 245-115 Total net forgiven amount is applied in reduction of tax losses
- 245-120 Allocation of total net forgiven amount in respect of tax losses

Reduction of net capital losses

- 245-130 Remaining total net forgiven amount is applied in reduction of net capital losses
- 245-135 Allocation of remaining total net forgiven amount in respect of net capital losses

Reduction of expenditure

- 245-145 Remaining total net forgiven amount is applied in reduction of expenditure
- 245-150 Allocation of remaining total net forgiven amount in respect of expenditures
- 245-155 How expenditure is reduced—straight line deductions
- 245-157 How expenditure is reduced—diminishing balance deductions
- 245-160 Amount applied in reduction of expenditure included in assessable income in certain circumstances

Reduction of cost bases of assets

1 of your *tax losses (if any) for any income years, if the tax losses
2 could, if you had enough assessable income, be deducted in:

- 3 (a) the *forgiveness income year; or
4 (b) a later income year.

5 **245-120 Allocation of total net forgiven amount in respect of tax**
6 **losses**

- 7 (1) You may choose:
8 (a) the order in which your *tax losses are reduced; and
9 (b) the amount applied to reduce each of those losses;
10 so long as the *total net forgiven amount is applied, to the
11 maximum extent possible, in reduction of those losses.
12 (2) If you do not make a choice for the purposes of subsection (1), the
13 Commissioner may make the choice on your behalf in a reasonable
14 way.

15 **Reduction of net capital losses**

16 **245-130 Remaining total net forgiven amount is applied in reduction**
17 **of net capital losses**

- 18 (1) The *total net forgiven amount (if any) remaining after being
19 applied under section 245-115 is applied, to the maximum extent
20 possible, in reduction, in accordance with section 245-135, of your
21 *net capital losses (if any) specified in subsection (2).
22 (2) Those *net capital losses are your net capital losses for income
23 years before the *forgiveness income year that you could apply in
24 working out your *net capital gain for the forgiveness income year
25 if you had enough capital gains.

26 **245-135 Allocation of remaining total net forgiven amount in respect**
27 **of net capital losses**

- 28 (1) You may choose:
29 (a) the order in which your *net capital losses are reduced; and
30 (b) the amount applied in reduction of each of those losses;
31 so long as the *total net forgiven amount remaining is applied, to
32 the maximum extent possible, in reduction of those losses.

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1 (2) If you do not make a choice for the purposes of subsection (1), the
2 Commissioner may make the choice on your behalf in a reasonable
3 way.

4 **Reduction of expenditure**

5 **245-145 Remaining total net forgiven amount is applied in reduction**
6 **of expenditure**

- 7 (1) The *total net forgiven amount (if any) remaining after being
8 applied under sections 245-115 and 245-130 is applied, to the
9 maximum extent possible, in reduction, in accordance with
10 sections 245-150, 245-155 and 245-157, of your expenditure that:
11 (a) is mentioned in the following table (other than expenditure
12 covered by subsection (2)) and was incurred by you before
13 the *forgiveness income year; and
14 (b) apart from this Subdivision, could be deducted by you for the
15 forgiveness income year or a later income year if no event or
16 circumstance (other than a *recoupment of the expenditure by
17 you in the forgiveness income year) occurred that would
18 affect its deductibility.

19

Table of expenditure

Item	Column 1 General description of expenditure	Column 2 Provision under which a deduction is available for the expenditure
1	Expenditure deductible under Division 40 (Capital allowances)	Division 40 of this Act
2	Expenditure incurred in *borrowing money to produce assessable income	Section 25-25 of this Act
3	Expenditure on scientific research	Subsection 73A(2) of the <i>Income Tax Assessment Act 1936</i>
4	Expenditure on *research and development activities	Section 73B, 73BA, 73BH, 73QA or 73QB of the <i>Income Tax Assessment Act 1936</i>
5	Advance revenue expenditure	Subdivision H of Division 3 of Part III of the <i>Income Tax Assessment Act 1936</i>

Table of expenditure

Item	Column 1 General description of expenditure	Column 2 Provision under which a deduction is available for the expenditure
6	Expenditure on acquiring a unit of industrial property to produce assessable income	Subsection 124M(1) of the <i>Income Tax Assessment Act 1936</i>
7	Expenditure on Australian films	Section 124ZAFA of the <i>Income Tax Assessment Act 1936</i>
8	Expenditure on assessable income-producing buildings and other capital works	Section 43-10 of this Act

1 Note: If the asset to which the expenditure relates was disposed of, lost or
2 destroyed before 28 June 1996 or the expenditure was recouped before
3 28 June 1996, see section 245-10 of the *Income Tax (Transitional*
4 *Provisions) Act 1997*.

- 5 (2) Expenditure is covered by this subsection if:
- 6 (a) it was incurred in respect of an asset you *disposed of to an
7 entity that you dealt with at *arm's length in respect of the
8 disposal; and
- 9 (b) the disposal occurred during the *forgiveness income year
10 before the *forgiveness of any debt owed by you, and the
11 forgiveness resulted in a *net forgiven amount; and
- 12 (c) no provision of this Act includes an amount in your
13 assessable income, or allows you a deduction, as a result of
14 the disposal.

15 **245-150 Allocation of remaining total net forgiven amount in respect**
16 **of expenditures**

- 17 (1) You may choose:
- 18 (a) the order in which your expenditures are reduced; and
- 19 (b) the amount applied in reduction of each of those
20 expenditures;
- 21 so long as that the *total net forgiven amount remaining is applied,
22 to the maximum extent possible, in reduction of your expenditures.

- 1 (2) If you do not make a choice for the purposes of subsection (1), the
2 Commissioner may make the choice on your behalf in a reasonable
3 way.

4 **245-155 How expenditure is reduced—straight line deductions**

- 5 (1) This section applies in respect of the reduction under
6 section 245-145 of an expenditure of yours, if:
7 (a) the amount that you could deduct, apart from this
8 Subdivision, in respect of the expenditure is a percentage,
9 fraction or proportion of an amount (the *base amount*); and
10 (b) the base amount is worked out without regard to any amount
11 or amounts you previously deducted in respect of that
12 expenditure.
- 13 (2) The amount of the reduction of the expenditure must not exceed:
14 (a) the base amount; less
15 (b) the amount of that part of the expenditure in respect of which
16 you have deducted (disregarding subsection (4)), or can
17 deduct, an amount for any income year before the
18 *forgiveness income year.
- 19 (3) For the purpose of working out your deductions for the
20 *forgiveness income year and later income years, any amount that
21 is applied in reduction of your expenditure is taken to reduce the
22 base amount.
- 23 (4) You are taken to have deducted the amount of the reduction in
24 respect of the expenditure:
25 (a) before the *forgiveness income year; and
26 (b) for the purposes of any provision of this Act that includes an
27 amount in your assessable income or allows you a deduction:
28 (i) because of the *disposal, loss or destruction of the asset
29 in respect of which the expenditure was incurred; or
30 (ii) because of the *recoupment of any of the expenditure;
31 or
32 (iii) because use of the asset for a particular purpose has
33 been otherwise terminated; or
34 (iv) because a *balancing adjustment event occurs for that
35 asset.

- 1 (5) The amount of that part of the expenditure in respect of which you
2 have deducted (disregarding subsection (4), or can deduct, an
3 amount for all income years (including income years before the
4 *forgiveness income year) must not exceed the base amount as
5 reduced under subsection (3).

6 **245-157 How expenditure is reduced—diminishing balance**
7 **deductions**

8 Any amount applied in reduction under section 245-145 of an
9 expenditure of yours is taken to have been deducted by you in
10 respect of the expenditure before the *forgiveness income year, if
11 the amount you could deduct, apart from this Subdivision, in
12 respect of the expenditure is a percentage, fraction or proportion of
13 an amount that is worked out after taking into account any amount
14 previously deducted by you in respect of the expenditure.

15 **245-160 Amount applied in reduction of expenditure included in**
16 **assessable income in certain circumstances**

17 If:

- 18 (a) after the *forgiveness income year you *recoup an amount of
19 expenditure that is subject to reduction under
20 section 245-145; and
21 (b) as a result of the recoupment, this Act applies to disallow any
22 amount you have deducted in respect of the expenditure;
23 an amount equal to the amount, or the sum of the amounts, applied
24 under this Subdivision in reduction of the expenditure is included
25 in your assessable income in the income year in which the
26 expenditure is recouped.

27 **Reduction of cost bases of assets**

28 **245-175 Remaining total net forgiven amount is applied in reduction**
29 **of cost bases of CGT assets**

- 30 (1) The *total net forgiven amount (if any) remaining after being
31 applied under sections 245-115, 245-130 and 245-145 is applied, to
32 the maximum extent possible, in reduction, in accordance with
33 sections 245-180 to 245-190, of the *cost base and *reduced cost
34 base of your *CGT assets.

- 1 (2) Subsection (1) does not apply to the following *CGT assets:
- 2 (a) a *pre-CGT asset;
- 3 (b) a CGT asset you *acquire after the start of the *forgiveness
- 4 income year;
- 5 (c) a *personal use asset;
- 6 (d) a *dwelling that was your main residence at any time before
- 7 the forgiveness income year;
- 8 (e) goodwill;
- 9 (f) a right of yours covered by section 118-305 (which exempts
- 10 from CGT certain rights relating to a superannuation fund or
- 11 approved deposit fund);
- 12 (g) a CGT asset that, throughout the period before the
- 13 forgiveness income year when it was owned by you, was
- 14 your *trading stock;
- 15 (h) a CGT asset if:
- 16 (i) expenditure by you (of a kind which is subject to
- 17 reduction under section 245-145) relates to the asset;
- 18 and
- 19 (ii) a *CGT event in relation to the asset would result in an
- 20 amount being included in your assessable income, or in
- 21 you being able to deduct an amount;
- 22 (i) if you are a foreign resident at the beginning of the
- 23 forgiveness income year—an asset of yours that is not
- 24 *taxable Australian property.

25 **245-180 Allocation of remaining total net forgiven amount among**

26 **relevant cost bases of CGT assets**

- 27 (1) Subject to section 245-185, you may choose:
- 28 (a) your *CGT assets whose *cost base and *reduced cost base
- 29 are subject to reduction under section 245-175; and
- 30 (b) the amount applied in reduction of the cost base and reduced
- 31 cost base of each of those assets;
- 32 so long as the *total net forgiven amount remaining is applied, to
- 33 the maximum extent possible, in reduction of the cost base and
- 34 reduced cost base of such assets.
- 35 (2) If you do not make a choice for the purposes of subsection (1), the
- 36 Commissioner may make the choice on your behalf in a reasonable
- 37 way.

1 **245-185 Relevant cost bases of investments in associated entities are**
2 **reduced last**

3 If your *CGT assets that are subject to reduction under
4 section 245-175 include investments in, or in relation to, an
5 *associate of yours (including *membership interests, or *debt
6 interests, in your associate), the:

- 7 (a) *cost base; and
8 (b) *reduced cost base;

9 of those assets are not subject to reduction under section 245-175
10 until the *total net forgiven amount (if any) remaining has been
11 applied, to the maximum extent possible, in reduction of the cost
12 bases of your other CGT assets.

13 **245-190 Reduction of the relevant cost bases of a CGT asset**

- 14 (1) Subject to subsection (3), if you choose to apply an amount in
15 reduction of the *cost base and *reduced cost base of a particular
16 *CGT asset, the cost base and reduced cost base of the asset, as at
17 any time on or after the beginning of the *forgiveness income year,
18 are reduced by that amount.
- 19 (2) The reduction by a particular amount of the *cost base and
20 *reduced cost base of a particular *CGT asset is, for the purpose of
21 working out the amount by which the *total net forgiven amount
22 remaining is applied, taken to be a reduction by the particular
23 amount (and not by the sum of the amounts by which those cost
24 bases are reduced).
- 25 (3) The maximum amount by which the *cost base and *reduced cost
26 base of a *CGT asset may be reduced is the amount that, apart from
27 sections 245-175 to 245-185, would be the reduced cost base of the
28 asset calculated as if a *CGT event had happened to the asset:
- 29 (a) subject to paragraph (b), on the first day of the *forgiveness
30 income year; or
31 (b) if, after the beginning of that income year, an event occurred
32 that would cause the reduced cost base of the asset to be
33 reduced—on the day on which the event occurred;
34 and the asset had been *disposed of at its *market value on the day
35 concerned.

1 **Unapplied total net forgiven amount**

2 **245-195 No further consequences if there is any remaining**
3 **unapplied total net forgiven amount**

- 4 (1) If any part of the *total net forgiven amount remains after the
5 application of that amount in making reductions under the
6 preceding provisions of this Subdivision, the remaining part is
7 disregarded.
- 8 (2) This section has effect subject to section 245-215 (about
9 partnerships and transferring the remaining part to the partners).

10 **Subdivision 245-F—Special rules relating to partnerships**

11 **Guide to Subdivision 245-F**

12 **245-200 What this Subdivision is about**

13 Any part of a partnership's total net forgiven amount left over after
14 applying it under Subdivision 245-E is divided between the
15 partners. Each partner treats the partner's share as a net forgiven
16 amount the partner has for the income year.

17 **Table of sections**

18 **Operative provisions**

19 245-215 Unapplied total net forgiven amount of a partnership is transferred to
20 partners

21 **Operative provisions**

22 **245-215 Unapplied total net forgiven amount of a partnership is**
23 **transferred to partners**

- 24 (1) This section applies if any part (the *residual amount*) of the *total
25 net forgiven amount in relation to a partnership in respect of the
26 *forgiveness income year remains after the total net forgiven
27 amount has been applied in accordance with Subdivision 245-E.

- 1 (2) If there is a *net income in relation to the partnership in respect of
2 the *forgiveness income year:
3 (a) each partner is taken to have had a debt *forgiven during the
4 forgiveness income year; and
5 (b) there is taken to be, in respect of the debt of each partner, a
6 *net forgiven amount worked out in accordance with the
7 following formula:

8
$$\frac{\text{Partner's share of net income}}{\text{Net income}} \times \text{Residual amount}$$

9 where:

10 *partner's share of net income* means the part of the net
11 income of the partnership for the forgiveness income year
12 that is included in the partner's assessable income.

- 13 (3) If there is a *partnership loss in relation to the partnership in
14 respect of the *forgiveness income year:
15 (a) each partner is taken to have had a debt *forgiven during the
16 forgiveness income year; and
17 (b) there is taken to be, in respect of the debt of each partner, a
18 *net forgiven amount worked out in accordance with the
19 following formula:

20
$$\frac{\text{Partner's share of partnership loss}}{\text{Partnership loss}} \times \text{Residual amount}$$

21 where:

22 *partner's share of partnership loss* means the part of the
23 partnership loss that the partner has deducted or can deduct.

- 24 (4) The *total net forgiven amount of a partner for the *forgiveness
25 income year as worked out under subsection 245-105(1) includes
26 the *net forgiven amount worked out in relation to the partner
27 under this section.
28 (5) This section has effect in relation to a partnership irrespective of
29 any agreement between the partners as to the operation of this
30 section.

1 **Subdivision 245-G—Record keeping**

2 **245-265 Keeping and retaining records**

- 3 (1) If you incur a debt, you must keep any records that are necessary to
4 enable the following matters to be readily found out:
- 5 (a) the date on which you incurred the debt;
 - 6 (b) the identity of the creditor;
 - 7 (c) the amount of the debt;
 - 8 (d) the terms of repayment of the debt;
 - 9 (e) if the debt is not a *moneylending debt and you and the
10 creditor were not dealing with each other at *arm's length in
11 respect of the incurring of the debt—your capacity at the time
12 when the debt was incurred to pay the debt when it falls due;
 - 13 (f) if your debt is *forgiven—the date of the forgiveness and the
14 amount offset under section 245-65 (if any) in respect of the
15 debt.

16 Note: There is an administrative penalty if you do not keep or retain records
17 as required by this section: see section 288-25 in Schedule 1 to the
18 *Taxation Administration Act 1953*.

- 19 (2) If a company and another company that are *under common
20 ownership cease to be under common ownership, each company
21 must keep any records that are necessary to enable the following
22 matters to be readily found out:
- 23 (a) the date on which the companies ceased to be under common
24 ownership;
 - 25 (b) the identity of each entity that was a *controller (for CGT
26 purposes) of the company immediately before the companies
27 ceased to be under common ownership;
 - 28 (c) the identity of each entity that was a controller (for CGT
29 purposes) of the company immediately after the companies
30 ceased to be under common ownership.
- 31 (3) You must keep the records required by subsection (1) or (2) in
32 writing in the English language or so as to enable them to be
33 readily accessible and convertible into writing in the English
34 language.
- 35 (4) Subject to subsection (5), you must keep the records required by
36 subsection (1) until:

- 1 (a) if paragraph (b) does not apply—the end of 5 years after the
2 debt was *forgiven; or
- 3 (b) if the period within which the Commissioner may, under
4 section 170 of the *Income Tax Assessment Act 1936*, amend
5 your assessment for the income year to which the records
6 relate, or in which a transaction or act to which the records
7 relate was completed, is extended under subsection 170(7) of
8 that Act—the later of:
- 9 (i) the end of the assessment period as so extended; and
10 (ii) the end of the period of 5 years mentioned in
11 paragraph (a).
- 12 (5) Subsection (4) does not require you to keep records after the debt is
13 paid.
- 14 (6) Subject to subsection (7), each company that keeps any records
15 required by subsection (2) must retain the records until the end of
16 the second income year after the income year in which the
17 companies ceased to be *under common ownership.
- 18 (7) If a debt of one of the companies mentioned in subsection (2) was
19 *forgiven at any time after the companies ceased to be *under
20 common ownership and before the end of the second income year
21 after the income year in which the cessation occurred, each
22 company that keeps records required by that subsection must retain
23 the records until the time specified in subsection (4).
- 24 (8) You commit an offence if you fail to comply with a provision of
25 this section.
- 26 Penalty: 30 penalty units.
- 27 (9) An offence against subsection (8) is an offence of strict liability.
- 28 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 29 (10) This section does not limit the application of any other provision of
30 this Act relating to the keeping or retention of records.

3 Subsection 995-1(1)

31 Insert:

32
33 *forgive* a debt has the meaning given by sections 245-35, 245-36
34 and 245-37.

Schedule 2 Forgiveness of commercial debts

Part 1 Main amendments

1 Note: Subdivisions 245-C to 245-G (about forgiveness of commercial debts)
2 apply to certain arrangements as if the arrangements were forgiveness
3 of debts: see section 245-45.

4 **4 Subsection 995-1(1)**

5 Insert:

6 *forgiveness income year*, in relation to a debt that is *forgiven,
7 means the income year in which the debt is forgiven.

8 **5 Subsection 995-1(1)**

9 Insert:

10 *gross forgiven amount* has the meaning given by section 245-75.

11 **6 Subsection 995-1(1)**

12 Insert:

13 *moneylending debt* means a debt resulting from a loan of money in
14 the ordinary course of a *business of lending money carried on by
15 the creditor.

16 **7 Subsection 995-1(1)**

17 Insert:

18 *net forgiven amount*, of a debt, has the meaning given by
19 sections 245-85 and 245-90.

20 **8 Subsection 995-1(1)**

21 Insert:

22 *total net forgiven amount* has the meaning given by subsection
23 245-105(1).

24 ***Income Tax (Transitional Provisions) Act 1997***

25 **9 Before Division 247**

26 Insert:

27 **Division 245—Forgiveness of commercial debts**

28 **Table of Subdivisions**

1 245-A Application of Division 245 of the Income Tax Assessment
2 Act 1997

3 **Subdivision 245-A—Application of Division 245 of the Income**
4 **Tax Assessment Act 1997**

5 **Table of sections**

6 245-5 Application and saving
7 245-10 Pre-28 June 1996 arrangements etc.

8 **245-5 Application and saving**

- 9 (1) Division 245 of the *Income Tax Assessment Act 1997* applies to
10 debts forgiven in:
11 (a) the 2010-11 income year; and
12 (b) later income years.
- 13 (2) Despite the repeal of Schedule 2C to the *Income Tax Assessment*
14 *Act 1936*, that Schedule continues to apply to debts forgiven in:
15 (a) the 2009-10 income year; and
16 (b) earlier income years.
- 17 (3) Subsection (2) does not limit the effect of section 8 of the *Acts*
18 *Interpretation Act 1901* in relation to the repeal.

19 **245-10 Pre-28 June 1996 arrangements etc.**

- 20 (1) Subdivisions 245-C to 245-G of the *Income Tax Assessment Act*
21 *1997* do not apply to a forgiveness of a debt if the forgiveness
22 occurs in accordance with the terms of an arrangement that:
23 (a) was entered into on or before 27 June 1996; and
24 (b) is evidenced in writing otherwise than by a document
25 evidencing the arrangement or transaction under which the
26 debt arose.
- 27 (2) Those Subdivisions also do not apply to reduce your expenditure:
28 (a) if the asset in respect of which the expenditure was incurred
29 was disposed of by you, or was lost or destroyed, on or
30 before 27 June 1996; or
31 (b) to the extent (if any) to which the expenditure was recouped
32 by you on or before 27 June 1996.

1

2 **Part 2—Consequential amendments**

3 ***Income Tax Assessment Act 1936***

4 **10 Subsections 73A(1A) and 82KZM(2)**

5 Omit “Schedule 2C”, substitute “the *Income Tax Assessment Act 1997*”.

6 **11 Paragraph 82KZMA(6)(b)**

7 Omit “Schedule 2C to this Act”, substitute “that Act”.

8 **12 Paragraph 82KZMF(2)(b)**

9 Omit “Schedule 2C to this Act”, substitute “the *Income Tax Assessment*
10 *Act 1997*”.

11 **13 Subsection 109F(3)**

12 Omit “(except subsection 245-35(4)) of Schedule 2C, assuming the
13 amount were a commercial debt for the purposes of Division 245 of that
14 Schedule”, substitute “or 245-37 of the *Income Tax Assessment Act*
15 *1997*, assuming the amount were a debt to which Subdivisions 245-C to
16 245-G of that Act apply”.

17 **14 Subsection 109F(3) (note)**

18 Omit “of Schedule 2C”, substitute “of the *Income Tax Assessment Act*
19 *1997*”.

20 **15 Subsection 109F(8) (example)**

21 Omit “subsection 245-35(2) of Schedule 2C”, substitute “paragraph
22 245-35(b) of the *Income Tax Assessment Act 1997*”.

23 **16 Sections 124KAA and 124ZAFAA**

24 Omit “Schedule 2C”, substitute “the *Income Tax Assessment Act 1997*”.

25 Note: The headings to sections 124KAA and 124ZAFAA are altered by omitting
26 “Schedule 2C” and substituting “the 1997 Act”.

27 ***Income Tax Assessment Act 1997***

28 **17 Section 12-5 (table item headed “bad debts”)**

1 Omit “**245-90 of Schedule 2C**”, substitute “245-90”.

2 **18 Subsection 25-25(1) (note)**

3 Omit “of Schedule 2C to the *Income Tax Assessment Act 1936*”.

4 **19 Subsection 25-35(5) (cell at table item 3, column headed**
5 **“See:”)**

6 Repeal the cell, substitute:
section 245-90

7 **20 Subsections 36-15(7) and 36-17(9) (note)**

8 Omit “of Schedule 2C to the *Income Tax Assessment Act 1936*”.

9 **21 Subsection 40-90(1)**

10 Omit “deductible”.

11 **22 Subsection 40-90(1)**

12 Omit “(within the meaning of Division 245 of Schedule 2C to the
13 *Income Tax Assessment Act 1936*) under section 245-155 of that
14 Schedule”, substitute “under section 245-155 or 245-157”.

15 **23 Subsection 40-645(3) (note 1)**

16 Omit “of this Act” (first and second occurring).

17 **24 Subsection 40-645(3) (note 1)**

18 Omit “of Schedule 2C to the *Income Tax Assessment Act 1936*”.

19 **25 Subsection 43-50(7)**

20 Omit “of Schedule 2C to the *Income Tax Assessment Act 1936*”.

21 **26 Section 102-30 (table item 3)**

22 Omit “of Schedule 2C to the *Income Tax Assessment Act 1936*”.

23 **27 Subsection 104-25(5) (note 2)**

24 Omit “of Schedule 2C to the *Income Tax Assessment Act 1936*”.

25 **28 Section 112-97 (table item 19)**

26 Omit “CGT assets of the debtor (except assets that are excluded assets
27 under Schedule 2C)”, substitute “certain CGT assets of the debtor”.

1 **29 Section 112-97 (cell at table item 19, column headed**
2 **“See:”)**

3 Repeal the cell, substitute:
sections 245-175
to 245-190

4 **30 Paragraph 165-115ZA(2)(b)**

5 Omit “section 245-10 in Schedule 2C to the *Income Tax Assessment Act*
6 *1936* (which relates”, substitute “Subdivisions 245-C to 245-G (which
7 relate”.

8 **31 Paragraph 204-30(2)(c)**

9 Omit “forgiving”, substitute “*forgiving”.

10 **32 Section 230-470**

11 Omit “forgiveness of a debt (as defined in Subdivision 245-B of
12 Schedule 2C to the *Income Tax Assessment Act 1936*)”, substitute
13 “*forgiveness of a debt to which Subdivisions 245-C to 245-G apply”.

14 **33 Paragraphs 230-470(a) and (b)**

15 Repeal the paragraphs, substitute:

- 16 (a) if section 245-90 (about agreements to forgo capital losses or
17 deductions) applies—the debt’s provisional net forgiven
18 amount mentioned in that section; or
19 (b) if that section does not apply—the debt’s *net forgiven
20 amount.

21 **34 Paragraphs 230-515(2)(e) and (f)**

22 Repeal the paragraphs, substitute:

- 23 (e) item 3 of the table in subsection 245-65(1) of this Act;
24 (f) section 775-40 of this Act.

25 **35 Subsection 243-75(1)**

26 Omit “Schedule 2C to the *Income Tax Assessment Act 1936*”, substitute
27 “Division 245”.

28 **36 Paragraph 243-75(2)(a)**

29 Omit “that Schedule”, substitute “Division 245”.

1 **37 Paragraph 243-75(2)(b)**

2 Omit “of that Schedule”.

3 **38 Subsection 707-140(3)**

4 Omit “forgiven (as defined in Subdivision 245-B in Schedule 2C to the
5 *Income Tax Assessment Act 1936*)”, substitute “*forgiven”.

6 **39 Subsection 707-140(3)**

7 Omit “subsections 245-105(5) and (6) in that Schedule”, substitute
8 “sections 245-115 and 245-130”.

9 **40 Subsection 707-415(2) (table item 1)**

10 Repeal the item, substitute:

11

- | | | | |
|---|--|--------------------------------|---|
| 1 | (a) the joining entity owed a debt just before the joining time to an entity that was not a *member of the group at the joining time; and | the *total net forgiven amount | applying that total net forgiven amount in accordance with sections 245-115, 245-130, 245-145 and 245-175 |
| | (b) the loss is wholly or partly attributable to the debt; and | | |
| | (c) Subdivision 245-E (about applying the total net forgiven amount to reduce other amounts) applies in relation to the debt (or another debt that is reasonably connected to the debt) because the debt is *forgiven after the joining time | | |

12 **41 Subsection 707-415(4)**

13 Omit “gross forgiven amount (within the meaning of section 245-75 in
14 Schedule 2C to the *Income Tax Assessment Act 1936*)”, substitute
15 “*gross forgiven amount”.

1 **42 Subsection 995-1(1) (note at the end of the definition of**
2 **company)**

3 After “Note”, insert “1”.

4 **43 Subsection 995-1(1) (at the end of the definition of**
5 **company)**

6 Add:

7 Note 2: A reference to a company includes a reference to a corporate limited
8 partnership: see section 94J of the *Income Tax Assessment Act 1936*.

9 **44 Subsection 995-1(1) (note at the end of the definition of**
10 **partnership)**

11 After “Note”, insert “1”.

12 **45 Subsection 995-1(1) (at the end of the definition of**
13 **partnership)**

14 Add:

15 Note 2: A reference to a partnership does not include a reference to a
16 corporate limited partnership: see section 94K of the *Income Tax*
17 *Assessment Act 1936*.

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Schedule 3—Leases of luxury cars

Part 1—Main amendments

Income Tax Assessment Act 1936

1 Schedule 2E

Repeal the Schedule.

Income Tax Assessment Act 1997

2 After Division 240

Insert:

Division 242—Leases of luxury cars

Table of Subdivisions

	Guide to Division 242
242-A	Notional sale and loan
242-B	Amount to be included in lessor's assessable income
242-C	Deductions allowable to lessee
242-D	Adjustments if total amount assessed to lessor differs from amount of interest
242-E	Extension, renewal and final ending of the lease

Guide to Division 242

242-1 What this Division is about

A luxury car is one whose market value exceeds the car limit set for a car's capital allowance deductions by section 40-230.

If the lessor of a luxury car is tax exempt, or taxed at a lower rate than the lessee, the lease could be structured to give both parties a better after-tax outcome than if the lessee had bought the car. The lessee could fully deduct the lease payments, thereby avoiding the

1 capital allowance limit for luxury cars, and the lessor would
2 receive higher lease payments.

3 This Division removes the tax benefit for the lessee by putting both
4 parties in the same position as if the lessor had sold the car to the
5 lessee and lent the lessee the purchase price.

6 **Subdivision 242-A—Notional sale and loan**

7 **Guide to Subdivision 242-A**

8 **242-5 What this Subdivision is about**

9 A leased luxury car is treated for income tax purposes as if it had
10 been sold by the lessor to the lessee for the car's market value. The
11 lessor is treated as having lent the lessee the money to buy the car,
12 and the lease payments are treated as payments of the principal and
13 interest on that notional loan.

14 **Table of sections**

15	Operative provisions	
16	242-10	Application
17	242-15	Notional sale and acquisition
18	242-20	Consideration for notional sale, and cost, of car
19	242-25	Notional loan by lessor to lessee

20 **Operative provisions**

21 **242-10 Application**

- 22 (1) This Division applies to a *car that:
- 23 (a) is leased (but not under a *short-term hire agreement or a
24 *hire purchase agreement) for consideration; and
- 25 (b) was a *luxury car when the lessor first leased it; and
- 26 (c) is not *trading stock of the lessee; and
- 27 (d) is not a car covered by subsection 40-230(2) (about cars
28 modified to carry individuals with a disability).

1 (2) The provisions of this Division do not have effect for the purposes
2 of Division 11A of Part III of the *Income Tax Assessment Act 1936*
3 (about withholding tax on dividends, interest and royalties).

4 Note: This subsection prevents interest on the notional loan that this
5 Division creates being subject to withholding tax under Division 11A.

6 (3) For the purposes of paragraph (1)(a), the question whether an
7 agreement is a *short-term hire agreement is determined on the
8 basis that an employee or employer of an entity is an *associate of
9 the entity.

10 Note: Under the definition of *short-term hire agreement* in subsection
11 995-1(1), successive agreements for the hire of the same asset to an
12 entity or its associates are not short-term hire agreements if they result
13 in substantial continuity of hiring.

14 **242-15 Notional sale and acquisition**

15 (1) This Act has effect as if:

16 (a) the *car had been disposed of (the *notional sale*) by the lessor
17 to the lessee; and

18 (b) the car had been acquired by the lessee;
19 at the start of the term of the lease.

20 Note: This Act will apply as it would have if the lessor had actually disposed
21 of the car to the lessee. For example, if the lessor had been deducting
22 an amount for the car's decline in value, the notional disposal will
23 activate the balancing adjustment rules in Subdivision 40-D because
24 the lessor would be treated as no longer holding the car.

25 (2) This Act also has effect as if the lessee owns the *car until:

26 (a) the lease (not including any extension or renewal of the
27 lease) ends; or

28 (b) the lessee enters into a sublease of the car and this Division
29 applies to the car in relation to the sublease.

30 Note 1: This means that the lessee (and not the lessor) may be able to deduct
31 amounts for the decline in value of the car under Division 40.

32 Note 2: The lessee will be treated as continuing to own the car until the end of
33 any extension or renewal: see section 242-80.

34 **242-20 Consideration for notional sale, and cost, of car**

35 (1) The consideration for the notional sale by the lessor, and the first
36 element of the *cost of the *car for the lessee, are the car's *market
37 value at the start of the term of the lease.

Schedule 3 Leases of luxury cars
Part 1 Main amendments

- 1 (2) If:
2 (a) the lease is a sublease; and
3 (b) the lessee is one or more of the following:
4 (i) an *associate of the lessor;
5 (ii) an employer of the lessor;
6 (iii) an employee of the lessor;
7 the first element of the *cost of the *car to the lessee is the sum of:
8 (c) the amount that would have been the car's *adjustable value
9 at the start of the term of the lease for the purposes of
10 applying this Act to the lessor if the lessor were not taken
11 under this Division to have disposed of the car; and
12 (d) any amount that is included in the lessor's assessable income
13 under section 40-285 as a balancing adjustment because the
14 lessor is treated as having disposed of the car.
15 Note: Section 242-20 of the *Income Tax (Transitional Provisions) Act 1997*
16 extends paragraph (2)(d) to cover amounts included in assessable
17 income under former provisions corresponding to section 40-285.

18 **242-25 Notional loan by lessor to lessee**

- 19 (1) This Act has effect as if, on the grant of the lease, the lessor had
20 made a loan (the *notional loan*) to the lessee:
21 (a) for a period equal to the term of the lease (not including the
22 term of any extension or renewal); and
23 (b) of an amount (the *notional loan principal*) equal to the
24 consideration for the notional sale of the *car less any amount
25 paid, or credited by the lessor as having been paid, by the
26 lessee to the lessor, at or before the start of the term of the
27 lease, for the first element of the *cost of the car to the lessee;
28 and
29 (c) subject to payment of interest.
30 Note: There is a further notional loan if the lease is extended or renewed: see
31 section 242-80.
32 (2) This Act has effect as if the notional loan principal were repaid,
33 and the interest were paid, by the making of the *luxury car lease
34 payments.

1 **Subdivision 242-B—Amount to be included in lessor’s**
2 **assessable income**

3 **Guide to Subdivision 242-B**

4 **242-30 What this Subdivision is about**

5 The lessor’s assessable income includes the interest on the notional
6 loan.

7 The lease payments to the lessor are non-assessable non-exempt
8 income.

9 Note: If the consideration for a notional sale of a car exceeds
10 the adjustable value of the car to the lessor, the excess
11 will be included in the lessor’s assessable income under
12 section 40-285.

13 There would be a similar result if the lessor is treated as
14 having reacquired the car and then sells the car for more
15 than the cost of reacquisition.

16 **Table of sections**

17 **Operative provisions**

18 242-35 Amount to be included in lessor’s assessable income
19 242-40 Treatment of lease payments

20 **Operative provisions**

21 **242-35 Amount to be included in lessor’s assessable income**

22 *Accrual amounts*

23 (1) The lessor’s assessable income for an income year includes:

24 (a) if a *luxury car lease payment period for the lease of a *car
25 occurs wholly during that income year—the amount (an
26 **accrual amount**) worked out under subsection (2) for that
27 luxury car lease payment period; and

28 (b) if part of a luxury car lease payment period for the lease of a
29 car occurs during that income year—so much of the amount
30 (also an **accrual amount**) worked out under subsection (2)
31 for that luxury car lease payment period as may appropriately

Schedule 3 Leases of luxury cars
Part 1 Main amendments

1 be related to that income year in accordance with generally
2 accepted accounting principles.

3 (2) The amount is:

4 Outstanding notional loan principal at
the start of the lease payment period × Implicit interest rate

5 where:

6 *implicit interest rate* is the implicit interest rate under the lease for
7 the *luxury car lease payment period, taking into account the
8 payments to be made by the lessee under the lease and any
9 *termination amounts.

10 *outstanding notional loan principal at the start of the lease*
11 *payment period* is:

12 (a) the sum of the notional loan principal and the accrual
13 amounts for earlier *luxury car lease payment periods; less

14 (b) the sum of the *luxury car lease payments that the lessee was
15 required to make before the start of the relevant luxury car
16 lease payment period.

17 *Excessive periods*

18 (3) If, apart from this subsection, a *luxury car lease payment period
19 for the lease of a *car would exceed 6 months, this Division applies
20 as if each of the following were a separate luxury car lease
21 payment period:

22 (a) the first 6 months of the original luxury car lease payment
23 period;

24 (b) if the original luxury car lease payment period was not longer
25 than 12 months—the remaining part of the original luxury car
26 lease payment period;

27 (c) if the original luxury car lease payment period was longer
28 than 12 months—each successive 6 month period in the
29 original luxury car lease payment period;

30 (d) the period (if any) after the end of the last of the periods to
31 which paragraph (c) applies.

1 **242-40 Treatment of lease payments**

2 (1) The *luxury car lease payments under the lease are not assessable
3 income and are not *exempt income of the lessor.

4 Note: Those lease payments are instead taken into account in calculating
5 accrual amounts that are included in the lessor's assessable income
6 under section 242-35.

7 (2) In working out the amounts the lessor can deduct for any income
8 year, ignore the fact that subsection (1) makes the *luxury car lease
9 payments *non-assessable non-exempt income.

10 Note: This allows the lessor to continue to deduct amounts related to earning
11 the lease payments (such as interest on an amount the lessor borrowed
12 to acquire the car), just as if the amounts related to earning interest on
13 the notional loan to the lessee.

14 **Subdivision 242-C—Deductions allowable to lessee**

15 **Guide to Subdivision 242-C**

16 **242-45 What this Subdivision is about**

17 The lessee is entitled to deduct the interest on the notional loan to
18 the same extent that the lessee would have been able to deduct the
19 lease payments apart from this Division.

20 **Table of sections**

21 **Operative provisions**

22 242-50 Extent to which deductions are allowable to lessee
23 242-55 Lease payments not deductible

24 **Operative provisions**

25 **242-50 Extent to which deductions are allowable to lessee**

26 (1) If a *luxury car lease payment period for the lease of a *car occurs
27 wholly during an income year of the lessee, the lessee can deduct
28 the accrual amount for that period for that income year.

29 Note 1: If a luxury car lease payment period would otherwise be longer than 6
30 months, subsection 242-35(3) divides the original period into periods
31 of no longer than 6 months.

Schedule 3 Leases of luxury cars
Part 1 Main amendments

1 Note 2: For *accrual amount*, see subsection 242-35(1).

2 (2) If part of a *luxury car lease payment period for the lease of a *car
3 occurs during an income year of the lessee, the lessee can deduct
4 so much of the accrual amount for that period as may appropriately
5 be related to that income year in accordance with generally
6 accepted accounting principles.

7 (3) The lessee can deduct an accrual amount, or part of an accrual
8 amount, for a *luxury car lease payment period under
9 subsection (1) or (2) for an income year only to the extent that the
10 lessee could deduct the luxury car lease payments made for that
11 year apart from this Division.

12 **242-55 Lease payments not deductible**

13 The lessee cannot deduct the *luxury car lease payments that the
14 lessee makes under the lease for any income year.

15 Note: Those payments are instead taken into account in calculating accrual
16 amounts that are deductible under section 242-50.

17 **Subdivision 242-D—Adjustments if total amount assessed to**
18 **lessor differs from amount of interest**

19 **Guide to Subdivision 242-D**

20 **242-60 What this Subdivision is about**

21 When a luxury car lease is extended, renewed or ends, the overall
22 nominal gain to the lessor is compared to the nominal interest so
23 far paid under the lease.

24 If the overall nominal gain is greater, the difference is assessable
25 income of the lessor, and the lessee may be able to deduct it.

26 If the overall nominal gain is less, the lessor can deduct the
27 difference, which may also be assessable income of the lessee.

28 This process ensures that the right amount has been taxed over the
29 term of the lease.

1 **Table of sections**

2 **Operative provisions**

- 3 242-65 Adjustments for lessor
4 242-70 Adjustments for lessee

5 **Operative provisions**

6 **242-65 Adjustments for lessor**

- 7 (1) This section applies at the following times:
8 (a) if the term of the lease is extended—when the extension
9 takes effect;
10 (b) if the lease is renewed—when the renewal takes effect;
11 (c) when the lease (including any extension or renewal of the
12 lease) ends.

- 13 (2) If the sum of all amounts (whether *luxury car lease payments, a
14 *termination amount or any other payments) that were paid or
15 payable to the lessor under the lease exceeds the amount worked
16 out under subsection (4), the excess is included in the lessor's
17 assessable income for the income year in which the relevant time
18 occurs.

19 Note: Subsection 242-80(8) treats the amount of a notional loan that is taken
20 to be made by an extended or renewed lease to be a termination
21 amount paid under the previous lease.

- 22 (3) If the sum of all amounts (whether *luxury car lease payments, a
23 *termination amount or any other payments) that were paid or
24 payable to the lessor under the lease is less than the amount worked
25 out under subsection (4), the lessor can deduct the difference for
26 the income year in which the relevant time occurs.

- 27 (4) The amount for the purposes of subsections (2) and (3) is the sum
28 of:
29 (a) the notional loan principal; and
30 (b) the sum of the accrual amounts that have been or are to be
31 included in the lessor's assessable income of any income
32 year.

33 Note: For *accrual amount*, see subsection 242-35(1).

1 **242-70 Adjustments for lessee**

2 (1) If:

3 (a) an amount is included in the lessor's assessable income for
4 an income year under subsection 242-65(2); or

5 (b) an amount would have been so included if the lessor had
6 been subject to tax on assessable income;

7 the lessee can deduct a corresponding amount for the same income
8 year.

9 (2) If:

10 (a) the lessor can deduct an amount for an income year under
11 subsection 242-65(3); or

12 (b) the lessor could have deducted an amount under that
13 subsection if the lessor had been subject to tax on assessable
14 income;

15 a corresponding amount is included in the lessee's assessable
16 income for the same income year.

17 (3) The lessee cannot deduct an amount for any income year under
18 subsection (1), and an amount is not included in the lessee's
19 assessable income of any income year under subsection (2), except
20 to the extent (if any) that the lessee could deduct the *luxury car
21 lease payments made apart from this Division.

22 **Subdivision 242-E—Extension, renewal and final ending of the**
23 **lease**

24 **Guide to Subdivision 242-E**

25 **242-75 What this Subdivision is about**

26 When a luxury car lease ends (whether it expires or is terminated
27 before its expiry date), one of 3 things will happen:

- 28 (a) if the lease is extended or renewed—the original
29 notional loan is treated as having been repaid and
30 the lessor is treated as having made a new loan to
31 the lessee; or

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(b) if the lessee acquires the car from the lessor—the lessee continues to own the car for tax purposes, and the actual transfer and the termination payment to acquire the car are ignored for tax purposes; or

(c) if the lessee’s right to use the car ends—the lessee is treated as having sold the car back to the lessor.

In each case, there may be adjustments under Subdivision 242-D to ensure that the right amount has been taxed over the term of the lease.

Table of sections

Operative provisions

- 242-80 What happens if the term of the lease is extended or the lease is renewed
- 242-85 What happens if an amount is paid by the lessee to acquire the car
- 242-90 What happens if the lessee stops having the right to use the car

Operative provisions

242-80 What happens if the term of the lease is extended or the lease is renewed

- (1) The rules in this section have effect if, after the end of the lease (or the end of any extension of the lease term or renewal of the lease), the lessee continues to have the *right to use the *car because the term of the lease is extended (or further extended) or the lease is renewed (or further renewed).
- (2) This Act has effect as if the lessee continued to be the owner of the *car until the end of the lease as extended or renewed.
- (3) However, this Act has effect as if the lessee stopped being the owner of the *car if:
 - (a) the lessee enters into a sublease in respect of the car; and
 - (b) this Division applies to the car in respect of that sublease.
- (4) This Act has effect as if the notional loan that arose because of the grant of the lease, or because of the previous extension or renewal, had been repaid.

Schedule 3 Leases of luxury cars

Part 1 Main amendments

1 Note: Also, Subdivision 242-D (about balancing adjustments) will apply to
2 the ending, extension or renewal.

- 3 (5) This Act has effect as if, on the grant of the extension or renewal,
4 the lessor had made a new loan (the *notional loan*) to the lessee:
5 (a) for the period of the extension of the term of the lease or the
6 period of the renewed lease, as the case may be; and
7 (b) of an amount (the *notional loan principal*) equal to the *car's
8 *market value when the extension or renewal is granted; and
9 (c) subject to the payment of interest.
- 10 (6) This Act has effect as if the notional loan principal were repaid,
11 and the interest were paid, by the making of the *luxury car lease
12 payments under the lease as extended or renewed (or further
13 extended or renewed).
- 14 (7) In determining whether subsection (1) applies to the lessee,
15 disregard any period after the end of the lease (or the end of any
16 extension of the lease term or renewal of the lease) and before the
17 extension or renewal (or further extension or renewal) is granted
18 and during which the lessee did not have the *right to use the *car if
19 the extension or renewal (or further extension or renewal):
20 (a) has effect from the time immediately after the end of that
21 term, extension or renewal; or
22 (b) otherwise results in substantial continuity of the leasing of
23 the car to the lessee.
- 24 (8) The amount of the notional loan is treated, for the purposes of
25 section 242-65 (about the lessor's balancing adjustments), as a
26 *termination amount paid to the lessor under the lease or under the
27 previous extension or renewal.

28 **242-85 What happens if an amount is paid by the lessee to acquire** 29 **the car**

30 If, at the end of the lease or, if it is extended or renewed, at the end
31 of any extension or renewal (the *end time*), an amount is paid to
32 the lessor by, or on behalf of, the lessee to acquire the *car, the
33 following provisions have effect:

- 34 (a) the amount paid is not included in the lessor's assessable
35 income;
36 (b) the lessee cannot deduct the payment;
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- 1 (c) this Act has effect as if:
2 (i) the lessee continued to be the owner of the car until the
3 lessee disposes of it; and
4 (ii) the transfer to the lessee of legal title to the car were not
5 a disposal of the car by the lessor.

6 **242-90 What happens if the lessee stops having the right to use the**
7 **car**

- 8 (1) If, at the end time:
9 (a) the lessee stops having the *right to use the *car; and
10 (b) no amount is paid to the lessor by, or on behalf of, the lessee
11 to acquire the car;
12 the following provisions have effect.
13 Note: For *end time*, see section 242-85.
- 14 (2) This Act has effect as if the *car:
15 (a) were sold by the lessee to the lessor; and
16 (b) were acquired by the lessor;
17 at the end time.
- 18 (3) The consideration for the sale of the *car by the lessee, and the first
19 element of the *cost of the car to the lessor, are the *market value
20 of the car at the end time.
- 21 (4) If the *car is afterwards acquired by an *associate of the lessee or
22 an employer or employee of the lessee, this Act has effect as if the
23 first element of the *cost of the car as a *depreciating asset were the
24 lesser of:
25 (a) the sum of:
26 (i) the amount that would have been the *adjustable value
27 of the car at that time for the purposes of applying this
28 Act to the lessee if the lessee were not treated under this
29 Division as having disposed of the car; and
30 (ii) any amount that is included in the lessee's assessable
31 income under section 40-285 as a balancing adjustment
32 because the lessee is treated as having disposed of the
33 car; and
34 (b) the cost of the acquisition of the car by the associate,
35 employer or employee.

Schedule 3 Leases of luxury cars
Part 1 Main amendments

1 Note: Section 242-20 of the *Income Tax (Transitional Provisions) Act 1997*
2 extends subparagraph (a)(ii) to cover amounts included in assessable
3 income under former provisions corresponding to section 40-285.

- 4 (5) For the purposes of paragraph (1)(a), the lessee is not treated as
5 having stopped to have the *right to use the *car if:
- 6 (a) the term of the lease is extended (or further extended), or the
7 lease is renewed (or further renewed), at a time after, but not
8 immediately after, the end of that term, extension or renewal
9 with effect from the time immediately after that end; or
 - 10 (b) the extension or renewal (or further extension or renewal)
11 otherwise results in substantial continuity of the leasing of
12 the car to the lessee.

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2 **Part 2—Consequential amendments**

3 ***Income Tax Assessment Act 1997***

4 **3 Section 10-5 (table item headed “leases of luxury cars”)**

5 Repeal the item, substitute:

leases of luxury cars

accrual amounts	242-35
adjustment amounts (lessee).....	242-70
adjustment amounts (lessor).....	242-65

6 **4 Section 11-55 (table item headed “notional sale and loan”)**

7 Omit “42A-40 in Schedule 2E”, substitute “242-40”.

8 **5 Section 12-5 (table item headed “leases of luxury cars”)**

9 Repeal the item, substitute:

leases of luxury cars

accrual amounts	242-35
adjustment amounts (lessee)	242-70
adjustment amounts (lessor).....	242-65
lease payments not deductible.....	242-55
payments to acquire car not deductible	242-85

10 **6 Subsection 25-35(4A)**

11 Omit “lease payments”, substitute “*luxury car lease payments”.

12 **7 Subsection 25-35(4A)**

13 Omit “Division 42A of Schedule 2E to the *Income Tax Assessment Act*
14 *1936*”, substitute “Division 242 (about luxury car leases)”.

15 **8 Subsection 25-35(4B)**

16 Omit “finance charge”, substitute “interest”.

17 **9 Subsection 25-35(4B)**

18 Omit “lease payments”, substitute “*luxury car lease payments”.

1 **10 Subsection 25-35(4C)**

2 Repeal the subsection.

3 **11 Subsection 28-12(1) (note 2)**

4 Omit “subsection 42A-15(2) in Division 42A of Schedule 2E to the
5 *Income Tax Assessment Act 1936*”, substitute “subsection 242-15(2)”.

6 **12 Subsection 28-45(1) (note 1)**

7 Omit “Division 42A of Schedule 2E to the *Income Tax Assessment Act*
8 *1936* applies is to be worked out under section 42A-20 in that
9 Division”, substitute “Division 242 applies is to be worked out under
10 section 242-20”.

11 **13 Subsection 28-90(6) (note 1)**

12 Omit “subsection 42A-15(2) in Division 42A of Schedule 2E to the
13 *Income Tax Assessment Act 1936*”, substitute “subsection 242-15(2)”.

14 **14 Section 40-40 (table item 1)**

15 Repeal the item, substitute:

- | | | |
|---|---|--|
| 1 | A *car in respect of which a lease has been granted
that was a *luxury car when the lessor first leased it | The lessee (while the
lessee has the *right
to use the car) and <i>not</i>
the lessor |
|---|---|--|

16 **15 Subsection 40-185(1) (note 1)**

17 Omit “is terminated under subsection 42A-105(3) of Schedule 2E to the
18 *Income Tax Assessment Act 1936*”, substitute “ends under subsection
19 242-90(3)”.

20 **16 Subsection 40-305(1) (note 1)**

21 Omit “is terminated under subsection 42A-105(3) of Schedule 2E to the
22 *Income Tax Assessment Act 1936*”, substitute “ends under subsection
23 242-90(3)”.

24 **17 Paragraph 40-755(4)(b)**

25 Omit “right to use”, substitute “*right to use”.

26 **18 Paragraph 43-175(2)(a)**

1 Omit “right to use or occupy”, substitute “*right to use or a right to
2 occupy”.

3 **19 After subparagraph 118-12(2)(a)(vi)**

4 Insert:

5 (via) section 242-40 (about luxury car lease payments);

6 **20 Subparagraphs 118-12(2)(b)(viii) and (ix)**

7 Repeal the subparagraphs, substitute:

8 (viii) subsection 271-105(3) in Schedule 2F (amounts subject
9 to family trust distribution tax).

10 **21 Paragraph 230-460(2)(a)**

11 Omit “Division 42A (about leases of luxury cars) of Schedule 2E to the
12 *Income Tax Assessment Act 1936*”, substitute “Division 242 (about
13 luxury car leases)”.

14 **22 Paragraphs 230-460(2)(b) and (c)**

15 Omit “of this Act”.

16 **23 Section 240-10**

17 Omit “*notional loan”, substitute “notional loan”.

18 **24 Subsection 240-25(4)**

19 Omit “a charge (the *finance charge*)”, substitute “interest”.

20 **25 Subsection 240-25(6)**

21 Omit “*notional loan principal is taken to be repaid, and the *finance
22 charge”, substitute “notional loan principal is taken to be repaid, and the
23 interest”.

24 **26 Paragraph 240-30(a)**

25 Omit “finance charge”, substitute “interest”.

26 **27 Subsection 240-60(1) (method statement, step 1)**

27 Omit “*notional loan principal”, substitute “notional loan principal”.

28 **28 Subsection 240-60(1) (method statement, step 3)**

29 Repeal the step, substitute:

1 Step 3. Work out the *implicit interest rate* for the *arrangement
2 payment period, taking into account the *arrangement
3 payments payable by the *notional buyer under the
4 *arrangement and any *termination amounts.

5 **29 Subsection 240-60(1) (method statement, step 4)**

6 Omit “*notional loan principal”, substitute “notional loan principal”.

7 **30 Section 240-78**

8 Repeal the section.

9 **31 Subsection 240-80(4)**

10 Omit “*notional loan principal”, substitute “notional loan principal”.

11 **32 Subsection 240-80(5)**

12 Omit “*notional loan for”, substitute “notional loan for”.

13 **33 Subsection 240-80(5)**

14 Omit “*notional loan principal”, substitute “notional loan principal”.

15 **34 Paragraph 240-90(4)(a)**

16 Omit “*notional loan principal”, substitute “notional loan principal”.

17 **35 Subdivision 240-G (heading)**

18 Repeal the heading, substitute:

19 **Subdivision 240-G—Adjustments if total amount assessed to**
20 **notional seller differs from amount of interest**

21 **36 Section 240-100**

22 Omit “finance charge”, substitute “interest”.

23 **37 Subsection 240-105(4) (formula)**

24 Omit “*Notional loan principal”, substitute “Notional loan principal”.

25 **38 Paragraph 240-115(2)(b)**

26 Omit “Division 42A of Schedule 2E to the *Income Tax Assessment Act*
27 *1936*”, substitute “Division 242 (about luxury car leases)”.

1 **39 Subsection 243-15(5)**

2 Repeal the subsection (including the note), substitute:

- 3 (5) A notional loan arising because of Division 240 (about
4 arrangements treated as a sale and loan) is taken to be a debt that
5 has been used to wholly or partly finance or refinance expenditure.

6 **40 Subsection 243-20(4)**

7 Repeal the subsection, substitute:

- 8 (4) A notional loan arising because of Division 240 (about
9 arrangements treated as a sale and loan) under a *hire purchase
10 agreement is also a *limited recourse debt*.

11 **41 Subsection 243-25(2)**

12 Repeal the subsection, substitute:

- 13 (2) However, a debt arrangement that is a notional loan arising
14 because of Division 240 (about arrangements treated as a sale and
15 loan) is not taken to have terminated merely because it has been
16 renewed or extended.

17 Note: Under Division 240, notional loans are taken to have ended if the
18 relevant arrangement is renewed or extended.

19 **42 Subsection 243-30(2)**

20 Repeal the subsection, substitute:

- 21 (2) If the debt agreement is a notional loan arising under Division 240
22 (about arrangements treated as a sale and loan), the property that is
23 the subject of the agreement is the *financed property*.

24 **43 Section 830-75 (heading)**

25 Repeal the heading, substitute:

26 **830-75 Extended meaning of *subject to foreign tax***

27 **44 Section 830-75**

28 Omit “subject to tax” (wherever occurring), substitute “subject to
29 foreign tax”.

30 **45 Subsection 855-55(4)**

1 Omit “subject to tax (within the meaning of Part X of the *Income Tax*
2 *Assessment Act 1936*)”, substitute “*subject to foreign tax”.

3 **46 Subparagraphs 974-130(4)(a)(iii) and (iv)**

4 Repeal the subparagraphs, substitute:

5 (iii) the lease or bailment is not an *arrangement to which
6 Division 240 of this Act (about arrangements treated as
7 a sale and loan), or Division 242 of this Act (about
8 luxury car leases), applies;

9 **47 Subsection 995-1(1) (definition of *depreciating asset***
10 ***lease*)**

11 Omit “right to use”, substitute “*right to use”.

12 **48 Subsection 995-1(1) (definition of *finance charge*)**

13 Repeal the definition.

14 **49 Subsection 995-1(1) (definition of *in-house software*)**

15 Omit “right to use”, substitute “*right to use”.

16 **50 Subsection 995-1(1) (definition of *IRU*)**

17 Omit “right to use”, substitute “*right to use”.

18 **51 Subsection 995-1(1)**

19 Insert:

20 *luxury car lease payment*, in relation to a *car to which
21 Division 242 (about luxury car leases) applies, means an amount
22 that the lessee under the lease is required to pay for the rental or
23 hire of the car, but does not include:

- 24 (a) an amount in the nature of a penalty payable for failure to
25 make a payment for rental or hire on time; or
26 (b) a *termination amount.

27 **52 Subsection 995-1(1)**

28 Insert:

29 *luxury car lease payment period* means a period for which a
30 *luxury car lease payment under the lease is allocated or expressed
31 to be payable.

1 Note: If a luxury car lease payment period for a lease of a luxury car would
2 otherwise be longer than 6 months, subsection 242-35(3) divides the
3 original period into periods of no longer than 6 months.

4 **53 Subsection 995-1(1) (definition of *luxury car*)**

5 Repeal the definition, substitute:

6 *luxury car*: a *car is a *luxury car* at a time if section 40-230 would
7 reduce its *cost as a *depreciating asset if an entity acquired it at
8 that time for its *market value.

9 Note 1: Division 242 treats a lease of a luxury car as a notional sale of the car
10 by the lessor to the lessee financed by a notional loan by the lessor to
11 the lessee.

12 Note 2: Section 242-10 of the *Income Tax (Transitional Provisions) Act 1997*
13 extends this definition to cover reductions of cost under former
14 provisions corresponding to section 40-230.

15 **54 Subsection 995-1(1) (definition of *notional loan*)**

16 Repeal the definition.

17 **55 Subsection 995-1(1) (definition of *notional loan principal*)**

18 Repeal the definition.

19 **56 Subsection 995-1(1) (definition of *special accrual amount*)**

20 Repeal the definition, substitute:

21 *special accrual amount* means an amount that is included in
22 assessable income, or an amount that can be deducted from
23 assessable income, under any of the following:

- 24 (a) Division 230 (about taxation of financial arrangements),
25 other than Subdivision 230-B;
- 26 (b) Subdivision 230-A if:
- 27 (i) the accruals method provided for in Subdivision 230-B
28 is applied to take account of the gain or loss concerned;
29 and
- 30 (ii) all the *financial benefits provided and received under
31 the *financial arrangement concerned are denominated
32 in a particular *foreign currency;
- 33 (c) Division 240 (about arrangements treated as a sale and loan);
- 34 (d) Division 242 (about luxury car leases);

- 1 (e) Division 16D of Part III of the *Income Tax Assessment Act*
2 *1936* (about certain arrangements relating to the use of
3 property);
4 (f) Division 16E of Part III of the *Income Tax Assessment Act*
5 *1936* (about accruals assessability in respect of certain
6 security payments).

7 **57 Subsection 995-1(1)**

8 Insert:

9 *subject to foreign tax* has the meaning given to the expression
10 “subject to tax” by Part X of the *Income Tax Assessment Act 1936*.

11 **58 Subsection 995-1(1) (definition of *subject to tax*)**

12 Repeal the definition.

13 **59 Subsection 995-1(1) (definition of *termination amount*)**

14 Repeal the definition, substitute:

- 15 *termination amount* means an amount payable because an
16 *arrangement in relation to property ends and includes:
17 (a) if, at the end of the arrangement, one party to the
18 arrangement acquires the property from the other party—an
19 amount payable for the acquisition; or
20 (b) if, at the end of the arrangement, the property is lost or
21 destroyed—any amounts paid to the owner of the property as
22 a result of the loss or destruction; or
23 (c) otherwise—the *market value of the property at the end of
24 the arrangement.

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2 **Part 3—Application and transitional provisions**

3 ***Income Tax (Transitional Provisions) Act 1997***

4 **60 Before Division 247**

5 Insert:

6 **Division 242—Leases of luxury cars**

7 **Table of sections**

8	242-10	Application
9	242-20	Balancing adjustments

10 **242-10 Application**

- 11 (1) Division 242 of the *Income Tax Assessment Act 1997* (the ***new***
12 ***Division***) applies to assessments for the 2010-11 income year and
13 later years.
- 14 (2) However, the new Division does not apply to a lease of a car if the
15 lease was granted on or before 7.30 pm, by legal time in the
16 Australian Capital Territory, on 20 August 1996 unless the lease
17 was extended after that time (whether the extension took effect
18 before or after that time).
- 19 (3) The definition of ***luxury car*** in subsection 995-1(1) of the *Income*
20 *Tax Assessment Act 1997* applies to a reduction under former
21 section 57AF of the *Income Tax Assessment Act 1936* or former
22 section 42-80 of the *Income Tax Assessment Act 1997* in the same
23 way as it applies to a reduction under section 40-230 of the *Income*
24 *Tax Assessment Act 1997*.

25 **242-20 Balancing adjustments**

26 Sections 242-20 and 242-90 of the *Income Tax Assessment Act*
27 *1997* apply to an amount included in assessable income under
28 former Subdivision 42-F or 42-G of the *Income Tax Assessment*
29 *Act 1997* and former subsection 59(2) of the *Income Tax*
30 *Assessment Act 1936* in the same way as they apply to an amount

Schedule 3 Leases of luxury cars
Part 3 Application and transitional provisions

1 included in assessable income under section 40-285 of the *Income*
2 *Tax Assessment Act 1997*.

1
2 **Schedule 4—Farm management deposits**

3 **Part 1—Main amendments**

4 *Income Tax Assessment Act 1936*

5 **1 Schedule 2G**

6 Repeal the Schedule.

7 *Income Tax Assessment Act 1997*

8 **2 After Division 392**

9 Insert:

10 **Division 393—Farm management deposits**

11 **Table of Subdivisions**

12 Guide to Division 393

13 393-A Tax consequences of farm management deposits

14 393-B Meaning of farm management deposit and owner

15 393-C Special rules relating to financial claims scheme for
16 account-holders with insolvent ADIs

17 **Guide to Division 393**

18 **393-1 What this Division is about**

19 You can deduct a farm management deposit you make, if:

- 20 (a) you are an individual carrying on a primary
21 production business (including a primary
22 production business you carry on as a partner in a
23 partnership or as a beneficiary of a trust); and
- 24 (b) you hold the deposit for at least 12 months; and
- 25 (c) you meet some other tests.
-

Schedule 4 Farm management deposits
Part 1 Main amendments

1 The amount of the deposit withdrawn is included in your
2 assessable income in the income year in which it is repaid. Special
3 rules apply if the deposit is repaid in exceptional circumstances.

4 Farm management deposits allow you to carry over income from
5 years of good cash flow and to draw down on that income in years
6 when you need the cash. This enables you to defer the income tax
7 on your taxable primary production income from the income year
8 in which you make the deposit until the income year in which the
9 deposit is repaid.

10 Note: An FMD provider must, every quarter, give certain
11 information to the Agriculture Secretary about farm
12 management deposits: see section 398-5 in Schedule 1 to
13 the *Taxation Administration Act 1953*.

14 **Subdivision 393-A—Tax consequences of farm management**
15 **deposits**

16 **Table of sections**

17	393-5	Deduction for making farm management deposit
18	393-10	Assessability on repayment of deposit
19	393-15	Transactions to which the deduction, assessment and 12 month rules have
20		modified application

21 **393-5 Deduction for making farm management deposit**

22 *Entitlement to deduction*

- 23 (1) You can deduct the amount of a *farm management deposit for an
24 income year if:
- 25 (a) you are the *owner of the deposit; and
 - 26 (b) the deposit is made at a time during the year when you are an
27 individual carrying on a *primary production business in
28 Australia; and
 - 29 (c) if during the year, at a time after the deposit was made, you
30 stopped carrying on a primary production business in
31 Australia—you started carrying on such a business again
32 within 120 days (whether or not during the year); and
 - 33 (d) your *taxable non-primary production income for the year is
34 not more than \$65,000; and

1 (e) you do not die or become bankrupt during the year.

2 Note 1: This section does not apply if a deposit is reinvested, the term of a
3 deposit is extended, or a deposit is transferred at the depositor's
4 request: see section 393-15.

5 Note 2: This Division applies to certain partners and beneficiaries as if they
6 were individuals who carried on a primary production business: see
7 subsections 393-25(2) and (3).

8 *Sum of deductions not to exceed taxable primary production*
9 *income*

10 (2) The sum of the deductions that you would otherwise be entitled to
11 under this section for *farm management deposits made in the
12 income year must *not* exceed your *taxable primary production
13 income for the income year.

14 *Amounts to be deducted in order of deposits*

15 (3) If you are entitled to deduct amounts in respect of 2 or more
16 deposits, deduct the amounts in the order in which the deposits
17 were made (until you reach the limit imposed by subsection (2)).

18 **393-10 Assessability on repayment of deposit**

19 *Amount assessable*

20 (1) Your assessable income for an income year includes the amount
21 worked out using the following formula, if:
22 (a) you are the *owner of a *farm management deposit; and
23 (b) the deposit is repaid in full or in part in the year; and
24 (c) the amount worked out using the formula is greater than nil:

*Unrecouped FMD deduction in respect of the deposit just before the repayment	—	Amount (if any) of the deposit that remains just after the repayment
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25
26 Note 1: This subsection does not apply if the deposit is reinvested, the term of
27 the deposit is extended, or the deposit is transferred at the depositor's
28 request: see section 393-15.

29 Note 2: In a case where not all of the deposit is deductible under
30 section 393-5, repayment of the non-deductible amount can take place
31 without the amount being assessable. Once that amount is repaid, the
32 remainder is assessable when it is repaid, so that the deduction is
33 recouped.

Schedule 4 Farm management deposits
Part 1 Main amendments

1 Example: Matt makes a farm management deposit of \$120,000 on 1 April 2011.
2 His taxable primary production income for the 2010—11 income year
3 is \$50,000; therefore, the deposit is only partly deductible in the year
4 because it exceeds his taxable primary production income. Matt makes
5 the following withdrawals from the deposit: \$45,000 on 1 May 2013,
6 \$40,000 on 1 March 2014 and \$35,000 on 1 September 2015.

7 The unrecouped FMD deduction immediately before the first
8 repayment of \$45,000 is \$50,000. No amount is included in his
9 assessable income for the 2012-2013 income year because the
10 difference between the unrecouped FMD deduction (\$50,000) and the
11 amount of the deposit remaining after the repayment (\$75,000) is less
12 than nil.

13 The unrecouped FMD deduction immediately before the second
14 repayment of \$40,000 is \$50,000. \$15,000 is included in Matt's
15 assessable income for the 2013-2014 income year because the
16 difference between the unrecouped FMD deduction (\$50,000) and the
17 amount of the deposit remaining after the second repayment (\$35,000)
18 is \$15,000, which is greater than nil.

19 The unrecouped FMD deduction immediately before the third
20 repayment of \$35,000 is \$35,000; that is, \$50,000 less \$15,000.
21 \$35,000 is included in Matt's assessable income for the 2015-2016
22 income year; that is, the difference between the unrecouped FMD
23 deduction (\$35,000) and the amount of the deposit remaining after the
24 third repayment (\$0).

25 *Unrecouped FMD deduction*

- 26 (2) The ***unrecouped FMD deduction*** in respect of a *farm
27 management deposit at a particular time is:
28 (a) if no part of the deposit has been repaid before that time—the
29 amount of the deduction under section 393-5 for making the
30 deposit; or
31 (b) if one or more parts of the deposit have been repaid before
32 that time—the unrecouped FMD deduction in respect of the
33 deposit just before the most recent such repayment, reduced
34 by any amount included in the *owner's assessable income
35 under this section as a result of that repayment.

36 Example: Mia makes a deposit of \$3,000, all of which is deductible. The
37 deposit's unrecouped FMD deduction just before a first repayment of
38 \$1,000 is the amount of the deduction (that is, \$3,000—see
39 paragraph (2)(a)). The deposit's unrecouped FMD deduction just
40 before a second repayment is \$2,000 (that is, according to
41 paragraph (2)(b), the unrecouped FMD deduction immediately before
42 the first repayment (\$3,000) reduced by the \$1,000 included in Mia's
43 assessable income as a result of the first repayment).

44 Note 1: If the deposit was originally an income equalisation deposit, see
45 section 393-10 of the *Income Tax (Transitional Provisions) Act 1997*.

1 Note 2: Section 393-55 affects the unrecouped FMD deduction of a new
2 deposit linked to an old deposit affected by Division 2AA (Financial
3 claims scheme for account-holders with insolvent ADIs) of Part II of
4 the *Banking Act 1959*.

5 *Application of Division to transfer, reinvestment or other dealing*

6 (3) This Division applies to a transfer, reinvestment or other dealing
7 with a *farm management deposit as if it were a repayment of the
8 deposit, if:

9 (a) you are the depositor; and

10 (b) the transfer, reinvestment or other dealing is on your behalf
11 or at your request.

12 Note: Section 393-15 modifies the application of the deduction, assessment
13 and 12 month rules to certain transfers, reinvestments and other
14 dealings.

15 *Deemed repayment because of death, bankruptcy etc.*

16 (4) This section applies as if a *farm management deposit had been
17 repaid when it became repayable, rather than when it is actually
18 repaid, if the deposit became repayable because of the requirement
19 contained in the relevant agreement as set out in item 11 of the
20 table in section 393-35 (death, bankruptcy etc.).

21 Note 1: This means that the amount of the deposit is included in your
22 assessable income for the income year when the death, bankruptcy etc.
23 occurs, rather than for any later year in which the deposit might be
24 repaid.

25 Note 2: This also means that, under subsection 45-120(5) in Schedule 1 to the
26 *Taxation Administration Act 1953* (about Pay as you go (PAYG)
27 instalments), the amount of the deposit is included in your instalment
28 income for the period in which the death, bankruptcy etc. occurs.

29 However, under section 12-140 in that Schedule, an amount may also
30 be required to be withheld from the actual payment if you do not quote
31 your tax file number or ABN to the relevant FMD provider.

32 Note 3: Section 393-60 of this Act may limit the operation of subsection (4) if
33 the farm management deposit is with an ADI that becomes a declared
34 ADI under Division 2AA (Financial claims scheme for
35 account-holders with insolvent ADIs) of Part II of the *Banking Act*
36 *1959*.

1 **393-15 Transactions to which the deduction, assessment and 12**
2 **month rules have modified application**

3 (1) The provisions mentioned in subsection (2) do not apply in relation
4 to the following transactions:

- 5 (a) the immediate reinvestment of a *farm management deposit
6 as a farm management deposit with the same *FMD provider;
7 (b) the extension of the term of a farm management deposit
8 (even if other terms such as those relating to interest payable
9 are also varied);
10 (c) the transfer of a farm management deposit in accordance with
11 a requirement of the relevant agreement as set out in item 13
12 of the table in section 393-35 (which allows for transfers of
13 deposits at the request of the depositor).

14 Note: This means that these transactions:

- 15 (a) will not result in assessable income for the owner; and
16 (b) will not give rise to a deduction; and
17 (c) will not, if the transaction occurs within 12 months after the end
18 of the day the deposit is made, result in the deposit losing its
19 status as a farm management deposit.

20 (2) The provisions are:

- 21 (a) section 393-5 (about deductions for making a farm
22 management deposit); and
23 (b) subsection 393-10(1) (about assessability of the repayment of
24 a farm management deposit); and
25 (c) subsections 393-40(1) and (2) (about repayment of a farm
26 management deposit within the first 12 months); and
27 (d) subsections 393-40(3) and (4) (about repayment of a farm
28 management deposit in exceptional circumstances).

29 (3) For the purposes of working out the *unrecouped FMD deduction
30 for a deposit that is subject to a transaction mentioned in
31 subsection (1), the transaction does not cause the deposit to be a
32 different deposit.

33 Note: This ensures that the unrecouped FMD deduction (which affects how
34 much income tax is assessed in the event of a repayment) equals the
35 deduction for the original deposit, less any amount included in your
36 assessable income because of a previous repayment of the deposit.

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

3 **Table of sections**

4	393-20	Farm management deposits
5	393-25	Owners of farm management deposits
6	393-30	Effect of contravening requirements
7	393-35	Requirements of agreement for a farm management deposit
8	393-40	Repayment of deposit within first 12 months
9	393-45	Partly repaid farm management deposits

10 **393-20 Farm management deposits**

11 *Meaning of farm management deposit*

- 12 (1) A deposit with an *FMD provider is a *farm management deposit*
13 if:
- 14 (a) the depositor applies to make the deposit in accordance with
15 subsection (2); and
 - 16 (b) the deposit is made under an agreement between the FMD
17 provider and the depositor that:
 - 18 (i) describes the deposit as a farm management deposit;
19 and
 - 20 (ii) at all times while the deposit is with the FMD provider,
21 contains requirements to the effect set out in the table in
22 section 393-35.

23 The agreement may also contain additional requirements that are
24 not inconsistent with those set out in that table.

25 *Depositor to provide information in application form*

- 26 (2) For the purposes of paragraph (1)(a), the depositor must apply to
27 the *FMD provider to make the deposit by completing and signing
28 a form that:
- 29 (a) permits the depositor to state the *owner's *tax file number in
30 the form; and
 - 31 (b) requires the depositor to provide any other information
32 required by regulations for the purposes of this paragraph;
33 and

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1 (c) contains any statements, required by regulations for the
2 purposes of this paragraph, that are to be read by the
3 depositor when completing the form.

4 Note 1: A depositor who makes a false or misleading statement in such a form
5 commits an offence against section 8K or 8N of the *Taxation*
6 *Administration Act 1953*.

7 Note 2: If the owner does not quote his or her tax file number or ABN to the
8 FMD provider, the Pay as you go (PAYG) withholding required under
9 section 12-140 in Schedule 1 to the *Taxation Administration Act 1953*
10 from a repayment of the deposit is at the highest marginal tax rate.

11 Note 3: Division 4A of Part VA of the *Income Tax Assessment Act 1936* sets
12 out rules for quoting tax file numbers in connection with farm
13 management deposits.

14 *Meaning of FMD provider*

15 (3) In this Act:

16 *FMD provider* means an entity that:

17 (a) is an *ADI; or

18 (b) carries on in Australia the *business of banking, so long as
19 the Commonwealth, a State or a Territory guarantees the
20 repayment of any deposit taken in the course of that business;
21 or

22 (c) carries on in Australia a business that consists of or includes
23 taking money on deposit, so long as the Commonwealth, a
24 State or a Territory guarantees the repayment of any deposit
25 taken in the course of that business.

26 **393-25 Owners of farm management deposits**

27 *Meaning of owner*

28 (1) The *owner* of a *farm management deposit is:

29 (a) if paragraph (b) does not apply—the individual who made or
30 is making the deposit; or

31 (b) in the case of a deposit made or being made by the trustee of
32 a trust on behalf of a beneficiary who is an individual—the
33 beneficiary.

1 *Primary production businesses carried on by partnerships and*
2 *trusts*

3 (2) This Division applies to you as if you were an individual who is
4 carrying on a *primary production business that is actually carried
5 on by a partnership, if you are an individual who is a partner in the
6 partnership.

7 (3) This Division, and section 97A of the *Income Tax Assessment Act*
8 *1936* (about beneficiaries who are owners of farm management
9 deposits), apply to you as if you were an individual who is carrying
10 on a *primary production business that is actually carried on by a
11 trustee, if you are an individual who is a beneficiary presently
12 entitled to a share of the income of the trust.

13 *Application of Division to beneficiary no longer under legal*
14 *disability*

15 (4) If:
16 (a) a *farm management deposit was made by a trustee on behalf
17 of a beneficiary of a trust; and
18 (b) the beneficiary was under a legal disability when the deposit
19 was made; and
20 (c) the beneficiary is no longer under a legal disability;
21 then this Division, and Division 4A of Part VA of the *Income Tax*
22 *Assessment Act 1936*, apply as if the beneficiary had made the
23 deposit.

24 Note: Division 4A of Part VA of the *Income Tax Assessment Act 1936* is
25 about quotation of tax file numbers in connection with farm
26 management deposits.

27 **393-30 Effect of contravening requirements**

28 (1) A deposit is not a *farm management deposit* if, when the deposit
29 was accepted, a requirement contained in the relevant agreement as
30 set out in items 1 to 6 of the table in section 393-35 was
31 contravened.

32 (2) A deposit is not, and is taken never to have been, a *farm*
33 *management deposit* if a requirement contained in the relevant
34 agreement as set out in items 7 to 9 of the table in section 393-35 is
35 contravened at any time in relation to the deposit.

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- 1 (3) So much of a deposit as causes a requirement contained in the
2 relevant agreement as set out in item 10 of the table in
3 section 393-35 to be contravened is not a *farm management*
4 *deposit*.

5 **393-35 Requirements of agreement for a farm management deposit**

- 6 An agreement mentioned in paragraph 393-20(1)(b) must contain
7 requirements to the effect of those set out in the following table:
8

Requirements of agreement for a farm management deposit

Item Requirement

- | | |
|---|--|
| 1 | The *owner must be an individual who is carrying on a *primary production business in Australia when the deposit is made.

Note: This Division applies to certain partners and beneficiaries as if they were individuals who carried on a primary production business: see subsections 393-25(2) and (3). |
| 2 | The deposit:
(a) must not be made by 2 or more individuals jointly; and
(b) must not be made on behalf of 2 or more individuals. |
| 3 | The deposit must not be made by a trustee on behalf of a beneficiary unless the beneficiary is:
(a) under a legal disability; and
(b) presently entitled to a share of the income of the trust. |
| 4 | The deposit must be \$1,000 or more when it is made, unless the deposit is:
(a) the immediate reinvestment of a *farm management deposit as a farm management deposit with the same *FMD provider; or
(b) the extension of the term of a farm management deposit (even if other terms such as those relating to interest payable are also varied). |
| 5 | The *owner must not, at any time while the deposit is with the *FMD provider, have any *farm management deposits with any other FMD provider. |
| 6 | Rights of the depositor in respect of the deposit must not be transferable to another entity. |
| 7 | The deposit must not be the subject of a charge or other encumbrance to secure any amount. |
| 8 | Amounts that would otherwise accrue as interest or other earnings on the deposit must not reduce liabilities of the depositor to pay interest to the *FMD provider in respect of loans or other debts of the depositor. |
-

Requirements of agreement for a farm management deposit

Item Requirement

- 9 Interest or other earnings on the deposit must not be invested as a *farm management deposit with the *FMD provider without having first been paid to the depositor.
-
- 10 The deposit must not be more than \$400,000, and the sum of the balances from time to time of the deposit and all other *farm management deposits of the *owner with the *FMD provider must not be more than \$400,000.
-
- 11 The deposit must be repaid if:
(a) the *owner dies or becomes bankrupt; or
(b) the owner ceases to carry on a *primary production business in Australia and does not start carrying on such a business again within 120 days.
-
- 12 The amount of any repayment of the deposit must be \$1,000 or more, except if the entire amount of the deposit is repaid.
-
- 13 The *FMD provider must transfer the deposit by electronic means to another FMD provider that agrees to accept the deposit as a *farm management deposit, if the first FMD provider is:
(a) requested in writing by the depositor to do so; and
(b) given any information or other assistance from the depositor necessary for the purpose.
-
- 14 The *FMD provider must not deduct from the deposit (whether at the time it is made, while it is with the FMD provider or at the time of its repayment) any administration fee or other amount required by the FMD provider to be paid in respect of the deposit or otherwise.
-

1 **393-40 Repayment of deposit within first 12 months**

2 *Partial repayment within first 12 months*

- 3 (1) Any part of a deposit repaid within 12 months after the end of the
4 day the deposit is made is not, and is taken never to have been, part
5 of a *farm management deposit*.

6 Note 1: A repayment covered by subsection (3) or (5) is disregarded in
7 applying this subsection. The normal rules in sections 393-5 (about
8 deductions for making a farm management deposit) and 393-10 (about
9 assessability of the repayment of a farm management deposit) apply
10 instead.

11 Note 2: This subsection does not apply if a deposit is reinvested, the term of a
12 deposit is extended, or a deposit is transferred at the depositor's
13 request: see section 393-15.

Schedule 4 Farm management deposits
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1 *Deposit not to be reduced to less than \$1,000 within first 12*
2 *months*

3 (2) A deposit is not, and is taken never to have been, a ***farm***
4 ***management deposit*** if the amount of the deposit is reduced to less
5 than \$1,000 because of one or more repayments within 12 months
6 after the end of the day the deposit is made.

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

9 Note 2: This subsection does not apply if a deposit is reinvested, the term of a
10 deposit is extended, or a deposit is transferred at the depositor's
11 request: see section 393-15.

12 *Repayment in exceptional circumstances*

13 (3) Subsections (1) and (2) do not apply to a repayment of the whole
14 or a part of a *farm management deposit if all of the following
15 circumstances are satisfied:

16 (a) the repayment is made in the income year following the
17 income year in which the deposit is made with the *FMD
18 provider;

19 (b) at the time of the repayment, the *owner of the deposit is
20 eligible for the issue of an exceptional circumstances
21 certificate (within the meaning of subsection 8A(2) of the
22 *Farm Household Support Act 1992*) that relates to a *primary
23 production business of that owner;

24 (c) by the end of 3 months after the end of the income year in
25 which the repayment is made, such an exceptional
26 circumstances certificate is issued in respect of that owner;

27 (d) a declaration of exceptional circumstances (as referred to in
28 paragraph 8(c) of the *Rural Adjustment Act 1992*) was not in
29 force in relation to that primary production business when the
30 deposit was made.

31 (4) Any later deposit that is made by, or on behalf of, that *owner in
32 the income year in which the repayment is made is not, and is
33 taken never to have been, a ***farm management deposit***.

34 *Repayment in the case of death, bankruptcy or ceasing to carry on*
35 *a primary production business*

36 (5) Subsections (1) and (2) do not apply to a repayment of a *farm
37 management deposit because of the requirement contained in the

1 relevant agreement as set out in item 11 of the table in
2 section 393-35 (death, bankruptcy etc.).

3 *Certain transactions do not affect the day the deposit was made*

- 4 (6) Subsections (1) to (4) apply as if a *farm management deposit that:
5 (a) is made as a result of a transaction mentioned in subsection
6 393-15(1) (about reinvesting a deposit, extending the term of
7 a deposit and transferring a deposit at the depositor's
8 request); or
9 (b) is affected by such a transaction;
10 were made on the day on which the original deposit was made.

11 Example: A farm management deposit is made on 1 July 2010 for a term of 6
12 months, but is extended in December 2010 for another 6 months. For
13 the purposes of subsections (1) to (4), the day the extended deposit
14 was made remains as 1 July 2010.

15 Note: Section 393-40 of the *Income Tax (Transitional Provisions) Act 1997*
16 provides for a special rule for deposits transferred under the repealed
17 *Loan (Income Equalization Deposits) Act 1976*.

18 **393-45 Partly repaid farm management deposits**

19 A reference to a *farm management deposit* is a reference to so
20 much of the deposit as has not been repaid.

21 **Subdivision 393-C—Special rules relating to financial claims** 22 **scheme for account-holders with insolvent ADIs**

23 **Guide to Subdivision 393-C**

24 **393-50 What this Subdivision is about**

25 A deposit (the *new deposit*) arising from:

- 26 (a) an entitlement under Division 2AA (Financial
27 claims scheme for account-holders with insolvent
28 ADIs) of Part II of the *Banking Act 1959* relating
29 to a farm management deposit (the *old deposit*); or
30 (b) a distribution from liquidation of an ADI that is
31 attributable to a farm management deposit (also the
32 *old deposit*);
-

1 is treated as a transfer of the old deposit and does not give rise to
2 new assessable income or deductions.

3 **Table of sections**

4 **Operative provisions**

- 5 393-55 Farm management deposits arising from farm management deposits with
6 ADIs subject to financial claims scheme
7 393-60 Repayment if owner of farm management deposit with insolvent ADI dies,
8 is bankrupt or ceases to be a primary producer

9 **Operative provisions**

10 **393-55 Farm management deposits arising from farm management**
11 **deposits with ADIs subject to financial claims scheme**

12 *Application*

- 13 (1) This section applies if an entitlement arises under Division 2AA
14 (Financial claims scheme for account-holders with insolvent ADIs)
15 of Part II of the *Banking Act 1959* in connection with an account
16 containing a *farm management deposit (the *old deposit*) with an
17 *ADI (the *old ADI*) and either:

- 18 (a) an amount (the *new deposit*) is deposited into either of the
19 following to meet, in whole or part, so much of the
20 entitlement as relates to the old deposit:

- 21 (i) an existing account for a farm management deposit;
22 (ii) an account established under section 16AH of that Act
23 for the purposes of meeting (in whole or part) the
24 entitlement; or

- 25 (b) an amount (also the *new deposit*) is deposited by a liquidator
26 of the old ADI into either of the following as so much of a
27 distribution from the liquidation of the old ADI as relates to
28 the old deposit:

- 29 (i) an existing account for a farm management deposit;
30 (ii) an account established under section 16AR of that Act
31 for the payment of the distribution.

32 Note: If an amount is deposited in connection with an account with the old
33 ADI containing 2 or more old deposits, the amount is to be
34 apportioned between each old deposit, so that so much of the amount

1 as is attributable to a particular old deposit is regarded as a distinct
2 new deposit relating to that old deposit.

3 *New deposit is a farm management deposit*

4 (2) This Division (except this section) applies to the new deposit as if
5 the new deposit were a transfer of the old deposit in accordance
6 with a requirement contained in the relevant agreement for the old
7 deposit as set out in item 13 of the table in section 393-35 (which
8 allows for transfers of deposits at the request of the depositor). To
9 avoid doubt, this Division applies in that way as if the amount
10 transferred were the amount of the new deposit, even if that is
11 more or less than the amount of the old deposit.

12 Note 1: The effects of this include the following:

- 13 (a) section 393-5 (about deductions for making a farm management
14 deposit) does not apply in relation to the making of the new
15 deposit (see paragraphs 393-15(1)(c) and (2)(a));
- 16 (b) subsection 393-10(1) (about assessability of the repayment of a
17 farm management deposit) can only apply to the extent of any
18 difference between the amount transferred and the amount of the
19 old deposit (see paragraphs 393-15(1)(c) and (2)(b));
- 20 (c) subsections 393-40(1), (2) and (4) (about repayment of a farm
21 management deposit within the first 12 months) can only apply
22 to the extent of any difference between the amount transferred
23 and the amount of the old deposit (see paragraphs 393-15(1)(c)
24 and (2)(c) and (d));
- 25 (d) the day the old deposit was made, for the purposes of subsections
26 393-40(1) and (2) (about repayment of a farm management
27 deposit within the first 12 months) and (3) and (4) (about
28 repayment in exceptional circumstances), is maintained for the
29 new deposit (see subsection 393-40(6)).

30 Note 2: Also, the unrecouped FMD deduction in respect of the new deposit is
31 the same as the unrecouped FMD deduction in respect of the old
32 deposit (see subsection 393-15(3)), unless subsection (6) or (7) of this
33 section applies because the new deposit is less than the old deposit.

34 (3) In determining whether either of the following is a *farm
35 management deposit, disregard a requirement contained in an
36 agreement as set out in item 4 of the table in section 393-35
37 (requiring the deposit to be \$1,000 or more):
38 (a) the new deposit;
39 (b) a deposit made later directly by the transfer of the new
40 deposit in accordance with a requirement of the relevant
41 agreement for the new deposit as mentioned in item 13 of
42 that table.

Schedule 4 Farm management deposits
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1 (4) In determining whether a deposit made after the entitlement arises
2 is a *farm management deposit, disregard the old deposit when
3 determining whether a requirement contained in an agreement as
4 set out in item 5 of the table in section 393-35 (prohibiting farm
5 management deposits with other FMD providers) has been
6 complied with.

7 Note: Subsection (4) means that a deposit made with a financial institution
8 other than the old ADI after the entitlement arises can be a farm
9 management deposit (despite subsection 393-30(1)) even though the
10 owner of the deposit still has the old deposit with the old ADI.

11 (5) A requirement contained in an agreement as set out in item 5 of the
12 table in section 393-35 does not apply to the new deposit to prevent
13 it from being a *farm management deposit.

14 Note: Subsections (4) and (5) mean that, despite subsection 393-30(1)
15 (which prevents a deposit, or part of a deposit, from being a farm
16 management deposit if certain requirements are not met), the fact that
17 you are the owner of both the new deposit with one financial
18 institution and the old deposit with another financial institution does
19 not prevent the new deposit from being a farm management deposit.

20 *Unrecouped FMD deduction for new deposit less than old deposit*

21 (6) Despite subsection (2) and subsection 393-15(3), if the new deposit
22 is less than the old deposit at the time (the **declaration time**) the
23 old ADI became a declared ADI under the *Banking Act 1959*, the
24 **unrecouped FMD deduction** in respect of the new deposit is the
25 amount worked out using the following formula:

26
$$\begin{array}{l} \text{Unrecouped FMD deduction} \\ \text{in respect of old deposit} \\ \text{just before declaration time} \end{array} \times \frac{\text{New deposit}}{\text{Old deposit just} \\ \text{before declaration time}}$$

27 Note: The new deposit could be less than the old deposit if the entitlement is
28 paid in instalments (each of which will be a separate new deposit).

29 (7) However, if the amount worked out under subsection (6) is more
30 than the difference (if any) between:
31 (a) the *unrecouped FMD deduction in respect of the old deposit
32 just before the declaration time; and
33 (b) the total of the amounts worked out under all previous
34 applications of subsection (6) in relation to that old deposit;
35 the **unrecouped FMD deduction** in respect of the new deposit is
36 equal to the difference (if any).

1 Note: This ensures that when new deposits linked to the old deposit are
2 repaid, the total amount included in assessable income will not exceed
3 the unrecouped FMD deduction in respect of the old deposit.

4 *Relationship with other provisions*

5 (8) This section has effect despite Division 253 (about tax treatment of
6 entitlements under the financial claims scheme for insolvent
7 ADIs).

8 **393-60 Repayment if owner of farm management deposit with**
9 **insolvent ADI dies, is bankrupt or ceases to be a primary**
10 **producer**

11 Subsection 393-10(4) does not apply in relation to so much of a
12 *farm management deposit with an *ADI as is equal to the sum of
13 the amounts described in subparagraphs (d)(i) and (ii) of this
14 section if:

- 15 (a) you are the *owner of the deposit; and
16 (b) the deposit becomes repayable during an income year
17 because of the requirement contained in the relevant
18 agreement as set out in item 11 of the table in section 393-35
19 (death, bankruptcy etc.); and
20 (c) during the income year, the ADI becomes a declared ADI
21 under Division 2AA (Financial claims scheme for
22 account-holders with insolvent ADIs) of Part II of the
23 *Banking Act 1959*; and
24 (d) at the end of the income year, you have either or both of the
25 following:
26 (i) an unmet entitlement under that Division connected
27 with the account for the farm management deposit;
28 (ii) an unmet claim against the ADI, or an unpaid debt owed
29 to you by the ADI, in the winding up of the ADI
30 connected with the account for the deposit.

31 Note: Subsection 393-10(4) makes the repayment of a farm management
32 deposit assessable in the income year when the death, bankruptcy etc.
33 occurs, rather than in any later year in which it might be repaid.

34 **3 Subsection 995-1(1) (definition of *farm management***
35 ***deposit*)**

36 Repeal the definition, substitute:

Schedule 4 Farm management deposits
Part 1 Main amendments

1 *farm management deposit* has the meaning given by
2 Subdivision 393-B.

3 **4 Subsection 995-1(1)**

4 Insert:

5 *FMD provider* (short for farm management deposit provider) has
6 the meaning given by subsection 393-20(3).

7 **5 Subsection 995-1(1)**

8 Insert:

9 *owner* of a *farm management deposit has the meaning given by
10 subsection 393-25(1).

11 **6 Subsection 995-1(1)**

12 Insert:

13 *unrecouped FMD deduction* (short for unrecouped farm
14 management deposit deduction) has the meaning given by
15 subsections 393-10(2) and 393-55(6) and (7).

16 ***Taxation Administration Act 1953***

17 **7 At the end of Part 5-25 in Schedule 1**

18 Add:

19 **Division 398—Miscellaneous reporting obligations**

20 **Table of Subdivisions**

21 Guide to Division 398
22 398-A Farm Management Deposit reporting

23 **Guide to Division 398**

24 **398-1 What this Division is about**

25 This Division contains reporting obligations not covered by other
26 Divisions of this Part.

1 **Subdivision 398-A—Farm Management Deposit reporting**

2 **Table of sections**

3 398-5 Reporting to Agriculture Department

4 **398-5 Reporting to Agriculture Department**

5 *FMD provider must provide quarterly information*

- 6 (1) An *FMD provider must, within 60 days after the end of a *quarter,
7 give in writing to the *Agriculture Secretary the information
8 specified in subsection (3) if the provider holds a *farm
9 management deposit at the end of any month in the quarter.

10 Penalty: 10 penalty units.

- 11 (2) An offence under subsection (1) is an offence of strict liability.

12 Note: For strict liability, see section 6.1 of the *Criminal Code*.

13 *Information required*

- 14 (3) The information is:
15 (a) the number of *farm management deposits held at the end of
16 each month in the *quarter; and
17 (b) the number of depositors in respect of such deposits at the
18 end of each month in the quarter; and
19 (c) the sum of the balances of such deposits at the end of each
20 month in the quarter; and
21 (d) any other information, in relation to farm management
22 deposits held by the *FMD provider at any time in the
23 quarter, that is required by the regulations for the purposes of
24 this section.

25 *Regulations not to require identity of depositor*

- 26 (4) Regulations made for the purposes of paragraph (3)(d) must not
27 require information:
28 (a) that discloses the identity of a depositor; or
29 (b) from which the identity of a depositor could reasonably be
30 inferred.

1

2

Part 2—Consequential amendments

3

Farm Household Support Act 1992

4

8 Subsection 3(2) (paragraph (aa) of the definition of exempt livestock proceeds)

5

6

Omit “Schedule 2G to the *Income Tax Assessment Act 1936*”,
substitute “the *Income Tax Assessment Act 1997*”.

7

8

Income Tax Assessment Act 1936

9

9 Subsection 6(1)

10

Insert:

11

farm management deposit has the meaning given by the *Income Tax Assessment Act 1997*.

12

13

10 Subsection 6(1)

14

Insert:

15

FMD provider has the meaning given by the *Income Tax Assessment Act 1997*.

16

17

11 Subsection 6(1) (definition of income from personal exertion or income derived from personal exertion)

18

19

Omit “section 393-15 of Schedule 2G”, substitute “section 393-10 of the *Income Tax Assessment Act 1997*”.

20

21

12 Subsection 6(1)

22

Insert:

23

owner of a farm management deposit has the meaning given by the *Income Tax Assessment Act 1997*.

24

25

13 Subsection 95(1) (definition of net income)

26

Omit “under Schedule 2G”, substitute “under Division 393 of the *Income Tax Assessment Act 1997* (Farm management deposits)”.

27

1 **14 At the end of paragraph 97A(1)(a)**

2 Add “and”.

3 **15 Paragraph 97A(1)(b)**

4 Omit “and”.

5 **16 Paragraph 97A(1)(c)**

6 Repeal the paragraph.

7 **17 At the end of paragraph 97A(1A)(a)**

8 Add “and”.

9 **18 Paragraph 97A(1A)(b)**

10 Omit “and”.

11 **19 Paragraph 97A(1A)(c)**

12 Repeal the paragraph.

13 **20 Subsection 97A(2)**

14 Repeal the subsection.

15 **21 At the end of section 97A**

16 Add:

17 Note: This section applies to certain beneficiaries as if they were individuals
18 who are carrying on a primary production business: see subsection
19 393-25(3) of the *Income Tax Assessment Act 1997*.

20 **22 Subsection 101A(4)**

21 Omit “(within the meaning of Schedule 2G)”.

22 **23 Subsection 170(10) (table item 29)**

23 Repeal the item.

24 **24 Subsection 170(10AA) (at the end of the table)**

25 Add:

210 Division 393 Farm management deposits

26 **25 Subsections 177B(1) and (2)**

1 Repeal the subsections, substitute:

2 (1) Nothing in the following limit the operation of this Part:

3 (a) the provisions of this Act (other than this Part);

4 (b) the *International Tax Agreements Act 1953*;

5 (c) the *Petroleum (Timor Sea Treaty) Act 2003*.

6 (2) This Part does not affect the operation of Division 393 of the
7 *Income Tax Assessment Act 1997* (Farm management deposits).

8 **26 Section 202DK**

9 Repeal the section.

10 **27 Section 202DL**

11 Omit “financial institution” (first occurring), substitute “FMD
12 provider”.

13 **28 Paragraph 202DL(a)**

14 Omit “393-30(3) of Schedule 2G”, substitute “393-20(2) of the *Income*
15 *Tax Assessment Act 1997*”.

16 **29 Paragraph 202DL(b)**

17 Omit “financial institution”, substitute “FMD provider”.

18 **30 At the end of section 202DL**

19 Add:

20 Note: If a farm management deposit was made by a trustee on behalf of a
21 beneficiary who was under a legal disability when the deposit was
22 made, and the beneficiary is no longer under a legal disability, this
23 Division applies as if the beneficiary had made the deposit: see
24 subsection 393-25(4) of the *Income Tax Assessment Act 1997*.

25 **31 Paragraph 202DM(1)(a)**

26 Omit “a financial institution”, substitute “an FMD provider”.

27 Note: The heading to subsection 202DM(1) is altered by omitting “*financial institution*” and
28 substituting “*FMD provider*”.

29 **32 Subsection 202DM(1)**

30 Omit “the financial institution”, substitute “the FMD provider”.

31 **33 Paragraph 202DM(3)(a)**

1 Omit “a financial institution”, substitute “an FMD provider”.

2 Note: The heading to subsection 202DM(3) is altered by omitting “*financial institution*” and
3 substituting “*FMD provider*”.

4 **34 Subsection 202DM(3)**

5 Omit “the financial institution”, substitute “the FMD provider”.

6 **35 Section 264AA**

7 Repeal the section.

8 **36 Paragraph 268-35(5)(j) in Schedule 2F**

9 Omit “Farm Management Deposits”, substitute “farm management
10 deposits”.

11 **37 Paragraph 268-35(5)(j) in Schedule 2F (note)**

12 Repeal the note, substitute:

13 Note: See Division 393 of the *Income Tax Assessment Act 1997*.

14 ***Income Tax Assessment Act 1997***

15 **38 Section 10-5 (table item headed “farm management
16 deposits”)**

17 Omit:

repayments of **393-1 of
Schedule 2G**

18 substitute:

repayments of 393-10

19 **39 Section 12-5 (table item headed “primary production”)**

20 Omit:

farm management deposits **393-1 to 393-65 of
Schedule 2G**

21 substitute:

farm management deposits Division 393

22 **40 Paragraph 26-55(2)(c)**

23 Repeal the paragraph, substitute:

- 1 (c) the amount you can deduct for the income year under
2 section 393-5 (which provides for deductions for making
3 *farm management deposits).

4 **41 Subparagraph 61-570(1)(a)(iii)**

5 Omit “section 393-15 of Schedule 2G to the *Income Tax Assessment Act*
6 *1936*”, substitute “section 393-10”.

7 **42 Paragraph 165-55(5)(j)**

8 Omit “Farm Management Deposits”, substitute “*farm management
9 deposits”.

10 **43 Paragraph 165-55(5)(j) (note)**

11 Repeal the note, substitute:

12 Note: See Division 393.

13 **44 Subsection 230-460(15)**

14 Repeal the subsection, substitute:

15 *Farm management deposits*

16 (15) A right to receive, or an obligation to provide, *financial benefits is
17 the subject of an exception if:

- 18 (a) the right or obligation is the right or obligation of an *owner
19 of a *farm management deposit; and
20 (b) the right or obligation relates to the deposit.

21 **45 Subsection 253-5(1) (paragraph (b) of the note)**

22 Omit “Subdivision 393-D in Schedule 2G to the *Income Tax Assessment*
23 *Act 1936*”, substitute “Subdivision 393-C”.

24 **46 Subsection 392-80(3)**

25 Repeal the subsection, substitute:

26 *Primary production deductions*

27 (3) Your *primary production deductions* for the *current year are:

- 28 (a) all amounts you can deduct that relate exclusively to your
29 *assessable primary production income for the current year;
30 and

1 (b) so much of any other amounts you can deduct (other than
2 *apportionable deductions) to the extent that they reasonably
3 relate to your assessable primary production income for the
4 current year.

5 ***Taxation Administration Act 1953***

6 **47 Subsections 8J(18) and (19)**

7 Repeal the subsections.

8 **48 Subsection 45-120(4) in Schedule 1**

9 Omit “section 393-10 in Schedule 2G to the *Income Tax Assessment Act*
10 *1936*”, substitute “section 393-5 of the *Income Tax Assessment Act*
11 *1997*”.

12 **49 Subsection 45-120(5) in Schedule 1**

13 Omit “section 393-15 in Schedule 2G to the *Income Tax Assessment Act*
14 *1936*”, substitute “section 393-10 of the *Income Tax Assessment Act*
15 *1997*”.

1

2 **Part 3—Application and transitional provisions**

3 ***Income Tax (Transitional Provisions) Act 1997***

4 **50 After Division 392**

5 Insert:

6 **Division 393—Farm management deposits**

7 **Table of Subdivisions**

8 393-A Tax consequences of farm management deposits

9 393-B Meaning of farm management deposit and owner

10 **Subdivision 393-A—Tax consequences of farm management**
11 **deposits**

12 **Table of sections**

13 393-1 Application of Division 393 of the *Income Tax Assessment Act 1997*

14 393-5 Unrecouped FMD deduction

15 393-10 Unrecouped FMD deduction for deposits made as a result of section 25B of
16 the *Loan (Income Equalization Deposits) Act 1976*

17 **393-1 Application of Division 393 of the *Income Tax Assessment Act***
18 ***1997***

19 Division 393 of the *Income Tax Assessment Act 1997* (about farm
20 management deposits) applies to assessments for:

21 (a) the 2010-11 income year; and

22 (b) later income years.

23 **393-5 Unrecouped FMD deduction**

24 A reference in Division 393 of the *Income Tax Assessment Act*
25 *1997* to a deduction under section 393-5 of that Act for making a
26 farm management deposit is taken to include a reference to a
27 deduction under section 393-10 in Schedule 2G to the *Income Tax*
28 *Assessment Act 1936*, as in force just before the commencement of

1 this section, if the deposit was made before the 2010-11 income
2 year.

3 **393-10 Unrecouped FMD deduction for deposits made as a result of**
4 **section 25B of the *Loan (Income Equalization Deposits)***
5 ***Act 1976***

6 Despite subsection 393-10(2) of the *Income Tax Assessment Act*
7 *1997*, if:

- 8 (a) no part of a farm management deposit has been repaid before
9 a particular time; and
10 (b) the deposit was made with an FMD provider as a result of a
11 request to which section 25B of the *Loan (Income*
12 *Equalization Deposits) Act 1976*, as in force on 21 February
13 2005, applied;

14 the ***unrecouped FMD deduction*** in respect of the deposit at that
15 time is equal to the amount of the unrecouped deduction (within
16 the meaning of the former subsection 159GA(3) of the *Income Tax*
17 *Assessment Act 1936*) in respect of the deposit immediately before
18 it ceased to be a deposit under the *Loan (Income Equalization*
19 *Deposits) Act 1976*.

20 Note: This means that the unrecouped deduction relating to the deposit
21 under the *Loan (Income Equalization Deposits) Act 1976* continues to
22 apply (by becoming an unrecouped FMD deduction) when the deposit
23 is transferred to an FMD provider as a farm management deposit. The
24 *Loan (Income Equalization Deposits) Act 1976* was repealed on
25 22 February 2005.

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

28 **Table of sections**

29 393-40 The day the deposit was made for deposits made as a result of section 25B
30 of the *Loan (Income Equalization Deposits) Act 1976*

31 **393-40 The day the deposit was made for deposits made as a result**
32 **of section 25B of the *Loan (Income Equalization Deposits)***
33 ***Act 1976***

34 If a farm management deposit was made with an FMD provider as
35 a result of a request under section 25B of the *Loan (Income*

Schedule 4 Farm management deposits
Part 3 Application and transitional provisions

1 *Equalization Deposits) Act 1976*, as in force on 21 February 2005,
2 then:

3 (a) subsections 393-40(1) to (4) of the *Income Tax Assessment*
4 *Act 1997* apply as if the day the deposit was made was the
5 day on which the deposit was originally made under the *Loan*
6 *(Income Equalization Deposits) Act 1976*; and

7 (b) subsection 393-40(6) does not apply to the deposit.

8 Note: The *Loan (Income Equalization Deposits) Act 1976* was repealed on
9 22 February 2005.

10 **51 Application of other amendments**

11 The amendments made by Parts 1 and 2 of this Schedule (other than
12 item 2) apply to assessments for:

13 (a) the 2010-11 income year; and

14 (b) later income years.

1

Schedule 5—General insurance

2

Part 1—Main amendments

3

Income Tax Assessment Act 1936

4

1 Schedule 2J

5

6 Repeal the Schedule.

6

Income Tax Assessment Act 1997

7

2 After Division 320

8

9 Insert:

9

Division 321—General insurance companies and companies that self-insure in respect of workers’ compensation liabilities

10

11

12

Table of Subdivisions

13

14 321-A Provision for, and payment of, claims by general insurance
15 companies

14

15

16 321-B Premium income of general insurance companies

16

17

17 321-C Companies that self-insure in respect of workers’
18 compensation liabilities

17

18

Subdivision 321-A—Provision for, and payment of, claims by general insurance companies

19

20

Table of sections

21

22 321-10 Assessable income to include amount for reduction in outstanding claims
23 liability

22

23

24 321-15 Deduction for increase in outstanding claims liability

24

25 321-20 How value of outstanding claims liability is worked out

25

26 321-25 Deduction for claims paid during current year

26

1 **321-10 Assessable income to include amount for reduction in**
2 **outstanding claims liability**

3 A *general insurance company's assessable income for the *current
4 year includes an amount equal to the amount (if any) by which:

- 5 (a) the value, at the end of the previous income year, of the
6 company's liability for *outstanding claims under *general
7 insurance policies; exceeds
8 (b) the value, at the end of the current year, of that liability.

9 Note: Those values are worked out under section 321-20.

10 **321-15 Deduction for increase in outstanding claims liability**

11 A *general insurance company can deduct for the *current year an
12 amount equal to the amount (if any) by which:

- 13 (a) the value, at the end of the current year, of the company's
14 liability for *outstanding claims under *general insurance
15 policies; exceeds
16 (b) the value, at the end of the previous income year, of that
17 liability.

18 Note: Those values are worked out under section 321-20.

19 **321-20 How value of outstanding claims liability is worked out**

20 Work out the value, at the end of an income year, of a *general
21 insurance company's liability for *outstanding claims under
22 *general insurance policies in this way:

23 *Method statement*

24 Step 1. Add up the amounts that, at the end of the income year,
25 the company determines, based on proper and reasonable
26 estimates, to be appropriate to set aside and invest in
27 order to meet:

- 28 (a) liabilities for outstanding claims under those
29 policies; and
30 (b) direct settlement costs associated with those
31 outstanding claims.

1 Step 2. Reduce the step 1 amount by so much of it as the
2 company expects at the end of the income year to
3 recover:

4 (a) under a contract of reinsurance; or

5 (b) in any other way;

6 other than under a contract of reinsurance to which
7 subsection 148(1) of the *Income Tax Assessment Act*
8 *1936* (about reinsurance with non-residents) applies.

9 **321-25 Deduction for claims paid during current year**

10 A *general insurance company can deduct for the *current year
11 amounts paid during that year in respect of claims under *general
12 insurance policies.

13 **Subdivision 321-B—Premium income of general insurance**
14 **companies**

15 **Table of sections**

16	321-45	Assessable income to include gross premiums
17	321-50	Assessable income to include amount for reduction in value of unearned 18 premium reserve
19	321-55	Deduction for increase in value of unearned premium reserve
20	321-60	How value of unearned premium reserve is worked out

21 **321-45 Assessable income to include gross premiums**

22 A *general insurance company's assessable income for the *current
23 year includes the gross premiums received or receivable by the
24 company during the current year in respect of *general insurance
25 policies.

26 **321-50 Assessable income to include amount for reduction in value**
27 **of unearned premium reserve**

28 A *general insurance company's assessable income for the *current
29 year includes an amount equal to the amount (if any) by which:

- 1 (a) the value, at the end of the previous income year, of the
2 company's unearned premium reserve; exceeds
3 (b) the value, at the end of the current year, of that reserve.

4 Note: Those values are worked out under section 321-60.

5 **321-55 Deduction for increase in value of unearned premium**
6 **reserve**

7 A *general insurance company can deduct for the *current year an
8 amount equal to the amount (if any) by which:

- 9 (a) the value, at the end of the current year, of the company's
10 unearned premium reserve; exceeds
11 (b) the value, at the end of the previous income year, of that
12 reserve.

13 Note: Those values are worked out under section 321-60.

14 **321-60 How value of unearned premium reserve is worked out**

15 Work out the value, at the end of an income year, of a *general
16 insurance company's unearned premium reserve in this way:

17 *Method statement*

- 18 Step 1. Add up the gross premiums received or receivable by the
19 company, in relation to *general insurance policies issued
20 in the course of carrying on *insurance business, in that
21 or an earlier income year.
- 22 Step 2. Reduce the step 1 amount by so much of the costs
23 incurred by the company in connection with the issue of
24 those policies as relate to the gross premiums, including,
25 for example, costs such as:
- 26 (a) commission and brokerage fees; and
27 (b) administration costs of processing insurance
28 proposals and renewals; and
29 (c) administration costs of collecting premiums; and
30 (d) selling and underwriting costs; and

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(e)	fire brigade charges; and
(f)	stamp duty; and
(g)	other charges, levies and contributions imposed by governments or governmental authorities that directly relate to general insurance policies.
Step 3.	Reduce the step 2 amount by any premiums (the relevant reinsurance premiums) paid or payable by the company, in that or an earlier income year, for the reinsurance of risks covered by those policies, except:
(a)	reinsurance premiums that the company cannot deduct because of subsection 148(1) of the <i>Income Tax Assessment Act 1936</i> (about reinsurance with non-residents); and
(b)	reinsurance premiums that were paid or payable in respect of a particular class of *insurance business where, under the contract of reinsurance, the reinsurer agreed to pay, in respect of a loss incurred by the company that is covered by the relevant policy, some or all of the excess over an agreed amount.
Step 4.	Add to the step 3 amount any reinsurance commissions received or receivable by the company that relate to the relevant reinsurance premiums.
Step 5.	The value, at the end of an income year, of the unearned premium reserve is so much of the step 4 amount as the company determines, based on proper and reasonable estimates, to relate to risks covered by the policies in respect of later income years.

Subdivision 321-C—Companies that self-insure in respect of workers’ compensation liabilities

Table of sections

Schedule 5 General insurance

Part 1 Main amendments

- 1 321-80 Assessable income to include amount for reduction in outstanding claims
- 2 liability
- 3 321-85 Deduction for outstanding claims liability
- 4 321-90 How value of outstanding claims liability is worked out
- 5 321-95 Deductions for claims paid during current year

6 **321-80 Assessable income to include amount for reduction in**
7 **outstanding claims liability**

8 The assessable income for the *current year of a company that is
9 not required by law to insure, and does not insure, against liability
10 for workers' compensation claims includes an amount equal to the
11 amount (if any) by which:

- 12 (a) the value, at the end of the previous income year, of the
13 company's liability for such claims that:
 - 14 (i) arose from events that occurred in that or an earlier
15 income year; and
 - 16 (ii) were not paid in full before the end of the previous
17 income year; exceeds
- 18 (b) the value, at the end of the current year, of that liability.

19 Note: Those values are worked out under section 321-90.

20 **321-85 Deduction for outstanding claims liability**

21 A company that is not required by law to insure, and does not
22 insure, against liability for workers' compensation claims can
23 deduct for the *current year an amount equal to the amount (if any)
24 by which:

- 25 (a) the value, at the end of the current year, of the company's
26 liability for such claims that:
 - 27 (i) arose from events that occurred in the current or an
28 earlier income year; and
 - 29 (ii) were not paid in full before the end of the current year;
30 exceeds
- 31 (b) the value, at the end of the previous income year, of that
32 liability.

33 Note: Those values are worked out under section 321-90.

1 **321-90 How value of outstanding claims liability is worked out**

2 Work out the value, at the end of an income year, of a company's
3 liability for claims covered by section 321-80 or 321-85 by adding
4 up the amounts that, at the end of that income year, the company
5 determines, based on proper and reasonable estimates, to be
6 appropriate to set aside and invest in order to meet:

- 7 (a) liabilities for those claims; and
8 (b) direct settlement costs associated with those claims.

9 **321-95 Deductions for claims paid during current year**

10 A company that is not required by law to insure, and does not
11 insure, against liability for workers' compensation claims can
12 deduct for the * current year amounts paid during that year in
13 respect of such claims.

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Part 2—Consequential amendments

Income Tax Assessment Act 1936

3 Subsection 6(1) (definition of *outstanding claims*)

Repeal the definition.

4 Subsection 6(1) (both the definitions of *value of the outstanding claims liability*)

Repeal the definitions.

5 Subsection 6(1) (definition of *value of the unearned premium reserve*)

Repeal the definition.

Income Tax Assessment Act 1997

6 Section 10-5 (table item headed “general insurance”)

Repeal the item, substitute:

general insurance companies and companies that self insure

gross premiums.....	321-45
reduction in value of outstanding claims liability.....	321-10 and 321-80
reduction in value of unearned premium reserve	321-50

7 Section 12-5 (table item headed “general insurance”)

Repeal the item, substitute:

general insurance companies and companies that self insure

claims paid.....	321-25 and 321-95
increase in value of outstanding claims liability.....	321-15 and 321-85
increase in value of unearned premium reserve.....	321-55

8 Section 713-710

Omit “in Schedule 2J to the *Income Tax Assessment Act 1936*”
(wherever occurring).

1 **9 Paragraph 713-710(b)**

2 Omit “in that Schedule”.

3 **10 Section 713-710 (note 1)**

4 Omit “in that Schedule”.

5 **11 Section 713-710 (note 2)**

6 Omit “in that Schedule”.

7 **12 Subsection 995-1(1) (definition of *contract of reinsurance*)**

8 Repeal the definition, substitute:

9 *contract of reinsurance*, in respect of *life insurance policies, does
10 not include a contract of reinsurance in respect of:

- 11 (a) the parts of *complying superannuation/FHSA life insurance
12 policies in respect of which the liabilities of the company that
13 issued the policies are to be discharged out of a *complying
14 superannuation/FHSA asset pool; or
15 (b) policies that are *exempt life insurance policies.

16 **13 Application**

17 The amendments made by this Schedule apply to the first income year
18 starting on or after the day on which this Act receives the Royal Assent
19 and later income years.