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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Tax Laws Amendment (2011 Measures
No. 5) Bill 2011**

No. , 2011

(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 (2011*
6 *Measures No. 5) Act 2011.*

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. Schedules 1 and 2	The day this Act receives the Royal Assent.	
3. Schedule 3, Part 1, Division 1	The day this Act receives the Royal Assent.	
4. Schedule 3, Part 1, Division 2	The day after this Act receives the Royal Assent.	
5. Schedule 3, Parts 2 and 3	The day this Act receives the Royal Assent.	
6. Schedule 4	The day this Act receives the Royal Assent.	
7. Schedule 5, Part 1	The day this Act receives the Royal Assent.	
8. Schedule 5, Part 2	1 April 2016.	1 April 2016

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be 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9 repealed as set out in the applicable items in the Schedule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.
12

1 **Schedule 1—Primary producers' income**
2 **averaging and farm management**
3 **deposits**

4 **Part 1—Primary producers' income averaging**

5 *Income Tax Assessment Act 1997*

6 **1 Subsection 392-20(1)**

7 Omit “if you are a beneficiary presently entitled to all or part of the trust
8 income for the income year”, substitute “if you satisfy the requirements
9 in subsection (2), (3) or (4)”.

10 **2 Subsections 392-20(2) and (3)**

11 Repeal the subsections, substitute:

12 *Primary production business carried on by a trust with beneficiary*
13 *presently entitled to income of the trust*

14 (2) You satisfy the requirements in this subsection if:

- 15 (a) you are a beneficiary of the trust referred to in subsection (1);
16 and
17 (b) you are presently entitled to a share of the income of the trust
18 for the income year; and
19 (c) if you are presently entitled to less than \$1,040 of the income
20 of the trust for the income year—the Commissioner is
21 satisfied that your interest in the trust was not acquired or
22 granted wholly or primarily to enable your income tax to be
23 adjusted under this Division.

24 *Primary production business carried on by a fixed trust with no*
25 *income of the trust*

26 (3) You satisfy the requirements in this subsection if:

- 27 (a) you are a beneficiary of the trust referred to in subsection (1);
28 and
29 (b) at all times during the income year, the manner or extent to
30 which each beneficiary of the trust can benefit from the trust

Schedule 1 Primary producers' income averaging and farm management deposits
Part 1 Primary producers' income averaging

- 1 is not capable of being significantly affected by the exercise,
2 or non-exercise, of a power; and
3 (c) the trust does not have any income of the trust for the income
4 year to which a beneficiary of the trust could be presently
5 entitled; and
6 (d) if the trust had income of the trust for the income year, you
7 would have been presently entitled to a share of the income
8 of the trust.

9 *Primary production business carried on by a non-fixed trust with*
10 *no income of the trust*

- 11 (4) You satisfy the requirements in this subsection if you do not satisfy
12 the requirements in subsection (3) and you are a chosen beneficiary
13 of the trust referred to in subsection (1) for the purposes of
14 section 392-22 for the income year.

15 *Corporate unit trusts and public trading trusts*

- 16 (5) You are not taken to carry on a *primary production business
17 carried on by the trustee of:
18 (a) a corporate unit trust (as defined in section 102J of the
19 *Income Tax Assessment Act 1936*, which deals with corporate
20 unit trusts); or
21 (b) a public trading trust (as defined in section 102R of the
22 *Income Tax Assessment Act 1936*, which deals with public
23 trading trusts).

24 **3 After section 392-20**

25 Insert:

26 **392-22 Trustee may choose that a beneficiary is a chosen beneficiary**
27 **of the trust**

- 28 (1) The trustee of a trust may choose that a beneficiary of the trust is a
29 chosen beneficiary of the trust for an income year if the trust does
30 not have income of the trust for the income year to which a
31 beneficiary of the trust could be presently entitled.
32 (2) The maximum number of choices that the trustee may make in
33 respect of the trust for an income year is the higher of:

- 1 (a) the number of individuals that were taken to be carrying on a
2 *primary production business carried on by the trust under
3 subsection 392-20(1) in the income year immediately before
4 the current income year; and
5 (b) 12.
- 6 (3) A choice made under subsection (1) must be:
7 (a) in writing; and
8 (b) signed by the trustee and the person chosen.
- 9 (4) The trustee can make the choice no later than the time it lodges the
10 trust's *income tax return for the income year to which the choice
11 relates. However, the Commissioner can allow the trustee to make
12 a choice at a later time.
- 13 (5) A choice cannot be revoked or varied.
14

1 **Part 2—Farm management deposits**

2 ***Income Tax Assessment Act 1936***

3 **4 Section 97A (note)**

4 Omit “subsection 393-25(3)”, substitute “subsections 393-25(3), (4), (5)
5 and (6)”.

6 **5 Section 202DL (note)**

7 Omit “subsection 393-25(4)”, substitute “section 393-28”.

8 ***Income Tax Assessment Act 1997***

9 **6 Subsection 393-5(1) (note 2)**

10 Omit “subsections 393-25(2) and (3)”, substitute “subsections
11 393-25(2), (3), (4), (5) and (6)”.

12 **7 Subsection 393-25(2) (heading)**

13 Repeal the heading, substitute:

14 *Primary production business carried on by a partnership*

15 **8 Before subsection 393-25(3)**

16 Insert:

17 *Primary production business carried on by a trust*

18 **9 Subsection 393-25(3)**

19 Omit “trustee, if you are an individual who is a beneficiary presently
20 entitled to a share of the income of the trust”, substitute “trust, if you
21 satisfy the requirements in subsection (4), (5) or (6)”.

22 **10 Subsection 393-25(4)**

23 Repeal the subsection, substitute:

24 *Primary production business carried on by a trust with beneficiary*
25 *presently entitled to income of the trust*

26 (4) You satisfy the requirements in this subsection if:

- 1 (a) you are an individual and a beneficiary of the trust referred to
2 in subsection (3); and
3 (b) you are presently entitled to a share of the income of the trust
4 for the income year.

5 *Primary production business carried on by a fixed trust with no*
6 *income of the trust*

- 7 (5) You satisfy the requirements in this subsection if:
8 (a) you are an individual and a beneficiary of the trust referred to
9 in subsection (3); and
10 (b) at all times during the income year, the manner or extent to
11 which each beneficiary of the trust can benefit from the trust
12 is not capable of being significantly affected by the exercise,
13 or non-exercise, of a power; and
14 (c) the trust does not have any income of the trust for the income
15 year to which a beneficiary of the trust could be presently
16 entitled; and
17 (d) if the trust had income of the trust for the income year, you
18 would have been presently entitled to a share of the income
19 of the trust.

20 *Primary production business carried on by a non-fixed trust with*
21 *no income of the trust*

- 22 (6) You satisfy the requirements in this subsection if you do not satisfy
23 the requirements in subsection (5) and you are an individual and a
24 chosen beneficiary of the trust referred to in subsection (3) for the
25 purposes of section 393-27 for the income year.

26 **11 After section 393-25**

27 Insert:

28 **393-27 Trustee may choose that a beneficiary is a chosen beneficiary**
29 **of the trust**

- 30 (1) The trustee of a trust may choose that a beneficiary of the trust is a
31 chosen beneficiary of the trust for an income year if the trust does
32 not have any income of the trust for the income year to which a
33 beneficiary of the trust could be presently entitled.

- 1 (2) The maximum number of choices that the trustee may make in
2 respect of the trust for an income year is the higher of:
3 (a) the number of individuals to which subsection 393-25(3)
4 applied in the income year immediately before the current
5 income year; and
6 (b) 12.
- 7 (3) A choice made under subsection (1) must be:
8 (a) in writing; and
9 (b) signed by the trustee and the person chosen.
- 10 (4) The trustee can make the choice no later than the time it lodges the
11 trust's *income tax return for the income year to which the choice
12 relates. However, the Commissioner can allow the trustee to make
13 a choice at a later time.
- 14 (5) A choice cannot be revoked or varied.

15 **393-28 Application of Division to beneficiary no longer under legal**
16 **disability**

17 If:

- 18 (a) a *farm management deposit was made by a trustee on behalf
19 of a beneficiary of a trust; and
20 (b) the beneficiary was under a legal disability when the deposit
21 was made; and
22 (c) the beneficiary is no longer under a legal disability;
23 then this Division, and Division 4A of Part VA of the *Income Tax*
24 *Assessment Act 1936*, apply as if the beneficiary had made the
25 deposit.

26 Note: Division 4A of Part VA of the *Income Tax Assessment Act 1936* is
27 about quotation of tax file numbers in connection with farm
28 management deposits.

29 **12 Section 393-35 (note to table item 1)**

- 30 Omit "subsections 393-25(2) and (3)", substitute "subsections
31 393-25(2), (3), (4), (5) and (6)".

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

33 **13 After section 393-10**

1 Insert:

2 **393-27 Trustee may choose that a beneficiary is a chosen beneficiary**
3 **of the trust**

4 If a beneficiary of a trust was covered by paragraph (c) of the
5 definition of *primary producer* in section 393-25 in Schedule 2G
6 to the *Income Tax Assessment Act 1936* in the 2009-10 income
7 year, treat subsection 393-25(3) of the *Income Tax Assessment Act*
8 *1997* as having applied to the beneficiary for the purpose of
9 determining the maximum number of choices that the trustee may
10 make under subsection 393-27(2) of that Act for the 2010-11
11 income year.
12

1 **Part 3—Application provision**

2 **14 Application provision**

3 The amendments made by this Schedule apply to:

- 4 (a) assessments for the trustee of a trust for an income year that
5 is the 2010-11 income year or a later income year; or
6 (b) assessments for a beneficiary of a trust that relate to the
7 2010-11 income year or a later income year of the trust.
8

1 **Schedule 2—Interim changes to the taxation**
2 **of trust income**

3 **Part 1—Main amendments**

4 ***Income Tax Assessment Act 1936***

5 **1 Before section 95**

6 Insert:

7 **95AAA Simplified outline of the relationship between this Division,**
8 **Division 6E and Subdivisions 115-C and 207-B of the**
9 ***Income Tax Assessment Act 1997***

10 The following is a simplified outline of the relationship between
11 this Division, Division 6E and Subdivisions 115-C and 207-B of
12 the *Income Tax Assessment Act 1997*.

13 This Division sets out the basic income tax treatment of the net
14 income of the trust estate. Generally:

- 15 (a) it has the result of assessing beneficiaries on a
16 share of the net income of the trust estate based on
17 their present entitlement to a share of the income
18 of the trust estate; and
- 19 (b) it has the result of assessing the trustee directly on
20 any residual net income; and
- 21 (c) as a collection mechanism, it has the result of
22 assessing the trustee in respect of some
23 beneficiaries, such as non-residents or those under
24 a legal disability.

25 If the trust estate has capital gains, franked distributions or
26 franking credits, this basic treatment is modified as described
27 below.

28 Division 6E modifies the operation of this Division for the purpose
29 of excluding amounts relevant to capital gains, franked

Schedule 2 Interim changes to the taxation of trust income
Part 1 Main amendments

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distributions and franking credits from the calculations of assessable amounts under sections 97, 98, 99, 99A and 100.

Division 6E does not modify the operation of this Division (or any other provision of this Act) for any other purpose. For example:

- (a) it does not modify the operation of this Division for the purposes of applying section 100A; and
- (b) it does not modify amounts taxed in the hands of the trustee under Subdivisions 115-C and 207-B of the *Income Tax Assessment Act 1997*.

Subdivisions 115-C and 207-B of the *Income Tax Assessment Act 1997* provide the corresponding taxation treatment for those capital gains, franked distributions and franking credits. Specifically:

- (a) Subdivision 115-C of that Act has the effect that an amount corresponding to each of those capital gains is taxed in the hands of the beneficiaries of the trust (as a capital gain) and, if necessary, assessed to the trustee.
- (b) Subdivision 207-B of that Act has the effect that an amount corresponding to each of those franked distributions is taxed in the hands of the beneficiaries of the trust and, if necessary, the trustee. It also has the effect that the entity in whose hands those distributions are taxed can take advantage of the relevant amount of related franking credits.

95AAB Adjustments under Subdivision 115-C or 207-B of the *Income Tax Assessment Act 1997*—references in this Act to assessable income under section 97, 98A or 100

- (1) Subsection (2) applies if an amount is included in the assessable income of a beneficiary of a trust estate because of Subdivision 115-C or 207-B of the *Income Tax Assessment Act 1997*.

- 1 (2) For the purposes of a provision of this Act (other than a provision
2 mentioned in subsection (3)), treat the amount as being included in
3 the beneficiary's assessable income in relation to the net income of
4 the trust estate under section 97, 98A or 100 (as the case requires).
- 5 (3) The provisions are as follows:
6 (a) sections 97, 98A (other than subsection 98A(2)) and 100
7 (other than subsections 100(2) and (3));
8 (b) sections 98, 99 and 99A;
9 (c) Subdivisions 115-C and 207-B of the *Income Tax Assessment*
10 *Act 1997*.
- 11 (4) To avoid doubt, subsection (2) applies despite subsection 6(1AA).

12 **95AAC Adjustments under Subdivision 115-C or 207-B of the**
13 ***Income Tax Assessment Act 1997*—references in this Act**
14 **to liabilities under section 98, 99 or 99A**

- 15 (1) Subsection (2) applies if an amount in respect of which a trustee of
16 a trust estate is liable to be assessed (and pay tax) under section 98
17 in respect of the beneficiary is increased because of
18 Subdivision 115-C or 207-B of the *Income Tax Assessment Act*
19 *1997*.
- 20 (2) For the purposes of a provision of this Act (other than a provision
21 mentioned in subsection (5)), treat the amount of the increase as
22 being an amount in respect of which the trustee is liable to be
23 assessed (and pay tax) under section 98 in respect of the
24 beneficiary's interest in or share of the net income of the trust
25 estate.
- 26 (3) Subsection (4) applies if an amount in respect of which a trustee of
27 a trust estate is liable to be assessed (and pay tax) under section 99
28 or 99A is increased because of Subdivision 115-C or 207-B of the
29 *Income Tax Assessment Act 1997*.
- 30 (4) For the purposes of a provision of this Act (other than a provision
31 mentioned in subsection (5)), treat the amount of the increase as
32 being an amount in respect of which the trustee is liable to be
33 assessed (and pay tax) under section 99 or 99A in respect of the net
34 income of the trust estate.
- 35 (5) The provisions are as follows:

Schedule 2 Interim changes to the taxation of trust income

Part 1 Main amendments

- 1 (a) sections 97, 98A (other than subsection 98A(2)) and 100
2 (other than subsections 100(2) and (3));
3 (b) sections 98, 99 and 99A;
4 (c) Subdivisions 115-C and 207-B of the *Income Tax Assessment*
5 *Act 1997*.
- 6 (6) To avoid doubt, subsections (2) and (4) apply despite subsection
7 6(1AA).

8 **2 Subsection 95(1)**

9 Insert:

10 *adjusted Division 6 percentage*, of an entity that is a beneficiary or
11 trustee of a trust estate, means the entity's Division 6 percentage of
12 the income of the trust estate calculated on the assumption that the
13 amount of a capital gain or franked distribution to which any
14 beneficiary or the trustee of the trust estate is specifically entitled
15 were disregarded in working out the income of the trust estate.

16 **3 Subsection 95(1)**

17 Insert:

18 *adjusted net income*, in relation to a trust estate, has the meaning
19 given by subsection 100AB(4).

20 **4 Subsection 95(1)**

21 Insert:

22 *Division 6 percentage*:

- 23 (a) a beneficiary of a trust estate has a *Division 6 percentage* of
24 the income of the trust estate equal to the share (expressed as
25 a percentage) of the income of the trust estate to which the
26 beneficiary is presently entitled; and
27 (b) the trustee of a trust estate has a *Division 6 percentage* of the
28 income of the trust estate equal to the share (expressed as a
29 percentage) of the income of the trust estate to which no
30 beneficiary is presently entitled.

31 However, if the income of a trust estate is nil:

- 32 (c) a beneficiary of a trust estate has a *Division 6 percentage* of
33 the income of the trust estate of 0%; and

- 1 (d) the trustee of a trust estate has a *Division 6 percentage* of the
2 income of the trust estate of 100%.

3 **5 Subsection 95(1)**

4 Insert:

5 *specifically entitled* has the same meaning as in the *Income Tax*
6 *Assessment Act 1997*.

7 **6 After section 100**

8 Insert:

9 **100AA Failure to pay or notify present entitlement of exempt entity**

- 10 (1) Subsection (3) applies if:
- 11 (a) an exempt entity is presently entitled to an amount of the
12 income of a trust estate; and
- 13 (b) the exempt entity is not an exempt Australian government
14 agency (within the meaning of the *Income Tax Assessment*
15 *Act 1997*); and
- 16 (c) at the end of 2 months after the end of the relevant income
17 year, the trustee has failed to notify the exempt entity in
18 writing of the present entitlement.
- 19 (2) For the purposes of this section, treat the trustee as giving the
20 exempt entity notice in writing of the present entitlement at a time
21 to the extent that the trustee pays the exempt entity the amount of
22 the present entitlement at that time.
- 23 (3) For the purposes of this Act, treat the exempt entity as *not* being
24 presently entitled, and having never been presently entitled, to the
25 amount mentioned in paragraph (1)(a) of the income of the trust
26 estate, to the extent that the trustee failed to notify the exempt
27 entity of that amount as mentioned in paragraph (1)(c).
- 28 (4) However, subsection (3) does not apply if the Commissioner
29 decides that the failure mentioned in paragraph (1)(c) of the trustee
30 should be disregarded.
- 31 (5) In making a decision under subsection (4) (or refusing to make
32 such a decision), the Commissioner must have regard to the
33 following:

Schedule 2 Interim changes to the taxation of trust income
Part 1 Main amendments

- 1 (a) the circumstances that led to the failure mentioned in
2 paragraph (1)(c);
3 (b) the extent to which the trustee has taken action to try to
4 correct the failure and if so, how quickly that action was
5 taken;
6 (c) whether this section has operated previously in relation to the
7 trustee, and if so, the circumstances in which this occurred;
8 (d) any other matters that the Commissioner considers relevant.
- 9 (6) If subsection (3) applies, for the purposes of any application of
10 section 99A in relation to the trust estate in relation to the relevant
11 year of income, treat the trust estate as a resident trust estate.
- 12 (7) This section does not apply in relation to a trust estate that:
13 (a) is a managed investment trust (within the meaning of the
14 *Income Tax Assessment Act 1997*) in relation to a year of
15 income; or
16 (b) is treated in the same way as a managed investment trust in
17 relation to a year of income for the purposes of Division 275
18 of that Act.

19 **100AB Adjusted Division 6 percentage exceeding benchmark**
20 **percentage: present entitlement of exempt entity**

- 21 (1) Subsection (2) applies if:
22 (a) an exempt entity is presently entitled to an amount of the
23 income of a trust estate; and
24 (b) the exempt entity is not an exempt Australian government
25 agency (within the meaning of the *Income Tax Assessment*
26 *Act 1997*); and
27 (c) the exempt entity's adjusted Division 6 percentage of the
28 income of the trust estate exceeds the benchmark percentage
29 determined under subsection (3).
- 30 (2) Subject to subsection 100AA(3), for the purposes of this Act, treat
31 the exempt entity as *not* being presently entitled, and having never
32 been presently entitled, to the amount of the income of the trust
33 estate mentioned in paragraph (1)(a) of this section, to the extent
34 that ensures that the exempt entity's adjusted Division 6 percentage
35 of the income of the trust estate equals the benchmark percentage
36 determined under subsection (3) of this section.

1 (3) Determine the benchmark percentage by working out the following
2 fraction (expressed as a percentage):

$$\frac{\text{The amount to which the exempt entity is presently entitled from the trust estate, to the extent that the amount forms part of the trust estate's adjusted net income for the year of income}}{\text{The trust estate's adjusted net income for the year of income}}$$

4 (4) A trust estate's *adjusted net income* for a year of income is its net
5 income for that year of income, with the following adjustments:

6 (a) firstly, in determining that net income, disregard any capital
7 gain or franked distribution to the extent to which a
8 beneficiary of the trust estate or the trustee is specifically
9 entitled to that gain or distribution;

10 (b) next, in determining the net capital gain (if any) of the trust
11 for the year of income, disregard steps 3 and 4 of the method
12 statement in subsection 102-5(1) (CGT discount and small
13 business concessions);

14 (c) next, reduce that net income by amounts (if any) that do not
15 represent net accretions of value to the trust estate in that year
16 of income (other than amounts included in that net income
17 under Part IVA).

18 (5) Subsection (2) does not apply in relation to a trust estate in relation
19 to a year of income if the Commissioner is of the opinion that it
20 would be unreasonable that the subsection should apply in relation
21 to that trust estate in relation to that year of income.

22 (6) In forming an opinion for the purposes of subsection (5), the
23 Commissioner must consider the following matters:

24 (a) the circumstances that led to the exempt entity's adjusted
25 Division 6 percentage exceeding the benchmark percentage
26 determined under subsection (3);

27 (b) the extent to which the exempt entity's adjusted Division 6
28 percentage exceeds that benchmark percentage;

29 (c) the extent to which the exempt entity actually received
30 distributions from the trust estate in respect of the year of
31 income;

32 (d) the extent to which other beneficiaries of the trust estate were
33 entitled to receive distributions of, or otherwise benefit from,

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Part 1 Main amendments

- 1 amounts representing the adjusted net income of the trust
2 estate;
3 (e) any other matters that the Commissioner considers relevant.
- 4 (7) If subsection (2) applies, for the purposes of any application of
5 section 99A in relation to the trust estate in relation to the relevant
6 year of income, treat the trust estate as a resident trust estate.
- 7 (8) This section does not apply in relation to a trust estate that:
8 (a) is a managed investment trust (within the meaning of the
9 *Income Tax Assessment Act 1997*) in relation to a year of
10 income; or
11 (b) is treated in the same way as a managed investment trust in
12 relation to a year of income for the purposes of Division 275
13 of that Act.

14 **7 After Division 6D of Part I**

15 Insert:

16 **Division 6E—Adjustment of Division 6 assessable amount**
17 **in relation to capital gains, franked distributions**
18 **and franking credits**

19 **102UW Application of Division**

20 This Division applies if:

- 21 (a) the net income of a trust estate exceeds nil; and
22 (b) any of the following things are taken into account in working
23 out the net income of the trust estate:
24 (i) a capital gain (to the extent that an amount of the capital
25 gain remained after applying steps 1 to 4 of the method
26 statement in subsection 102-5(1) of the *Income Tax*
27 *Assessment Act 1997*);
28 (ii) a franked distribution (to the extent that an amount of
29 the franked distribution remained after reducing it by
30 deductions that were directly relevant to it);
31 (iii) a franking credit.

1 **102UX Adjustment of Division 6 assessable amount in relation to**
2 **capital gains, franked distributions and franking credits**

- 3 (1) Make the assumptions in the following subsections for the
4 purposes of working out in accordance with Division 6 an amount:
5 (a) included in the assessable income of a beneficiary of a trust
6 estate under section 97, 98A or 100; or
7 (b) in respect of which a trustee of a trust estate is liable to pay
8 tax under section 98, in relation to a beneficiary of the trust
9 estate; or
10 (c) in respect of which a trustee of a trust estate is liable to pay
11 tax under section 99 or 99A.

12 Note: Those assumptions are made only for the purposes of working out the
13 amounts mentioned in paragraphs (a), (b) and (c). They are not made
14 for any other purposes (for example, determining the income of a trust
15 estate, the net income of a trust estate, or the amount of a present
16 entitlement of a beneficiary of a trust estate to the income of the trust
17 estate).

- 18 (2) Assume that the income of the trust estate were equal to the
19 Division 6E income of the trust estate.
20 (3) Assume that the net income of the trust estate were equal to the
21 Division 6E net income of the trust estate.
22 (4) Assume that the amount of a present entitlement of a beneficiary of
23 the trust estate to the income of the trust estate were equal to the
24 amount of the beneficiary's Division 6E present entitlement to the
25 income of the trust estate.

26 **102UY Interpretation**

- 27 (1) Expressions used in this Division have the same meaning as in
28 Division 6.
29 (2) The *Division 6E income*, of the trust estate, is the income of the
30 trust estate worked out on the assumption that amounts attributable
31 to the things mentioned in paragraph 102UW(b) were disregarded.
32 The Division 6E income of the trust estate cannot be less than nil.
33 (3) The *Division 6E net income*, of the trust estate, is the net income
34 of the trust estate worked out on the assumption that the things
35 mentioned in paragraph 102UW(b) were disregarded. The
36 Division 6E net income of the trust estate cannot be less than nil.

- 1 (4) A beneficiary of the trust estate has an amount of a ***Division 6E***
2 ***present entitlement to the income of the trust estate*** that is equal
3 to the amount of the beneficiary's present entitlement to the
4 income of the trust estate, decreased by:
- 5 (a) for each capital gain taken into account as mentioned in
6 paragraph 102UW(b)—so much of the beneficiary's share of
7 the capital gain as was included in the income of the trust
8 estate; and
- 9 (b) for each franked distribution taken into account as mentioned
10 in paragraph 102UW(b)—so much of the beneficiary's share
11 of the franked distribution as was included in the income of
12 the trust estate.
- 13 (5) The following expressions in this Division have the same meaning
14 as in the *Income Tax Assessment Act 1997*:
- 15 (a) *share* of a capital gain (see section 115-227 of that Act);
16 (b) *share* of a franked distribution (see section 207-55 of that
17 Act).

18 ***Income Tax Assessment Act 1997***

19 **8 Section 115-200**

20 Omit “The rules also give the beneficiary a deduction if necessary to
21 prevent it from being taxed twice on the same parts of the trust's net
22 income.”, substitute “Division 6E of Part III of the *Income Tax*
23 *Assessment Act 1936* will exclude amounts from the beneficiary's
24 assessable income if necessary to prevent it from being taxed twice on
25 the same parts of the trust's net income.”.

26 **9 Subsections 115-215(2) and (3)**

27 Repeal the subsections, substitute:

28 *Extra capital gains*

- 29 (3) If you are a beneficiary of the trust estate, for each * capital gain of
30 the trust estate, Division 102 applies to you as if you had:
- 31 (a) if the capital gain was not reduced under either step 3 of the
32 method statement in subsection 102-5(1) (discount capital
33 gains) or Subdivision 152-C (small business 50%
34 reduction)—a capital gain equal to the amount mentioned in
35 subsection 115-225(1); and

- 1 (b) if the capital gain was reduced under either step 3 of the
2 method statement or Subdivision 152-C but not both (even if
3 it was further reduced by the other small business
4 concessions)—a capital gain equal to twice the amount
5 mentioned in subsection 115-225(1); and
6 (c) if the capital gain was reduced under both step 3 of the
7 method statement and Subdivision 152-C (even if it was
8 further reduced by the other small business concessions)—a
9 capital gain equal to 4 times the amount mentioned in
10 subsection 115-225(1).

11 Note: This subsection does not affect the amount (if any) included in your
12 assessable income under Division 6 of Part III of the *Income Tax*
13 *Assessment Act 1936* because of the capital gain of the trust estate.
14 However, Division 6E of that Part may have the effect of reducing the
15 amount included in your assessable income under Division 6 of that
16 Part by an amount related to the capital gain you have under this
17 subsection.

18 **10 Subsection 115-215(6)**

19 Repeal the subsection.

20 **11 Sections 115-220, 115-222 and 115-225**

21 Repeal the sections, substitute:

22 **115-220 Assessing trustees under section 98 of the *Income Tax***
23 ***Assessment Act 1936***

- 24 (1) This section applies if:
25 (a) you are the trustee of the trust estate; and
26 (b) on the assumption that there is a share of the income of the
27 trust to which a beneficiary of the trust is presently entitled,
28 you would be liable to be assessed (and pay tax) under
29 section 98 of the *Income Tax Assessment Act 1936* in relation
30 to the trust estate in respect of the beneficiary.
- 31 (2) For each *capital gain of the trust estate, increase the amount (the
32 ***assessable amount***) in respect of which you are actually liable to
33 be assessed (and pay tax) under section 98 of the *Income Tax*
34 *Assessment Act 1936* in relation to the trust estate in respect of the
35 beneficiary by:
36 (a) unless paragraph (b) applies—the amount mentioned in
37 subsection 115-225(1) in relation to the beneficiary; or

1 (b) if the liability is under paragraph 98(3)(b) or subsection
2 98(4), and the capital gain was reduced under step 3 of the
3 method statement in subsection 102-5(1) (discount capital
4 gains)—twice the amount mentioned in subsection
5 115-225(1) in relation to the beneficiary.

6 (3) To avoid doubt, increase the assessable amount under
7 subsection (2) even if the assessable amount is nil.

8 **115-222 Assessing trustees under section 99 or 99A of the *Income***
9 ***Tax Assessment Act 1936***

10 (1) Subsection (2) applies if:

- 11 (a) you are the trustee of the trust estate; and
12 (b) section 99A of the *Income Tax Assessment Act 1936* does not
13 apply in relation to the trust estate in relation to the relevant
14 income year.

15 (2) For each *capital gain of the trust estate, increase the amount (the
16 ***assessable amount***) in respect of which you are liable to be
17 assessed (and pay tax) under section 99 of the *Income Tax*
18 *Assessment Act 1936* in relation to the trust estate by the amount
19 mentioned in subsection 115-225(1).

20 (3) Subsection (4) applies if:

- 21 (a) you are the trustee of the trust estate; and
22 (b) subsection (2) does not apply.

23 (4) For each *capital gain of the trust estate, increase the amount (the
24 ***assessable amount***) in respect of which you are liable to be
25 assessed (and pay tax) under section 99A of the *Income Tax*
26 *Assessment Act 1936* in relation to the trust estate by:

- 27 (a) if the capital gain was not reduced under either step 3 of the
28 method statement in subsection 102-5(1) (discount capital
29 gains) or Subdivision 152-C (small business 50%
30 reduction)—the amount mentioned in subsection 115-225(1);
31 and
32 (b) if the capital gain was reduced under either step 3 of the
33 method statement or Subdivision 152-C but not both (even if
34 it was further reduced by the other small business
35 concessions)—twice the amount mentioned in subsection
36 115-225(1); and
-

- 1 (c) if the capital gain was reduced under both step 3 of the
2 method statement and Subdivision 152-C (even if it was
3 further reduced by the other small business concessions)—4
4 times the amount mentioned in subsection 115-225(1).
- 5 (5) To avoid doubt, increase the assessable amount under
6 subsection (2) or (4) even if the assessable amount is nil.

7 **115-225 Attributable gain**

- 8 (1) The amount is the product of:
9 (a) the amount of the *capital gain remaining after applying steps
10 1 to 4 of the method statement in subsection 102-5(1); and
11 (b) your *share of the capital gain (see section 115-227), divided
12 by the amount of the capital gain.
- 13 (2) Subsection (3) applies if the net income of the trust estate
14 (disregarding the amount of any *franking credits) for the relevant
15 income year falls short of the sum of:
16 (a) the *net capital gain (if any) of the trust estate for the income
17 year; and
18 (b) the total of all *franked distributions (if any) included in the
19 assessable income of the trust estate for the income year (to
20 the extent that an amount of the franked distributions
21 remained after reducing them by deductions that were
22 directly relevant to them).
- 23 (3) For the purposes of subsection (1), replace paragraph (a) of that
24 subsection with the following paragraph:
25 (a) the product of:
26 (i) the amount of the capital gain remaining after applying
27 steps 1 to 4 of the method statement in subsection
28 102-5(1); and
29 (ii) the *net income of the trust estate for that income year
30 (disregarding the amount of any *franking credits),
31 divided by the sum mentioned in subsection (2); and

32 **115-227 Share of a capital gain**

- 33 An entity that is a beneficiary or the trustee of a trust estate has a
34 *share* of a *capital gain that is the sum of:

- 1 (a) the amount of the capital gain to which the entity is
2 *specifically entitled; and
3 (b) if there is an amount of the capital gain to which no
4 beneficiary of the trust estate is specifically entitled, and to
5 which the trustee is not specifically entitled—that amount
6 multiplied by the entity’s *adjusted Division 6 percentage of
7 the income of the trust estate for the relevant income year.

8 **115-228 Specifically entitled to an amount of a capital gain**

- 9 (1) A beneficiary of a trust estate is *specifically entitled* to an amount
10 of a *capital gain made by the trust estate in an income year equal
11 to the amount calculated under the following formula:

12
$$\text{*Capital gain} \times \frac{\text{Share of net financial benefit}}{\text{Net financial benefit}}$$

13 where:

14 *net financial benefit* means an amount equal to the *financial
15 benefit that is referable to the capital gain (after any application by
16 the trustee of losses, to the extent that the application is consistent
17 with the application of capital losses against the capital gain in
18 accordance with the method statement in subsection 102-5(1)).

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

- 21 (a) the beneficiary has received, or can be reasonably expected
22 to receive; and
23 (b) is referable to the *capital gain (after application by the
24 trustee of any losses, to the extent that the application is
25 consistent with the application of capital losses against the
26 capital gain in accordance with the method statement in
27 subsection 102-5(1)); and
28 (c) is recorded, in its character as referable to the capital gain, in
29 the accounts or records of the trust no later than 2 months
30 after the end of the income year.

31 Note: A trustee of a trust estate that makes a choice under section 115-230 is
32 taken to be specifically entitled to a capital gain.

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

- 1 (a) the exercise of a power conferred by the terms of the trust; or
2 (b) the terms of the trust deed (if any), and the terms applicable
3 to the trust because of the operation of legislation, the
4 common law or the rules of equity.

- 5 (3) For the purposes of this section, in calculating the amount of the
6 *capital gain, disregard sections 112-20 and 116-30 (Market value
7 substitution rule) to the extent that those sections have the effect of
8 increasing the amount of the capital gain.

9 **12 Section 115-230 (heading)**

10 Repeal the heading, substitute:

11 **115-230 Choice for resident trustee to be specifically entitled to**
12 **capital gain**

13 **13 Subsection 115-230(1)**

14 Repeal the subsection, substitute:

15 *Purpose*

- 16 (1) The purpose of this section is to allow a trustee of a resident trust
17 to make a choice that has the effect that the trustee will be assessed
18 on a *capital gain of the trust if no trust property representing the
19 capital gain has been paid to or applied for the benefit of a
20 beneficiary of the trust.

21 **14 Subsection 115-230(2)**

22 Repeal the subsection, substitute:

23 *Trusts for which choice can be made*

- 24 (2) A trustee can only make a choice under this section in relation to a
25 trust estate that is, in the income year in respect of which the
26 choice is made, a resident trust estate (within the meaning of
27 Division 6 of Part III of the *Income Tax Assessment Act 1936*).

28 **15 Paragraphs 115-230(3)(a), (b) and (c)**

29 Repeal the paragraphs, substitute:

- 30 (a) a *capital gain is taken into account in working out the *net
31 capital gain of a trust for an income year; and

- 1 (b) trust property representing all or part of that capital gain has
2 not been paid to or applied for the benefit of a beneficiary of
3 the trust by the end of 2 months after the end of the income
4 year;

5 **16 Subsection 115-230(3)**

6 Omit “beneficiary’s share”, substitute “capital gain”.

7 **17 Subsection 115-230(4)**

8 Repeal the subsection, substitute:

9 *Consequences if trustee makes choice*

- 10 (4) These are the consequences if the trustee makes a choice that this
11 subsection applies in respect of a *capital gain:
12 (a) sections 115-215 and 115-220 do not apply in relation to the
13 capital gain;
14 (b) for the purposes of this Act, the trustee is taken to be
15 *specifically entitled to all of the capital gain.

16 **18 Subsection 207-35(3)**

17 Repeal the subsection, substitute:

- 18 (3) Subsection (4) applies if:
19 (a) a *franked distribution is made, or *flows indirectly, to a
20 partnership or the trustee of a trust in an income year; and
21 (b) the assessable income of the partnership or trust for that year
22 includes an amount (the *franking credit amount*) that is all
23 or a part of the additional amount of assessable income
24 included under subsection (1) in relation to the distribution;
25 and
26 (c) the distribution flows indirectly to an entity that is a partner
27 in the partnership, or a beneficiary or the trustee of the trust;
28 and
29 (d) disregarding Division 6E of Part III of the *Income Tax*
30 *Assessment Act 1936*, the entity has an amount of assessable
31 income for that year that is attributable to all or a part of the
32 distribution.

- 1 (4) Despite any provisions in Divisions 5 and 6 of Part III of the
2 *Income Tax Assessment Act 1936*, the entity's assessable income
3 for that year also includes:
4 (a) in the case of an entity that is a partner in a partnership—so
5 much of the franking credit amount as is equal to the entity's
6 *share of the *franking credit on the distribution; and
7 (b) in the case of an entity that is a beneficiary of a trust:
8 (i) so much of the franking credit amount as is equal to the
9 entity's share of the franking credit on the distribution;
10 and
11 (ii) the amount mentioned in section 207-37.

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

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

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

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

- 30 (5) Subsection (6) applies if:
31 (a) a *franked distribution is made, or *flows indirectly, to the
32 trustee of a trust in an income year; and
33 (b) the assessable income of the trust for that year includes an
34 amount (the **franking credit amount**) that is all or a part of
35 the additional amount of assessable income included under
36 subsection (1) in relation to the distribution; and
37 (c) disregarding Division 6E of Part III of the *Income Tax*
38 *Assessment Act 1936*, the trustee of the trust is liable to be
39 assessed (and pay tax) in respect of an amount (the
40 **assessable amount**) under section 98, 99 or 99A of that Act
41 in relation to the trust.

- 1 (6) Despite any provisions in Division 6 of Part III of the *Income Tax*
2 *Assessment Act 1936*, for the purposes of that Division, increase
3 the assessable amount by so much of the franking credit amount as
4 is equal to:
- 5 (a) if the trustee of the trust is liable to be assessed (and pay tax)
6 under section 98 of that Act—the sum of:
- 7 (i) the trustee's *share of the *franking credit on the
8 distribution in respect of the beneficiary; and
9 (ii) the amount mentioned in section 207-37; or
- 10 (b) if the trustee of the trust is liable to be assessed (and pay tax)
11 under section 99 or 99A of that Act—the sum of:
- 12 (i) the trustee's share of the franking credit on the
13 distribution; and
14 (ii) the amount mentioned in section 207-37.

15 **19 After section 207-35**

16 Insert:

17 **207-37 Attributable franked distribution—trusts**

- 18 (1) The amount is the product of:
- 19 (a) the amount of the *franked distribution (to the extent that an
20 amount of the franked distribution remained after reducing it
21 by deductions that were directly relevant to it); and
22 (b) the beneficiary's or the trustee's (as the case requires) *share
23 of the franked distribution (see section 207-55), divided by
24 the amount of the franked distribution.
- 25 (2) Subsection (3) applies if the net income of the trust estate
26 (disregarding the amount of any *franking credits) for the relevant
27 income year falls short of the sum of:
- 28 (a) the *net capital gain (if any) of the trust estate for the income
29 year; and
30 (b) the total of all *franked distributions (if any) included in the
31 assessable income of the trust estate for the income year (to
32 the extent that an amount of the franked distributions
33 remained after reducing them by deductions that were
34 directly relevant to them).
- 35 (3) For the purposes of subsection (1), replace paragraph (a) of that
36 subsection with the following paragraph:
-

1 (a) the product of:

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

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

9 **20 Subsection 207-50(5) (example)**

10 Omit “is \$70”, substitute “is therefore \$70”.

11 **21 Subsection 207-50(5) (example)**

12 Omit “The beneficiary is therefore allowed a tax offset of \$30”,
13 substitute “The beneficiary is also allowed a tax offset of \$30”.

14 **22 Subsection 207-55(3) (cell at table item 3, column 3)**

15 Repeal the cell, substitute:
the amount mentioned in
subsection (4)

16 **23 At the end of section 207-55**

17 Add:

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

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

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

24 (ii) if the focal entity is the trustee and has the share amount
25 because of the operation of section 98 of the *Income Tax*
26 *Assessment Act 1936* in respect of a beneficiary (see
27 subparagraph 207-50(4)(b)(i))—the beneficiary is
28 specifically entitled; and

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

- 1 (i) unless subparagraph (ii) applies—the focal entity’s
2 *adjusted Division 6 percentage of the income of the
3 trust for the relevant income year; or
4 (ii) if the focal entity is the trustee and has the share amount
5 because of the operation of section 98 of the *Income Tax*
6 *Assessment Act 1936* in respect of a beneficiary (see
7 subparagraph 207-50(4)(b)(i))—the beneficiary’s
8 adjusted Division 6 percentage of the income of the
9 trust for the relevant income year.

10 **24 At the end of Subdivision 207-B**

11 Add:

12 **207-58 Specifically entitled to an amount of a franked distribution**

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

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

17 where:

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

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

- 24 (a) the beneficiary has received, or can be reasonably expected
25 to receive; and
26 (b) is referable to the *franked distribution (after application by
27 the trustee of any expenses that are directly relevant to the
28 franked distribution); and
29 (c) is recorded, in its character as referable to the franked
30 distribution, in the accounts or records of the trust no later
31 than the end of the income year.
- 32 (2) To avoid doubt, for the purposes of subsection (1), something is
33 done in accordance with the terms of the trust if it is done in
34 accordance with:

- 1 (a) the exercise of a power conferred by the terms of the trust; or
2 (b) the terms of the trust deed (if any), and the terms applicable
3 to the trust because of the operation of legislation, the
4 common law or the rules of equity.

5 **207-59 Franked distributions within class treated as single franked**
6 **distribution**

- 7 (1) Subsection (3) applies if:
8 (a) a trust receives 2 or more *franked distributions in an income
9 year; and
10 (b) all of the franked distributions that the trust receives in the
11 income year are, in accordance with the terms of the trust, to
12 the extent that they are distributed in that income year,
13 distributed within a single class.
- 14 (2) For the purposes of this Subdivision and Division 6E of Part III of
15 the *Income Tax Assessment Act 1936*, treat all of the *franked
16 distributions that the trust receives in the income year as one single
17 franked distribution.
- 18 (3) To avoid doubt, for the purposes of subsection (1), something is
19 done in accordance with the terms of the trust if it is done in
20 accordance with:
21 (a) the exercise of a power conferred by the terms of the trust; or
22 (b) the terms of the trust deed (if any), and the terms applicable
23 to the trust because of the operation of legislation, the
24 common law or the rules of equity.

25 **25 Subsection 995-1(1)**

26 Insert:

27 *adjusted Division 6 percentage*, in relation to a trust estate, has the
28 same meaning as in Division 6 of Part III of the *Income Tax*
29 *Assessment Act 1936*.

30 **26 Subsection 995-1(1) (after paragraph (a) of the definition**
31 **of share)**

32 Insert:

- 33 (aa) of a *capital gain has the meaning given by section 115-227;
34 and

1 **27 Subsection 995-1(1)**

2 Insert:

3 *specifically entitled:*

- 4 (a) *specifically entitled* to a *capital gain has the meaning given
5 by section 115-228; and

6 Note: A trustee of a trust estate that makes a choice under
7 section 115-230 is taken to be specifically entitled to a capital
8 gain.

- 9 (b) *specifically entitled* to a *franked distribution has the
10 meaning given by section 207-58.
11

1 **Part 2—Consequential amendments**

2 ***Income Tax Assessment Act 1936***

3 **28 Subsection 97(1) (note)**

4 Repeal the note.

5 **29 Subsection 98A(1) (note)**

6 Repeal the note.

7 **30 Subsection 98A(2)**

8 Omit “Where subsection (1) applies in relation to a beneficiary in
9 relation to a year of income”, substitute “Where the trustee of a trust
10 estate is assessed and is liable to pay tax in respect of the whole or a
11 part of a share of the net income of a trust estate of a year of income in
12 pursuance of subsection 98(3)”.

13 **31 Paragraph 98A(2)(a)**

14 Omit “(including, for a beneficiary that is a company, any tax paid in
15 respect of that interest because of section 115-220 of the *Income Tax*
16 *Assessment Act 1997*)”.

17 **32 Subsection 98A(3) (note)**

18 Repeal the note.

19 **33 Paragraph 98B(2)(c)**

20 Omit “(including any tax paid under subsection 98(4) in respect of the
21 taxed net income because of section 115-222 of the *Income Tax*
22 *Assessment Act 1997*)”.

23 **34 Subsection 100(1) (note 1)**

24 Repeal the note.

25 **35 Subsection 100(1) (note 2)**

26 Omit “Note 2”, substitute “Note”.

27 **36 After subsection 100(1)**

28 Insert:

1 (1AA) If an amount is included in the assessable income of a beneficiary
2 of a trust estate because of Subdivision 115-C or 207-B of the
3 *Income Tax Assessment Act 1997*, for the purposes of
4 paragraph (1)(b), treat the beneficiary as deriving income from
5 another source.

6 **37 Subsection 100(1B) (note 1)**

7 Repeal the note.

8 **38 Subsection 100(2)**

9 After “subsection (1) or (1A) applies”, insert “(or a beneficiary under a
10 legal disability whose assessable income is increased as a result of
11 Subdivision 115-C or 207-B of the *Income Tax Assessment Act 1997*)”.

12 **39 Subparagraph 102AAU(1)(c)(iv)**

13 Repeal the subparagraph.

14 **40 Paragraph 159H(b)**

15 Repeal the paragraph, substitute:

- 16 (b) both of the following requirements are satisfied:
- 17 (i) the taxpayer is a trustee who is liable to be assessed
18 under section 98 in respect of a share of the net income
19 of a trust estate in respect of a beneficiary;
 - 20 (ii) the beneficiary is a resident and is not a company.

21 **41 Paragraph 160AAAA(4)(c)**

22 Repeal the paragraph, substitute:

- 23 (c) an amount in respect of which a trustee of a trust estate is
24 liable to be assessed (and pay tax) under section 98 in respect
25 of the taxpayer’s spouse.

26 **42 Paragraph 160AAAB(5)(c)**

27 Repeal the paragraph, substitute:

- 28 (c) an amount in respect of which a trustee of a trust estate is
29 liable to be assessed (and pay tax) under section 98 in respect
30 of the taxpayer’s spouse.

31 **43 After paragraph 365(1)(c)**

32 Insert:

- 1 (ca) where a beneficiary of a trust is specifically entitled to an
2 amount of a capital gain or a franked distribution of the trust
3 for a year of income:
4 (i) in the case of a capital gain—the amount mentioned in
5 subsection 115-225(1) in respect of the beneficiary; or
6 (ii) in the case of a franked distribution—the amount
7 mentioned in subsection 207-37(1) in respect of the
8 beneficiary;
9 to the extent that it is not covered under paragraph (c);

10 **44 Paragraph 460(3)(c)**

11 Repeal the paragraph, substitute:

- 12 (c) the tax detriment would be reduced by an amount if it were
13 recalculated on the following assumptions:
14 (i) sections 97, 98A and 100 applied only to so much of the
15 beneficiary's share of the net income of the Australian
16 trust or the ultimate trust as is attributable to periods
17 when the beneficiary was a Part X Australian resident;
18 (ii) Subdivision 115-C of the *Income Tax Assessment Act*
19 *1997* applied only to so much of the beneficiary's share
20 of each capital gain of the Australian trust or the
21 ultimate trust as is attributable to periods when the
22 beneficiary was a Part X Australian resident;
23 (iii) Subdivision 207-B of the *Income Tax Assessment Act*
24 *1997* applied only to so much of the beneficiary's share
25 of each franked distribution of the Australian trust or the
26 ultimate trust as is attributable to periods when the
27 beneficiary was a Part X Australian resident;

28 ***Income Tax Assessment Act 1997***

29 **45 Section 12-5 (table item headed "capital gains")**

30 Omit:
beneficiary whose assessable income includes share of net
income of trust with net capital gain 115-215

31 **46 Section 102-30 (table item 2AA)**

32 Repeal the item, substitute:

Schedule 2 Interim changes to the taxation of trust income
Part 2 Consequential amendments

2AA	Beneficiary of trust that makes a capital gain taken into account in working out the net income of the trust	The beneficiary is treated as having an extra capital gain corresponding to the beneficiary's share of the capital gain (taking into account adjustments in respect of the CGT discount and small business concessions).	Subdivision 115-C
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1 **47 Subsection 315-155(2)**

2 Repeal the subsection, substitute:

3 (2) If this section applies:

4 (a) sections 115-215 and 115-220 do not apply in relation to the
5 *capital gain; and

6 (b) for the purposes of this Act, the trustee is taken to be
7 *specifically entitled to all of the capital gain.

8 **48 Subsections 315-175(2) and (3)**

9 Repeal the subsections, substitute:

10 (2) If this section applies:

11 (a) sections 115-215 and 115-220 do not apply in relation to the
12 *capital gain; and

13 (b) for the purposes of this Act, the trustee is taken to be
14 *specifically entitled to all of the capital gain.

15 **49 Paragraph 320-137(4)(d)**

16 Omit “subsection 115-280(1);”, substitute “subsection 115-280(1).”.

17 **50 Paragraph 320-137(4)(e)**

18 Repeal the paragraph.
19

1 **Part 3—Application provision**

2 **51 Application provision**

- 3 (1) Subject to this item, the amendments made by this Schedule apply to
4 assessments for the 2010-11 income year and later income years.

5 *Early balancers and the 2010-11 income year*

- 6 (2) Subitems (3) and (4) apply in relation to a trust whose 2010-11 income
7 year started before 1 July 2010.

- 8 (3) The amendments made by this Schedule do not apply to an assessment
9 for the 2010-11 income year unless the trustee of the trust makes a
10 choice in accordance with subitem (4).

- 11 (4) A choice mentioned in subitem (3):
12 (a) can only be made before the end of 2 months after the
13 commencement of this item; and
14 (b) can only be made in writing.

15 *MITs and the 2010-11 and 2011-12 income years*

- 16 (5) Subitems (6) and (7) apply in relation to an entity that:
17 (a) is a managed investment trust in relation to an income year;
18 or
19 (b) is treated in the same way as a managed investment trust in
20 relation to an income year for the purposes of Division 275 of
21 the *Income Tax Assessment Act 1997*.

- 22 (6) If the income year is the 2010-11 or 2011-12 income year, the
23 amendments made by this Schedule do not apply to an assessment for
24 the income year unless:
25 (a) the trustee of the entity makes a choice in accordance with
26 subitem (7) in relation to the income year; or
27 (b) in the case of the 2011-12 income year—the trustee of the
28 entity made a choice in accordance with subitem (7) in
29 relation to the 2010-11 income year.

- 30 (7) A choice mentioned in subitem (6):
31 (a) can only be made before the end of 2 months after the later
32 of:

Schedule 2 Interim changes to the taxation of trust income

Part 3 Application provision

- 1 (i) the end of the income year in relation to which the
2 choice is made; and
3 (ii) the commencement of this item; and
4 (b) can only be made in writing.
5

1 **Schedule 3—National Rental Affordability**
2 **Scheme**

3 **Part 1—National Rental Affordability Scheme Tax**
4 **Offset**

5 **Division 1—NRAS consortiums**

6 *Income Tax Assessment Act 1997*

7 **1 Sections 380-5 to 380-20**

8 Repeal the sections, substitute:

9 **NRAS certificates issued to individuals, corporate tax entities**
10 **and superannuation funds**

11 **380-5 Claims by individuals, corporate tax entities and**
12 **superannuation funds**

13 *Entitlement*

- 14 (1) An entity is entitled to a *tax offset for an income year if:
15 (a) the *Housing Secretary issues an *NRAS certificate in
16 relation to an *NRAS year to the entity (other than in the
17 entity's capacity (if any) as the *NRAS approved participant
18 of an *NRAS consortium); and
19 (b) the income year begins in the NRAS year; and
20 (c) the entity is an individual, a *corporate tax entity or a
21 *superannuation fund.

22 *Amount*

- 23 (2) The amount of the entity's *tax offset is the amount stated in the
24 *NRAS certificate.

1 **NRAS certificates issued to NRAS approved participants**

2 **380-10 Members of NRAS consortiums—individuals, corporate tax**
3 **entities and superannuation funds**

4 *Entitlement*

- 5 (1) A *member of an *NRAS consortium is entitled to a *tax offset for
6 an income year if:
7 (a) the *Housing Secretary issues an *NRAS certificate in
8 relation to an *NRAS year to the *NRAS approved
9 participant of the NRAS consortium; and
10 (b) the income year commences in the NRAS year; and
11 (c) the member is an individual, a *corporate tax entity or a
12 *superannuation fund.

13 *Amount*

- 14 (2) The amount of the *tax offset is the total of the amounts worked
15 out using the following formula for each *NRAS dwelling:
16 (a) covered by the *NRAS certificate; and
17 (b) from which the *member *derives *NRAS rent during the
18 *NRAS year:

19
$$\begin{array}{l} \text{Amount stated in the} \\ \text{*NRAS certificate} \\ \text{for the *NRAS dwelling} \end{array} \times \frac{\begin{array}{l} \text{*NRAS rent *derived by the} \\ \text{*member from the *NRAS dwelling} \\ \text{during the *NRAS year} \end{array}}{\begin{array}{l} \text{Total *NRAS rent *derived} \\ \text{from the *NRAS dwelling} \\ \text{during the *NRAS year} \end{array}}$$

- 20 (3) Treat the references in subsection (2) to the *NRAS year as being
21 references to a period that occurs during the NRAS year, if the
22 *NRAS certificate is apportioned for the period.

23 **380-14 Members of NRAS consortiums—partnerships and trustees**

- 24 (1) This section applies if:
25 (a) the *Housing Secretary issues an *NRAS certificate in
26 relation to an *NRAS year to the *NRAS approved
27 participant of an *NRAS consortium; and

- 1 (b) the NRAS certificate covers one or more *NRAS dwellings;
2 and
3 (c) a *member of the NRAS consortium, other than the NRAS
4 approved participant, *derives *NRAS rent during the NRAS
5 year from any of those NRAS dwellings; and
6 (d) the member is a partnership or a trustee of a trust.
- 7 (2) For the purposes of sections 380-15 and 380-20, assume that:
8 (a) the *member has been issued with an *NRAS certificate in
9 relation to the *NRAS year; and
10 (b) the NRAS certificate covers each *NRAS dwelling:
11 (i) covered by the NRAS certificate mentioned in
12 paragraph (1)(b) of this section; and
13 (ii) from which the member *derives *NRAS rent during the
14 NRAS year; and
15 (c) the amount stated in the NRAS certificate for each of those
16 NRAS dwellings is the amount worked out using the formula
17 in subsection 380-10(2) in relation to the NRAS dwelling for
18 the NRAS year for the member.

19 **NRAS certificates issued to partnerships and trustees**

20 **380-15 Entities to whom NRAS rent flows indirectly**

- 21 (1) An entity is entitled to a *tax offset for an income year (the *offset*
22 *year*) if:
23 (a) the *Housing Secretary issues an *NRAS certificate in
24 relation to an *NRAS year to a partnership or a trustee of a
25 trust; and
26 (b) *NRAS rent *derived:
27 (i) from any of the *NRAS dwellings covered by the NRAS
28 certificate; and
29 (ii) during the NRAS year;
30 *flows indirectly to the entity in any income year; and
31 (c) the offset year of the partnership or trustee begins in the
32 NRAS year; and
33 (d) the entity is:
34 (i) an individual; or

Schedule 3 National Rental Affordability Scheme
Part 1 National Rental Affordability Scheme Tax Offset

- 1 (ii) a *corporate tax entity when the NRAS rent flows
2 indirectly to it; or
3 (iii) the trustee of a trust that is liable to be assessed on a
4 share of, or all or a part of, the trust's *net income under
5 section 98, 99 or 99A of the *Income Tax Assessment Act*
6 *1936* for the offset year; or
7 (iv) the trustee of an *FHSA; or
8 (v) a *superannuation fund, an *approved deposit fund or a
9 *pooled superannuation trust.

10 Note: The entities covered by this section are the ultimate recipients of the
11 NRAS rent because the NRAS rent does not flow indirectly through
12 them to other entities.

- 13 (2) The amount of the *tax offset is the sum of the amounts worked out
14 using the following formula for each *NRAS dwelling from which
15 there is *NRAS rent covered by paragraph (1)(b):

$$\text{Amount stated in the } * \text{NRAS certificate} \times \frac{\text{The entity's } * \text{share of the } * \text{NRAS rent for the } * \text{NRAS dwelling } * \text{derived during the } * \text{NRAS year}}{\text{Total } * \text{NRAS rent } * \text{derived during the } * \text{NRAS year from } * \text{NRAS dwellings covered by the } * \text{NRAS certificate}}$$

16

- 17 (3) Treat the references in subsection (2) to the *NRAS year as being
18 references to a period that occurs during the NRAS year, if the
19 *NRAS certificate is apportioned for the period.

20 **380-20 Trustee of a trust that does not have net income for an**
21 **income year**

- 22 (1) An entity is entitled to a *tax offset for an income year (the *offset*
23 *year*) if:
24 (a) the *Housing Secretary issues an *NRAS certificate in
25 relation to an *NRAS year to a partnership or a trustee of a
26 trust; and
27 (b) the entity is a trustee of a trust; and
28 (c) the trust mentioned in paragraph (b) does not have a *net
29 income for an income year; and
30 (d) *NRAS rent *derived during the NRAS year from an *NRAS
31 dwelling covered by the NRAS certificate would otherwise

- 1 *flow indirectly to the entity in the income year mentioned in
2 paragraph (c) as if:
3 (i) the trust did have a net income for the income year; and
4 (ii) for the purposes of paragraph 380-25(4)(b), the entity
5 has a share amount, being the net income referred to in
6 subparagraph (i) of this paragraph; and
7 (iii) the entity's *share of the NRAS rent under
8 section 380-30 was a positive amount; and
9 (e) the offset year of the partnership or trustee begins in the
10 NRAS year.
- 11 (2) The amount of the *tax offset is the amount worked out in
12 accordance with subsection 380-15(2), as if the reference in the
13 formula to the *NRAS certificate were a reference to the NRAS
14 certificate mentioned in paragraph (1)(a) of this section.
- 15 (3) For the purposes of working out the entity's *share of *NRAS rent
16 for an *NRAS dwelling, assume subparagraphs (1)(d)(i), (ii) and
17 (iii) of this section apply.
- 18 (4) If the trustee of a trust is entitled to a *tax offset under this section:
19 (a) a beneficiary of the trust; or
20 (b) a subsequent entity to whom *NRAS rent for an *NRAS
21 dwelling mentioned in paragraph (1)(d) *flows indirectly;
22 is not entitled to a tax offset under this Subdivision in relation to
23 the NRAS rent *derived during the *NRAS year from for the
24 NRAS dwelling.

25 **2 At the end of Subdivision 380-A**

26 Add:

27 **Miscellaneous**

28 **380-32 Amended certificates**

29 A reference in this Subdivision to an *NRAS certificate in relation
30 to an *NRAS year is to be treated as a reference to an amended
31 NRAS certificate in relation to the NRAS year, if the *Housing
32 Secretary issues such an amended certificate.

33 **3 Application provision**

1 The amendments made by this Division apply to NRAS rent derived
2 during the 2009-10 NRAS year or later NRAS years.

3 **Division 2—Elections by NRAS approved participants**

4 ***Income Tax Assessment Act 1997***

5 **4 After section 380-10**

6 Insert:

7 **380-11 Elections by NRAS approved participants**

8 *Scope*

- 9 (1) This section and sections 380-12 and 380-13 apply if:
- 10 (a) a *member (the *electing member*) of an *NRAS consortium
11 would, apart from subsection 380-12(3), be entitled to a *tax
12 offset under section 380-10 for an income year because of:
- 13 (i) an *NRAS certificate in relation to an *NRAS year; and
14 (ii) an *NRAS dwelling covered by the NRAS certificate;
15 and
- 16 (b) the electing member was the *NRAS approved participant of
17 the NRAS consortium at any time during the NRAS year;
18 and
- 19 (c) the electing member elects to have this section apply to the
20 NRAS certificate and NRAS dwelling for the income year.

21 *Requirements for an election*

- 22 (2) The election must be made:
- 23 (a) in the *approved form; and
24 (b) within 30 days after the day the *Housing Secretary issues the
25 *NRAS certificate.
- 26 (3) The Commissioner may require a copy or copies of the election to
27 be given, within the 30 day period mentioned in paragraph (2)(b):
- 28 (a) to the Commissioner; or
29 (b) to each *member of the *NRAS consortium who may be
30 entitled to a *tax offset under section 380-12 as a result of the
31 election; or

1 (c) both to the Commissioner and to each such member.

2 (4) The election may not be revoked.

3 **380-12 Elections by NRAS approved participants—tax offsets**

4 *Entitlement to tax offset*

5 (1) A *member of the *NRAS consortium (other than the electing
6 member) is entitled to a *tax offset for the income year if the
7 member is an individual, a *corporate tax entity or a
8 *superannuation fund.

9 *Amount of tax offset*

10 (2) The amount of the *tax offset is the amount worked out using the
11 following formula:

12
$$\begin{array}{l} \text{Amount of the *tax offset} \\ \text{to which the electing member} \\ \text{would be entitled under section 380-10} \\ \text{because of the *NRAS certificate} \\ \text{and the *NRAS dwelling,} \\ \text{if the election were disregarded} \end{array} \times \frac{\text{Member's rent}}{\text{Total rent}}$$

13 where:

14 ***member's rent*** means:

- 15 (a) if *NRAS rent was payable for the *NRAS dwelling in
16 relation to the whole of the *NRAS year—the rent *derived
17 by the *member from the NRAS dwelling during the NRAS
18 year; or
19 (b) if NRAS rent was payable for the NRAS dwelling in relation
20 to only part of the NRAS year—the rent derived by the
21 member from the NRAS dwelling during that part of the
22 NRAS year.

23 ***total rent*** means:

- 24 (a) if *NRAS rent was payable for the *NRAS dwelling in
25 relation to the whole of the *NRAS year—the rent *derived
26 from the NRAS dwelling during the NRAS year; or
27 (b) if NRAS rent was payable for the NRAS dwelling in relation
28 to only part of the NRAS year—the rent derived from the
29 NRAS dwelling during that part of the NRAS year.

- 1 (3) The *tax offset to which the electing member would otherwise be
2 entitled under section 380-10 for the income year because of the
3 *NRAS certificate and the *NRAS dwelling is reduced by the same
4 amount.
- 5 (4) Treat the references in subsection (2) to the *NRAS year as being
6 references to a period that occurs during the NRAS year, if the
7 *NRAS certificate is apportioned for the period.

8 *Amount of tax offset—rent that passes through NRAS approved*
9 *participant*

- 10 (5) For the purposes of the references in the definitions in
11 subsection (2) to rent *derived from the *NRAS dwelling during
12 the *NRAS year, disregard *NRAS rent derived by a *member of
13 the *NRAS consortium from the NRAS dwelling during a period in
14 the NRAS year, to the extent that another member derives rent
15 from the NRAS dwelling during the period because:
- 16 (a) the first member is the *NRAS approved participant of the
17 NRAS consortium throughout the period; and
- 18 (b) the first member, in accordance with the contractual
19 *arrangements that established the NRAS consortium, passes
20 the NRAS rent on to the other member.

21 Note: There may be more than one NRAS approved participant during an
22 NRAS year. The electing member may be the NRAS approved
23 participant for only part of the NRAS year.

- 24 (6) For the purposes of paragraph (5)(b), treat any *NRAS rent
25 retained by the first *member under the *arrangements as
26 management fees or commission as having been passed on to the
27 other member.

28 **380-13 Elections by NRAS approved participants—special rule for**
29 **partnerships and trustees**

30 For the purposes of sections 380-14 to 380-30 (which apply if a
31 partnership or the trustee of a trust derives NRAS rent), for each
32 *NRAS dwelling:

- 33 (a) from which the electing member *derived *NRAS rent during
34 the *NRAS year; and
- 35 (b) that is covered by the *NRAS certificate; and

1 (c) from which a partnership, or the trustee of a trust, that is a
2 *member of the *NRAS consortium derived rent during the
3 NRAS year;

4 treat the following proportion of the NRAS rent as being NRAS
5 rent derived during the NRAS year by the member mentioned in
6 paragraph (c):

7
$$\frac{\text{Member's rent}}{\text{Total rent}}$$

8 where:

9 *member's rent* has the same meaning as in subsection 380-12(2).

10 *total rent* has the same meaning as in subsection 380-12(2).

11 **5 Subsection 380-14(2)**

12 Omit “sections 380-15 and 380-20”, substitute “sections 380-15 to
13 380-20”.

14 **6 After section 380-15**

15 Insert:

16 **380-16 Elections by NRAS approved participants that are** 17 **partnerships or trustees**

18 *Scope*

19 (1) This section and sections 380-17 and 380-18 apply if:

20 (a) an entity (the *indirect entity*) is entitled to a *tax offset under
21 section 380-15 or 380-20 for an income year because *NRAS
22 rent *derived:

23 (i) from any of the *NRAS dwellings covered by an
24 *NRAS certificate issued by the *Housing Secretary in
25 relation to an *NRAS year to a *member (the *electing*
26 *member*) of an *NRAS consortium; and

27 (ii) during the NRAS year;

28 *flows indirectly to the indirect entity in any income year (or
29 would otherwise flow indirectly to the indirect entity, as
30 mentioned in paragraph 380-20(1)(d)); and

- 1 (b) the electing member was the *NRAS approved participant of
2 the NRAS consortium at any time during the NRAS year;
3 and
4 (c) the electing member elects to have this section apply to the
5 NRAS certificate and NRAS dwelling for the income year.

6 *Requirements for an election*

- 7 (2) The election must be made:
8 (a) in the *approved form; and
9 (b) within 30 days after the day the *Housing Secretary issues the
10 *NRAS certificate.
- 11 (3) The Commissioner may require a copy or copies of the election to
12 be given, within the 30 day period mentioned in paragraph (2)(b):
13 (a) to the Commissioner; or
14 (b) to each *member of the *NRAS consortium who may be
15 entitled to a *tax offset under section 380-17 as a result of the
16 election; or
17 (c) both to the Commissioner and to each such member.
- 18 (4) The election may not be revoked.

19 **380-17 Elections by NRAS approved participants that are**
20 **partnerships or trustees—tax offsets**

21 *Entitlement to tax offset*

- 22 (1) A *member of the *NRAS consortium (other than the electing
23 member) is entitled to a *tax offset for the income year if the
24 member is an individual, a *corporate tax entity or a
25 *superannuation fund.

26 *Amount of tax offset*

- 27 (2) The amount of the *tax offset is the amount worked out using the
28 following formula:

29 Total tax offsets \times $\frac{\text{Member's rent}}{\text{Total rent}}$

30 where:

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member's rent means:

- (a) if *NRAS rent was payable for the *NRAS dwelling in relation to the whole of the *NRAS year—the rent *derived by the *member from the NRAS dwelling during the NRAS year; or
- (b) if NRAS rent was payable for the NRAS dwelling in relation to only part of the NRAS year—the rent derived by the member from the NRAS dwelling during that part of the NRAS year.

total rent means:

- (a) if *NRAS rent was payable for the *NRAS dwelling in relation to the whole of the *NRAS year—the rent *derived from the NRAS dwelling during the NRAS year; or
- (b) if NRAS rent was payable for the NRAS dwelling in relation to only part of the NRAS year—the rent derived from the NRAS dwelling during that part of the NRAS year.

total tax offsets means the total of the *tax offsets to which entities would be entitled under section 380-15 or 380-20 because of *NRAS rent *derived:

- (a) from any of the *NRAS dwellings covered by the *NRAS certificate; and
- (b) during the *NRAS year;

that *flows indirectly to them from the electing member (or would otherwise flow indirectly to them from the electing member, as mentioned in paragraph 380-20(1)(d)).

- (3) The *tax offset to which the indirect entity would otherwise be entitled under section 380-15 for the income year because of the *NRAS certificate and the *NRAS dwelling is reduced by the amount worked out using the following formula:

$$\text{Amount worked out under subsection (2)} \times \frac{\text{Amount of the *tax offset to which the indirect entity would otherwise be entitled under section 380-15}}{\text{Total tax offsets}}$$

where:

total tax offsets has the same meaning as in subsection (2).

- 1 (4) Treat the references in subsection (2) to the *NRAS year as being
2 references to a period that occurs during the NRAS year, if the
3 *NRAS certificate is apportioned for the period.

4 *Amount of tax offset—rent that passes through NRAS approved*
5 *participant*

- 6 (5) For the purposes of the references in the definitions in
7 subsection (2) to rent *derived from the *NRAS dwelling during
8 the *NRAS year, disregard *NRAS rent derived by a *member of
9 the *NRAS consortium from the NRAS dwelling during a period in
10 the NRAS year, to the extent that another member derives rent
11 from the NRAS dwelling during the period because:
12 (a) the first member is the *NRAS approved participant of the
13 NRAS consortium throughout the period; and
14 (b) the first member, in accordance with the contractual
15 *arrangements that established the NRAS consortium, passes
16 the NRAS rent on to the other member.

17 Note: There may be more than one NRAS approved participant during an
18 NRAS year. The electing member may be the NRAS approved
19 participant for only part of the NRAS year.

- 20 (6) For the purposes of paragraph (5)(b), treat any *NRAS rent
21 retained by the first *member under the *arrangements as
22 management fees or commission as having been passed on to the
23 other member.

24 **380-18 Elections by NRAS approved participants that are**
25 **partnerships or trustees—special rule for partnerships**
26 **and trustees**

27 For the purposes of sections 380-15 and 380-20 to 380-30 (which
28 apply if a partnership or the trustee of a trust derives NRAS rent),
29 for each *NRAS dwelling:

- 30 (a) from which the electing member *derived *NRAS rent during
31 the *NRAS year; and
32 (b) that is covered by the *NRAS certificate; and
33 (c) from which a partnership or trust that is a *member of the
34 *NRAS consortium derived rent during the NRAS year;

1 treat the following proportion of the NRAS rent as being NRAS
2 rent derived during the NRAS year by the member mentioned in
3 paragraph (c):

$$4 \frac{\text{Member's rent}}{\text{Total rent}}$$

5 where:

6 *member's rent* has the same meaning as in subsection 380-14B(2).

7 *total rent* has the same meaning as in subsection 380-14B(2).

8 **7 Application provision**

9 The amendment made by this Division applies to assessments for:

- 10 (a) the 2010-11 income year; and
11 (b) later income years.

12 **8 Transitional provision—elections**

13 An election in relation to an NRAS certificate under section 380-11 or
14 380-16 of the *Income Tax Assessment Act 1997*, inserted by this
15 Division, may be made within 30 days after the day this item
16 commences, if the Housing Secretary issues the NRAS certificate
17 before that commencement.
18

1 **Part 2—Other incentives**

2 ***Income Tax Assessment Act 1997***

3 **9 Paragraph 118-37(1)(j)**

4 After “to you”, insert “(whether directly or indirectly, such as through
5 an *NRAS consortium of which you are a *member)”.

6 **10 Section 380-35**

7 Omit “or a *non-cash benefit provided to you”, substitute “; or a
8 *non-cash benefit provided to you, (whether directly or indirectly, such
9 as through an *NRAS consortium of which you are a *member)”.

10 **11 Application provision**

11 The amendments made by this Part apply to assessments for:

- 12 (a) the 2008-09 income year; and
13 (b) later income years.
14

1 **Part 3—Definitions**

2 ***Income Tax Assessment Act 1997***

3 **12 Paragraph 118-37(1)(j)**

4 Omit “National Rental Affordability Scheme”, substitute “*National
5 Rental Affordability Scheme”.

6 **13 Section 380-35**

7 Omit “National Rental Affordability Scheme”, substitute “*National
8 Rental Affordability Scheme”.

9 **14 Subsection 995-1(1) (at the end of the definition of**
10 ***member*)**

11 Add:

12 ; and (e) in relation to an *NRAS consortium—means:

- 13 (i) an entity (other than in the capacity as a partner of a
14 partnership) that is a party to the contractual
15 *arrangement, or to one of the contractual arrangements,
16 that established the NRAS consortium (whether or not
17 the entity was a party to the arrangement when the
18 NRAS consortium was established); or
19 (ii) a partnership, if all of the partners of the partnership are
20 parties to the contractual arrangement, or to one of the
21 contractual arrangements, that established the NRAS
22 consortium (whether or not the partners were parties to
23 the arrangement when the NRAS consortium was
24 established).

25 **15 Subsection 995-1(1)**

26 Insert:

27 ***NRAS approved participant*** (short for National Rental
28 Affordability Scheme approved participant), of an *NRAS
29 consortium, means a *member of the NRAS consortium who is the
30 approved participant (within the meaning of the regulations made
31 for the purposes of the *National Rental Affordability Scheme Act*
32 *2008*) for the NRAS consortium.

33 **16 Subsection 995-1(1)**

1 Insert:

2 *NRAS certificate* (short for National Rental Affordability Scheme
3 certificate) means a certificate issued by the *Housing Secretary
4 under the *National Rental Affordability Scheme.

5 **17 Subsection 995-1(1)**

6 Insert:

7 *NRAS consortium* (short for National Rental Affordability Scheme
8 consortium) means a consortium, joint venture or *non-entity joint
9 venture:

10 (a) established by one or more contractual *arrangements, the
11 purpose of which are to facilitate the leasing of *NRAS
12 dwellings; and

13 (b) that is not a *corporate tax entity, a *superannuation fund, a
14 trust or a partnership.

15 **18 Subsection 995-1(1)**

16 Insert:

17 *NRAS dwelling* (short for National Rental Affordability Scheme
18 dwelling) means an approved rental dwelling (within the meaning
19 of the regulations made for the purposes of the *National Rental*
20 *Affordability Scheme Act 2008*).

21 **19 Subsection 995-1(1) (definition of *NRAS rent*)**

22 Omit “rental dwelling under the National Rental Affordability Scheme”,
23 substitute “*NRAS dwelling under the *National Rental Affordability
24 Scheme”.

25

1 **Schedule 4—Phasing out the dependent**
2 **spouse tax offset**
3

4 ***Income Tax Assessment Act 1936***

5 **1 Sub-subparagraph 23AB(7)(a)(ii)(D)**

6 Repeal the sub-subparagraph, substitute:

- 7 (D) any rebate to which the taxpayer would be
8 entitled under section 159J in respect of a
9 dependant included in class 1 in the table in
10 subsection 159J(2) if the assumptions in
11 subsection (7A) of this section were made; and

12 **2 At the end of paragraph 23AB(7)(a)**

13 Add:

- 14 (iii) if the taxpayer was not entitled to a rebate under
15 section 159J in respect of a dependant included in class
16 1 in the table in subsection 159J(2)—an amount equal to
17 any rebate to which the taxpayer would be entitled
18 under that section in respect of a dependant included in
19 class 1 in the table if it were assumed that subsection
20 159J(1C) did not apply;

21 **3 After subsection 23AB(7)**

22 Insert:

- 23 (7A) The assumptions for the purposes of sub-subparagraph (7)(a)(ii)(D)
24 are that:
25 (a) subsection 159J(1B) also included a reference to any
26 dependant included in class 1 in the table in subsection
27 159J(2) and the amount applicable to class 1 in that table was
28 \$2,440; and
29 (b) subsection 159J(1C) did not apply; and
30 (c) section 159JA did not apply.

31 **4 Paragraphs 79A(2)(a), (d) and (e)**

32 Repeal the paragraphs, substitute:

- 1 (a) if the taxpayer is a resident of the special area in Zone A, or
2 of the special area in Zone B, in the year of income—an
3 amount equal to the sum of:
4 (i) \$1,173 increased by 50% of the relevant rebate amount
5 in relation to the taxpayer in relation to the year of
6 income; and
7 (ii) if the taxpayer was not entitled to a rebate under
8 section 159J in respect of a dependant included in class
9 1 in the table in subsection 159J(2)—the dependent
10 spouse relevant rebate amount in relation to the taxpayer
11 in relation to the income year; or
12 (d) if the taxpayer is a resident of Zone A in the year of income
13 but has not resided or actually been in the special area in
14 Zone A or the special area in Zone B during any part of the
15 year of income—an amount equal to the sum of:
16 (i) \$338 increased by 50% of the relevant rebate amount in
17 relation to the taxpayer in relation to the year of income;
18 and
19 (ii) if the taxpayer was not entitled to a rebate under
20 section 159J in respect of a dependant included in class
21 1 in the table in subsection 159J(2)—the dependent
22 spouse relevant rebate amount in relation to the taxpayer
23 in relation to the income year; or
24 (e) if the taxpayer is a resident of Zone B in the year of income
25 but has not resided or actually been in Zone A or the special
26 area in Zone B during any part of the year of income—an
27 amount equal to the sum of:
28 (i) \$57 increased by 20% of the relevant rebate amount in
29 relation to the taxpayer in relation to the year of income;
30 and
31 (ii) if the taxpayer was not entitled to a rebate under
32 section 159J in respect of a dependant included in class
33 1 in the table in subsection 159J(2)—the dependent
34 spouse relevant rebate amount in relation to the taxpayer
35 in relation to the income year; or

36 **5 Subsection 79A(4)**

37 Insert:

38 *dependent spouse relevant rebate amount* means the amount of
39 any rebate to which the taxpayer would be entitled under

1 section 159J in respect of a dependant included in class 1 in the
 2 table in subsection 159J(2) if it were assumed that subsection
 3 159J(1C) did not apply.

4 **6 Subsection 79A(4) (paragraph (d) of the definition of**
 5 ***relevant rebate amount***)

6 Omit “ignoring”, substitute “ignoring subsection 159J(1C) and”.

7 **7 Subparagraph 79B(2)(a)(ii)**

8 Omit “; or”, substitute “; and”.

9 **8 At the end of paragraph 79B(2)(a)**

10 Add:

11 (iii) if the taxpayer was not entitled to a rebate under
 12 section 159J in respect of a dependant included in class
 13 1 in the table in subsection 159J(2)—an amount equal to
 14 the dependent spouse concessional rebate amount in
 15 relation to the taxpayer in relation to the income year; or

16 **9 Paragraph 79B(4)(b)**

17 Omit “amount.”, substitute “amount; and”.

18 **10 At the end of subsection 79B(4)**

19 Add:

20 (c) if the taxpayer was not entitled to a rebate under section 159J
 21 in respect of a dependant included in class 1 in the table in
 22 subsection 159J(2)—an amount equal to the dependent
 23 spouse concessional rebate amount in relation to the taxpayer
 24 in relation to the income year.

25 **11 At the end of paragraph 79B(4A)(b)**

26 Add:

27 and (iii) if the taxpayer was not entitled to a rebate under
 28 section 159J in respect of a dependant included in class
 29 1 in the table in subsection 159J(2)—an amount equal to
 30 the dependent spouse concessional rebate amount in
 31 relation to the taxpayer in relation to the income year;

32 **12 Subsection 79B(6) (paragraph (d) of the definition of**
 33 ***concessional rebate amount***)

1 Omit “ignoring”, substitute “ignoring subsection 159J(1C) and”.

2 **13 Subsection 79B(6)**

3 Insert:

4 *dependent spouse concessional rebate amount* means any rebate
5 to which the taxpayer would be entitled under section 159J in
6 respect of a dependant included in class 1 in the table in subsection
7 159J(2) if it were assumed that subsection 159J(1C) did not apply.

8 **14 Subsection 159HA(7) (subparagraph (c)(i) of the definition**
9 **of *indexable amount*)**

10 Repeal the subparagraph, substitute:

11 (i) paragraph 23AB(7A)(a); or

12 **15 After subsection 159J(1B)**

13 Insert:

14 (1C) A taxpayer is not entitled, in his or her assessment in respect of a
15 year of income, to a rebate under this section in respect of a
16 dependant included in class 1 in the table in subsection (2) if the
17 dependant was born on or after 1 July 1971.

18 (1D) A taxpayer is not entitled, in his or her assessment in respect of a
19 year of income, to a rebate under this section in respect of a
20 dependant who is an invalid spouse or a carer spouse for the
21 purpose of class 5 in the table in subsection (2) if the taxpayer is
22 also entitled to a rebate in respect of the dependant being included
23 in class 1 in the table.

24 (1E) If a taxpayer is entitled, in his or her assessment in respect of a
25 year of income, to a rebate under this section in respect of a
26 dependant who is an invalid spouse included in class 5 in the table
27 in subsection (2), the taxpayer is not also entitled to a rebate in
28 respect of that dependant being included as a carer spouse in class
29 5 in the table.

30 **16 Subsection 159J(2) (table item 5)**

31 Repeal the item, substitute:

5	Invalid relative, invalid spouse or carer spouse	In respect of an invalid relative—\$770
---	--	---

In respect of an invalid spouse—\$2,100

In respect of a carer spouse—\$2,100

1 **17 At the end of paragraphs 159J(3)(a), (aa), (b), (c) and (e)**

2 Add “or”.

3 **18 After paragraph 159J(3)(e)**

4 Insert:

5 (f) a dependant, being a spouse of the taxpayer, is an invalid
6 spouse or a carer spouse during part only of the income year;

7 **19 Subsection 159J(3A)**

8 Omit “child of the taxpayer being a dependant”, substitute “child,
9 invalid spouse or carer spouse of the taxpayer being a dependant”.

10 **20 After subsection 159J(5C)**

11 Insert:

12 (5CA) For the purposes of subsections (5A), (5B) and (5C), treat a
13 dependant that is an invalid spouse or a carer spouse for the
14 purpose of class 5 in the table in subsection (2) as a dependant
15 included in class 1 in the table.

16 **21 Subsection 159J(5D)**

17 Omit “subsection (2), the taxpayer is entitled, or would, but for
18 subsection (4) be entitled,”, substitute “subsection (2) or a dependant
19 that is an invalid spouse or a carer spouse for the purpose of class 5 in
20 the table in subsection (2), the taxpayer is entitled, or would, but for
21 subsection (1C) or (4), be entitled,”.

22 **22 Subsection 159J(6)**

23 Insert:

24 *carer spouse* means a person who is a spouse of the taxpayer,
25 being a person:

26 (a) who is wholly engaged in providing care to an invalid
27 relative; or

1 (b) to whom a carer allowance or carer payment is being paid
2 pursuant to the *Social Security Act 1991* or to whom a carer
3 service pension is being paid pursuant to the *Veterans'*
4 *Entitlements Act 1986*.

5 **23 Subsection 159J(6) (definition of *invalid relative*)**

6 Omit “sister of the taxpayer”, substitute “sister of the taxpayer or of the
7 taxpayer’s spouse”.

8 **24 Subsection 159J(6)**

9 Insert:

10 *invalid spouse* means a person that is a spouse of the taxpayer,
11 being a person who satisfies the requirements in paragraph (a) or
12 (c) of the definition of *invalid relative*.

13 **25 Paragraph 159JA(1)(a)**

14 Omit “subsection 159J(2)”, substitute “subsection 159J(2) or is an
15 invalid spouse or a carer spouse for the purpose of class 5 in the table in
16 subsection 159J(2)”.

17 **26 Paragraph 159JA(3)(b)**

18 Omit “subsection 159J(2)”, substitute “subsection 159J(2) or is an
19 invalid spouse or a carer spouse for the purpose of class 5 in the table in
20 subsection 159J(2)”.

21 **27 At the end of paragraphs 159L(1)(a) and (b)**

22 Add “or”.

23 **28 Paragraph 159L(1)(ba)**

24 Omit “included in class 5 in”, substitute “who is an invalid relative for
25 the purpose of class 5 in”.

26 **29 Paragraph 159L(1)(c)**

27 Repeal the paragraph, substitute:

28 (c) an invalid spouse (within the meaning of subsection 159J(6));

29 **30 Subsection 159L(3)**

30 Omit “subsection 159J(2),”, substitute “subsection 159J(2) or a carer
31 spouse for the purpose of class 5 in the table in subsection 159J(2)”.

1 **31 Subsection 159L(4)**

2 Omit “Where a taxpayer has a spouse and the housekeeper is not,
 3 during the year of income, engaged in caring for the spouse of the
 4 taxpayer, being a spouse in receipt of a disability support pension under
 5 the *Social Security Act 1991*:”, substitute “If a taxpayer has an invalid
 6 spouse (within the meaning of subsection 159J(6)) and the housekeeper
 7 is not, during the year of income, engaged in caring for the invalid
 8 spouse of the taxpayer.”.

9 **32 Subsection 159P(4) (paragraph (ca) of the definition of**
 10 ***dependant*)**

11 Omit “, class 5 or class 6 in the table in subsection 159J(2)”, substitute
 12 “or class 6 in the table in subsection 159J(2) or a person who is an
 13 invalid relative for the purpose of class 5 in the table in subsection (2)”.

14 ***Income Tax Assessment Act 1997***

15 **33 Section 13-1 (table item headed “dependants”)**

16	Omit:	
	invalid relative	159J
17	substitute:	
	invalid relative, invalid spouse or carer spouse	159J

18 **34 Application provision**

19 The amendments made by this Schedule apply to assessments for the
 20 2011-12 income year and later income years.
 21

1 **Schedule 5—Car fringe benefits**

2 **Part 1—Amendments commencing on Royal Assent**

3 ***Fringe Benefits Tax Assessment Act 1986***

4 **1 Subsection 9(1) (formula and definitions)**

5 Repeal the formula and definitions, substitute:

6
$$\left(0.2 \times \text{Base value of the car} \times \frac{\text{Number of days during that year of tax on which the car fringe benefits were provided by the provider}}{\text{Number of days in that year of tax}} \right) - \text{Amount (if any) of the recipient's payment}$$

7 Note: For special rules for the years of tax starting on 1 April 2011, 1 April
8 2012 and 1 April 2013, see item 9 of Schedule 5 to the *Tax Laws*
9 *Amendment (2011 Measures No. 5) Act 2011*.

10 **2 At the end of subparagraph 9(2)(a)(i)**

11 Add “and”.

12 **3 At the end of paragraph 9(2)(b)**

13 Add “and”.

14 **4 Paragraphs 9(2)(c) and (d)**

15 Repeal the paragraphs.

16 **5 At the end of subparagraph 9(2)(e)(i)**

17 Add “and”.

18 **6 At the end of subsection 9(2)**

19 Add:

20 ; and (f) the holding period is the period in the year of tax when the
21 car was held by the provider.

22 **7 Subsection 136(1)**

23 Insert:

1 **annualised number of whole kilometres** travelled during an FBT
2 year, by a car in respect of which a car fringe benefit is provided
3 during the FBT year, is the number calculated in accordance with
4 the following formula:

$$5 \quad \begin{array}{l} \text{Number of whole kilometres} \\ \text{travelled by the car during} \\ \text{the period in the FBT year} \\ \text{when the car was held by the} \\ \text{provider of the car fringe benefit} \end{array} \times \frac{\text{Number of days in the FBT year}}{\text{Number of days in the period in the} \\ \text{FBT year when the car was held by} \\ \text{the provider of the car fringe benefit}}$$

6 **8 Application provision**

7 (1) The amendments made by this Part apply to a car fringe benefit in
8 relation to a year of tax beginning on or after 1 April 2011, whether the
9 car fringe benefit is provided before, on or after the commencement of
10 this item.

11 (2) Despite subitem (1), the amendments do not apply to a car fringe
12 benefit, in relation to an employer in relation to a year of tax, that
13 relates to a car, if:

14 (a) any car fringe benefit, in relation to the employer in relation
15 to the year of tax in respect of employment of an employee
16 by the employer, that relates to the car is constituted by the
17 application or availability of the car for a period; and

18 (b) the last time at which:
19 (i) the employer, or an associate of the employer; or
20 (ii) the employee, or an associate of the employee;
21 committed to the application or availability of the car for that
22 period, in respect of the employment, occurred before 7.30
23 pm Australian Eastern Standard Time on 10 May 2011.

24 Note: The effect of subitem (2) is that the amendments will not apply until the first year of tax
25 starting after the employer, employee or associate first commits, after 7.30 pm
26 Australian Eastern Standard Time on 10 May 2011, to the application or availability of
27 the car.

28 **9 Transitional provision**

29 (1) The following table has effect:
30

Schedule 5 Car fringe benefits
Part 1 Amendments commencing on Royal Assent

Transitional provision

Item	Column 1	Column 2	Column 3	Column 4
	The formula in subsection 9(1) of the <i>Fringe Benefits Tax Assessment Act 1986</i> (as amended by this Part) applies in relation to a car fringe benefit in relation to an employer in relation to the year of tax starting on ...	in relation to a car that, during the year of tax, travelled more than the following annualised number of whole kilometres:	but not more than the following annualised number of whole kilometres (if applicable):	as if the reference in the formula to 0.2 were a reference to ...
1	1 April 2011	25,000	40,000	0.14
2	1 April 2011	40,000	not applicable	0.10
3	1 April 2012	25,000	40,000	0.17
4	1 April 2012	40,000	not applicable	0.13
5	1 April 2013	40,000	not applicable	0.17

- 1 (2) Subitem (1) applies to a car fringe benefit to which the amendments
2 made by this Schedule apply (see item 8), unless:
3 (a) the employer chooses to have the subitem not apply to car
4 fringe benefits in relation to the employer in relation to the
5 car; and
6 (b) if the car fringe benefit is in respect of employment of an
7 employee by the employer, and the employee would be
8 worse off as a result of the subitem not applying to car fringe
9 benefits in relation to the employer in relation to the car—the
10 employee consents to the employer’s choice.
- 11 (3) The way the employer’s return under the *Fringe Benefits Tax*
12 *Assessment Act 1986* for the relevant year of tax is prepared is sufficient
13 evidence of the making of the choice.
14

1 **Part 2—Amendments commencing on 1 April 2016**

2 ***Fringe Benefits Tax Assessment Act 1986***

3 **10 Subsection 9(1) (note)**

4 Repeal the note.

5 **11 Subsection 135K(4)**

6 Repeal the subsection.

7 **12 Subsection 136(1) (definition of *annualised number of***
8 ***whole kilometres*)**

9 Repeal the definition.