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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Tax and Superannuation Laws
Amendment (2013 Measures No. 2) Bill
2013**

No. , 2013

(Treasury)

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

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	3
4	Amendment of assessments.....	3
Schedule 1—Definition of documentary		4
	<i>Income Tax Assessment Act 1997</i>	4
Schedule 2—Ex-gratia payments for natural disasters		6
Part 1—Amendments commencing on Royal Assent		6
	<i>Income Tax Assessment Act 1997</i>	6
	<i>Tax Laws Amendment (2011 Measures No. 1) Act 2011</i>	8
	<i>Tax Laws Amendment (2012 Measures No. 1) Act 2012</i>	8
Part 2—Sunsetting		9
	Division 1—Repeal on 1 July 2016	9
	<i>Income Tax Assessment Act 1997</i>	9
	Division 2—Repeal on 1 July 2017	9
	<i>Income Tax Assessment Act 1997</i>	9
Schedule 3—GST instalment system		10
	<i>A New Tax System (Goods and Services Tax) Act 1999</i>	10
Schedule 4—Deductible gift recipients		11
Part 1—Amendments commencing on Royal Assent		11
	<i>Income Tax Assessment Act 1997</i>	11
Part 2—Sunsetting		13
	Division 1—Repeal on 1 July 2019	13
	<i>Income Tax Assessment Act 1997</i>	13
	Division 2—Repeal on 1 July 2023	13
	<i>Income Tax Assessment Act 1997</i>	13
Schedule 5—Merging multiple accounts in a superannuation entity		14
	<i>Superannuation Industry (Supervision) Act 1993</i>	14

Schedule 6—Government co-contribution for low income earners	17
<i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i>	17
Schedule 7—Consolidating the dependency tax offsets	19
Part 1—Main amendments	19
<i>Income Tax Assessment Act 1997</i>	19
Part 2—Other amendments	27
<i>Income Tax Assessment Act 1936</i>	27
<i>Income Tax Assessment Act 1997</i>	28
Part 3—Application of amendments	30
Schedule 8—Taxation of financial arrangements	31
Part 1—Core rules	31
Division 1—Attribution of costs	31
<i>Income Tax Assessment Act 1997</i>	31
Division 2—Interest	31
<i>Income Tax Assessment Act 1997</i>	31
Division 3—Consistency in working out gains or losses	32
<i>Income Tax Assessment Act 1997</i>	32
Part 2—Accruals/realisation methods	33
Division 1—Sufficiently certain particular gains or losses	33
<i>Income Tax Assessment Act 1997</i>	33
Division 2—Precedence of particular gains or losses	33
<i>Income Tax Assessment Act 1997</i>	33
Division 3—Spreading prepayments	34
<i>Income Tax Assessment Act 1997</i>	34
Division 4—Spreading single payment	35
<i>Income Tax Assessment Act 1997</i>	35
Division 5—Re-estimations	36
<i>Income Tax Assessment Act 1997</i>	36
Division 6—Impairments and reversals	37

<i>Income Tax Assessment Act 1997</i>	37
Division 7—Running balancing adjustments	39
<i>Income Tax Assessment Act 1997</i>	39
Division 8—Ceasing of rights or obligations	40
<i>Income Tax Assessment Act 1997</i>	40
Part 3—Fair value method	42
<i>Income Tax Assessment Act 1997</i>	42
Part 4—Hedging financial arrangements method	44
Division 1—One in all in principle	44
<i>Income Tax Assessment Act 1997</i>	44
Division 2—Hedging net investments in foreign operations	47
<i>Income Tax Assessment Act 1997</i>	47
Part 5—Transitional balancing adjustments	49
<i>Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009</i>	49
Part 6—Elective requirements	51
<i>Income Tax Assessment Act 1997</i>	51
Part 7—Miscellaneous amendments	52
Division 1—Consistency of language	52
<i>Income Tax Assessment Act 1997</i>	52
Division 2—Other amendments	52
<i>Income Tax Assessment Act 1997</i>	52

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

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Tax and Superannuation Laws*
7 *Amendment (2013 Measures No. 2) Act 2013*.

8 **2 Commencement**

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

13

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The day this Act receives the Royal Assent.	
3. Schedule 2, Part 1	The day this Act receives the Royal Assent.	
4. Schedule 2, Part 2, Division 1	1 July 2016.	1 July 2016
5. Schedule 2, Part 2, Division 2	1 July 2017.	1 July 2017
6. Schedule 3	The day this Act receives the Royal Assent.	
7. Schedule 4, Part 1	The day this Act receives the Royal Assent.	
8. Schedule 4, Part 2, Division 1	1 July 2019.	1 July 2019
9. Schedule 4, Part 2, Division 2	1 July 2023.	1 July 2023
10. Schedules 5 to 7	The day this Act receives the Royal Assent.	
11. Schedule 8	Immediately after the commencement of item 1 of Schedule 3 to the <i>Tax Laws Amendment (2010 Measures No. 4) Act 2010</i> .	26 March 2009

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.

1 **3 Schedule(s)**

2 Each Act that is specified in a Schedule to this Act is amended or
3 repealed as set out in the applicable items in the Schedule
4 concerned, and any other item in a Schedule to this Act has effect
5 according to its terms.

6 **4 Amendment of assessments**

7 Section 170 of the *Income Tax Assessment Act 1936* does not
8 prevent the amendment of an assessment if:

- 9 (a) the assessment was made on or before the day this section
10 commences; and
11 (b) the amendment is made within 2 years after that day; and
12 (c) the amendment is made for the purpose of giving effect to
13 Schedule 8 to this Act (Taxation of financial arrangements).

1 **Schedule 1—Definition of documentary**
2

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

4 **1 Subparagraph 376-20(2)(c)(i)**

5 Omit “documentary”, substitute “*documentary”.

6 **2 Subparagraph 376-20(2)(c)(iii)**

7 Omit “quiz program”, substitute “quiz program, game show”.

8 **3 After section 376-20**

9 Insert:

10 **376-25 Meaning of *documentary***

11 *Meaning of documentary*

- 12 (1) A *film is a ***documentary*** if the film is a creative treatment of
13 actuality, having regard to:
14 (a) the extent and purpose of any contrived situation featured in
15 the film; and
16 (b) the extent to which the film explores an idea or a theme; and
17 (c) the extent to which the film has an overall narrative structure;
18 and
19 (d) any other relevant matters.

20 *Exclusion of infotainment or lifestyle programs and magazine*
21 *programs*

- 22 (2) However, a *film is not a ***documentary*** if it is:
23 (a) an infotainment or lifestyle program (within the meaning of
24 Schedule 6 to the *Broadcasting Services Act 1992*); or
25 (b) a film that:
26 (i) presents factual information; and
27 (ii) has 2 or more discrete parts, each dealing with a
28 different subject or a different aspect of the same
29 subject; and

1 (iii) does not contain an over-arching narrative structure or
2 thesis.

3 **4 Subparagraph 376-45(2)(c)(i)**

4 Omit “documentary”, substitute “*documentary”.

5 **5 Subparagraph 376-45(2)(c)(iii)**

6 Omit “quiz program”, substitute “quiz program, game show”.

7 **6 Subparagraph 376-65(2)(d)(ii)**

8 Omit “quiz program”, substitute “quiz program, game show”.

9 **7 Subparagraph 376-65(2)(d)(iii)**

10 Omit “documentary”, substitute “*documentary”.

11 **8 Paragraph 376-65(3)(c)**

12 Omit “documentary”, substitute “*documentary”.

13 **9 Subsection 376-65(6) (cells at table items 2, 3, 5, 6, 7 and 8,**
14 **column headed “For this type of film ...”)**

15 Omit “documentary”, substitute “*documentary”.

16 **10 Subsection 376-170(4A)**

17 Omit “documentary”, substitute “*documentary”.

18 **11 Subsection 995-1(1)**

19 *documentary* has the meaning given by section 376-25.

20 **12 Application of amendments**

21 (1) The amendments made by items 1, 3, 4, 7, 8, 9, 10 and 11 apply in
22 relation to films commencing principal photography on or after 1 July
23 2012.

24 (2) The amendments made by items 2, 5 and 6 apply in relation to films
25 commencing principal photography on or after the day this Schedule
26 commences.

1 **Schedule 2—Ex-gratia payments for natural**
2 **disasters**

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

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

5 **1 Section 11-15 (table item headed “welfare”)**

6 Omit:

Assistance for New Zealand non-protected special category visa holders for a disaster that occurred in Australia during the 2010-11 financial year	51-30
Assistance for New Zealand non-protected special category visa holders for the floods that occurred in New South Wales and Queensland in January, February and March 2012	51-30
Disaster Income Recovery Subsidy for the floods that occurred in Australia during the period starting on 29 November 2010, or for Cyclone Yasi	51-30

7 substitute:

Disaster assistance for New Zealand non-protected special category visa holders	51-30
Disaster Income Recovery Subsidy	51-30

8 **2 Section 51-30 (table item 5.1C)**

9 Repeal the item, substitute:

5.2	<p>an individual in receipt of an ex-gratia payment from the Commonwealth known as assistance for New Zealand non-protected special category visa holders for a disaster:</p> <p>(a) that occurred in Australia during the 2011-12 *financial year; and</p> <p>(b) that the *Emergency Management Minister has declared to be a major disaster for the purposes of the Australian Government Disaster Recovery Payment</p>	the payment	<p>the payment must be claimed:</p> <p>(a) after 5 February 2012; and</p> <p>(b) before 1 December 2012;</p> <p>and the Minister must make the declaration before 1 June 2012</p>
5.3	<p>an individual in receipt of an ex-gratia payment from the Commonwealth known as assistance for New Zealand non-protected special category visa holders for a disaster:</p> <p>(a) that occurred in Australia during the 2012-13 *financial year; and</p> <p>(b) that the *Emergency Management Minister has</p>	the payment	<p>the payment must be claimed:</p> <p>(a) after 24 August 2012; and</p> <p>(b) before 1 January 2014;</p> <p>and the Minister must make the declaration before 1 July 2013</p>

Schedule 2 Ex-gratia payments for natural disasters
Part 1 Amendments commencing on Royal Assent

declared to be a
major disaster for
the purposes of
the Australian
Government
Disaster Recovery
Payment

5.4	an individual in receipt of an ex-gratia payment from the Commonwealth known as Disaster Income Recovery Subsidy for the floods that occurred in Queensland during the period starting on 21 January 2013	the payment	the payment must be claimed: (a) after 20 January 2013; and (b) before 5 August 2013
-----	---	-------------	--

1 **3 Subsection 995-1(1)**

2 Insert:

3 *Emergency Management Minister* means the Minister who
4 administers the *Social Security Act 1991*, insofar as it relates to
5 Australian Government Disaster Recovery Payment.

6 ***Tax Laws Amendment (2011 Measures No. 1) Act 2011***

7 **4 Item 3 of Schedule 1**

8 Repeal the item.

9 ***Tax Laws Amendment (2012 Measures No. 1) Act 2012***

10 **5 Part 2 of Schedule 3**

11 Repeal the Part.

1 **Part 2—Sunsetting**

2 **Division 1—Repeal on 1 July 2016**

3 *Income Tax Assessment Act 1997*

4 **6 Section 51-30 (table item 5.2)**

5 Repeal the item.

6 **Division 2—Repeal on 1 July 2017**

7 *Income Tax Assessment Act 1997*

8 **7 Section 11-15 (table item headed “welfare”)**

9 Omit:

Disaster assistance for New Zealand non-protected special category visa holders	51-30
Disaster Income Recovery Subsidy	51-30

10 **8 Section 51-30 (table items 5.3 and 5.4)**

11 Repeal the items.

12 **9 Subsection 995-1(1) (definition of *Emergency Management***
13 ***Minister*)**

14 Repeal the definition.

1
2

Schedule 3—GST instalment system

3

A New Tax System (Goods and Services Tax) Act 1999

4

1 Paragraph 162-30(1)(d)

5

Repeal the paragraph.

6

2 Subsection 162-30(6)

7

Repeal the subsection.

8

3 At the end of subsection 162-135(1)

9

Add:

10

The amount must not be less than zero.

11

4 Subsection 162-140(4) (note)

12

Omit “Note”, substitute “Note 1”.

13

5 At the end of subsection 162-140(4)

14

Add:

15

Note 2: Your estimated annual GST amount is taken to be zero if it would otherwise be less than zero (see subsection (6)).

16

17

6 At the end of section 162-140

18

Add:

19

(6) Your *estimated annual GST amount* relating to the *GST instalment quarter is zero if, apart from this subsection, this estimate would be less than zero.

20

21

22

7 Section 195-1 (definition of *estimated annual GST amount*)

23

Omit “subsection 162-140(4) and paragraph 162-140(5)(b)”, substitute “section 162-140”.

24

25

8 Application of amendments

26

The amendments made by this Schedule apply in relation to GST instalment quarters starting on or after the first 1 July that is on or after the commencement of this Schedule.

27

28

1 **Schedule 4—Deductible gift recipients**

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

3 *Income Tax Assessment Act 1997*

4 **1 Subsection 30-25(2) (at the end of the table)**

5 Add:

2.2.42	The Conversation Trust	the gift must be made after 21 November 2012
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6 **2 Subsection 30-45(2) (at the end of the table)**

7 Add:

4.2.42	National Congress of Australia's First Peoples Limited	the gift must be made after 30 June 2013
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8 **3 Subsection 30-50(2) (at the end of the table)**

9 Add:

5.2.31	the Anzac Centenary Public Fund	the gift must be made after 30 November 2012 and before 1 May 2019
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5.2.32	the Australian Peacekeeping Memorial Project Incorporated	the gift must be made after 31 December 2012 and before 1 January 2015
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5.2.33	National Boer War Memorial Association Incorporated	the gift must be made after 31 December 2012 and before 1 January 2015
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10 **4 Section 30-105 (table item 13.2.15)**

11 Repeal the item.

12 **5 Section 30-105 (at the end of the table)**

13 Add:

13.2.19	Philanthropy Australia Inc.	the gift must be made after 27 February 2013
---------	-----------------------------	--

1 **6 Section 30-315 (after table item 4A)**

2 Insert:

5 Anzac Centenary Public Fund item 5.2.31

3 **7 Section 30-315 (cell at table item 24B, column headed**
4 **“Provision”)**

5 Repeal the cell, substitute:
item 5.2.32

6 **8 Section 30-315 (after table item 37)**

7 Insert:

38 Conversation Trust item 2.2.42

8 **9 Section 30-315 (after table item 73)**

9 Insert:

73AA National Boer War Memorial Association item 5.2.33
Incorporated

10 **10 Section 30-315 (after table item 73A)**

11 Insert:

73B National Congress of Australia’s First item 4.2.42
Peoples Limited

12 **11 Section 30-315 (after table item 85)**

13 Insert:

85A Philanthropy Australia Inc. item 13.2.19

1 **Part 2—Sunsetting**

2 **Division 1—Repeal on 1 July 2019**

3 *Income Tax Assessment Act 1997*

4 **12 Subsection 30-50(2) (table items 5.2.32 and 5.2.33)**

5 Repeal the items.

6 **13 Section 30-315 (table items 24B and 73AA)**

7 Repeal the items.

8 **Division 2—Repeal on 1 July 2023**

9 *Income Tax Assessment Act 1997*

10 **14 Subsection 30-50(2) (table item 5.2.31)**

11 Repeal the item.

12 **15 Section 30-315 (table item 5)**

13 Repeal the item.

1 **Schedule 5—Merging multiple accounts in a**
2 **superannuation entity**
3

4 *Superannuation Industry (Supervision) Act 1993*

5 **1 Subsection 10(1)**

6 Insert:

7 *buy-sell spread* has the meaning given by subsection 29V(4).

8 **2 Subsection 10(1)**

9 Insert:

10 *superannuation account* has the meaning given by
11 subsection 108A(3).

12 **3 Before subsection 29E(7)**

13 Insert:

14 *Complying with rules relating to merging multiple accounts in a*
15 *superannuation entity*

16 (6E) The following additional condition is imposed on each RSE licence
17 that relates to a superannuation entity for which the RSE licensee
18 has obligations under section 108A. The condition is that the RSE
19 licensee must ensure that the rules that that section requires in
20 relation to the superannuation entity are complied with.

21 **4 After section 108**

22 Insert:

23 **108A Trustee's duty to identify etc. multiple superannuation**
24 **accounts of members**

25 (1) Each trustee of a superannuation entity (other than the trustee of a
26 pooled superannuation trust or a self managed superannuation
27 fund) must ensure that rules are established, which:

- 1 (a) set out a procedure for identifying when a member of the
2 superannuation entity has more than one superannuation
3 account in the superannuation entity; and
4 (b) require the trustee to carry out the procedure to identify such
5 members at least once each financial year; and
6 (c) if the member has 2 or more superannuation accounts in the
7 superannuation entity—require the trustee to merge the
8 accounts so that the member has only one account balance in
9 respect of those accounts, if the trustee reasonably believes
10 that it is in the best interests of the member to do so; and
11 (d) provide that fees are not payable (other than a buy-sell
12 spread) for any merger of superannuation accounts that
13 occurs as a result of paragraphs (a) to (c).
- 14 (2) The requirement in paragraph (1)(c) does not apply if:
15 (a) it is not practicable in the circumstances to merge the
16 member's superannuation accounts; or
17 (b) one or more of the superannuation accounts is a defined
18 benefit interest or income stream.
- 19 (3) A **superannuation account** is a record of the member's benefits, in
20 relation to a superannuation entity in which the member has an
21 interest, which is recorded separately:
22 (a) from other benefits of the member in relation to the entity (if
23 any); and
24 (b) from other benefits of any other member in relation to the
25 entity.
- 26 To avoid doubt, an FHSA (within the meaning of the *First Home*
27 *Saver Accounts Act 2008*) is not a superannuation account.
- 28 Note: FHSA is short for first home saver account
- 29 (4) In determining, for the purpose of paragraph (1)(c), whether it is in
30 the best interests of a member to merge his or her superannuation
31 accounts, the trustee must consider the total amount of fees and
32 charges payable by the member in respect of all of his or her
33 accounts in the superannuation entity (including any fees and
34 charges payable by the member for insurance provided in respect
35 of all of his or her accounts).
- 36 (5) A trustee commits an offence if the trustee contravenes
37 subsection (1). This is an offence of strict liability.
-

Schedule 5 Merging multiple accounts in a superannuation entity

1 Penalty: 50 penalty units.

2 Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of
3 criminal responsibility.

4 Note 2: For strict liability, see section 6.1 of the *Criminal Code*.

5 **5 Application of amendments**

6 The amendments made by this Schedule apply from 1 July 2013.

1 **Schedule 6—Government co-contribution for**
2 **low income earners**
3

4 *Superannuation (Government Co-contribution for Low*
5 *Income Earners) Act 2003*

6 **1 Paragraph 9(1)(c)**

7 Omit “2009-10 income year or a later income year”, substitute
8 “2009-10, 2010-11 and 2011-12 income years”.

9 **2 At the end of subsection 9(1)**

10 Add:
11 ; and (d) for the 2012-13 income year or a later income year—an
12 amount equal to 50% of the sum of the eligible personal
13 superannuation contributions the person makes during the
14 income year.

15 **3 Subsection 10(1B)**

16 Omit “2009-10 income year or a later income year”, substitute
17 “2009-10 income year, 2010-11 income year or 2011-12 income year”.

18 **4 After subsection 10(1B)**

19 Add:
20 (1C) The amount of the Government co-contribution in respect of a
21 person for the 2012-13 income year or a later income year must not
22 exceed the maximum amount worked out using the following
23 table:
24

Maximum Government co-contribution

Item	Person’s total income for the income year	Maximum amount
1	the lower income threshold or less	\$500

Maximum Government co-contribution

Item	Person's total income for the income year	Maximum amount
2	more than the lower income threshold but less than the higher income threshold	\$500 reduced by 3.333 cents for each dollar by which the person's total income for the income year exceeds the lower income threshold

1 **5 Subsection 10(2)**

2 Omit "and (1B)", substitute ", (1B) and (1C)".

3 **6 Paragraph 10A(1)**

4 Omit "and 2011-12" (wherever occurring), substitute ", 2011-12 and
5 2012-13".

6 **7 Paragraph 10A(3)(c)**

7 Omit "2007-08 income year or a later income year", substitute
8 "2007-08 income year or a later income year before the 2012-13 income
9 year".

10 **8 At the end of subsection 10A(3)**

11 Add:
12 ; or (d) for the 2012-13 income year or a later income year—the sum
13 of:
14 (i) the lower income threshold for that income year; and
15 (ii) \$15,000.

16 **9 Subsection 10A(5A)**

17 Omit "and 2011-12", substitute ", 2011-12 and 2012-13".

18 **10 Application of amendments**

19 The amendments made by this Schedule apply to the 2012-13 income
20 year and later income years.

1 **Schedule 7—Consolidating the dependency**
2 **tax offsets**

3 **Part 1—Main amendments**

4 *Income Tax Assessment Act 1997*

5 **1 Before Subdivision 61-G**

6 Insert:

7 **Subdivision 61-A—Dependant (invalid and carer) tax offset**

8 **Guide to Subdivision 61-A**

9 **61-1 What this Subdivision is about**

10 You are entitled to a tax offset for an income year if you maintain
11 certain dependants who are unable to work.

12 **Table of sections**

13 **Object of this Subdivision**

14 61-5 Object of this Subdivision

15 **Entitlement to the dependant (invalid and carer) tax offset**

16 61-10 Who is entitled to the tax offset

17 61-15 Cases involving more than one spouse

18 61-20 Exceeding the income limit for family tax benefit (Part B)

19 61-25 Eligibility for family tax benefit (Part B) without shared care

20 **Amount of the dependant (invalid and carer) tax offset**

21 61-30 Amount of the dependant (invalid and carer) tax offset

22 61-35 Families with shared care percentages

23 61-40 Reduced amounts of dependant (invalid and carer) tax offset

24 61-45 Reductions to take account of the other individual's income

1 **Object of this Subdivision**

2 **61-5 Object of this Subdivision**

3 The object of this Subdivision is to provide a *tax offset to assist
4 with the maintenance of certain types of dependants who are
5 genuinely unable to work because of invalidity, or because of their
6 care obligations.

7 **Entitlement to the dependant (invalid and carer) tax offset**

8 **61-10 Who is entitled to the tax offset**

- 9 (1) You are entitled to a *tax offset for an income year if:
- 10 (a) during the year you contribute to the maintenance of another
11 individual who:
- 12 (i) is your *spouse; or
13 (ii) is your *parent or your spouse's parent; or
14 (iii) is aged 16 years or over, and is your *child, brother or
15 sister or a brother or sister of your spouse; and
- 16 (b) during the year, the other individual meets the requirements
17 of one or more of subsections (2), (3) and (4); and
- 18 (c) during the year:
- 19 (i) the other individual is an Australian resident; or
20 (ii) if the other individual is your spouse or your child—you
21 had a domicile in Australia; and
- 22 (d) you are not entitled to a rebate of tax under section 159J
23 (rebates for dependants) of the *Income Tax Assessment Act*
24 *1936* in respect of the other individual for the year; and
- 25 (e) you are not entitled to a rebate of tax under section 159L
26 (rebates for housekeepers) of the *Income Tax Assessment Act*
27 *1936* in respect of the other individual for the year.

- 28 Note: To be entitled to a rebate under section 159J or 159L of the *Income*
29 *Tax Assessment Act 1936*, you must also be entitled to either or both
30 of the following:
- 31 (a) a rebate under section 23AB (service with an armed force under
32 the control of the United Nations), section 79A (residents of
33 isolated areas) or section 79B (members of Defence Force
34 serving overseas) of that Act;
- 35 (b) a rebate under subsection 159J(2) of that Act in respect of a
36 spouse born before 1 July 1952.

- 1 (2) The other individual meets the requirements of this subsection if he
2 or she is being paid:
3 (a) a disability support pension or a special needs disability
4 support pension under the *Social Security Act 1991*; or
5 (b) an invalidity service pension under the *Veterans'*
6 *Entitlements Act 1986*.
- 7 (3) The other individual meets the requirements of this subsection if he
8 or she:
9 (a) is your *spouse or parent, or your spouse's parent; and
10 (b) is being paid a carer allowance or carer payment under the
11 *Social Security Act 1991* in relation to provision of care to a
12 person who:
13 (i) is your *child, brother or sister, or the brother or sister of
14 your spouse; and
15 (ii) is aged 16 years or over.
- 16 (4) The other individual meets the requirements of this subsection if he
17 or she is your *spouse or parent, or your spouse's parent, and is
18 wholly engaged in providing care to an individual who:
19 (a) is your *child, brother or sister, or the brother or sister of your
20 spouse; and
21 (b) is aged 16 years or over; and
22 (c) is being paid:
23 (i) a disability support pension or a special needs disability
24 support pension under the *Social Security Act 1991*; or
25 (ii) an invalidity service pension under the *Veterans'*
26 *Entitlements Act 1986*.
- 27 (5) You may be entitled to more than one *tax offset for the year under
28 subsection (1) if:
29 (a) you contributed to the maintenance of more than one other
30 individual (none of whom are your *spouse) during the year;
31 or
32 (b) you had different *spouses at different times during the year.
- 33 Note 1: If paragraph (b) applies, the amount of the tax offset in relation to
34 each spouse would be only part of the full amount: see section 61-40.
- 35 Note 2: Section 960-255 may be relevant to determining relationships for the
36 purposes of this section.
-

1 **61-15 Cases involving more than one spouse**

- 2 (1) Despite paragraph 61-10(1)(a), if, during a period comprising some
3 or all of the year, there are 2 or more individuals who are your
4 *spouse, you are taken, for the purposes of section 61-10, only to
5 contribute to the maintenance of the spouse with whom you reside
6 during that period.
- 7 (2) Despite paragraph 61-10(1)(a) and subsection (1) of this section, if,
8 during a period comprising some or all of the year:
9 (a) you reside with 2 or more individuals who are your *spouse;
10 or
11 (b) 2 or more individuals are your *spouse but you reside with
12 none of them;
13 you are taken, for the purposes of section 61-10, only to contribute
14 to the maintenance of whichever of those individuals in relation to
15 whom you are entitled to the smaller, or smallest, amount
16 (including a nil amount) of tax offset under this Subdivision in
17 relation to that period.
- 18 (3) If, but for this subsection, subsection (2) would apply in relation to
19 more than one other individual, that paragraph is taken to apply
20 only in relation to one of those other individuals.

21 **61-20 Exceeding the income limit for family tax benefit (Part B)**

- 22 (1) Despite section 61-10, you are not entitled to a *tax offset for an
23 income year if the sum of:
24 (a) your *adjusted taxable income for offsets for the year; and
25 (b) if you had a *spouse for the whole or part of the year, and
26 your spouse was not the other individual referred to in
27 subsection 61-10(1)—the spouse's adjusted taxable income
28 for offsets for the year;
29 is more than the amount specified in subclause 28B(1) of
30 Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*,
31 as indexed under Part 2 of Schedule 4 to that Act.
- 32 (2) However, if you had a *spouse for only part of the year, the
33 spouse's *adjusted taxable income for offsets for the year is taken,
34 for the purposes of paragraph (1)(b), to be this amount:

Schedule 7 Consolidating the dependency tax offsets

Part 1 Main amendments

- 1 (a) your entitlement to the tax offset is based on the other
2 individual being your spouse during the year; and
3 (b) during a period (the *shared care period*) comprising the
4 whole or part of the year:
5 (i) you, or your *spouse while being your partner (within
6 the meaning of the *A New Tax System (Family*
7 *Assistance) Act 1999*), was eligible for family tax
8 benefit at the Part B rate within the meaning of that Act;
9 and
10 (ii) clause 31 of Schedule 1 to that Act applied in respect of
11 that Part B rate because you, or your spouse, had a
12 shared care percentage for an FTB child (within the
13 meaning of that Act).

14 (2) The reduction is worked out as follows:

15
$$\frac{\text{Shared care rate}}{\text{Non-shared care rate}} \times \text{Unaltered offset amount} \times \frac{\text{Number of days in the shared care period}}{\text{Number of days in the year}}$$

16 where:

17 ***non-shared care rate*** is the rate that would be the standard rate in
18 relation to you or your *spouse under clause 30 of Schedule 1 to
19 the *A New Tax System (Family Assistance) Act 1999* if:

- 20 (a) clause 31 of that Schedule did not apply; and
21 (b) the FTB child in relation to whom the standard rate was
22 determined under clause 31 of that Schedule was the only
23 FTB child of you or your spouse, as the case requires.

24 ***shared care rate*** is the standard rate in relation to you or your
25 *spouse worked out under clause 31 of Schedule 1 to the *A New*
26 *Tax System (Family Assistance) Act 1999*.

27 ***unaltered offset amount*** is what would, but for this section, be the
28 amount of your *tax offset in relation to the other individual under
29 section 61-10 for the year.

30 **61-40 Reduced amounts of dependant (invalid and carer) tax offset**

- 31 (1) The amount of the *tax offset under sections 61-30 and 61-35 in
32 relation to the other individual for the year is reduced by the
-

1 amount in accordance with subsection (2) of this section if one or
2 more of the following applies:

- 3 (a) you contribute to the maintenance of the other individual
4 during part only of the year;
5 (b) during the whole or part of the year, 2 or more individuals
6 contribute to the maintenance of the other individual;
7 (c) the other individual is an individual of a kind referred to in
8 subparagraph 61-10(1)(a)(i), (ii) or (iii) during part only of
9 the year;
10 (d) paragraph 61-10(1)(b) applies to the other individual during
11 part only of the year;
12 (e) paragraph 61-10(1)(c) applies during part only of the year;
13 (f) during part of the year:
14 (i) you, or your *spouse while being your partner (within
15 the meaning of the *A New Tax System (Family*
16 *Assistance) Act 1999*), is eligible for family tax benefit
17 at the Part B rate (within the meaning of that Act); and
18 (ii) clause 31 of Schedule 1 to that Act does not apply in
19 respect of the Part B rate;
20 (g) the other individual is your spouse, and, during part of the
21 year, parental leave pay is payable under the *Paid Parental*
22 *Leave Act 2010* to you, or to your spouse while being your
23 partner (within the meaning of that Act).

24 (2) The amount of the tax offset under sections 61-30 and 61-35 is
25 reduced to an amount that, in the Commissioner's opinion, is
26 reasonable in the circumstances, having regard to the applicable
27 matters referred to in paragraphs (1)(a) to (g).

28 (3) If paragraph (1)(f) or (g) applies, the Commissioner is not to
29 consider the part of the year covered by that paragraph.

30 **61-45 Reductions to take account of the other individual's income**

31 The amount of the *tax offset under sections 61-30 to 61-40 in
32 relation to the other individual for the year is reduced by \$1 for
33 every \$4 by which the following exceeds \$282:

- 34 (a) if you contribute to the maintenance of the other individual
35 for the whole of the year—the other individual's *adjusted
36 taxable income for offsets for the year;

Schedule 7 Consolidating the dependency tax offsets
Part 1 Main amendments

- 1 (b) if paragraph (a) does not apply—the other individual’s
2 *adjusted taxable income for offsets for that part of the year
3 during which you contribute to the maintenance of the other
4 individual.

1 **Part 2—Other amendments**

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

3 **2 After subsection 159J(1E)**

4 Insert:

5 (1F) A taxpayer is not entitled, in his or her assessment in respect of a
6 year of income, to a rebate under this section in respect of a
7 dependant included in class 2, 3, 4, 5 or 6 in the table in
8 subsection (2) unless the taxpayer is entitled, in his or her
9 assessment in respect of that year of income, to a rebate under:

- 10 (a) section 23AB (certain persons serving with an armed force
11 under the control of the United Nations); or
12 (b) section 79A (residents of isolated areas); or
13 (c) section 79B (members of Defence Force serving overseas).

14 (1G) Subsection (1F) does not affect a taxpayer's entitlement to a rebate
15 in respect of a dependant who is also a dependant included in class
16 1 in the table in subsection (2).

17 **3 Subsection 159J(6) (definition of *invalid relative*)**

18 Repeal the definition, substitute:

19 ***invalid relative*** means a person who:

- 20 (a) is not less than 16 years of age and is a child, brother or sister
21 of the taxpayer or of the taxpayer's spouse; and
22 (b) is being paid a disability support pension or a special needs
23 disability support pension under the *Social Security Act 1991*.

24 Note: Section 960-255 of the *Income Tax Assessment Act 1997* may be
25 relevant to determining relationships for the purposes of this
26 definition.

27 **4 Subsection 159J(6) (definition of *invalid spouse*)**

28 Repeal the definition, substitute:

29 ***invalid spouse*** means a person who:

- 30 (a) is a spouse of the taxpayer; and

1 (b) is being paid a disability support pension or a special needs
2 disability support pension under the *Social Security Act 1991*.

3 **5 After subsection 159L(3B)**

4 Insert:

5 (3C) A taxpayer is not entitled, in his or her assessment in respect of a
6 year of income, to a rebate under this section unless the taxpayer is
7 entitled, in his or her assessment in respect of that year of income,
8 to a rebate under:

- 9 (a) section 23AB (certain persons serving with an armed force
10 under the control of the United Nations); or
11 (b) section 79A (residents of isolated areas); or
12 (c) section 79B (members of Defence Force serving overseas).

13 **6 Subsection 159P(4) (at the end of the definition of**
14 ***dependant*)**

15 Add:

- 16 ; or (e) a person in respect of whom the taxpayer is entitled to a tax
17 offset under Subdivision 61-A of the *Income Tax Assessment*
18 *Act 1997*; or
19 (f) a person in respect of whom the taxpayer would be entitled to
20 a tax offset under Subdivision 61-A of the *Income Tax*
21 *Assessment Act 1997* but for section 61-20 of that Act.

22 ***Income Tax Assessment Act 1997***

23 **7 Section 13-1 (table item headed “dependants”)**

24 Omit:

invalid relative, invalid spouse or carer spouse..... **159J**

25 substitute:

invalid relative, invalid spouse or carer in **159J**,
receipt of carer benefit Subdivision 61-A

26 **8 After section 960-265 (table item 3)**

27 Insert:

3A Dependant (invalid and carer) tax offset section 61-30

1 **9 Subsection 995-1(1)**

2 Insert:

3 *adjusted taxable income for offsets* means adjusted taxable income
4 for rebates within the meaning of subsection 6(1) of the *Income*
5 *Tax Assessment Act 1936*.

1 **Part 3—Application of amendments**

2 **10 Application of amendments**

3 The amendments made by this Schedule apply to assessments for the
4 2012-13 income year and later income years.

1 **Schedule 8—Taxation of financial**
2 **arrangements**

3 **Part 1—Core rules**

4 **Division 1—Attribution of costs**

5 *Income Tax Assessment Act 1997*

6 **1 Subsection 230-70(2)**

7 After “are to provide”, insert “or might provide”.

8 **2 Subsection 230-75(2)**

9 After “are to receive”, insert “or might receive”.

10 **Division 2—Interest**

11 *Income Tax Assessment Act 1997*

12 **3 Subsection 230-70(4)**

13 Repeal the subsection.

14 **4 At the end of section 230-70**

15 Add:

16 Note: Generally, no financial benefit you have provided, or are to provide or
17 might provide, under a financial arrangement is reasonably
18 attributable to an amount you receive that is in the nature of interest.

19 **5 Subsection 230-75(4)**

20 Repeal the subsection.

21 **6 At the end of section 230-75**

22 Add:

23 Note: Generally, no financial benefit you have received, or are to receive or
24 might receive, under a financial arrangement is reasonably attributable
25 to an amount you provide that is in the nature of interest.

1 **7 Subsection 230-200(2)**

2 Omit all the words after paragraph (b).

3 **Division 3—Consistency in working out gains or losses**

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

5 **8 At the end of section 230-80**

6 Add:

7 (4) Subsection (3) does not require you to use that same manner
8 consistently for:

9 (a) a *financial arrangement that you start to have on or after the
10 time a *Commonwealth law that amends the method is made;
11 and

12 (b) a financial arrangement that you start to have before that
13 time;

14 if:

15 (c) the Commonwealth law allows you to choose to apply the
16 method in a particular manner (being a manner in which you
17 are not, apart from the Commonwealth law, allowed to apply
18 the method); and

19 (d) the inconsistency is entirely due to you choosing to apply the
20 method in that manner to the financial arrangement
21 mentioned in paragraph (a).

22 **9 Application of amendment**

23 The amendment made by this Division applies in relation to the
24 following Commonwealth laws:

25 (a) this Schedule;

26 (b) other Commonwealth laws made on or after the day this Act
27 receives the Royal Assent.

1 **Part 2—Accruals/realisation methods**

2 **Division 1—Sufficiently certain particular gains or losses**

3 *Income Tax Assessment Act 1997*

4 **10 Paragraph 230-110(2)(a)**

5 After “gain or loss”, insert “, and the extent to which such a financial
6 benefit is, for the purposes of subsection 230-70(2) or 230-75(2),
7 reasonably attributable to the benefit, right or obligation mentioned in
8 paragraph (1)(c) or (d) of this section at the time mentioned in
9 subsection (1)”.

10 **Division 2—Precedence of particular gains or losses**

11 *Income Tax Assessment Act 1997*

12 **11 At the end of subsection 230-100(2) (before the note)**

13 Add:
14 ; and (c) you choose to apply the accruals method to the gain or loss,
15 or subsection (4) applies to the gain or loss.

16 **12 Subparagraph 230-100(3)(b)(i)**

17 Before “at the time”, insert “before or”.

18 **13 Paragraph 230-110(2)(b)**

19 Repeal the paragraph, substitute:
20 (b) disregard any financial benefit that has already been taken
21 into account, under subsection 230-105(1), in working out, at
22 the time when you started to have the arrangement, the
23 amount of a sufficiently certain overall gain or loss from the
24 *financial arrangement to which the accruals method applies;
25 and

26 **14 Subsection 230-130(2)**

27 Repeal the subsection.

1 **Division 3—Spreading prepayments**

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

3 **15 After subsection 230-100(3)**

4 Insert:

5 *Accruals method—particular gain or loss becomes sufficiently*
6 *certain*

7 (3A) The accruals method provided for in this Subdivision also applies
8 to a gain or loss you have from a *financial arrangement if:

- 9 (a) the gain or loss arises from a *financial benefit that you are to
10 receive or are to provide under the arrangement; and
11 (b) the gain or loss becomes sufficiently certain at the time you
12 receive or provide the benefit; and
13 (c) at least part of the period over which the gain or loss would
14 be spread under that method (assuming that method applied)
15 occurs after the time you receive or provide the benefit.

16 This subsection has effect subject to subsection (4).

17 Note 1: Subsection 230-110(1) tells you when you have a sufficiently
18 certain gain or loss at a particular time.

19 Note 2: For the period over which the gain or loss would be spread, see
20 subsections 230-130(3) to (5).

21 *Accruals method—particular gain or loss from qualifying security*

22 **16 Subsection 230-100(4)**

23 After “Subsection (3)”, insert “or (3A)”.

24 **17 Subsection 230-110(1)**

25 Omit “will make”, substitute “make, or will make,”.

26 **18 Subsection 230-115(1)**

27 Omit “will make”, substitute “make, or will make,”.

1 **19 Paragraph 230-130(4)(b)**

2 Before “not start”, insert “other than in the case of a gain or loss to
3 which subsection 230-100(3A) or subsection (4A) of this section
4 applies—”.

5 **20 Subsection 230-130(5)**

6 Repeal the subsection, substitute:

- 7 (5) The end of the period over which a gain or loss to which
8 subsection (3) applies is to be spread must not end later than the
9 time when you will cease to have the *financial arrangement.

10 **21 After subsection 230-170(2)**

11 Insert:

- 12 (2A) Subsections (1) and (2) do not apply to a part of a gain or loss if:
13 (a) subsection 230-100(3A) or 230-130(4A) applies to the gain
14 or loss; and
15 (b) that part of the gain or loss is allocated to an interval under
16 section 230-135; and
17 (c) that interval ends before or during the income year during
18 which the gain or loss becomes sufficiently certain (as
19 mentioned in paragraph 230-100(3A)(b) or 230-130(4A)(f),
20 whichever is applicable).

21 Instead, you are taken, for the purposes of section 230-15, to make,
22 for that income year, a gain or loss equal to that part of that gain or
23 loss.

24 **Division 4—Spreading single payment**

25 ***Income Tax Assessment Act 1997***

26 **22 After subsection 230-135(6)**

27 Insert:

- 28 (6A) However, if there is only one *financial benefit that is to be taken
29 into account in working out the amount of the gain or loss, then,
30 for the purposes of paragraph (5)(b), in determining the amount to
31 which you apply the rate of return, have regard to a notional
32 principal:

- 1 (a) by reference to which the financial benefit is calculated; or
2 (b) which is reasonably related to the financial benefit.

3 **Division 5—Re-estimations**

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

5 **23 Paragraph 230-190(1)(c)**

6 Omit “section 230-200; and”, substitute “section 230-200.”.

7 **24 Paragraph 230-190(1)(d)**

8 Repeal the paragraph.

9 **25 Subsection 230-190(2)**

10 Repeal the subsection, substitute:

- 11 (2) You must re-estimate the gain or loss as soon as reasonably
12 practicable after you become aware of the circumstances referred
13 to in paragraph (1)(b), if subsection (1) applies.

14 **26 After subsection 230-190(3)**

15 Insert:

- 16 (3A) You also re-estimate a gain or loss from a *financial arrangement
17 under subsection (5) if:
18 (a) the gain or loss is spread using the method referred to in
19 paragraph 230-135(2)(b) in accordance with section 230-140
20 (effective interest method); and
21 (b) you recalculate the effective interest rate in accordance with
22 that method; and
23 (c) the terms and conditions of the arrangement provide for reset
24 dates to occur no more than 12 months apart; and
25 (d) the maximum life of the arrangement (as determined under
26 the terms and conditions of the arrangement) is more than 12
27 months.
28 (3B) You must re-estimate the gain or loss at the relevant reset date if
29 subsection (3A) applies.

1 **Division 6—Impairments and reversals**

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

3 **27 After subsection 230-130(4)**

4 Insert:

5 (4A) This subsection applies to a gain or loss to which subsection (3)
6 applies, if:

- 7 (a) there is an impairment (within the meaning of the
8 *accounting principles) of:
9 (i) the *financial arrangement; or
10 (ii) a financial asset or financial liability that forms part of
11 the arrangement; and
12 (b) because of the impairment, you make a reassessment under
13 section 230-185 in relation to the arrangement; and
14 (c) you determine on the reassessment that the gain or loss is not
15 sufficiently certain (whether or not the gain or loss was
16 sufficiently certain before the reassessment); and
17 (d) there is a reversal of the impairment loss (within the meaning
18 of the accounting principles) that resulted from the
19 impairment; and
20 (e) because of the reversal, you make a reassessment under
21 section 230-185 in relation to the arrangement; and
22 (f) you determine on the reassessment that the gain or loss has
23 become sufficiently certain.

24 Note: For the income years to which the gain or loss is allocated, see
25 section 230-170.

26 **28 After section 230-170**

27 Insert:

28 **230-172 Applying accruals method to loss resulting from**
29 **impairment**

- 30 (1) This section applies if:
31 (a) there is an impairment (within the meaning of the
32 *accounting principles) of:
33 (i) a *financial arrangement; or

- 1 (ii) a financial asset or financial liability that forms part of a
2 financial arrangement; and
3 (b) you make a loss from the financial arrangement as a result of
4 the impairment; and
5 (c) the accruals method applies to the loss.
- 6 (2) You cannot deduct a loss you make for an income year under
7 section 230-15, to the extent that the loss results from the
8 impairment (including as affected by any later reversal of the
9 impairment loss (within the meaning of the *accounting principles)
10 that resulted from the impairment).
- 11 (3) Disregard subsection (2) for the purposes of paragraph (c) of step 1
12 of the method statement in subsection 230-445(1).

13 **29 Subsections 230-190(8) to (10)**

14 Repeal the subsections.

15 **30 After section 230-190**

16 Insert:

17 **230-192 Re-estimation—impairments and reversals**

- 18 (1) This section applies if the re-estimation mentioned in
19 section 230-190 arises because of:
20 (a) an impairment (within the meaning of the *accounting
21 principles) of:
22 (i) the *financial arrangement; or
23 (ii) a financial asset or financial liability that forms part of
24 the arrangement; or
25 (b) a reversal of an impairment loss (within the meaning of the
26 accounting principles) that resulted from such an impairment.
- 27 (2) Despite paragraph 230-190(6)(a), you must make the fresh
28 allocation in accordance with paragraph 230-190(6)(b).
- 29 *Losses non-deductible*
- 30 (3) You cannot deduct a loss you make for an income year under
31 section 230-15, to the extent that the loss results from:

- 1 (a) the impairment (including as affected by any later reversal of
2 the impairment loss that resulted from the impairment); or
3 (b) the operation of subsection (7).

- 4 (4) Disregard subsection (3) for the purposes of paragraph (c) of step 1
5 of the method statement in subsection 230-445(1).

6 *Reversals*

- 7 (5) Subsections (7) and (8) apply to the part of the gain or loss that is
8 to be reallocated in accordance with paragraph 230-190(6)(b), if:
9 (a) the fresh determination under paragraph 230-190(5)(a) that
10 arose because of the reversal resulted in that part being a
11 gain; and
12 (b) there are losses that:
13 (i) resulted from the impairment; and
14 (ii) you could have deducted apart from
15 subsection 230-172(2) or subsection (3) of this section.
- 16 (6) Paragraph (5)(b) does not apply to a loss to the extent that:
17 (a) the loss reflects the amount of a loss you make under
18 paragraph 230-195(1)(b) or (c); and
19 (b) the loss you make under paragraph 230-195(1)(b) or (c)
20 relates to you writing off, as a bad debt, a right to receive a
21 *financial benefit (or a part of a financial benefit).
- 22 (7) Treat the fresh determination as having resulted in that part being a
23 loss, if the total of the losses mentioned in paragraph (5)(b) of this
24 section exceeds the amount of the gain mentioned in
25 paragraph (5)(a). The amount of the loss is equal to the amount of
26 the excess.
- 27 (8) Otherwise, reduce the amount of that gain by the total of those
28 losses.

29 **Division 7—Running balancing adjustments**

30 *Income Tax Assessment Act 1997*

31 **31 After subsection 230-175(1)**

32 Insert:

1 (1A) Subsection (1) does not apply to the extent that the difference
2 results from:

- 3 (a) an impairment (within the meaning of the *accounting
4 principles) of:
5 (i) the *financial arrangement; or
6 (ii) a financial asset or financial liability that forms part of
7 the arrangement; or
8 (b) you writing off, as a bad debt, a right to a *financial benefit
9 (or a part of a financial benefit).

10 **32 After subsection 230-175(2)**

11 Insert:

12 (2A) Subsection (2) does not apply to the extent that the difference
13 results from the reversal of an impairment loss (within the meaning
14 of the *accounting principles) that resulted from an impairment
15 (within the meaning of the accounting principles) of:

- 16 (a) the *financial arrangement; or
17 (b) a financial asset or financial liability that forms part of the
18 arrangement.

19 **Division 8—Ceasing of rights or obligations**

20 ***Income Tax Assessment Act 1997***

21 **33 Subsection 230-180(2)**

22 Repeal the subsection, substitute:

- 23 (2) For the purposes of subsection (1), a gain or loss from a *financial
24 arrangement is taken to occur at:
25 (a) if the last of the *financial benefits, rights and obligations
26 taken into account in determining the amount of the gain or
27 loss is a financial benefit—the time the financial benefit:
28 (i) is provided; or
29 (ii) if the financial benefit is not provided at the time when
30 it is due to be provided under the arrangement and it is
31 reasonable to expect that the financial benefit will be
32 provided—is due to be provided; or

- 1 (b) if the last of the financial benefits, rights and obligations
2 taken into account in determining the amount of the gain or
3 loss is a right to receive a financial benefit or an obligation to
4 provide a financial benefit—the time:
5 (i) if the right or obligation ceases before the financial
6 benefit is provided—the right or obligation ceases; or
7 (ii) otherwise—the financial benefit is provided.
8 This subsection has effect subject to subsection (3).

1 **Part 3—Fair value method**

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

3 **34 Paragraph 230-40(4)(a)**

4 Repeal the paragraph, substitute:

- 5 (a) to the extent that Subdivision 230-C (fair value method)
6 applies to the gain or loss; or

7 Note: See subsection (5) of this section and subsection 230-230(4).

8 **35 Paragraph 230-220(1)(c)**

9 Omit “to classify or designate”, substitute “to classify, designate or (in
10 whole or in part) otherwise treat”.

11 **36 Subsection 230-230(1)**

12 Repeal the subsection, substitute:

- 13 (1) You make a gain or loss for an income year from a *financial
14 arrangement to which a *fair value election applies if:

- 15 (a) the principles or standards mentioned in
16 paragraph 230-210(2)(a) require you to recognise a gain or
17 loss in profit or loss for the income year from the asset or
18 liability mentioned in paragraph 230-220(1)(c); or
19 (b) in the case of an arrangement to which subsection 230-220(2)
20 applies—the principles or standards referred to in
21 paragraph 230-220(1)(c) would have required you to
22 recognise a gain or loss in profit or loss for the year from the
23 asset or liability mentioned in paragraph 230-220(1)(c) if the
24 arrangement had not been an intra-group transaction for the
25 purposes of the standard referred to in
26 paragraph 230-220(2)(b); or
27 (c) in the case of an arrangement to which subsection 230-220(3)
28 applies—the principles or standards referred to in
29 paragraph 230-220(1)(c) would have required you to
30 recognise a gain or loss in profit or loss for the year from the
31 asset or liability mentioned in paragraph 230-220(1)(c) if the
32 arrangement had been between 2 separate entities.

1 Note: Subsection 230-40(7) provides that an election under
2 Subdivision 230-E (hedging financial arrangements method) or
3 Subdivision 230-F (method of relying on financial reports) may
4 override a fair value election.

5 (1A) The gain or loss you make is the gain or loss the principles or
6 standards require, or would have required, you to recognise in
7 profit or loss as mentioned in subsection (1).

8 **37 At the end of section 230-230**

9 Add:

10 *Subdivision does not apply to extent gains or losses not recognised*
11 *as at fair value*

- 12 (4) This Subdivision does not apply to a gain or loss you make from
13 the *financial arrangement, to the extent:
- 14 (a) you are required, as mentioned in paragraph 230-220(1)(c),
15 to otherwise treat as at fair value through profit and loss the
16 assets or liabilities that the financial arrangement is; and
 - 17 (b) the principles or standards referred to in
18 paragraph 230-210(2)(a) do not require you to recognise the
19 gain or loss as at fair value through profit or loss.

20 Note: See also subsection 230-40(5).

21 **38 At the end of section 230-245**

22 Add:

- 23 (6) In determining, for the purposes of the balancing adjustment under
24 subsection (2) or (4) or for the purposes of subsection (5), the fair
25 value of the *financial arrangement at a time, disregard any
26 changes in the fair value to the extent that:
- 27 (a) you are required, as mentioned in paragraph 230-220(1)(c),
28 to otherwise treat the financial arrangement as at fair value
29 through profit and loss; and
 - 30 (b) the principles or standards referred to in
31 paragraph 230-210(2)(a) do not require you to recognise the
32 changes as at fair value through profit or loss.

1 **Part 4—Hedging financial arrangements method**

2 **Division 1—One in all in principle**

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

4 **39 Section 230-325**

5 Repeal the section, substitute:

6 **230-325 Hedging financial arrangements to which election applies**

7 A *hedging financial arrangement election applies to a *hedging
8 financial arrangement:

- 9 (a) that you start to have in the income year in which you make
10 the election or in a later income year; and
11 (b) that is not excluded from the application of the election by
12 section 230-330.

13 Note: Subject to a determination by the Commissioner, the hedging financial
14 arrangement election does not apply to a financial arrangement you
15 start to have after you fail to comply with the requirements in
16 sections 230-355 and 230-360 and paragraph 230-365(c) in relation to
17 a hedging financial arrangement to which the election does apply: see
18 section 230-385. See also subsection 230-305(1).

19 **40 Paragraph 230-335(3)(d)**

20 Before “you satisfy”, insert “in a case in which none of subsections (5),
21 (6) and (7) are satisfied—”.

22 **41 Paragraph 230-335(3)(e)**

23 Before “you satisfy”, insert “in any case—”.

24 **42 After subsection 230-335(3)**

25 Insert:

26 (3A) Disregard paragraph (3)(d) if subsection (4) is satisfied and:

- 27 (a) a *hedging financial arrangement election applies to the
28 *financial arrangement (because you previously satisfied the
29 additional recording requirements mentioned in that
30 paragraph at a time when the election applied); or

1 (b) all of the following subparagraphs apply:

- 2 (i) a hedging financial arrangement election would apply to
3 the financial arrangement if you satisfied the additional
4 recording requirements mentioned in paragraph (3)(d);
5 (ii) the election and subsection (3) apply to another
6 financial arrangement;
7 (iii) subsection (4) is or was satisfied in relation to that other
8 arrangement at a time when the election applied to that
9 other arrangement.

10 **43 Paragraph 230-365(c)**

11 Omit all the words after subparagraph (ii).

12 **44 At the end of section 230-365**

13 Add:

14 ; and (d) your assessment must be that the hedging of the risk will be
15 highly effective (within the meaning of the principles or
16 standards referred to in paragraph 230-315(2)(a)) in reducing
17 your exposure to changes in the fair value of the hedged item
18 or items or cash flows attributable to the hedged risk
19 throughout the remainder of the period for which you expect
20 to have the arrangement.

21 **45 Section 230-380 (heading)**

22 Repeal the heading, substitute:

23 **230-380 Commissioner may determine that requirement met**

24 **46 Subsection 230-380(6)**

25 Omit “and the Commissioner’s”, substitute “, in a way that satisfies the
26 requirements of section 230-360. The Commissioner’s”.

27 **47 Section 230-385**

28 Repeal the section, substitute:

1 **230-385 Consequences of failure to meet requirements**

2 *When this section applies*

3 (1) This section applies if:

- 4 (a) your *hedging financial arrangement election applies to a
5 *hedging financial arrangement; and
6 (b) you do not meet a requirement of section 230-355 or 230-360
7 or paragraph 230-365(c) in relation to the arrangement.

8 (2) For the purposes of paragraph (1)(b), treat the requirement in
9 paragraph 230-365(c) as being met even if you do not assess the
10 hedging of the risk mentioned in that paragraph, but you can
11 demonstrate that you intend to do so.

12 *Commissioner may determine matter under section 230-360*

13 (3) If:

- 14 (a) you fail to determine a matter in relation to the *hedging
15 financial arrangement under section 230-360; or
16 (b) you determine a matter in relation to the arrangement under
17 section 230-360 but the determination does not satisfy the
18 requirements of subsection 230-360(2);

19 the Commissioner may determine that matter, in a way that
20 satisfies the requirements of section 230-360. A reference in this
21 Division to a determination made under that section is treated as
22 including a reference to a determination under this subsection.

23 *Election does not apply to hedging financial arrangements you*
24 *start to have after failing to comply with requirements*

25 (4) Your *hedging financial arrangement election does not apply to a
26 *hedging financial arrangement you start to have:

- 27 (a) after you fail to meet the requirement mentioned in
28 paragraph (1)(b) in relation to the arrangement mentioned in
29 that paragraph; and
30 (b) before a date (if any) determined by the Commissioner.

31 (5) The Commissioner may make a determination under
32 paragraph (4)(b) only if satisfied that you are unlikely to fail again
33 to meet a requirement of section 230-355 or 230-360 or

1 paragraph 230-365(c) in relation to a *hedging financial
2 arrangement.

- 3 (6) In deciding whether to make a determination under
4 paragraph (4)(b), the Commissioner must have regard to:
5 (a) your record keeping practices; and
6 (b) your compliance history; and
7 (c) any changes that have been made to:
8 (i) your accounting systems and controls; and
9 (ii) your internal governance processes;
10 to ensure that failures of the kind mentioned in
11 paragraph (1)(b) do not happen again; and
12 (d) any other relevant matter.

13 *Commissioner may still exercise powers under section 230-380*

- 14 (7) This section does not prevent the Commissioner from exercising
15 the Commissioner's powers under section 230-380 in relation to
16 the *hedging financial arrangement mentioned in subsection (1).

17 **Division 2—Hedging net investments in foreign**
18 **operations**

19 *Income Tax Assessment Act 1997*

20 **48 Subsection 230-310(5)**

21 Repeal the subsection, substitute:

- 22 (5) Subsection (6) applies if:
23 (a) a *hedged item is your net investment in a foreign operation
24 (within the meaning of the *accounting principles); and
25 (b) the foreign operation is carried on through:
26 (i) a company in which you hold *shares; or
27 (ii) a company that is a subsidiary of yours (within the
28 meaning of the *Corporations Act 2001*).
- 29 (6) The table in subsection (4) has effect as if:
30 (a) to the extent that the *hedging financial arrangement hedges a
31 risk or risks in relation to *shares you hold in the company—

Schedule 8 Taxation of financial arrangements
Part 4 Hedging financial arrangements method

1 the reference in that table to the *hedged item were a
2 reference to your interest in those shares; and
3 (b) to the extent that the hedging financial arrangement hedges a
4 risk or risks in relation to another interest you have in the
5 company—the reference in that table to the hedged item were
6 a reference to that interest.

1 **Part 5—Transitional balancing adjustments**

2 ***Tax Laws Amendment (Taxation of Financial Arrangements)***
3 ***Act 2009***

4 **49 At the end of paragraph 104(14)(c) of Schedule 1**

5 Add “and”.

6 **50 After paragraph 104(14)(c) of Schedule 1**

7 Insert:

8 (ca) the attributable assessable amount represents the whole of the
9 deferred tax effect of a gain or loss from the financial
10 arrangement that has been recognised in profit or loss in
11 accordance with the accounting principles mentioned in
12 paragraph 230-395(2)(a) of the *Income Tax Assessment Act*
13 *1997*;

14 **51 At the end of subitem 104(14) of Schedule 1**

15 Add:

16 Note: The deferred tax effect to be taken into account for the purposes of paragraph (ca) might
17 be affected by a later assessment, the amendment of an assessment or a law that applies
18 retrospectively.

19 **52 At the end of paragraph 104(15)(c) of Schedule 1**

20 Add “and”.

21 **53 After paragraph 104(15)(c) of Schedule 1**

22 Insert:

23 (ca) the attributable deductible amount represents the whole of the
24 deferred tax effect of a gain or loss from the financial
25 arrangement that has been recognised in profit or loss in
26 accordance with the accounting principles mentioned in
27 paragraph 230-395(2)(a) of the *Income Tax Assessment Act*
28 *1997*;

29 **54 At the end of subitem 104(15) of Schedule 1**

30 Add:

Schedule 8 Taxation of financial arrangements

Part 5 Transitional balancing adjustments

- 1 Note: The deferred tax effect to be taken into account for the purposes of paragraph (ca) might
2 be affected by a later assessment, the amendment of an assessment or a law that applies
3 retrospectively.

1 **Part 6—Elective requirements**

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

3 **55 At the end of Subdivision 230-I**

4 Add:

5 **230-527 Elections—reporting documents of foreign ADIs**

6 (1) So much of a Statement of Financial Performance and a Statement
7 of Financial Position, given to *APRA by a foreign ADI (within
8 the meaning of the *Banking Act 1959*) as required under section 13
9 of the *Financial Sector (Collection of Data) Act 2001*, as:

- 10 (a) cover the activities of an *Australian permanent
11 establishment of the foreign ADI for the year; and
12 (b) are prepared in accordance with the recognition and
13 measurement standards under the *accounting principles; and
14 (c) are audited in accordance with the *auditing principles;
15 are treated, for the purposes of the provisions mentioned in
16 subsection (2), as being a financial report for a year:
17 (d) prepared by the foreign ADI in accordance with the
18 accounting principles; and
19 (e) audited in accordance with the auditing principles.

20 (2) The provisions are as follows:

- 21 (a) sections 230-150 to 230-165 (election for portfolio treatment
22 of fees);
23 (b) sections 230-210 to 230-220 (fair value election);
24 (c) sections 230-255 to 230-265 (foreign exchange retranslation
25 election);
26 (d) sections 230-315 to 230-335 (hedging financial arrangement
27 election);
28 (e) sections 230-395, 230-400, 230-410 and 230-430 (election to
29 rely on financial reports).

1 **Part 7—Miscellaneous amendments**

2 **Division 1—Consistency of language**

3 *Income Tax Assessment Act 1997*

4 **56 Paragraphs 230-80(2)(a) and (3)(a)**

5 Omit “make”, substitute “have”.

6 **57 Subsections 230-100(2), (3), (4) and (5)**

7 Omit “make”, substitute “have”.

8 **58 Section 230-125**

9 Omit “make”, substitute “have”.

10 **Division 2—Other amendments**

11 *Income Tax Assessment Act 1997*

12 **59 Subparagraph 230-5(2)(a)(iv) (second occurring)**

13 Renumber as subparagraph (iva).

14 **60 Paragraph 230-85(a)**

15 After “even”, insert “if”.

16 Note: This item fixes a typographical error.

17 **61 Subparagraph 230-140(3)(c)(ii)**

18 Omit “will be provided or received”, substitute “is to be provided or
19 received”.

20 **62 Paragraph 230-190(7)(a)**

21 Omit “are to apply”, substitute “is to apply”.

22 Note: This item fixes a grammatical error.

1 **63 Subsections 230-290(1) and (3)**

2 Omit “*foreign currency retranslation election”, substitute “*foreign
3 exchange retranslation election”.

4 Note: This item fixes typographical errors.

5 **64 Paragraph 230-455(1)(d)**

6 Omit “subparagraph (iv)”, substitute “subparagraph (a)(iv)”.

7 Note: This item clarifies a cross-reference.