



# **Tax Law Improvement Act 1997**

**Act No. 121 of 1997 as amended**

This Act incorporates amendments up to, and including, Act No. 57 of 2002



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# **An Act to amend the law about income tax, and for related purposes**

[Assented to 8 July 1997]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Tax Law Improvement Act 1997*.

## **2 Commencement**

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Schedule 1 commences on 1 July 1997 immediately after the commencement of the *Income Tax Assessment Act 1997*.
- (3) Each of the other Schedules (except Schedule 12) commences immediately after the commencement of the immediately preceding Schedule.
- (4) If a note specifies the commencement of an item in Schedule 12, the item commences as specified in the note.
- (5) If there is no note specifying the commencement of an item in Schedule 12, the item commences on 1 July 1997 immediately after the commencement of the *Income Tax Assessment Act 1997*.

## **3 Schedule(s)**

Subject to section 2, each Act specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to this Act has effect according to its terms.

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#### Section T4T

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### **4 Application of amendments**

An amendment made by an item in a Schedule (except Schedule 1) applies to assessments for the 1997-98 income year and later income years, unless otherwise indicated in that Schedule.

## **Schedule 1—Amendment of the Income Tax Assessment Act 1997**

### **1 Chapter 2 (link note after heading)**

Repeal the link note.

### **2 Before Part 2-5**

Insert:

## **Part 2-1—Assessable income**

*[The next Division is Division 15.]*

### **—Some items of assessable income**

### **Guide to Division 15**

#### **15-1 What this Division is about**

This Division sets out some items that are included in your assessable income. Remember that the general rules about assessable income in Division 6 apply to these items.

### **Table of sections**

#### **Operative provisions**

15-3	Return to work payments
15-5	Accrued leave transfer payments
15-10	Bounties and subsidies
15-15	Profit-making undertaking or plan
15-20	Royalties
15-25	Amount received for lease obligation to repair
15-30	Insurance or indemnity for loss of assessable income
15-35	Interest on overpayments and early payments of tax

## Operative provisions

### 15-3 Return to work payments

Your assessable income includes an amount you receive under an \*arrangement that an entity enters into for a purpose of inducing you to resume working for, or providing services to, any entity.

### 15-5 Accrued leave transfer payments

Your assessable income includes an \*accrued leave transfer payment that you receive.

To find out if the payment is deductible to the payer, see section 26-10.

### 15-10 Bounties and subsidies

Your assessable income includes a bounty or subsidy that:

- (a) you receive in relation to carrying on a \*business; and
- (b) is not assessable as \*ordinary income under section 6-5.

### 15-15 Profit-making undertaking or plan

- (1) Your assessable income includes profit arising from the carrying on or carrying out of a profit-making undertaking or plan.
- (2) This section does not apply to a profit that:
  - (a) is assessable as \*ordinary income under section 6-5; or
  - (b) arises in respect of the sale of property acquired on or after 20 September 1985.

Note: If you sell property you acquired *before* 20 September 1985 for profit-making by sale, your assessable income includes the profit: see section 25A of the *Income Tax Assessment Act 1936*.

### 15-20 Royalties

Your assessable income includes an amount that you receive as or by way of royalty within the ordinary meaning of “royalty” (disregarding the definition of *royalty* in subsection 995-1(1)) if the amount is not assessable as \*ordinary income under section 6-5.



### **15-25 Amount received for lease obligation to repair**

Your assessable income includes an amount you receive from an entity if:

- (a) you receive it as a lessor or former lessor of premises; and
- (b) the entity pays you the amount for failing to comply with a lease obligation to make repairs to the premises; and
- (c) the entity uses or has used the premises for the \*purpose of producing assessable income; and
- (d) the amount is not assessable as \*ordinary income under section 6-5.

Note: The entity can deduct the amount: see section 25-15.

### **15-30 Insurance or indemnity for loss of assessable income**

Your assessable income includes an amount you receive by way of insurance or indemnity for the loss of an amount (the **lost amount**) if:

- (a) the lost amount would have been included in your assessable income; and
- (b) the amount you receive is not assessable as \*ordinary income under section 6-5.

### **15-35 Interest on overpayments and early payments of tax**

Your assessable income includes interest payable to you under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*. The interest becomes assessable when it is paid to you or applied to discharge a liability you have to the Commonwealth.

*[The next Division is Division 20.]*

## Division 20 Table of Subdivisions

### Guide to Division 20

- 20-A Insurance, indemnity or other recoupment for deductible expenses
- 20-B Disposal of a car for which lease payments have been deducted

## Guide to Division 20

### 20-1 What this Division is about

This Division includes amounts in your assessable income to reverse the effect of certain kinds of deductions.

### Table of sections

- 20-5 Other provisions that reverse the effect of deductions

### 20-5 Other provisions that reverse the effect of deductions

The table lists other provisions that reverse the effect of certain kinds of deductions.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

Provisions that adjust your tax position in respect of deductions		
Item	In this situation:	See:
1	A balancing charge for property on which you incurred expenditure deductible under a capital allowance is included in your assessable income.	40-25 and 40-30
2	An amount you receive by way of insurance or indemnity for a loss of trading stock is included in your assessable income.	70-115

<b>Provisions that adjust your tax position in respect of deductions</b>		
<b>Item</b>	<b>In this situation:</b>	<b>See:</b>
3	<p>Because of:</p> <ul style="list-style-type: none"> <li>• petroleum resource rent tax; or</li> <li>• an instalment of petroleum resource rent tax;</li> </ul> <p>that you have deducted or can deduct, an amount is refunded, credited, paid or applied: the amount is included in your assessable income.</p>	330-350(3)
4	You receive a fringe benefit by way of reimbursement or payment of a loss or outgoing you incurred: your deduction for the loss or outgoing is reduced.	<b>51AH</b>
5	<p>A company receives (or becomes entitled to) an amount:</p> <ul style="list-style-type: none"> <li>• in respect of the results of research and development activities on which it incurred deductible expenditure; or</li> <li>• attributable to it having incurred deductible expenditure on research and development activities.</li> </ul> <p>The amount is included in its assessable income.</p>	<b>73B(27A)</b>
6	You receive an amount as recoupment of expenditure on research and development activities that you have deducted at the rate of 150%: the rate of deduction is reduced to 100%.	<b>73C</b>
7	You receive an amount as recoupment for your local governing body election expenses: an amount is included in your assessable income.	<b>74A(4)</b>
8	You receive superannuation benefits as a result of someone's deductible contributions: the benefits are included in your assessable income.	<b>82AAQ</b>

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## Subdivision 20-A—Insurance, indemnity or other recoupment for deductible expenses

### Guide to Subdivision 20-A

#### 20-10 What this Subdivision is about

Your assessable income may include an amount that you receive by way of insurance, indemnity or other recoupment if:

- it is for a deductible expense; and
- it is *not* otherwise assessable income.

#### Table of sections

20-15 How to use this Subdivision

##### What is an *assessable recoupment*?

20-20 Assessable recoupments

20-25 What is *recoupment*?

20-30 Tables of deductions for which recoupments are assessable

##### How much is included in your assessable income?

20-35 If the expense is deductible in a single income year

20-40 If the expense is deductible over 2 or more income years

20-45 Effect of balancing charge

20-50 If the expense is only partially deductible

20-55 Meaning of *previous recoupment law*

#### 20-15 How to use this Subdivision

- (1) First, read sections 20-20 to 20-30 to work out whether you have received an assessable recoupment. If not, you do not need to read the rest of the Subdivision.
- (2) If you *have* received one or more assessable recoupments, sections 20-35 to 20-55 tell you how much is included in your assessable income for an income year.

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## What is an *assessable recoupment*?

### 20-20 Assessable recoupments

#### *Exclusion*

- (1) An amount is *not* an ***assessable recoupment*** to the extent that it is \*ordinary income, or it is \*statutory income because of a provision outside this Subdivision.

#### *Insurance or indemnity*

- (2) An amount you receive as \*recoupment of a loss or outgoing is an ***assessable recoupment*** if:
- (a) you receive the amount by way of insurance or indemnity; and
  - (b) you can deduct an amount for the loss or outgoing for the \*current year, or you have deducted or can deduct an amount for it for an earlier income year, under any provision of this Act.

#### *Other recoupment*

- (3) An amount you receive as \*recoupment of a loss or outgoing (*except* by way of insurance or indemnity) is an ***assessable recoupment*** if:
- (a) you can deduct an amount for the loss or outgoing for the \*current year; or
  - (b) you have deducted or can deduct an amount for the loss or outgoing for an earlier income year;
- under a provision listed in section 20-30.

### 20-25 What is *recoupment*?

#### *General*

- (1) ***Recoupment*** of a loss or outgoing includes:
- (a) any kind of recoupment, reimbursement, refund, insurance, indemnity or recovery, however described; and
  - (b) a grant in respect of the loss or outgoing.

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*Amount paid for you*

- (2) If some other entity pays an amount for you in respect of a loss or outgoing that you incur, you are taken to receive the amount as **recoupment** of the loss or outgoing.

*Amount for disposing of right to recoupment*

- (3) If you dispose of your right to receive an amount as \*recoupment of a loss or outgoing you are taken to receive as **recoupment** of the loss or outgoing any amount you receive for disposing of that right. (The disposal need not be to another entity.)

*Amount received that is recoupment to an unspecified extent*

- (4) If you receive an amount that is, to an unspecified extent, \*recoupment of a loss or outgoing, the amount is taken to be **recoupment** of the loss or outgoing to whatever extent is reasonable.

*Balancing adjustments not covered*

- (5) If a balancing adjustment is required for property on which you incurred a loss or outgoing, no part of the \*termination value of the property is an amount you receive as **recoupment** of the loss or outgoing.

Note: The termination value is usually the amount you receive because of disposal, loss or destruction of the property.

## **20-30 Tables of deductions for which recoupments are assessable**

- (1) This table shows the deductions under the *Income Tax Assessment Act 1997* for which recoupments are assessable.

Note: References are to section numbers except where otherwise indicated.

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<b>Provisions of the Income Tax Assessment Act 1997</b>		
<b>Item</b>	<b>Provision</b>	<b>Description of expense</b>

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<b>Provisions of the Income Tax Assessment Act 1997</b>		
<b>Item</b>	<b>Provision</b>	<b>Description of expense</b>
1.1	8-1 (so far as it allows you to deduct a bad debt, or part of a debt that is bad)	bad debts
1.2	8-1 (so far as it allows you to deduct rates or taxes)	rates or taxes
1.3	25-5	tax-related expenses
1.4	25-35	bad debts
1.5	25-45	embezzlement or larceny by an employee
1.6	25-60	election expenses, Commonwealth and State elections
1.7	25-75	rates and land taxes on premises used to produce mutual receipts
1.8	330-15	exploration or prospecting expenditure
1.9	330-80	allowable capital expenditure relating to mining or quarrying
1.10	330-370	transport capital expenditure relating to mining or quarrying
1.11	330-435	rehabilitation expenditure relating to mining or quarrying
1.12	330-485	balancing adjustment deduction for expenditure relating to mining or quarrying
1.13	Subdivision 387-A	landcare operations expenditure
1.14	Subdivision 387-B	expenditure on facilities to conserve or convey water
1.15	Subdivision 387-D	grapevine establishment expenditure
1.16	Subdivision 387-E	mains electricity connection expenditure

- (2) This table shows the deductions under the *Income Tax Assessment Act 1936* for which recoupments are assessable.

Note: References are to section numbers except where otherwise indicated.

<b>Provisions of the Income Tax Assessment Act 1936</b>		
<b>Item</b>	<b>Provision</b>	<b>Description of expense</b>
2.1	<b>51(1)</b> (so far as it allows you to deduct a bad debt, or part of a debt that is bad)	bad debts
2.2	<b>51(1)</b> (so far as it allows you to deduct rates or taxes)	rates or taxes
2.3	<b>63</b>	bad debts
2.4	<b>69</b>	tax-related expenses
2.5	<b>70A(3)</b>	mains electricity connection expenditure
2.6	<b>71</b>	embezzlement or larceny by an employee
2.7	<b>72</b>	rates and land tax
2.8	<b>73B</b>	research and development activity expenditure
2.9	<b>74</b>	election expenses, Commonwealth and State elections
2.10	<b>75AA(1) or (6)</b>	grape vine establishment expenditure
2.11	<b>75B(2) or (3A)</b>	water conservation or conveyance expenditure
2.12	<b>75D(2)</b>	land degradation prevention expenditure
2.13	<b>82AB</b>	development allowance expenditure
2.14	<b>82BB</b>	environmental impact study expenditure
2.15	<b>82BK</b>	environmental protection expenditure



<b>Provisions of the Income Tax Assessment Act 1936</b>		
<b>Item</b>	<b>Provision</b>	<b>Description of expense</b>
2.16	<b>82Z(1)</b>	currency exchange loss
2.17	<b>Division 10 of Part III</b>	mining and quarrying expenditure
2.18	<b>Division 10AAA of Part III</b>	expenditure on transport of minerals and quarry materials
2.19	<b>Division 10AA of Part III</b>	expenditure on prospecting and mining for petroleum
2.20	<b>124BA</b>	expenditure on rehabilitating mining, quarrying and petroleum sites
2.21	<b>124ZZF</b>	horticultural plant establishment expenditure (effective life of the plant less than 3 years)
2.22	<b>124ZZG</b>	horticultural plant establishment expenditure (effective life of the plant more than 3 years)
2.23	<b>628</b>	drought mitigation property expenditure by a primary producer
2.24	<b>636</b>	drought mitigation property expenditure by a leasing company

## How much is included in your assessable income?

### 20-35 If the expense is deductible in a single income year

- (1) Your assessable income includes an \*assessable recoupment of a loss or outgoing if:
- (a) you can deduct the whole of the loss or outgoing for the \*current year; or
  - (b) you have deducted or can deduct the whole of the loss or outgoing for an earlier income year.

Note 1: The operation of this section may be affected if a balancing charge has been included in your assessable income because of a deduction for the loss or outgoing: see section 20-45.

Note 2: Recoupment of a loss or outgoing for which you can deduct amounts over more than one income year is covered by section 20-40.

Note 3: Recoupment of a loss or outgoing that is only partially deductible is covered by section 20-50.

*Total assessed not to exceed the loss or outgoing*

- (2) The total of all amounts that subsection (1) includes in your assessable income for one or more income years in respect of a loss or outgoing cannot exceed the amount of the loss or outgoing.

*Recoupment received before income year of the deduction*

- (3) If:
- (a) you can deduct the whole of a loss or outgoing for the \*current year; and
  - (b) before the current year you received an \*assessable recoupment of the loss or outgoing;
- your assessable income for the current year includes so much of the recoupment as subsection (1) would have included if you had instead received the recoupment at the start of the current year.

#### **20-40 If the expense is deductible over 2 or more income years**

- (1) This section includes an amount in your assessable income if:
- (a) you receive in the \*current year an \*assessable recoupment of a loss or outgoing for which you can deduct amounts over 2 or more income years; or
  - (b) you received in an *earlier* income year an \*assessable recoupment of a loss or outgoing of that kind (unless all of the recoupment has already been included in your assessable income for one or more earlier income years by this section or a \*previous recoupment law).

(This section applies even if the recoupment was received before the first of those income years.)

Note: Recoupment of a loss or outgoing that is only partially deductible is covered by section 20-50.

- (2) Work out as follows how much is included in your assessable income for the \*current year because of one or more \*assessable recoupments of the loss or outgoing.

Note: The method statement ensures that assessable recoupments are included:

- only so far as they have *not* already been included for an earlier income year; and
- only to the extent of your total deductions to date for the loss or outgoing.

*Method statement*

*Step 1.* Add up all the \*assessable recoupments of the loss or outgoing that you have received (in the \*current year or earlier). The result is the ***total assessable recoupment***.

*Step 2.* Add up the amounts (if any) included in your assessable income for earlier income years, in respect of the loss or outgoing, by this section or a \*previous recoupment law. The result is the ***recoupment already assessed***. (If no amount was included, the ***recoupment already assessed*** is nil.)

*Step 3.* Subtract the recoupment already assessed from the total assessable recoupment. The result is the ***unassessed recoupment***.

*Step 4.* Add up each amount that you can deduct for the loss or outgoing for the \*current year, or you have deducted or can deduct for the loss or outgoing for an earlier income year. The result is the ***total deductions for the loss or outgoing***.

Note: The total deductions may be reduced if an amount has been included in your assessable income because of a balancing adjustment: see section 20-45.

*Step 5.* Subtract the recoupment already assessed from the total deductions for the loss or outgoing. The result is the ***outstanding deductions***.

*Step 6.* The unassessed recoupment is included in your assessable income, unless it is greater than the outstanding deductions. In that case, the amount of the outstanding deductions is included instead.

Example: At the start of the 1997-98 income year, a mining company incurs \$100,000 of expenditure on mining operations. \$10,000 is deductible for the 1997-98 income year and for each of the following 9 income years under section 330-80.

In the 1997-98 income year, the company receives \$20,000 as recoupment. How much is assessable for the 1997-1998 income year?

Applying the method statement:

After Step 1: the total assessable recoupment is \$20,000.

After Step 2: the recoupment already assessed is nil.

After Step 3: the unassessed recoupment is:  
total assessable recoupment – recoupment already assessed,  
ie  $\$20,000 - 0 = \$20,000$ .

After Step 4: the total deductions for the loss or outgoing are \$10,000.

After Step 5: the outstanding deductions are:  
total deductions for the loss or outgoing – recoupment already  
assessed, ie  $\$10,000 - 0 = \$10,000$ .

After Step 6: the unassessed recoupment (Step 3) is greater than  
outstanding deductions (Step 5), so the amount of the outstanding  
deductions is included in assessable income, ie \$10,000.

Applying the method statement to the 1998-99 income year: a further  
\$10,000 is included in the company's assessable income.

## 20-45 Effect of balancing charge

- (1) This section may affect the operation of section 20-35 or 20-40 (as appropriate) if:
  - (a) a balancing adjustment is required for the \*current year (or for an earlier income year) because you have deducted or can deduct an amount for an income year for the loss or outgoing; and
  - (b) an amount (the ***balancing charge***) is included in your assessable income for the \*current year (or for the earlier income year) because of the balancing adjustment.

To find out about balancing adjustments, see section 40-25.

### *Effect on section 20-35*

- (2) In applying section 20-35, treat each of the following as reduced by the balancing charge:
  - (a) the amount of the loss or outgoing;

- (b) the total of what you can deduct for the loss or outgoing for the \*current year, or have deducted or can deduct for an earlier income year.

*Effect on section 20-40*

- (3) In applying the method statement in subsection 20-40(3), reduce the **total deductions for the loss or outgoing** by the balancing charge.

Example: Continuing the example in subsection 20-40(3): during the 2000-2001 income year, the mining company:

- receives a further \$10,000 as recoupment of the original expenditure; and
- sells its mining operations for \$75,000.

As a result of the sale, a balancing charge of \$5,000 is included under section 330-485 in the company's assessable income for that income year.

How much of the recoupment amount received in the 2000-2001 income year is assessable for that income year?

Applying the method statement in subsection 20-40(3):

After Step 1: the total assessable recoupment is \$30,000 (received during 1997-98 and 2000-2001).

After Step 2: the recoupment already assessed is \$20,000 (for 1997-98 and 1998-99).

After Step 3: the unassessed recoupment is:  
total assessable recoupment – recoupment already assessed,  
ie  $\$30,000 - \$20,000 = \$10,000$ .

After Step 4: the total deductions for the loss or outgoing are \$30,000 (\$10,000 for each of 1997-98, 1998-99 and 1999-2000), reduced by \$5,000 (the amount included in assessable income for the balancing adjustment), ie \$25,000.

After Step 5: the outstanding deductions are:  
total deductions for the loss or outgoing – recoupment already assessed, ie  $\$25,000 - \$20,000 = \$5,000$ .

After Step 6: the unassessed recoupment (Step 3) is greater than outstanding deductions (Step 5), so the amount of the outstanding deductions is included in assessable income, ie \$5,000.

**20-50 If the expense is only partially deductible**

- (1) This section extends the operation of section 20-35 or 20-40 (as appropriate) to a case where the total of what you can deduct under a provision (the *deduction provision*) for a loss or outgoing is limited to a proportion of the loss or outgoing.
- (2) If you receive an \*assessable recoupment of the loss or outgoing, section 20-35 or 20-40 applies as if:
  - (a) you had incurred *only* that proportion of the loss or outgoing, but could deduct the *whole* of that proportion under the deduction provision; and
  - (b) you had received only that proportion of the recoupment.

Example: You incur expenditure of \$500. A provision listed in section 20-30 entitles you to deduct 10% of the expenditure (\$50) over 5 years. This means you can deduct \$10 in each of the 5 years.

You recoup \$300 of the expenditure. This section treats you as receiving only 10% of the recoupment. Therefore, \$30 is dealt with by section 20-40.

**20-55 Meaning of *previous recoupment law***

*Previous recoupment law* means a provision of the *Income Tax Assessment Act 1936* listed in this table.

Previous recoupment law		
Item	Provision	What kind of expense the provision relates to:
1	<b>26(j)</b> (so far as it relates to an amount received for or in respect of a loss or outgoing that is an allowable deduction)	a loss or outgoing that is an allowable deduction
2	<b>26(k)</b>	embezzlement or larceny by an employee
3	<b>63(3)</b>	bad debts
4	<b>69(8)</b>	tax-related expenses

<b>Previous recoupment law</b>		
<b>Item</b>	<b>Provision</b>	<b>What kind of expense the provision relates to:</b>
5	<b>70A(5)</b>	mains electricity connection expenditure
6	<b>72(2)</b> (so far as it relates to a refund of an amount allowed or allowable as a deduction)	rates or taxes
7	<b>74(2)</b>	election expenses, Commonwealth and State elections

## **Subdivision 20-B—Disposal of a car for which lease payments have been deducted**

### **Guide to Subdivision 20-B**

#### **20-100 What this Subdivision is about**

This Subdivision reverses the effect of deductions for lease payments for a car leased to you (or to your associate), but only if you make a profit by disposing of the car after acquiring it from the lessor. The *smallest* of these amounts is included in your assessable income:

- your profit on the disposal;
- the total deductible lease payments for the period of the lease;
- the total amounts you *could have deducted* for depreciation of the car if, instead of leasing it, you had owned it and used it solely for the purpose of producing assessable income.

### **Table of sections**

20-105 Map of this Subdivision

**The usual case**

- 20-110 Disposal of a leased car for profit
- 20-115 Working out the profit on the disposal
- 20-120 Meaning of *notional depreciation*

**The associate case**

- 20-125 Disposal of a leased car for profit

**Successive leases**

- 20-130 Successive leases

**Previous disposals of the car**

- 20-135 No amount included if earlier disposal for market value
- 20-140 Reducing the amount to be included if there has been an earlier disposal

**Miscellaneous rules**

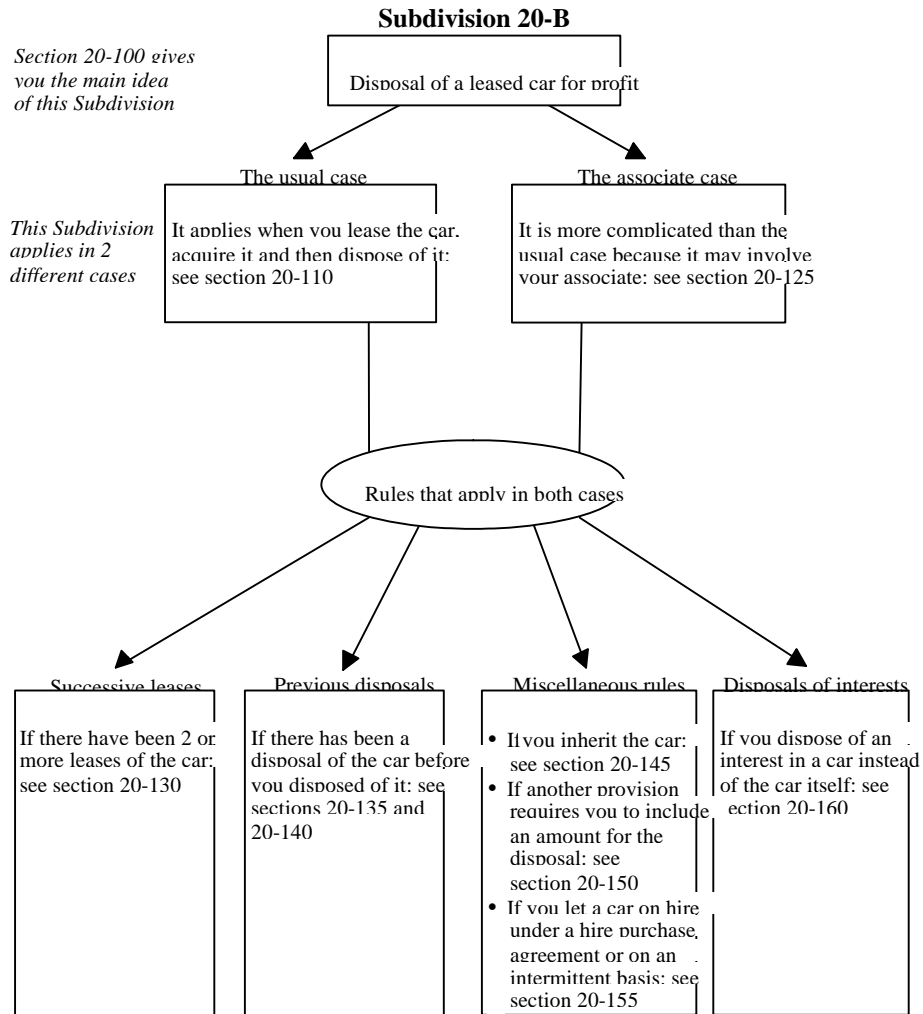
- 20-145 No amount included if you inherited the car
- 20-150 Reducing the amount to be included if another provision requires you to include an amount for the disposal
- 20-155 Exception for particular cars taken on hire

**Disposals of interests in a car: special rules apply**

- 20-160 Disposal of an interest in a car



## 20-105 Map of this Subdivision



## The usual case

### 20-110 Disposal of a leased car for profit

- (1) Your assessable income includes the \*profit you make on disposing of a \*car if:
- (a) the car was designed mainly for carrying passengers; and

- (b) the car was leased to you and has been leased to no-one else;  
and
- (c) you or another entity can deduct for the income year any of  
the lease payments paid or payable by you, or have deducted  
or can deduct any of them for an earlier income year, under  
this Act; and
- (d) you acquired the car from the lessor.

Note 1: Even if subsection (1) does not apply, an amount may still be included  
in your assessable income:

- under section 20-125 (which deals with more  
complicated cases that may involve your associate); or
- if you disposed of an interest in a car (rather than  
the car itself): see section 20-160.

Note 2: In some cases you do *not* include an amount in your assessable  
income:

- if there has been an earlier disposal of the car for  
market value: see section 20-135; or
- if you inherited the car: see section 20-145; or
- if the car was let on hire in the circumstances set  
out in section 20-155.

(2) However, the amount included cannot exceed the smaller of these  
limits:

- (a) the total lease payments for the lease that you or another  
entity have deducted or can deduct under this Act for an  
income year;
- (b) the amount of \*notional depreciation for the lease period.

Note 1: If, because of more than one lease of the car, there is more than one  
way to work out the amount to be included, you only include the  
largest amount: see section 20-130.

Note 2: In some cases you reduce the amount to be included:

- if there has been an earlier disposal of the car, or of an interest in it: see section 20-140; or
- if another provision requires you to include an amount because of the disposal: see section 20-150.

- (3) You increase those limits if you have previously leased the \*car from the same lessor, or from an \*associate of that lessor.

You increase the first limit by the total lease payments for each previous lease of that kind that you or another entity have deducted or can deduct under this Act for an income year.

You increase the second limit by the amount of \*notional depreciation for the period of each previous lease of that kind.

### 20-115 Working out the profit on the disposal

- (1) The **profit** on the disposal is the amount by which the \*consideration receivable for the disposal exceeds:

- the amount it cost you to acquire the \*car;

plus:

- any capital expenditure you incurred on the car after acquiring it.

- (2) The **consideration receivable** is worked out using this table:

<b>Consideration receivable for the disposal of the car</b>		
<b>Item</b>	<b>In this situation:</b>	<b>the consideration receivable is:</b>
1	you sell the *car for a price specific to it	that price, less the expenses of the sale
2	you sell the *car with other property without a specific price being allocated to it	the part of the total sale price that is reasonably attributable to the car less the part of the reasonably attributable expenses of the sale
3	you trade the *car in and buy another car	the value of the trade-in, plus any other consideration you receive

Consideration receivable for the disposal of the car		
Item	In this situation:	the consideration receivable is:
4	you sell the *car and another entity buys another car	the amount by which the cost of the other car is reduced by the sale, plus any other consideration you receive
5	you dispose of the *car to an insurer because it is lost or destroyed	the amount or value received or receivable under the insurance policy

## 20-120 Meaning of *notional depreciation*

This is how to work out the *notional depreciation* for a lease period:

### *Method statement*

#### *Step 1.* Compare:

- the \*car's \*cost to the lessor for the purposes of Subdivision 42-B (which is about working out the cost of \*plant for the purposes of depreciation);

with:

- the car's \*termination value for the purposes of section 42-205 when the lessor disposed of it.

#### *Step 2.* If the car's cost exceeds the car's termination value, multiply the excess by:

- the number of days in the lease period;

divided by:

- the number of days the lessor owned the car.

#### *Step 3.* The result is the *notional depreciation* for the lease period.

*Step 4.* If the car's cost does *not* exceed the car's termination value, the ***notional depreciation*** for the lease period is zero.

Note 1: The notional depreciation for the lease period represents:

- the amount you could have deducted for depreciation of the car if, instead of leasing it, you had owned it and used it solely for the purpose of producing assessable income for that period;

adjusted by:

- the balancing adjustment you would have made if you had disposed of the car at the end of that period.

Note 2: The car's cost to the lessor is worked out differently if the lessor acquired it in the 1996-97 income year or an earlier income year: see section 20-105 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 3: The car's termination value is worked out differently if the lessor disposed of it in the 1996-97 income year or an earlier income year: see section 20-110 of the *Income Tax (Transitional Provisions) Act 1997*.

## The associate case

### 20-125 Disposal of a leased car for profit

- (1) Your assessable income includes the \*profit you make on disposing of a \*car if:
- (a) section 20-110 does *not* include an amount in your assessable income because of the disposal; and
  - (b) the car was designed mainly for carrying passengers; and
  - (c) the car was leased to you or your \*associate; and
  - (d) you, your associate or another entity can deduct for the income year any of the lease payments paid or payable by the lessee, or have deducted or can deduct any of them for an earlier income year, under this Act; and
  - (e) either:
    - (i) you, your associate, or entities including you or your associate, acquired the car from the lessor; or
    - (ii) another entity acquired the car from the lessor under an \*arrangement that enabled you or your associate to acquire the car.

Note 1: Even if subsection (1) does not apply, an amount may be included in your assessable income if you disposed of an interest in a car (rather than the car itself): see section 20-160.

Note 2: In some cases you do *not* include an amount in your assessable income:

- if there has been an earlier disposal of the car for market value: see section 20-135; or
- if you inherited the car: see section 20-145; or
- if the car was let on hire in the circumstances set out in section 20-155.

(2) However, the amount included cannot exceed the smallest of these limits:

- (a) the total lease payments for the lease that you, your \*associate or another entity have deducted or can deduct under this Act for an income year;
- (b) the amount of \*notional depreciation for the lease period;
- (c) if an entity other than you, or if entities including you, acquired the \*car from the lessor—the amount by which the \*consideration receivable for the disposal of the car by you exceeds the total of:
  - (i) the car's cost to that entity, or those entities; and
  - (ii) any capital expenditure that entity, or any of those entities, incurred on the car after that acquisition and before you acquired it.

Note 1: If, because of more than one lease of the car, there is more than one way to work out the amount to be included, you only include the largest amount: see section 20-130.

Note 2: In some cases you reduce the amount to be included:

- if there has been an earlier disposal of the car, or of an interest in it: see section 20-140; or
- if another provision requires you to include an amount because of the disposal: see section 20-150.

Example: Your associate leases a car for 5 years and then acquires it from the lessor for \$4,000. Your associate sells it to you for \$3,000. You sell it for \$10,000.

Your profit is \$10,000 (the consideration receivable) less \$3,000 (the car's cost to you) = \$7,000.

The first 2 limits on the amount to be included in your assessable income are \$9,000 (total deductible lease payments for the lease) and \$8,000 (notional depreciation for the lease period).

Since your associate acquired the car from the lessor, the third limit is \$10,000 (the consideration receivable by you) less \$4,000 (the car's cost to the associate) = \$6,000.

The amount you include in your assessable income *cannot* exceed the smallest of the limits. So, you do not include your profit of \$7,000. Instead, you include \$6,000 (the smallest of the limits).

- (3) You increase the first 2 limits if you, or your associate, have previously leased the \*car from the same lessor, or from an associate of that lessor.

You increase the first limit by the total lease payments for each previous lease of that kind that you, your \*associate or another entity have deducted or can deduct under this Act for an income year.

You increase the second limit by the amount of \*notional depreciation for the period of each previous lease of that kind.

## **Successive leases**

### **20-130 Successive leases**

If, because of 2 or more leases of the \*car, there are different amounts that could be included in your assessable income because of the disposal, only the largest of those amounts is included.

## **Previous disposals of the car**

### **20-135 No amount included if earlier disposal for market value**

You do *not* include an amount in your assessable income because of the disposal if, after the lessor disposed of the \*car and before you disposed of it, an entity other than you disposed of the car and:

- (a) the \*consideration receivable for that disposal was at least the market value of the car at the time of that disposal; or
- (b) because of that disposal, that market value was included, or an amount worked out using that market value was included, in the entity's assessable income under this Act.



## 20-140 Reducing the amount to be included if there has been an earlier disposal

Each limit on the amount to be included in your assessable income because of your disposal of the \*car is reduced if, after the lease period began and before your disposal, the car, or an interest in it, was disposed of in one of these situations:

Reducing each limit on the amount to be included		
Item	In this situation:	reduce each limit by:
1	Section 20-110 or 20-125 included an amount in your assessable income in respect of such an earlier disposal by you	that amount
2	Section 20-110 or 20-125 included an amount in another entity's assessable income in respect of such an earlier disposal by the other entity	that amount
3	Section 20-110 or 20-125 would have included an amount in your assessable income in respect of such an earlier disposal by you but for the operation of section 20-145	that amount
4	Section 20-110 or 20-125 would have included an amount in another entity's assessable income in respect of such an earlier disposal by the other entity but for the operation of section 20-145	that amount
5	Section 20-150 reduced the amount to be included in your assessable income in respect of such an earlier disposal by you	the amount of the reduction
6	Section 20-150 reduced the amount to be included in another entity's assessable income in respect of such an earlier disposal by the other entity	the amount of the reduction

Examples: Your associate leases a car for 5 years and then acquires it. Your associate disposes of it to you and section 20-110 includes \$500 in your associate's assessable income.

You later dispose of the car.

In working out the amount to include in your assessable income for your disposal, you *can* reduce each limit in subsection 20-125(2) by \$500 because the disposal by your associate occurred *after* the lease period began.

Contrast this case:

You lease a car for 5 years and then acquire it. You dispose of it to another entity and section 20-110 includes \$1,000 in your assessable income.

You lease the car from that entity for 2 years and then acquire it. You later dispose of it.

In working out the amount to include in your assessable income in respect of the second lease, you *cannot* reduce each limit in subsection 20-110(2) by \$1,000 because the first disposal did *not* occur after the start of that lease.

Note: If the earlier disposal occurred in the 1996-97 income year or an earlier income year, each limit may be able to be reduced by a further amount: see section 20-115 of the *Income Tax (Transitional Provisions) Act 1997*.

## Miscellaneous rules

### 20-145 No amount included if you inherited the car

You do *not* include an amount in your assessable income because of the disposal if you inherited the \*car.

### 20-150 Reducing the amount to be included if another provision requires you to include an amount for the disposal

The amount to be included in your assessable income because of the disposal is reduced by any amount that another provision of this Act (except sections 42-190 and 42-240) requires you to include in your assessable income because of the disposal.

Note: Sections 42-190 and 42-240 are about including an amount after making a balancing adjustment on the disposal of a car.

### 20-155 Exception for particular cars taken on hire

This Subdivision does not apply to these kinds of leases:

- (a) letting a \*car on hire under a hire purchase agreement; or
- (b) letting a \*car on hire under an agreement of a kind ordinarily entered into by people who take cars on hire intermittently on an hourly, daily, weekly or monthly basis.

## **Disposals of interests in a car: special rules apply**

### **20-160 Disposal of an interest in a car**

- (1) This Subdivision applies to the disposal of an interest in a \*car in almost the same way as it does to the disposal of the car itself. The differences are set out below.
- (2) Your assessable income includes so much of your \*profit on the disposal as is reasonable. The limits in subsections 20-110(2) and 20-125(2) do *not* apply.
- (3) The cost of the interest to you is taken to be a reasonable amount.
- (4) Sections 20-135 and 20-140 do *not* apply to the disposal.
  - Note 1: Section 20-135 says that you do not include an amount if there has been an earlier disposal of the car for market value.
  - Note 2: Section 20-140 allows you to reduce the amount to be included if there has been an earlier disposal of the car.
- (5) Section 20-145 applies to the disposal if you inherited either the interest or the \*car itself.
  - Note: Section 20-145 says that you do not include an amount if you inherited the car.

*[The next Part is Part 2-5.]*

### **3 Part 2-5 (link note after heading)**

Omit “*Division 26*”, substitute “*Division 25*”.

### **4 Before Division 26**

Insert:

## Division 25Guide to Division 25

### 25-1 What this Division is about

This Division sets out some amounts you can deduct. Remember that the general rules about deductions in Division 8 (which is about general deductions) apply to this Division.

### Table of sections

#### Operative provisions

25-5	Tax-related expenses
25-10	Repairs
25-15	Amount paid for lease obligation to repair
25-20	Lease document expenses
25-25	Borrowing expenses
25-30	Expenses of discharging a mortgage
25-35	Bad debts
25-40	Loss from profit-making undertaking or plan
25-45	Loss by theft etc.
25-50	Payments of pensions, gratuities or retiring allowances
25-55	Payments to associations
25-60	Parliament election expenses
25-70	Deduction for election expenses does not extend to entertainment
25-75	Rates and land taxes on premises used to produce mutual receipts

### Operative provisions

#### 25-5 Tax-related expenses

- (1) You can deduct expenditure you incur to the extent that it is for:
  - (a) managing your \*tax affairs; or
  - (b) complying with an obligation imposed on you by a  
\*Commonwealth law, insofar as that obligation relates to the  
\*tax affairs of an entity; or

- 
- (c) interest under section 170AA (Underpayment of tax) or 207A (Late payment of tax) of the *Income Tax Assessment Act 1936*.

Note: To find out whether a trustee of a deceased estate can deduct expenditure under this section, see subsection 69(7) of the *Income Tax Assessment Act 1936*.

*No deduction for certain expenditure*

- (2) You cannot deduct under subsection (1):
- (a) \*tax; or
  - (b) an amount payable under Part VI (Collection and recovery of tax) of the *Income Tax Assessment Act 1936*; or
  - (c) expenditure for borrowing money (including payments of interest) to pay an amount covered by paragraph (a) or (b); or
  - (d) expenditure for a matter relating to the commission (or possible commission) of an offence against an \*Australian law or a \*foreign law; or
  - (e) a fee or commission for advice about the operation of a \*Commonwealth law relating to taxation, unless that advice is provided by a \*recognised tax adviser.

*No deduction for expenditure excluded from general deductions*

- (3) You cannot deduct expenditure under subsection (1) to the extent that a provision of this Act (except section 8-1) expressly prevents or limits your deducting it under section 8-1 (about general deductions). It does not matter whether the provision specifically refers to section 8-1.

*No deduction for capital expenditure*

- (4) You cannot deduct capital expenditure under subsection (1). However, for this purpose, expenditure is not capital expenditure merely because the \*tax affairs concerned relate to matters of a capital nature.

Example: Under this section, you can deduct expenditure you incur in applying for a private ruling on whether you can depreciate an item of property.

*Use of property taken to be for income producing purpose*

- (5) Under some provisions of this Act it is important to decide whether you used property for the \*purpose of producing assessable income. For provisions of that kind, your use of property is taken to be for that purpose insofar as you use the property for:
- (a) managing your \*tax affairs; or
  - (b) complying with an obligation imposed on you by a \*Commonwealth law, insofar as that obligation relates to the \*tax affairs of another entity.

Example: You buy a computer to prepare your tax returns. The expenditure you incur in buying the computer is capital expenditure and cannot be deducted under this section.

However, to the extent that you use the computer in preparing your income tax return, you will be able to depreciate your computer and deduct an amount under section 54 (Depreciation) of the *Income Tax Assessment Act 1936*. That is because, under this subsection, the computer is property that you are taken to use for the purpose of producing assessable income.

- (6) If another provision of this Act expressly provides that a particular use of property is not taken to be for the \*purpose of producing assessable income, that provision overrides subsection (5).

## 25-10 Repairs

- (1) You can deduct expenditure you incur for repairs to premises (or part of premises), \*plant, machinery, tools or articles that you held or used *solely* for the \*purpose of producing assessable income.

*Property held or used partly for that purpose*

- (2) If you held or used the property only *partly* for that purpose, you can deduct so much of the expenditure as is reasonable in the circumstances.

*No deduction for capital expenditure*

- (3) You cannot deduct capital expenditure under this section.

**25-15 Amount paid for lease obligation to repair**

You can deduct an amount that you pay for failing to comply with a lease obligation to make repairs to premises if you use or have used the premises for the <sup>\*</sup>purpose of producing assessable income.

Note: The amount is assessable income of the entity to which you pay it: either as ordinary income under section 6-5 or because it is included by section 15-25.

**25-20 Lease document expenses**

- (1) You can deduct expenditure you incur for preparing, registering or stamping:
- (a) a lease of property; or
  - (b) an assignment or surrender of a lease of property;
- if you have used or will use the property *solely* for the <sup>\*</sup>purpose of producing assessable income.

*Property used partly for that purpose*

- (2) If you have used, or will use, the leased property only *partly* for that purpose, you can deduct the expenditure to the extent that you have used, or will use, the leased property for that purpose.

**25-25 Borrowing expenses**

- (1) You can deduct expenditure you incur for borrowing money, to the extent that you use the money for the <sup>\*</sup>purpose of producing assessable income. In most cases the deduction is spread over the <sup>\*</sup>period of the loan.

For the cases where the deduction is *not* spread, see subsection (6).

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Note: Your deductions under this section may be reduced if any of your commercial debts have been forgiven in the income year: see Subdivision 245-E of Schedule 2C to the *Income Tax Assessment Act 1936*.

*Income year when money used solely for the purpose of producing assessable income*

- (2) You can deduct for an income year the maximum amount worked out under subsection (4) if you use the borrowed money during that income year *solely* for the \*purpose of producing assessable income.

Example: In 1997-98 you borrow \$100,000 and incur expenditure of \$1,500 for the borrowing. You use the money to buy a house. Throughout 1998-99 you rent the house to a tenant. You can deduct for the expenditure for 1998-99 the maximum amount worked out under subsection (4).

*Income year when borrowed money used partly for that purpose*

- (3) If you use the money only *partly* for that purpose during that income year, you can deduct the proportion of that maximum amount that is appropriate having regard to the extent that you used the borrowed money for that purpose.

Note: You cannot deduct anything for that income year if you do not use the money for that purpose at all during that income year.

*Maximum deduction for an income year*

- (4) You work out as follows the maximum amount that you can deduct for the expenditure for an income year:

<i>Method statement</i>
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*Step 1.* Work out the **remaining expenditure** as follows:

- For the income year in which the \*period of the loan begins, it is the amount of the expenditure.
- For a later income year, it is the amount of the expenditure reduced by the the maximum amount that you can deduct for the expenditure for each earlier income year.

*Step 2.* Work out the **remaining loan period** as follows:

- For the income year in which the \*period of the loan begins, it is the period of the loan (as determined at the end of the income year).
- For a later income year, it is the period from the start of the income year until the end of the period of the loan (as determined at the end of the income year).

*Step 3.* Divide the remaining expenditure by the number of days in the remaining loan period.

*Step 4.* Multiply the result from Step 3 by the number of days in the remaining loan period that are in the income year.

**Example:** To continue the example in subsection (2): suppose the original period of the loan is 4 years starting on 1 September 1997. What is the maximum amount you can deduct for the expenditure for 1997-98?

Applying the method statement:

After Step 1: the remaining expenditure is \$1,500 (the amount of the expenditure).

After Step 2: the remaining loan period is 4 years from 1 September 1997 (1,461 days).

After Step 3: the result is \$1,500 divided by 1,461 = \$1.03.

After Step 4: the result is \$1.03 multiplied by 302 days = \$310.06.

Suppose you repay the loan early, on 31 December 1998. What is the maximum amount you can deduct for the expenditure for 1998-99?

Applying the method statement:

After Step 1: the remaining expenditure is \$1,500 (the amount of the expenditure) reduced by \$310.06 (the maximum amount you can deduct for 1997-98) = \$1,189.94.

After Step 2: the remaining loan period is the period from 1 July 1998 to 31 December 1998 (183 days).

After Step 3: the result is \$1,189.94 divided by 183 days = \$6.50.

After Step 4: the result is \$6.50 multiplied by 183 days = \$1,189.94.

*Meaning of period of the loan*

- (5) The **period of the loan** is the shortest of these periods:
- (a) the period of the loan as specified in the original loan contract;
  - (b) the period starting on the first day on which the money was borrowed and ending on the day the loan is repaid;
  - (c) 5 years starting on the first day on which the money was borrowed.

*When deduction not spread*

- (6) If the total of the following is \$100 or less:
- (a) each amount of expenditure you incur in an income year for borrowing money you use during that income year *solely* for the \*purpose of producing assessable income;
  - (b) for each amount of expenditure you incur in that income year for borrowing money you use during that income year only *partly* for that purpose—the proportion of that amount that is appropriate having regard to the extent that you use the money during that income year for that purpose;
- you can deduct for the income year:
- (c) each amount covered by paragraph (a); and
  - (d) each proportion covered by paragraph (b).

## 25-30 Expenses of discharging a mortgage

*Mortgage for borrowed money*

- (1) You can deduct expenditure you incur to discharge a mortgage that you gave as security for the repayment of money that you borrowed if you used the money *solely* for the \*purpose of producing assessable income.
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*Mortgage for property bought*

- (2) You can deduct expenditure you incur to discharge a mortgage that you gave as security for the payment of the whole or part of the purchase price of property that you bought if you used the property *solely* for the \*purpose of producing assessable income.

*Money or property used partly for that purpose*

- (3) If you used the money you borrowed, or the property you bought, only *partly* for the \*purpose of producing assessable income, you can deduct the expenditure to the extent that you used the money or property for that purpose.

*No deduction for payments of principal or interest*

- (4) You cannot deduct payments of principal or interest under this section.

## **25-35 Bad debts**

- (1) You can deduct a debt (or part of a debt) that you write off as bad in the income year if:
- (a) it was included in your assessable income for the income year or for an earlier income year; or
  - (b) it is in respect of money that you lent in the ordinary course of your \*business of lending money.

Note: If a bad debt is in respect of a payment that is required to be made under a qualifying security (within the meaning of Division 16E of Part III of the *Income Tax Assessment Act 1936*): see subsection 63(1A) of that Act.

*Writing off a debt you have bought*

- (2) You can deduct a debt that you write off as bad in the income year if you bought the debt in the ordinary course of your \*business of lending money. However, you cannot deduct more than the expenditure you incurred in buying the debt.

*Writing off part of a debt you have bought*

- (3) You can deduct a part of a debt if:
- (a) you write off that part as bad in the income year; and

- (b) you bought the debt in the ordinary course of your \*business of lending money.
- (4) However, the maximum that you can deduct under subsection (3) for one or more income years is the amount (if any) by which:
- the expenditure you incurred in buying the debt; exceeds:
  - so much of the debt as has not yet been written off as bad.

*Special rules affecting deductions under this section*

- (5) Your entitlement to deductions under this section may be affected by the rules described in the table.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

<b>Rules affecting deductions for bad debts</b>		
<b>Item</b>	<b>For the rules about this situation:</b>	<b>See:</b>
1	A company cannot deduct a bad debt if there has been a change in ownership or control of the company and the company has not carried on the same business.	<b>sections 63A and 63C</b>
2	A company cannot deduct a bad debt in various other cases that may involve trafficking in bad debts.	<b>sections 63B and 63D</b>
3	A deduction under this section is reduced if the debt is forgiven and the debtor and creditor are companies under common ownership and agree for the creditor to forgo the deduction to a specified extent.	<b>section 245-90 of Schedule 2C</b>

**25-40 Loss from profit-making undertaking or plan**

- (1) You can deduct a loss arising from the carrying on or carrying out of a profit-making undertaking or plan if any profit from that plan would have been included in your assessable income by section 15-15 (which is about profit-making undertakings and plans).

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*When section does not apply*

- (2) You cannot deduct a loss under subsection (1) if the loss arises in respect of the sale of property acquired on or after 20 September 1985.

Note: If you sell property you acquired *before* 20 September 1985 for profit-making by sale, you may be able to deduct a loss on the sale: see section 52 of the *Income Tax Assessment Act 1936*.

*Notice to Commissioner*

- (3) You can deduct a loss under subsection (1), insofar as it arises in respect of property, only if:
- (a) you notified the Commissioner that you acquired the property for the purpose of profit-making by sale or for the carrying on or carrying out of any profit-making undertaking or plan (however described); or
  - (b) the Commissioner is satisfied that you acquired the property for either of those purposes.

*When notice must have been given*

- (4) The notice must have been given at or before the time you lodged your \*income tax return:
- (a) for the income year in which you acquired the property; or
  - (b) if you were not required to lodge an income tax return for that income year—for the first income year after that income year for which you *were* required to lodge one.

## **25-45 Loss by theft etc.**

You can deduct a loss in respect of money if:

- (a) you discover the loss in the income year; and
- (b) the loss was caused by theft, stealing, embezzlement, larceny, defalcation or misappropriation by your employee or \*agent (other than an individual you employ solely for private purposes); and
- (c) the money was included in your assessable income for the income year, or for an earlier income year.

## **25-50 Payments of pensions, gratuities or retiring allowances**

- (1) You can deduct a payment of a pension, gratuity or retiring allowance that you make to:
  - (a) an employee; or
  - (b) a former employee; or
  - (c) a dependant of an employee or a former employee.
- (2) However, you can deduct it only to the extent that it is made in good faith in consideration of the past services of the employee, or former employee, in any \*business that you carried on for the purpose of gaining or producing assessable income.
- (3) You cannot deduct a payment under this section if you can deduct it under any other provision of this Act.

## **25-55 Payments to associations**

- (1) You can deduct a payment you make for membership of a trade, business or professional association.

Note: Alternatively, you can deduct the expense under section 8-1 (which is about general deductions) if you satisfy the requirements of that section.

*Maximum amount—\$42*

- (2) However, \$42 is the maximum amount you can deduct under this section for the payments that you make in the income year to any one association.

*If you deduct under section 8-1*

- (3) If you deduct a payment under section 8-1 (which is about general deductions) instead of this section:
  - (a) the payment does *not* count towards the \$42 limit; and
  - (b) the amount that you can deduct for the payment is *not* limited to \$42.

## **25-60 Parliament election expenses**

You can deduct expenditure you incur in contesting an election for membership of:

- (a) the Parliament of the Commonwealth; or
- (b) the Parliament of a State; or
- (c) the Legislative Assembly for the Australian Capital Territory; or
- (d) the Legislative Assembly of the Northern Territory of Australia.

Note: Entertainment expenses are excluded: see section 25-70.

*[The next section is section 25-70.]*

## **25-70 Deduction for election expenses does not extend to entertainment**

- (1) To the extent that you incur expenditure in respect of providing \*entertainment, you cannot deduct it under section 25-60.
- (2) However, subsection (1) does not stop you deducting expenditure to the extent that you incur it in respect of:
  - (a) providing \*entertainment that is available to the public generally; or
  - (b) providing food or drink to yourself, unless it would be concluded that you have a purpose of enabling or facilitating \*entertainment to be provided to someone else.

## **25-75 Rates and land taxes on premises used to produce mutual receipts**

- (1) An entity can deduct these amounts it pays for premises:
  - (a) rates which are annually assessed;
  - (b) land tax imposed under a \*State law or \*Territory law.

But only if it uses the premises:

- (c) for the purpose of producing mutual receipts; or
- (d) in carrying on a \*business for the purpose of producing mutual receipts.

*When premises used only for deductible purposes*

- (2) The entity can deduct the *whole* of the rates or land tax if it uses the premises *only* in one or more of these ways:
- (a) for the purpose of producing mutual receipts;
  - (b) in carrying on a \*business for the purpose of producing mutual receipts;
  - (c) for the \*purpose of producing assessable income.

*When premises used partly for deductible purposes*

- (3) If the entity uses the premises *partly* in one or more of the ways referred to in subsection (2) and partly in some other way, it can deduct the rates or land tax to the extent that it uses the premises in one or more of the ways referred to in that subsection.

*No deduction under section 8-1*

- (4) The entity cannot deduct the rates or land tax under section 8-1 (which is about general deductions).

**5 Division 26 (heading and link note)**

Repeal the heading and the link note, substitute:



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## Division 26Guide to Division 26

### 26-1 What this Division is about

This Division sets out some amounts that you *cannot* deduct, or that you cannot deduct in full.

### Table of sections

#### Operative provisions

26-5	Penalties
26-10	Leave payments
26-20	HECS and student assistance
26-30	Relative's travel expenses
26-35	Reducing deductions for amounts paid to related entities
26-40	Maintaining your family
26-45	Recreational club expenses
26-50	Expenses for a leisure facility or boat

### Operative provisions

#### 26-5 Penalties

You cannot deduct under this Act:

- (a) an amount (however described) payable, by way of penalty, under an \*Australian law or a \*foreign law; or
- (b) an amount ordered by a court to be paid on the conviction of an entity for an offence against an \*Australian law or a \*foreign law.

#### 26-10 Leave payments

- (1) You cannot deduct under this Act a loss or outgoing for long service leave, annual leave, sick leave or other leave except:
  - (a) an amount paid in the income year to the individual to whom the leave relates (or, if that individual has died, to that individual's dependant or \*legal personal representative); or

- (b) an \*accrued leave transfer payment that is made in the income year.
- (2) An ***accrued leave transfer payment*** is a payment that an entity makes:
  - (a) in respect of an individual's leave (some or all of which accrued while the entity was required to make payments in respect of the individual's leave, or leave the individual might take); and
  - (b) when the entity is no longer required (or is about to stop being required) to make payments in respect of such leave; and
  - (c) to another entity when the other entity has begun (or is about to begin) to be required to make payments in respect of such leave; and
  - (d) under (or for the purposes of facilitating the provisions of) an \*Australian law, or an award, order, determination or industrial agreement under an \*Australian law.

It does not matter whether the leave accrues to the individual as an employee or for some other reason.

Example: Your employee goes to a new employer. You pay the new employer \$2,000 for the employee's unused long service leave because an industrial agreement requires you to make that payment.

Note: An accrued leave transfer payment is included in the assessable income of the entity to which it is made: see section 15-5.

[The next section is section 26-20.]

## 26-20 HECS and student assistance

- (1) You cannot deduct under this Act:
  - (a) a contribution made under Chapter 4 of the *Higher Education Funding Act 1988*; or
  - (b) a basic charge within the meaning of Chapter 5 of that Act; or
  - (c) a payment made to reduce a debt to the Commonwealth under Chapter 5A of that Act; or

- (d) a payment made to reduce a debt to the Commonwealth, or to a participating corporation, under Part 4A of the *Student Assistance Act 1973*.

*Exception when you provide a fringe benefit*

- (2) Subsection (1) does not stop you deducting expenditure you incur in \*providing a \*fringe benefit.

*[The next section is section 26-30.]*

## **26-30 Relative's travel expenses**

- (1) You cannot deduct under this Act a loss or outgoing you incur, insofar as it is attributable to your \*relative's travel, if:
  - (a) you travelled in the course of performing your duties as an employee, or in the course of carrying on a \*business for the purpose of gaining or producing your assessable income; and
  - (b) your relative accompanied you while you travelled.

*Exception to subsection (1)*

- (2) Subsection (1) does not stop you deducting a loss or outgoing if:
  - (a) your \*relative, while accompanying you, performed substantial duties as your employer's employee, or as your employee; and
  - (b) it is reasonable to conclude that your relative would still have accompanied you even if he or she had not had a personal relationship with you.

*Exception when you provide a fringe benefit*

- (3) Subsection (1) does not stop you deducting expenditure you incur in \*providing a \*fringe benefit.

*This section applies to PAYE earners*

- (4) If an individual is *not* an employee, but *is* a \*PAYE earner, this section applies to him or her as if:
  - (a) he or she were an employee; and

- (b) the entity (the ***notional employer***) who pays (or is liable to pay) \*PAYE earnings because of which he or she is (or would be) a \*PAYE earner were his or her employer; and
- (c) any other individual who receives (or is entitled to receive) \*PAYE earnings:
  - (i) because of which the other individual is (or would be) a \*PAYE earner; and
  - (ii) that the notional employer pays (or is liable to pay) to the other individual;were also an employee of the notional employer.

*This section applies to entities liable to PAYE earnings*

- (5) If an entity is *not* an employer, but pays (or is liable to pay) \*PAYE earnings, this section applies to the entity as if:
  - (a) it were an employer; and
  - (b) an individual to whom the entity pays (or is liable to pay) \*PAYE earnings were the entity's employee.

## 26-35 Reducing deductions for amounts paid to related entities

*You can only deduct reasonable amounts paid to related entities*

- (1) If, under another provision of this Act, you can deduct an amount for a payment you make, or for a liability you incur, to a \*related entity, then you can only deduct so much of the amount as the Commissioner considers reasonable.

Note: This section has a special operation if the payment is made, or the liability is incurred, by a partnership in which a private company is a partner: see section 65 (Payments to associated persons and relatives) of the *Income Tax Assessment Act 1936*.

*Meaning of related entity*

- (2) A ***related entity*** is any of the following:
  - (a) your \*relative; or
  - (b) a partnership in which your relative is a partner.
- (3) In the case of a partnership, a ***related entity*** is any of the following:
  - (a) a \*relative of a partner in the partnership;

- (b) an individual who is or has been a director of a company that is a partner in the partnership and is a \*private company for the income year;
- (c) an entity that is or has been a shareholder in a company of that kind;
- (d) a \*relative of an individual who is or has been a director or shareholder of a company of that kind;
- (e) a beneficiary of a trust if the trustee is a partner in the partnership;
- (f) a \*relative of a beneficiary of a trust if the trustee is a partner in the partnership;
- (g) another partnership, if a partner in the other partnership is a \*relative of a partner in the first partnership.

However, a partner in a partnership is *not* a **related entity** of the partnership.

*If you can't deduct, then related entity doesn't include amount as income*

- (4) To the extent that subsection (1) stops you deducting an amount, the amount is neither assessable income, nor exempt income, of the \*related entity.

*Amendments of assessments*

- (5) The Commissioner can amend an assessment at any time for the purpose of giving effect to subsection (4).

Example: An amount was not included in the related entity's assessable income because at the time you could not deduct the amount. At a later time you discover that you could deduct the amount and your assessment is amended. The Commissioner can amend the entity's assessment so that the amount is included in the entity's assessable income.

## 26-40 Maintaining your family

You cannot deduct under this Act expenditure you incur for maintaining:

- (a) your \*spouse (except a spouse permanently living separately and apart from you); or
- (b) your \*child who is under 16 years.

Example: A farmer cannot deduct an amount for food or lodgings that the farmer provides to his or her child who is under 16 years for the work the child performs on the farm.

## 26-45 Recreational club expenses

- (1) You cannot deduct under this Act a loss or outgoing to the extent you incur it to obtain or maintain:
  - (a) membership of a \*recreational club; or
  - (b) rights to enjoy (otherwise than as a \*member) facilities provided by a \*recreational club for the use or benefit of its \*members;whether for yourself or someone else.

### *Meaning of recreational club*

- (2) A **recreational club** is a company that was established or is carried on mainly to provide facilities, for the use or benefit of its \*members, for drinking, dining, \*recreation or entertainment.

### *Exception when you provide a fringe benefit*

- (3) Subsection (1) does not stop you deducting expenditure you incur in \*providing a \*fringe benefit.

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## 26-50 Expenses for a leisure facility or boat

- (1) You cannot deduct under this Act a loss or outgoing to the extent you incur it:

- (a) to acquire ownership of a \*leisure facility or boat; or
- (b) to retain ownership of a \*leisure facility or boat; or
- (c) to acquire rights to use a \*leisure facility or boat; or
- (d) to retain rights to use a \*leisure facility or boat; or
- (e) to use, operate, maintain or repair a \*leisure facility or boat; or
- (f) in relation to any obligation associated with your ownership of a \*leisure facility or boat; or
- (g) in relation to any obligation associated with your rights to use a \*leisure facility or boat.

However, there are exceptions (see subsections (3), (4), (5), (6) and (8)).

*What is a leisure facility?*

- (2) A **leisure facility** is land, a building, or part of a building or other structure, that is used (or held for use) for holidays or \*recreation.

*Exception—leisure facilities*

- (3) Subsection (1) does not stop you deducting a loss or outgoing for a \*leisure facility if at all times in the income year:
- (a) you hold the leisure facility for sale in the ordinary course of your business of selling leisure facilities; or
  - (b) you use the leisure facility (or hold it for use) mainly to provide it:
    - (i) in the ordinary course of your \*business of providing leisure facilities for payment; or
    - (ii) to produce your assessable income in the nature of rents, lease premiums, licence fees or similar charges; or
    - (iii) for your employees to use; or
    - (iv) for the care of your employees' children.

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In the case of a company, subparagraphs (b)(iii) and (iv) do not apply to employees who are \*members or directors of the company.

*Exception—part year use of leisure facilities*

- (4) If you use a \*leisure facility (or hold it) as described in subsection (3) at all times during *part* of the income year, then subsection (1) does not stop you deducting so much of the loss or outgoing as is reasonable in the circumstances.

*Exception—boats*

- (5) Subsection (1) does not stop you deducting a loss or outgoing for a boat if at all times in the income year you:
- (a) hold the boat as \*trading stock for sale in the ordinary course of a \*business that you carry on; or
  - (b) use the boat (or hold it) mainly for letting it on hire in the ordinary course of a \*business that you carry on; or
  - (c) use the boat (or hold it) mainly for transporting for payment in the ordinary course of a \*business that you carry on, the public or goods; or
  - (d) use the boat for a purpose that is essential to the efficient conduct of a \*business that you carry on.

*Exception—part year use of boats*

- (6) If you use a boat (or hold it) as described in subsection (5) at all times during *part* of the income year, then subsection (1) does not stop you deducting so much of the loss or outgoing as is reasonable in the circumstances.

*Anti-avoidance—when exceptions do not apply*

- (7) A \*leisure facility or boat is taken not to be used (or held) as described in subsection (3) or (5) if:
- (a) apart from this subsection, the leisure facility or boat would be used (or held) in that way because of a \*scheme; and
  - (b) in the Commissioner's opinion, the scheme would not have been entered into or carried out if this section had not been enacted.



*Exception when you provide a fringe benefit*

- (8) Subsection (1) does not stop you deducting expenditure you incur in \*providing a \*fringe benefit.

**6 Section 28-185 (link note)**

Omit “*Division 36*”, substitute “*Division 30*”.

**7 After Division 28**

Insert:

## **Division 30**Table of Subdivisions

### Guide to Division 30

30-A	Deductions for gifts or contributions
30-B	Tables of recipients for deductible gifts
30-C	Rules applying to particular gifts of property
30-D	Testamentary gifts under the Cultural Bequests Program
30-E	Register of environmental organisations
30-F	Register of cultural organisations
30-G	Index to this Division

## **Guide to Division 30**

### **30-1 What this Division is about**

This Division sets out the rules for working out deductions for certain gifts or contributions that you make.

### **Table of sections**

30-5	How to find your way around this Division
30-10	Index

### **30-5 How to find your way around this Division**

- (1) You should start at Subdivision 30-A unless you are making a testamentary gift under the Cultural Bequests Program.

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Note: Subdivision 30-D deals with the deductibility of such a gift.

- (2) Subdivision 30-A contains a table of all the gifts and contributions that you can deduct. You need to look at the table to see whether the type of gift or contribution you are making is covered by it.
- (3) In some cases, the table sends you off to Subdivision 30-B. It has a number of tables that list particular funds, authorities or institutions that deductible gifts can be made to.
- (4) In other cases, the table sends you off to Subdivision 30-C. It contains rules that apply to particular gifts of property.
- (5) Subdivision 30-E requires the establishment of a register of \*environmental organisations. Subdivision 30-F requires the establishment of a register of \*cultural organisations. Their only relevance to you is that you can deduct a gift that you make to a fund listed on either register.

### **30-10 Index**

There is an index to this Division in Subdivision 30-G.

## **Subdivision 30-A—Deductions for gifts or contributions**

### **Table of sections**

30-15 Table of gifts or contributions that you can deduct

### **30-15 Table of gifts or contributions that you can deduct**

- (1) You can deduct a gift or contribution that you make in the situations set out in the following table. It tells you:
  - who the recipient of the gift or contribution can be; and
  - the type of gift or contribution that you can make; and
  - how much you can deduct for the gift or contribution; and
  - any special conditions that apply.
- (2) A testamentary gift or contribution is not deductible under this section.

Note: Subdivision 30-D deals with the deductibility of testamentary gifts under the Cultural Bequests Program.

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**Deductible gifts or contributions**

<b>Recipient</b>	<b>Type of gift or contribution</b>	<b>How much you can deduct</b>
1 A fund, authority or institution covered by an item in any of the tables in Subdivision 30-B.	A gift of: (a) money; or (b) property (including *trading stock) that you purchased during the 12 months before making the gift; or (c) an item of your *trading stock if: • the gift is a disposal of the item outside the ordinary course of your *business; and • no election has been made, or is made, in relation to the item under Subdivision 385-E (about electing to spread or defer profit from the forced disposal or death of *live stock).	(a) if the gift is money—the amount you are giving; or (b) if the gift is property (except *trading stock covered by paragraph (c))—the lesser of the market value of the property on the day you made the gift and the amount you paid for the property; or (c) if the gift is an item of your *trading stock: • that you disposed of outside the ordinary course of your *business; and • for which no election has been made, or is made, in relation to the item under Subdivision 385-E; the market value of the item on the day you made the gift.
2 A public fund established and maintained under a will or instrument of trust solely for: (a) the purpose of providing money, property or benefits: • to a fund, authority or institution covered by an item in any of the tables in Subdivision 30-B; and • for any purposes set out in the item; or (b) the establishment of such a fund, authority or institution.	A gift of: (a) money; or (b) property (including *trading stock) that you purchased during the 12 months before making the gift; or (c) an item of your *trading stock if: • the gift is a disposal of the item outside the ordinary course of your *business; and • no election has been made, or is made, in relation to the item under Subdivision 385-E (about electing to spread or defer profit from the forced disposal or death of *live stock).	(a) if the gift is money—the amount you are giving; or (b) if the gift is property (except *trading stock covered by paragraph (c))—the lesser of the market value of the property on the day you made the gift and the amount you paid for the property; or (c) if the gift is an item of your *trading stock: • that you disposed of outside the ordinary course of your *business; and • for which no election has been made, or is made, in relation to the item under Subdivision 385-E; the market value of the item on the day you made the gift.

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**Deductible gifts or contributions**

<b>Recipient</b>	<b>Type of gift or contribution</b>	<b>How much you can deduct</b>
3 A political party that is registered under Part XI of the <i>Commonwealth Electoral Act 1918</i> .	A contribution of: (a) money; or (b) property that you purchased during the 12 months before making the contribution.	(a) if the contribution is money—the amount of the contribution; or (b) if the contribution is property—the lesser of the market value of the property on the day you made the contribution and the amount you paid for the property.
4 (a) the Australiana Fund; or (b) a public library in Australia; or (c) a public museum in Australia; or (d) a public art gallery in Australia; or (e) an institution in Australia consisting of a public library, a public museum and a public art gallery or any 2 of them.	A gift of property (except an estate or interest in land or in a building or part of a building).	<p>The general rule is that you can deduct the average of the market values specified in the written valuations you get from approved valuers.</p> <p>Subdivision 30-C sets out:</p> <p>(a) how a person becomes an approved valuer; and (b) the exceptions to the general rule; and (c) the situations when the amount you can deduct is reduced.</p> <p>If the property is jointly owned, see section 30-225 to work out how much of the gift you can deduct.</p>

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**Deductible gifts or contributions**

<b>Recipient</b>	<b>Type of gift or contribution</b>	<b>How much you can deduct</b>
5 The Commonwealth (for the purposes of Artbank).	A gift of property (except an estate or interest in land or in a building or part of a building).	<p>The general rule is that you can deduct the average of the market values specified in the written valuations you get from approved valuers.</p> <p>Subdivision 30-C sets out:</p> <p>(a) how a person becomes an approved valuer; and</p> <p>(b) the exceptions to the general rule; and</p> <p>(c) the situations when the amount you can deduct is reduced.</p> <p>If the property is jointly owned, see section 30-225 to work out how much of the gift you can deduct.</p>
6 (a) the National Trust of Australia (New South Wales); or (b) the National Trust of Australia (Victoria); or (c) The National Trust of Queensland; or (d) The National Trust of South Australia; or (e) The National Trust of Australia (W.A.); or (f) the National Trust of Australia (Tasmania); or (g) The National Trust of Australia (Northern Territory); or (h) the National Trust of Australia (A.C.T.); or (i) the Australian Council of National Trusts.	A gift of a place listed in the Register of the National Estate (kept under the <i>Australian Heritage Commission Act 1975</i> ).	<p>The general rule is that you can deduct the average of the market values specified in the written valuations you get from approved valuers.</p> <p>Subdivision 30-C sets out:</p> <p>(a) how a person becomes an approved valuer; and</p> <p>(b) the exceptions to the general rule; and</p> <p>(c) the situations when the amount you can deduct is reduced.</p> <p>If the place is jointly owned, see section 30-225 to work out how much of the gift you can deduct.</p>

**Subdivision 30-B—Tables of recipients for deductible gifts**

**Table of sections**

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**Health**

30-20 Health

**Education**

30-25 Education

30-30 Gifts that must be for certain purposes

30-35 Gifts to a public fund established to benefit a rural school hostel building must satisfy certain requirements

**Research**

30-40 Research

**Welfare and rights**

30-45 Welfare and rights

**Defence**

30-50 Defence

**Environment**

30-55 The environment

30-60 Gifts to a National Parks body or conservation body must satisfy certain requirements

**Industry, trade and design**

30-65 Industry, trade and design

**The family**

30-70 The family

30-75 Marriage guidance organisations must be approved

### **International affairs**

- 30-80 International affairs  
 30-85 Declaration must be in force at the time you make the gift

### **Sports and recreation**

- 30-90 Sports and recreation

### **Philanthropic trusts**

- 30-95 Philanthropic trusts

### **Cultural organisations**

- 30-100 Cultural organisations

## **Health**

### **30-20 Health**

(1) This table sets out general categories of health recipients.

<b>Health—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
1.1.1	a public hospital	none
1.1.2	a hospital carried on by a society or association otherwise than for the purposes of profit or gain to the individual members of the society or association	none
1.1.3	a public fund established before 23 October 1963 and maintained for the purpose of providing money for hospitals covered by item 1.1.1 or 1.1.2 or for the establishment of such hospitals	none
1.1.4	a public authority engaged in research into the causes, prevention or cure of disease in human beings, animals or plants	the gift must be made for such research



**Health—General**

<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
1.1.5	a public institution engaged solely in research into the causes, prevention or cure of disease in human beings, animals or plants	none

(2) This table sets out specific health recipients.

**Health—Specific**

<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
1.2.1	The Australian College of Obstetricians and Gynaecologists	none
1.2.2	the Australian College of Occupational Medicine	none
1.2.3	the Australian Postgraduate Federation in Medicine	the gift must be made for education or research in medical knowledge or science
1.2.4	the College of Radiologists in Australasia	the gift must be made for education or research in medical knowledge or science
1.2.5	the New South Wales College of Nursing	none
1.2.6	the Royal Australian and New Zealand College of Psychiatrists	none
1.2.7	the Royal Australian College of General Practitioners	the gift must be made for education or research in medical knowledge or science
1.2.8	the Royal Australasian College of Physicians	none
1.2.9	the Royal Australasian College of Surgeons	none
1.2.10	the Royal College of Pathologists of Australasia	the gift must be made for education or research in medical knowledge or science

<b>Health—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
1.2.11	the Australian Regional Council of the Royal College of Obstetricians and Gynaecologists	none
1.2.12	the Royal College of Nursing, Australia	none
1.2.13	the Australian and New Zealand College of Anaesthetists	none

## Education

### 30-25 Education

(1) This table sets out general categories of education recipients.

<b>Education—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
2.1.1	a public university	none
2.1.2	a public fund for the establishment of a public university	none
2.1.3	a higher education institution within the meaning of the <i>Employment, Education and Training Act 1988</i>	none
2.1.4	a residential educational institution affiliated under statutory provisions with a public university	none
2.1.5	a residential educational institution established by the Commonwealth	none
2.1.6	a residential educational institution that is affiliated with a higher education institution within the meaning of the <i>Employment, Education and Training Act 1988</i>	none

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<b>Education—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
2.1.7	an institution that the Minister for Employment, Education, Training and Youth Affairs has declared by a signed instrument to be a technical and further education institution within the meaning of the <i>Employment, Education and Training Act 1988</i>	see section 30-30
2.1.8	a public fund established and maintained solely for the purpose of providing religious instruction in government schools in Australia	none
2.1.9	a public fund established and maintained by a Roman Catholic archdiocesan or diocesan authority solely for the purpose of providing religious instruction in government schools in Australia	none
2.1.10	a public fund established and maintained solely for providing money for the acquisition, construction or maintenance of a building used, or to be used, as a school or college by: (a) a government; or (b) a public authority; or (c) a society or association which is carried on otherwise than for the purposes of profit or gain to the individual members of the society or association	none
2.1.11	a public fund established and maintained solely for providing money for the acquisition, construction or maintenance of a rural school hostel building	see section 30-35

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(2) This table sets out specific education recipients.

<b>Education—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
2.2.1	The Academy of the Social Sciences in Australia Incorporated	none
2.2.2	the Australian Academy of Science	none
2.2.3	the Australian Academy of the Humanities for the Advancement of Scholarship in Language, Literature, History, Philosophy and the Fine Arts	none
2.2.4	the Australian Academy of Technological Sciences and Engineering Limited	none
2.2.5	the Australian Administrative Staff College	none
2.2.6	the Australian and New Zealand Association for the Advancement of Science	none
2.2.7	the Australian Ireland Fund	none
2.2.8	the Life Education Centre	none
2.2.9	a company that conducts life education programs under the auspices of the Life Education Centre if the company: (a) is not carried on for the purposes of profit or gain to its individual members; and (b) is prohibited by its *constitution from making any distribution of money or property to its members	the gift must be for the conduct of such programs
2.2.10	the Council for Christian Education in Schools	none
2.2.11	the Council for Jewish Education in Schools	none
2.2.12	H.R.H. The Duke of Edinburgh's Commonwealth Study Conferences (Australia) Incorporated	none
2.2.13	the Lionel Murphy Foundation	none

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<b>Education—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
2.2.14	the Marcus Oldham Farm Management College	see section 30-30
2.2.15	the Constitutional Centenary Foundation Incorporated	none
2.2.16	the Polly Farmer Foundation (Inc)	none

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### **30-30 Gifts that must be for certain purposes**

- (1) You can deduct a gift that you make to:
  - (a) a technical and further education institution covered by item 2.1.7 of the table in subsection 30-25(1); or
  - (b) the Marcus Oldham Farm Management College;
 only if the gift is for:
  - (c) purposes of the institution, or of the College, that have been declared by the Minister for Employment, Education, Training and Youth Affairs to relate solely to tertiary education; or
  - (d) the provision of facilities for the institution, or the College, if the Minister has declared that he or she is satisfied the facilities are to be used principally for such purposes.
- (2) A declaration under subsection (1) must be in writing, signed by the Minister.

### **30-35 Gifts to a public fund established to benefit a rural school hostel building must satisfy certain requirements**

- (1) You can deduct a gift that you make to a public fund covered by item 2.1.11 of the table in subsection 30-25(1) only if each requirement in this section is satisfied.
  - (2) The rural school hostel building must be used, or going to be used, principally as residential accommodation for students:
    - (a) whose usual place of residence is in a rural area; and
    - (b) who are undertaking primary or secondary education, or special education programs for children with disabilities, at a school in the same area as the building.
-

- (3) The costs of the school must be solely or partly funded by the Commonwealth, a State or a Territory.
- (4) The residential accommodation must be provided by:
- (a) the Commonwealth, a State or a Territory; or
  - (b) a public authority; or
  - (c) a company that:
    - (i) is not carried on for the purposes of profit or gain to its individual members; and
    - (ii) is prohibited by its \*constitution from making any distribution of money or property to its members.

## Research

### 30-40 Research

- (1) This table sets out general categories of research recipients.

<b>Research—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
3.1.1	a university, college, institute, association or organisation which is an approved research institute for the purposes of section 73A (Expenditure on scientific research) of the <i>Income Tax Assessment Act 1936</i>	the gift must be made for purposes of scientific research in the field of natural or applied science

- (2) This table sets out specific research recipients.

<b>Research—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
3.2.1	the Centre for Independent Studies	none
3.2.2	the Ian Clunies Ross Memorial Foundation	none
3.2.3	the Commonwealth	the gift must be made for purposes of research in the Australian Antarctic Territory

## Welfare and rights

### 30-45 Welfare and rights

- (1) This table sets out general categories of welfare and rights recipients.

<b>Welfare and rights—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
4.1.1	a public benevolent institution	none
4.1.2	a public fund established before 23 October 1963 and maintained for the purpose of providing money for public benevolent institutions or for the establishment of public benevolent institutions	none
4.1.3	a public fund established and maintained for the relief of persons in Australia who are in necessitous circumstances	none

- (2) This table sets out specific welfare and rights recipients.

<b>Welfare and rights—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
4.2.1	Amnesty International	none
4.2.2	the Child Accident Prevention Foundation of Australia	none
4.2.3	the National Foundation for Australian Women Limited	none
4.2.4	the National Safety Council of Australia	none
4.2.5	the Pearl Watson Foundation Limited	none
4.2.6	the Royal Society for the Prevention of Cruelty to Animals New South Wales	none
4.2.7	the Royal Society for the Prevention of Cruelty to Animals (Victoria)	none

<b>Welfare and rights—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
4.2.8	the Royal Queensland Society for the Prevention of Cruelty	none
4.2.9	the Royal Society for the Prevention of Cruelty to Animals (South Australia) Incorporated	none
4.2.10	the Royal Society for the Prevention of Cruelty to Animals Western Australia (Incorporated)	none
4.2.11	the R.S.P.C.A. (Tasmania) Incorporated	none
4.2.12	the Society for the Prevention of Cruelty to Animals (Northern Territory)	none
4.2.13	the Royal Society for the Prevention of Cruelty to Animals (A.C.T.) Incorporated	none
4.2.14	the R.S.P.C.A. Australia Incorporated	none

## Defence

### 30-50 Defence

(1) This table sets out general categories of defence recipients.

<b>Defence—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
5.1.1	the Commonwealth or a State	the gift must be made for purposes of defence
5.1.2	a public institution or public fund established and maintained for the comfort, recreation or welfare of members of the armed forces of any part of Her Majesty's dominions, or of any allied or other foreign force serving in association with Her Majesty's armed forces	none



(2) This table sets out specific defence recipients.

<b>Defence—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
5.2.1	the Shrine of Remembrance Restoration and Development Trust	the gift must be made before 1 July 1999
5.2.2	The Sandakan Memorials Trust Fund	the gift must be made before 30 July 1997
5.2.3	the Cobram and District War Memorial Incorporated Fund	the gift must be made before 19 October 1997
5.2.4	The Central Synagogue Restoration Fund	the gift must be made before 23 December 1997
5.2.5	The Borneo Memorials Trust Fund	the gift must be made before 23 December 1997

## **Environment**

### **30-55 The environment**

(1) This table sets out general categories of environment recipients.

<b>The environment—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
6.1.1	a public fund that, when the gift is made, is on the register of *environmental organisations kept under Subdivision 30-E	none

(2) This table sets out specific environment recipients.

<b>The environment—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
6.2.1	the Australian Conservation Foundation Incorporated	see section 30-60

<b>The environment—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
6.2.2	Greening Australia Limited	see section 30-60
6.2.3	Landcare Australia Limited	see section 30-60
6.2.4	the National Parks Association of New South Wales	see section 30-60
6.2.5	the Victorian National Parks Association	see section 30-60
6.2.6	the Victoria Conservation Trust	see section 30-60
6.2.7	the National Parks Association of Queensland	see section 30-60
6.2.8	The Nature Conservation Society of South Australia Incorporated	see section 30-60
6.2.9	the National Parks Foundation of South Australia Incorporated	see section 30-60
6.2.10	the Western Australian National Parks and Reserves Association Incorporated	see section 30-60
6.2.11	the Tasmanian Conservation Trust Incorporated	see section 30-60
6.2.12	the National Parks Association of the Australian Capital Territory Incorporated	see section 30-60
6.2.13	the National Trust of Australia (New South Wales)	none
6.2.14	the National Trust of Australia (Victoria)	none
6.2.15	The National Trust of Queensland	none
6.2.16	The National Trust of South Australia	none
6.2.17	The National Trust of Australia (W.A.)	none
6.2.18	the National Trust of Australia (Tasmania)	none
6.2.19	The National Trust of Australia (Northern Territory)	none
6.2.20	the National Trust of Australia (A.C.T.)	none
6.2.21	the Australian Council of National Trusts	none
6.2.22	the World Wide Fund for Nature	see section 30-60

### **30-60 Gifts to a National Parks body or conservation body must satisfy certain requirements**

You can deduct a gift that you make to:

- (a) an environmental institution covered by any of the items 6.2.1 to 6.2.12 of the table in subsection 30-55(2); or
  - (b) the World Wide Fund for Nature;
- only if, at the time of making the gift:
- (c) the institution or Fund has agreed to give the Secretary to the Department of the Environment, Sport and Territories, within a reasonable period after the end of the income year in which you made the gift, statistical information about gifts made to the institution or Fund during that income year; and
  - (d) the institution or Fund has a policy of not acting as a mere conduit for the donation of money or property to other institutions, bodies or persons.

## **Industry, trade and design**

### **30-65 Industry, trade and design**

This table sets out specific industry, trade and design recipients.

<b>Industry, trade and design—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
7.2.1	the Industrial Design Council of Australia	none
7.2.2	the Productivity Promotion Council of Australia	none
7.2.3	the Work Skill Australia Foundation Incorporated	none

## The family

### 30-70 The family

- (1) This table sets out general categories of family recipients.

<b>The family—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
8.1.1	a public fund established and maintained solely for the purpose of providing money to be used in giving marriage guidance to persons in Australia through a voluntary organisation or a branch or section of a voluntary organisation	see section 30-75

- (2) This table sets out specific family recipients.

<b>The family—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
8.2.1	the Nursing Mothers' Association of Australia	none

### 30-75 Marriage guidance organisations must be approved

- (1) You can deduct a gift that you make to a public fund covered by item 8.1.1 of the table in subsection 30-70(1) only if the organisation, or branch or section of the organisation, has been declared by the Attorney-General to be a marriage guidance organisation.
- (2) The Attorney-General may declare an organisation, or a branch or section of an organisation, to be a marriage guidance organisation if he or she is satisfied that:
- (a) it is willing and able to engage in marriage guidance; and
  - (b) marriage guidance is, or will be, its only activity, or a major part of its activities.
- (3) A declaration under subsection (1) must be in writing, signed by the Attorney-General.

## International affairs

### 30-80 International affairs

- (1) This table sets out general categories of international affairs recipients.

<b>International affairs—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
9.1.1	a public fund declared by the Treasurer to be a relief fund	see section 30-85

- (2) This table sets out specific international affairs recipients.

<b>International affairs—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
9.2.1	the Australian Institute of International Affairs	none
9.2.2	the Australian National Travel Association	none
9.2.3	The Foundation for Development Cooperation Ltd	none

### 30-85 Declaration must be in force at the time you make the gift

- (1) You can deduct a gift that you make to a public fund covered by item 9.1.1 of the table in subsection 30-80(1) only if the declaration is in force at the time you make the gift.
- (2) The Treasurer may, by notice in the *Gazette*, declare a public fund to be a relief fund if he or she is satisfied that the fund:
- (a) has been established by an organisation declared by the Minister for Foreign Affairs to be an approved organisation; and
  - (b) is solely for the relief of people in a country declared by the Minister for Foreign Affairs to be a developing country.
- (3) The notice must specify the day on which it has effect. It cannot have effect earlier than the day on which it is published in the *Gazette*.

- (4) The Treasurer may, by notice in the *Gazette*, revoke a declaration that a public fund is a relief fund. The notice must specify the day on which it has effect. It cannot have effect earlier than the day on which it is published in the *Gazette*.
- (5) A declaration by the Minister for Foreign Affairs under this section must be in writing, signed by the Minister.

## Sports and recreation

### 30-90 Sports and recreation

This table sets out specific sports and recreation recipients.

<b>Sports and recreation—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
10.2.1	the Australian Sports Foundation	none
10.2.2	the Girl Guides Association of Australia	none
10.2.3	an institution that is known as a State or Territory branch of the Girl Guides Association of Australia	none
10.2.4	the Scout Association of Australia	none
10.2.5	an institution that is known as a State or Territory branch of the Scout Association of Australia	none
10.2.6	the Australian Games Uniform Company Limited	none

## Philanthropic trusts

### 30-95 Philanthropic trusts

This table sets out specific philanthropic trusts.

<b>Philanthropic trusts—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
11.2.1	the Connellan Airways Trust	none

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<b>Philanthropic trusts—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
11.2.2	The Friends of the Duke of Edinburgh's Award in Australia Incorporated	none
11.2.3	the Herbert Vere Evatt Memorial Foundation Incorporated	none
11.2.4	the Playford Memorial Trust	none
11.2.5	The Sir Robert Menzies Memorial Foundation Limited	none
11.2.6	the Queen Elizabeth II Silver Jubilee Trust for Young Australians	none
11.2.7	the Winston Churchill Memorial Trust	none

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## **Cultural organisations**

### **30-100 Cultural organisations**

(1) This table sets out general categories of cultural recipients.

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<b>Cultural organisations—General</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
12.1.1	a public fund that, when the gift is made, is on the register of *cultural organisations kept under Subdivision 30-F	none
12.1.2	a public library	none
12.1.3	a public museum	none
12.1.4	a public art gallery	none
12.1.5	an institution consisting of a public library, public museum and public art gallery or of any 2 of them	none

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(2) This table sets out specific cultural recipients.

<b>Cultural organisations—Specific</b>		
<b>Item</b>	<b>Fund, authority or institution</b>	<b>Special conditions</b>
12.2.1	The Australiana Fund	none

## **Subdivision 30-C—Rules applying to particular gifts of property**

### **Table of sections**

#### **Valuation requirements**

- 30-200 Getting written valuations
- 30-205 Sale price would have been assessable
- 30-210 Approved valuers

#### **Working out the amount you can deduct for a gift of property**

- 30-215 How much you can deduct
- 30-220 Reducing the amount you can deduct

#### **Joint ownership of property**

- 30-225 Gift of property by joint owners

## **Valuation requirements**

### **30-200 Getting written valuations**

- (1) You satisfy the valuation requirements if you get 2 or more written valuations of the gift you made.

Note 1: In most cases, you need to get these written valuations to be able to deduct a gift of property that you make to a recipient covered by item 4, 5 or 6 of the table in section 30-15.

Note 2: You do *not* need to get written valuations in the circumstances set out in section 30-205.

- (2) The valuations must be by different individuals, each of whom is an approved valuer of the kind of property you are giving away.



Note: Section 30-210 deals with how an individual becomes an approved valuer.

- (3) Each valuation must state the amount that, in the opinion of the valuer, was:
  - (a) the market value of the property on the day you made the gift; or
  - (b) the market value of the property on the day the valuation was made.
- (4) If a valuation states the market value of the property on the day the valuation was made, it must have been made within 90 days before or after the gift was made. However, the Commissioner may allow a longer period than this.

### **30-205 Sale price would have been assessable**

You do *not* need to get written valuations of the gift you made if:

- (a) no amount is included in your assessable income in respect of the gift you made; but
- (b) an amount *would* have been included in your assessable income if you had sold the property instead of making the gift.

### **30-210 Approved valuers**

- (1) The Secretary to the Department of Communications and the Arts may approve an individual as a valuer of a particular kind of property. The approval must be in writing, signed by the Secretary.
- (2) The Secretary must, in deciding whether to approve an individual, have regard to:
  - (a) the individual's qualifications, experience and knowledge in valuing that kind of property; and
  - (b) the individual's knowledge of the current market value of that kind of property; and
  - (c) the individual's standing in the professional community.

## Working out the amount you can deduct for a gift of property

### 30-215 How much you can deduct

- (1) This section contains the rules for working out how much you can deduct for a gift of property that you make to a recipient covered by item 4, 5 or 6 of the table in section 30-15.
- (2) The general rule is that the amount you can deduct for a gift of this kind is the average of the market values specified in the written valuations you got from the approved valuers.

Note: In some situations you must reduce the amount you can deduct: see section 30-220.

- (3) The exceptions to the general rule are set out in this table:

Amount you can deduct for a gift of property		
Item	In this case:	The amount you can deduct is:
1	Section 30-205 (which is about the sale price being assessable) applies, and you bought the property	the amount you paid for the property
2	Section 30-205 (which is about the sale price being assessable) applies, and you created or produced the property	so much of the cost of creation or production as you would have been able to deduct if you had sold the property
3	Neither of cases 1 and 2 applies, and you acquired the property: <ol style="list-style-type: none"> <li>(a) less than one year before making the gift (otherwise than by inheriting it); or</li> <li>(b) for the purpose of giving it away; or</li> <li>(c) subject to an * arrangement that the property would be given away</li> </ol>	the lesser of the amount you paid for the property and: <ol style="list-style-type: none"> <li>(a) if the average of the written valuations you got fairly represents the market value of the property on the day you made the gift—that average; or</li> <li>(b) if it does not— the market value of the property on the day you made the gift</li> </ol>
4	None of cases 1 to 3 applies, and the average of the written valuations you got does <i>not</i> fairly represent the market value of the property on the day you made the gift	the market value of the property on the day you made the gift

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**30-220 Reducing the amount you can deduct**

- (1) The amount you can deduct is reduced by a reasonable amount if:
  - (a) the terms and conditions on which the gift is made are such that the recipient:
    - (i) does not receive immediate custody and control of the property; or
    - (ii) does not have the unconditional right to retain custody and control of the property in perpetuity; or
    - (iii) does not obtain an immediate, indefeasible and unencumbered legal and equitable title to the property; or
  - (b) the custody, control or use of the property by the recipient is affected by an \*arrangement entered into in respect of the making of the gift.
- (2) In deciding what is a reasonable amount, have regard to the effect of those terms and conditions, or that \*arrangement, on the market value of the gift.

**Joint ownership of property****30-225 Gift of property by joint owners**

If:

- (a) you own property jointly with one or more other entities; and
  - (b) you and the other entities make a gift of the property; and
  - (c) you would have been able to deduct the gift under section 30-15 because of item 4, 5 or 6 of the table in that section if you had made a gift of the property as sole owner of it;
- you can deduct so much of the gift as is reasonable, having regard to your interest in the property.

**Subdivision 30-D—Testamentary gifts under the Cultural Bequests Program****Table of sections**

30-230	Testamentary gifts of property
30-235	Getting a certificate

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30-240 Limit on total value of gifts for an income year

### **30-230 Testamentary gifts of property**

- (1) A testamentary gift of property (except an estate or interest in land or in a building or part of a building) that you make under the Cultural Bequests Program is deductible for the income year in which you die.

Note: The trustee of your estate can claim the deduction in the tax return lodged for you that covers the period from the start of the income year to the day you die.

- (2) The recipient of the gift must be:
- (a) The Australian Fund; or
  - (b) a public library in Australia; or
  - (c) a public museum in Australia; or
  - (d) a public art gallery in Australia; or
  - (e) an institution in Australia consisting of a public library, a public museum and a public art gallery or any 2 of them.
- (3) The property must be given to, and accepted by, the recipient for inclusion in a collection it is maintaining or establishing.
- (4) The value of the gift must be \$2 or more.
- (5) When you die, there must be in force a certificate from the Minister for Communications and the Arts:
- (a) approving the gift; and
  - (b) specifying the value of the gift.
- (6) If:
- (a) you die before the last day of an income year; and
  - (b) section 26-55 (which is about a limit on deductions) prevents the whole or a part of the gift from being deductible in the tax return lodged for you for that income year;
- the trustee of your estate can claim the whole or part as a deduction in the trust return for that income year.

Note: The trust return covers the period from the day you die to the end of the income year.

### **30-235 Getting a certificate**

- (1) You get a certificate by making a written application for one to the Minister for Communications and the Arts.
- (2) The Minister must decide your application in accordance with written guidelines made by the Minister under this section.
- (3) The guidelines may require the Minister to decide an application having regard to:
  - (a) specified criteria; or
  - (b) recommendations of particular bodies.
- (4) If the Minister approves your gift, he or she must give you a certificate:
  - (a) approving the gift; and
  - (b) specifying the value of the gift; and
  - (c) setting out any other information that the Commissioner requires.

### **30-240 Limit on total value of gifts for an income year**

The total value of all gifts approved by the Minister for Communications and the Arts for an income year cannot exceed an amount that the Minister determines in writing. The Minister must determine this amount before approving any gifts for that income year.

## **Subdivision 30-E—Register of environmental organisations**

### **Guide to Subdivision 30-E**

#### **30-250 What this Subdivision is about**

This Subdivision requires the establishment of a register of environmental organisations. Section 30-15 allows you to deduct a gift that you make to a fund that is on the register.

## Table of sections

### Operative provisions

30-255	Establishing the register
30-260	Meaning of <i>environmental organisation</i>
30-265	Its principal purpose must be protecting the environment
30-270	Other requirements it must satisfy
30-275	Further requirement for a body corporate or a co-operative society
30-280	What must be on the register
30-285	Removal from the register

## Operative provisions

### 30-255 Establishing the register

The Secretary to the Department of Environment, Sport and Territories must keep a register of \*environmental organisations.

Note: Section 30-280 sets out what details must be entered on the register.

### 30-260 Meaning of *environmental organisation*

An *environmental organisation* is:

- (a) a body corporate; or
  - (b) a co-operative society; or
  - (c) a trust; or
  - (d) an unincorporated body established for a public purpose by the Commonwealth, a State or a Territory;
- that satisfies each requirement in sections 30-265 and 30-270.

Note: A body corporate or a co-operative society must satisfy a further requirement: see section 30-275.

### 30-265 Its principal purpose must be protecting the environment

- (1) Its principal purpose must be:
  - (a) the protection and enhancement of the natural environment or of a significant aspect of the natural environment; or

- 
- (b) the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.
  - (2) It must maintain a public fund:
    - (a) to which gifts of money or property for its principal purpose can be made; and
    - (b) to which any money received because of such gifts is to be credited; and
    - (c) that does not receive any other money or property.
  - (3) It must use gifts made to the fund, and any money received because of such gifts, only for its principal purpose.
  - (4) It must have agreed to comply with any rules that the Treasurer and the Minister for Environment, Sport and Territories make to ensure that gifts made to the fund are used only for its principal purpose.

### **30-270 Other requirements it must satisfy**

#### *No payment of profits to its members*

- (1) It must not pay any of its profits or financial surplus, or give any of its property, to its members, beneficiaries, controllers or owners (as appropriate).

#### *No acting as a conduit*

- (2) It must have a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons.

#### *Surplus assets to be transferred on winding up*

- (3) It must have rules providing that, if the public fund is wound up, any surplus assets of the fund are to be transferred to another fund that is on the register.

#### *Statistical information to be provided*

- (4) It must have agreed to give the Secretary to the Department of Environment, Sport and Territories, within a reasonable period

after the end of each income year, statistical information about gifts made to the public fund during that income year.

**30-275 Further requirement for a body corporate or a co-operative society**

A body corporate (except a statutory authority) or a co-operative society is an *environmental organisation* only if:

- (a) its membership consists principally of bodies corporate; or
- (b) it has at least 50 members who are individuals that are:
  - (i) regarded as financial members; and
  - (ii) entitled to vote at a general meeting of it; or
- (c) the Minister for Environment, Sport and Territories has determined that, because of special circumstances, it does not have to meet either of the requirements in paragraph (a) or (b).

**30-280 What must be on the register**

- (1) The Secretary to the Department of Environment, Sport and Territories must enter on the register each \*environmental organisation, and the public fund it maintains, that he or she has been directed to enter by the Treasurer and the Minister for Environment, Sport and Territories.
- (2) The Treasurer and the Minister may so direct the Secretary only if the Minister has notified the Treasurer that he or she is satisfied that an organisation is an \*environmental organisation. The notification must be in writing.
- (3) The direction must be in writing and must specify the day on which the organisation and public fund are to be entered on the register. The day must be the day on which the direction is given or a later day.
- (4) The Treasurer and the Minister for Environment, Sport and Territories must have regard to the policies and budgetary priorities of the Commonwealth Government in deciding whether to give a direction.



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**30-285 Removal from the register**

- (1) The Treasurer and the Minister for Environment, Sport and Territories may direct the Secretary to the Department of Environment, Sport and Territories to remove an \*environmental organisation, and the public fund it maintains, from the register.
- (2) The direction must be in writing and must specify the day on which the organisation and public fund are to be removed from the register. The day must be the day on which the direction is given or a later day.

**Subdivision 30-F—Register of cultural organisations****Guide to Subdivision 30-F****30-290 What this Subdivision is about**

This Subdivision requires the establishment of a register of cultural organisations. Section 30-15 allows you to deduct a gift that you make to a fund that is on the register.

**Table of sections****Operative provisions**

30-295	Establishing the register
30-300	Meaning of <i>cultural organisation</i>
30-305	What must be on the register
30-310	Removal from the register

**Operative provisions****30-295 Establishing the register**

The Secretary to the Department of Communications and the Arts must keep a register of \*cultural organisations.

Note: Section 30-305 sets out what details must be entered on the register.

**30-300 Meaning of *cultural organisation***

- (1) A *cultural organisation* is:
  - (a) a body corporate; or
  - (b) a trust; or
  - (c) an unincorporated body established for a public purpose by the Commonwealth, a State or a Territory;that satisfies each requirement in this section.
- (2) Its principal purpose must be the promotion of literature, music, a performing art, a visual art, a craft, design, film, video, television, radio, community arts, Aboriginal arts or movable cultural heritage.
- (3) It must maintain a public fund:
  - (a) to which gifts of money or property for its principal purpose can be made; and
  - (b) to which any money received because of such gifts is to be credited; and
  - (c) that does not receive any other money or property.
- (4) It must use gifts made to the fund, and any money received because of such gifts, only for its principal purpose.
- (5) It must not pay any of its profits or financial surplus, or give any of its property, to its members, beneficiaries, controllers or owners (as appropriate).
- (6) It must have agreed to comply with any rules that the Treasurer and the Minister for Communications and the Arts make to ensure that gifts made to the fund are used only for its principal purpose.
- (7) It must have agreed to give the Secretary to the Department of Communications and Arts, at intervals of 6 months, statistical information about gifts made to the public fund during the last 6 months.

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**30-305 What must be on the register**

- (1) The Secretary to the Department of Communications and the Arts must enter on the register each \*cultural organisation, and the public fund it maintains, that he or she has been directed to enter by the Treasurer and the Minister for Communications and the Arts.
- (2) The Treasurer and the Minister may so direct the Secretary only if the Minister has notified the Treasurer that he or she is satisfied that an organisation is a \*cultural organisation. The notification must be in writing.
- (3) The direction must be in writing and must specify the day on which the organisation and public fund are to be entered on the register. The day must be the day on which the direction is given or a later day.
- (4) The Treasurer and the Minister for Communications and the Arts must have regard to the policies and budgetary priorities of the Commonwealth Government in deciding whether to give a direction.

**30-310 Removal from the register**

- (1) The Treasurer and the Minister for Communications and the Arts may direct the Secretary to the Department of Communications and the Arts to remove a \*cultural organisation, and the public fund it maintains, from the register.
- (2) The direction must be in writing and must specify the day on which the organisation and public fund are to be removed from the register. The day must be the day on which the direction is given or a later day.

**Subdivision 30-G—Index to this Division****Table of sections**

30-315	Index
30-320	Effect of this Subdivision

### 30-315 Index

(1) The table in this section gives you an index to this Division.

(2) It tells you:

- each topic covered by this Division; and
- where in this Division you can find the detail about each topic.

Note: In the last column there are many references in this form: item 2.2.1. These refer to items in the tables in Subdivision 30-B.

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Topic		Provision
1	Academies - professional	section 30-25
2	Academy of the Social Sciences in Australia Incorporated	item 2.2.1
3	Amnesty International	item 4.2.1
4	Ancillary funds	item 2 of the table in section 30-15
5	Antarctic research	item 3.2.3
6	Approved research institutes	item 3.1.1
7	Armed forces, auxiliaries	item 5.1.2
8	Artbank	item 5 of the table in section 30-15
9	Art galleries	items 12.1.4 and 12.1.5; item 4 of the table in section 30-15
10	Australian Academy of Science	item 2.2.2
11	Australian Academy of Technological Sciences and Engineering Limited	item 2.2.4
12	Australian Academy of the Humanities for the Advancement of Scholarship in Language, Literature, History, Philosophy and the Fine Arts	item 2.2.3
13	Australian Administrative Staff College	item 2.2.5
14	Australiana Fund	item 12.2.1; item 4 of the table in section 30-15

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16 Australian and New Zealand College of Anaesthetists	item 1.2.13	
17 Australian Antarctic Territory, payment to Commonwealth for research	item 3.2.3	
18 Australian College of Obstetricians and Gynaecologists	item 1.2.1	
19 Australian College of Occupational Medicine	item 1.2.2	
20 Australian Conservation Foundation Incorporated	item 6.2.1	
21 Australian Games Uniform Company Limited	item 10.2.6	
22 Australian Institute of International Affairs	item 9.2.1	
23 Australian Ireland Fund	item 2.2.7	
24 Australian National Travel Association	item 9.2.2	
25 Australian Postgraduate Federation in Medicine	item 1.2.3	
26 Australian Regional Council of the Royal College of Obstetricians and Gynaecologists	item 1.2.11	
27 Australian Sports Foundation	item 10.2.1	
28 Borneo Memorials Trust Fund	item 5.2.5	
29 Central Synagogue Restoration Fund	item 5.2.4	
30 Centre for Independent Studies	item 3.2.1	
31 Child Accident Prevention Foundation of Australia	item 4.2.2	
32 Cobram and District War Memorial Incorporated Fund	item 5.2.3	
33 College buildings	item 2.1.10	
34 College of Radiologists in Australasia	item 1.2.4	
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Topic		Provision
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38	Constitutional Centenary Foundation Incorporated	item 2.2.15
39	Council for Christian Education in Schools	item 2.2.10
40	Council for Jewish Education in Schools	item 2.2.11
41	Cultural Bequests Program, testamentary gifts	Subdivision 30-D
42	Cultural organisations	section 30-100
43	Cultural organisations, register of	Subdivision 30-F
44	Defence organisations	section 30-50
45	Diseases - institutions researching causes, prevention or cure	items 1.1.4 and 1.1.5
46	Education bodies	section 30-25
47	Environmental organisations	section 30-55
48	Environmental organisations, register of	Subdivision 30-E
49	Family organisations	section 30-70
50	Foundation for Development Cooperation Ltd	item 9.2.3
51	Friends of the Duke of Edinburgh's Award in Australia Incorporated	item 11.2.2
52	Girl Guides	items 10.2.2 and 10.2.3
53	Greening Australia Limited	item 6.2.2
54	Health organisations	section 30-20
55	Herbert Vere Evatt Memorial Foundation Incorporated	item 11.2.3
56	Heritage properties	item 6 of the table in section 30-15
57	Higher education institutions	item 2.1.3
58	Hospitals	items 1.1.1, 1.1.2 and 1.1.3
59	H.R.H. The Duke of Edinburgh's Commonwealth Study Conferences (Australia) Incorporated	item 2.2.12
60	Ian Clunies Ross Memorial Foundation	item 3.2.2

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62 Industry, trade and design	section 30-65	
63 International affairs	section 30-80	
64 Joint ownership of property	section 30-225	
65 Landcare Australia Limited	item 6.2.3	
66 Libraries	items 12.1.2 and 12.1.5; item 4 of the table in section 30-15	
67 Life Education Centre	items 2.2.8 and 2.2.9	
68 Lionel Murphy Foundation	item 2.2.13	
69 Marcus Oldham Farm Management College	item 2.2.14	
70 Marriage guidance organisations	item 8.1.1	
71 Medical colleges	section 30-20	
72 Medical research	section 30-20	
73 Museums	items 12.1.3 and 12.1.5; item 4 of the table in section 30-15	
74 National Foundation for Australian Women Limited	item 4.2.3	
75 National Parks associations	section 30-55	
76 National Safety Council of Australia	item 4.2.4	
77 National Trust bodies	section 30-55; item 6 of the table in section 30-15	
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80 New South Wales College of Nursing	item 1.2.5	
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83 Pearl Watson Foundation Limited	item 4.2.5	
84 People in need, fund for	item 4.1.3	
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89 Prevention of cruelty to animals	section 30-45	
90 Productivity	section 30-65	
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92 Property, rules for valuing gifts	section 30-15 and Subdivision 30-C	
93 Public benevolent institutions	items 4.1.1 and 4.1.2	
94 Queen Elizabeth II Silver Jubilee Trust for Young Australians	item 11.2.6	
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98 Royal Australian and New Zealand College of Psychiatrists	item 1.2.6	
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110 Shrine of Remembrance Restoration and Development Trust	item 5.2.1	



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112	Sports and recreation	section 30-90
113	Tasmanian Conservation Trust Incorporated	item 6.2.11
114	Taxation incentives for the Arts scheme	items 4 and 5 of the table in section 30-15
115	Technical and further education institution	item 2.1.7
116	Tertiary education/TAFE	section 30-25
117	Trusts - philanthropic	section 30-95
118	Trusts - ancillary	item 2 of the table in section 30-15
119	Universities - general	section 30-25
120	Universities - research	section 30-40
121	Valuers	section 30-210
122	Victoria Conservation Trust	item 6.2.6
123	War Memorials	section 30-50
124	Welfare and rights	section 30-45
125	Winston Churchill Memorial Trust	item 11.2.7
126	Work Skill Australia Foundation Incorporated	item 7.2.3
127	World Wide Fund for Nature Australia	item 6.2.22

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### **30-320 Effect of this Subdivision**

This Subdivision (except this section) has effect as if it were a  
\*Guide.

Note: In interpreting an operative provision, a Guide may be considered  
only for limited purposes: see section 950-150.

*[The next Division is Division 32.]*

## Division 32Table of Subdivisions

### Guide to Division 32

- 32-A No deduction for entertainment expenses
- 32-B Exceptions
- 32-C Definitions relevant to the exceptions
- 32-D In-house dining facilities (employer expenses table item 1.2)
- 32-E Anti-avoidance
- 32-F Special rules for companies and partnerships

## Guide to Division 32

### 32-1 What this Division is about

You cannot deduct costs of providing entertainment. Nor can you deduct amounts for property that you use for providing entertainment. But there are exceptions.

## Subdivision 32-A—No deduction for entertainment expenses

### Table of sections

- 32-5 No deduction for entertainment expenses
- 32-10 Meaning of *entertainment*
- 32-15 No deduction for property used for providing entertainment

### 32-5 No deduction for entertainment expenses

To the extent that you incur a loss or outgoing in respect of providing \*entertainment, you cannot deduct it under section 8-1. However, there are exceptions, which are set out in Subdivision 32-B.

Note 1: Under section 8-1 you can deduct a loss or outgoing that you incur for the purpose of producing assessable income.

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Note 2: If you have used your property in providing entertainment, you may not be able to deduct an amount for the property: see section 32-15.

Note 3: Section 32-75 deals with arrangements to avoid the operation of this section.

### **32-10 Meaning of *entertainment***

(1) ***Entertainment*** means:

- (a) entertainment by way of food, drink or \*recreation; or
- (b) accommodation or travel to do with providing entertainment by way of food, drink or \*recreation.

(2) You are taken to provide ***entertainment*** even if business discussions or transactions occur.

Note: These are some examples of what is entertainment:

- business lunches
- social functions.

These are some examples of what is *not* entertainment:

- meals on business travel overnight
- theatre attendance by a critic
- a restaurant meal of a food writer.

### **32-15 No deduction for property used for providing entertainment**

To the extent that you use property in providing \*entertainment, your use of the property is taken *not* to be for the \*purpose of producing assessable income if section 32-5 would stop you deducting a loss or outgoing if you incurred it in the income year in providing the entertainment.

Note: Under some provisions of this Act, in order to deduct an amount for your property, you must have used the property for the purpose of producing assessable income.

## **Subdivision 32-B—Exceptions**

### **Table of sections**

32-20	The main exception—fringe benefits
32-25	The tables set out the other exceptions
32-30	Employer expenses

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- 32-35 Seminar expenses
- 32-40 Entertainment industry expenses
- 32-45 Promotion and advertising expenses
- 32-50 Other expenses

### **32-20 The main exception—fringe benefits**

Section 32-5 does not stop you deducting a loss or outgoing to the extent that you incur it in respect of providing \*entertainment by way of \*providing a \*fringe benefit.

But this exception does not apply to the extent that the taxable value of the \*fringe benefit is reduced under section 63A of the *Fringe Benefits Tax Assessment Act 1986*.

Note 1: You may be able to deduct losses or outgoings that are fringe benefits under section 51AEA, 51AEB or 51AEC of the *Income Tax Assessment Act 1936*. If you do, then you cannot deduct them under section 8-1 (about general deductions) and so this section is not relevant.

Note 2: There are other exceptions for a loss or outgoing you incur in providing a benefit that would be a fringe benefit if it were not an exempt benefit: see items 1.6 and 1.7 of the table in section 32-30.

### **32-25 The tables set out the other exceptions**

Section 32-5 does not stop you deducting a loss or outgoing to the extent that you incur it in respect of providing \*entertainment as described in column 2 of an item of a table in this Subdivision.

However, if column 3 of that item applies, the exception in column 2 of that item does not.

### **32-30 Employer expenses**

<b>Employer expenses</b>		
<b>Item</b>	<b>Section 32-5 does not stop you deducting a loss or outgoing for ...</b>	<b>But the exception does not apply if ...</b>
1.1	providing food or drink to your employees in an *in-house dining facility.	the food or drink is provided at a party, reception or other social function.

<b>Employer expenses</b>		
<b>Item</b>	<b>Section 32-5 does not stop you deducting a loss or outgoing for ...</b>	<b>But the exception does not apply if ...</b>
1.2	providing food or drink to individuals (other than your employees) in an *in-house dining facility.	(a) you choose (under section 32-70) <i>not</i> to include in your assessable income \$30 for each meal you provide in the *in-house dining facility in the income year to an individual (other than your employee); <i>or</i> (b) the food or drink is provided at a party, reception or other social function.
1.3	providing food or drink in a *dining facility to your employees who perform most of their duties in connection with: (a) the dining facility; <i>or</i> (b) a facility (of which the dining facility forms a part) for providing accommodation, *recreation or travel.	the food or drink is provided at a party, reception or other social function.
1.4	providing food or drink to your employee under an *industrial instrument relating to overtime.	
1.5	providing a facility for *recreation on property you occupy, if the facility is mainly operated for your employees to use.	the facility is for: (a) accommodation; <i>or</i> (b) dining or drinking (unless it is a food or drink vending machine).
1.6	providing food or drink which would be a *fringe benefit apart from sections 54, 58, 58N, 58S and 58T of the <i>Fringe Benefits Tax Assessment Act 1986</i> (disregarding section 58P of that Act).	

<b>Employer expenses</b>		
<b>Item</b>	<b>Section 32-5 does not stop you deducting a loss or outgoing for ...</b>	<b>But the exception does not apply if ...</b>
1.7	providing a meal which would be a *fringe benefit apart from sections 58A, 58F, 58L, 58LA and 58M of the <i>Fringe Benefits Tax Assessment Act 1986</i> (disregarding section 58P of that Act).	
1.8	giving your employee an allowance that is included in his or her assessable income.	<p>(a) the employee is a *relative of another employee of yours; <i>and</i></p> <p>(b) you give the allowance to the relative, as your employee, because:</p> <p>(i) he or she provides, or facilitates providing, *entertainment to do with the other employee's employment; <i>and</i></p> <p>(ii) you expect the relative to do so.</p>

Note 1: In the case of a company, items 1.1, 1.2, 1.3, 1.5 and 1.8 cover directors of the company as if they were employees: see section 32-80.

Note 2: In the case of a company, items 1.1, 1.2, 1.3 and 1.5 cover directors, employees and property of another company that is a member of the same wholly-owned group: see section 32-85.

Note 3: Item 1.8 has a special operation for partnerships: see section 32-90.

**32-35 Seminar expenses**

<b>Seminar expenses</b>		
<b>Item</b>	<b>Section 32-5 does not stop you deducting a loss or outgoing for ...</b>	<b>But the exception does not apply if ...</b>
2.1	providing food, drink, accommodation or travel to an individual (including yourself) that is reasonably incidental to the individual attending a *seminar that *goes for at least 4 hours.	(a) the seminar is a *business meeting; <i>or</i> (b) the *seminar's main purpose is to promote or advertise a *business (or prospective *business) or its goods or services; <i>or</i> (c) the *seminar's main purpose is to provide *entertainment at, or in connection with, the seminar.

**32-40 Entertainment industry expenses**

<b>Entertainment industry expenses</b>		
<b>Item</b>	<b>Section 32-5 does not stop you deducting a loss or outgoing for ...</b>	<b>But the exception does not apply if ...</b>
3.1	providing *entertainment for payment in the ordinary course of a *business that you carry on.	
3.2	providing *entertainment in performing your duties to your employer who carries on a *business that includes providing that entertainment for payment.	

## 32-45 Promotion and advertising expenses

Promotion and advertising expenses		
Item	Section 32-5 does not stop you deducting a loss or outgoing for ...	But the exception does not apply if ...
4.1	providing *entertainment if: (a) you provide it to an individual under a contract to supply him or her with goods or services in the ordinary course of your *business; <i>and</i> (b) you incur the loss or outgoing to promote or advertise to the public your business or its goods or services.	
4.2	providing or exhibiting your *business's goods or services if you incur the loss or outgoing to promote or advertise those goods or services to the public.	
4.3	providing *entertainment to promote or advertise to the public a *business or its goods or services.	some people have a greater opportunity to get the benefits of the entertainment than ordinary members of the public have.



**32-50 Other expenses**

<b>Other expenses</b>		
<b>Item</b>	<b>Section 32-5 does not stop you deducting a loss or outgoing for ...</b>	<b>But the exception does not apply if ...</b>
5.1	buying food or drink to do with overtime that you work, if you receive an allowance under an *industrial instrument to buy the food or drink.	
5.2	providing *entertainment free to members of the public who are sick, disabled, poor or otherwise disadvantaged.	

**Subdivision 32-C—Definitions relevant to the exceptions****Table of sections**

32-55	In-house dining facility (employer expenses table items 1.1 and 1.2)
32-60	Dining facility (employer expenses table item 1.3)
32-65	Seminars (seminar expenses table item 2.1)

**32-55 In-house dining facility (employer expenses table items 1.1 and 1.2)**

An *in-house dining facility* is a canteen, dining room or similar facility that:

- (a) is on property you occupy; and
- (b) is operated mainly for providing food and drink to your employees; and
- (c) is not open to the public.

Note 1: In the case of a company, this definition also covers directors of the company as if they were employees: see section 32-80.

Note 2: In the case of a company, this definition also covers directors, employees and property of another company that is a member of the same wholly-owned group: see section 32-85.

**32-60 Dining facility (employer expenses table item 1.3)**

A *dining facility* is:

- (a) a canteen, dining room or similar facility; or
  - (b) a cafe, restaurant or similar facility;
- that is on property you occupy.

Note: In the case of a company, this definition also covers property of another company that is a member of the same wholly-owned group: see section 32-85.

**32-65 Seminars (seminar expenses table item 2.1)**

- (1) *Seminar* includes a conference, convention, lecture, meeting (including a meeting for the presentation of awards), speech, “question and answer session”, training session or educational course.

- (2) In working out whether a \*seminar *goes for at least 4 hours* the following are taken not to affect the seminar's continuity, nor to form part of it:
- (a) any part of the seminar that occurs during a meal;
  - (b) any break during the seminar for the purpose of a meal, rest or \*recreation.
- (3) A \*seminar is a ***business meeting*** if its main purpose is for individuals who are (or will be) associated with the carrying on of a particular \*business to give or receive information, or discuss matters, relating to the business.

However, the \*seminar is *not* a ***business meeting*** if it:

- (a) is organised by (or on behalf of) an employer solely for either or both of these purposes:
  - (i) training the employer and the employer's employees (or just those employees) in matters relevant to the employer's \*business (or prospective \*business);
  - (ii) enabling the employer and the employer's employees (or just those employees) to discuss general policy issues relevant to the internal management of the employer's \*business; and
- (b) is conducted on property that is occupied by a person (other than the employer) whose \*business includes organising seminars or making property available for conducting seminars.

Note 1: In the case of a company, subsection (3) covers directors of the company as if they were employees: see section 32-80.

Note 2: In the case of a company, paragraph (3)(b) also covers property of another company that is a member of the same wholly-owned group: see section 32-85.

Note 3: Subsection (3) has a special operation for partnerships: see section 32-90.

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## Subdivision 32-D—In-house dining facilities (employer expenses table item 1.2)

### Table of sections

32-70      \$30 is assessable for each meal provided to non-employee in an in-house dining facility

### 32-70 \$30 is assessable for each meal provided to non-employee in an in-house dining facility

- (1) Your assessable income includes \$30 for a meal you provide in an \*in-house dining facility in the income year to an individual other than your employee, but only if:
  - (a) you incur a loss or outgoing in respect of providing the meal; and
  - (b) because of item 1.2 of the table in section 32-30, section 32-5 does not stop you deducting the loss or outgoing under section 8-1 (which deals with general deductions); and
  - (c) the loss or outgoing is one that you can deduct under section 8-1 for the income year or some other income year.
- (2) However, you can choose *not* to include in your assessable income \$30 for each meal you provide in the \*in-house dining facility in the income year to an individual other than your employee.

Note:      If you do choose, you cannot rely on item 1.2 of the table in section 32-30 as a basis for deducting a loss or outgoing you incur in respect of providing a meal.
- (3) You must choose by the day you lodge your \*income tax return for the income year, or within a further time allowed by the Commissioner.

## Subdivision 32-E—Anti-avoidance

### Table of sections

32-75      Commissioner may treat you as having incurred entertainment expense

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**32-75 Commissioner may treat you as having incurred entertainment expense**

If:

- (a) you incur a loss or outgoing under an \*arrangement; and
- (b) someone provides \*entertainment under the arrangement to you or someone else; and
- (c) section 32-5 would have stopped you deducting the loss or outgoing under section 8-1 (which deals with general deductions) if you had incurred it in respect of providing that entertainment;

this Division applies to you as if you had incurred the loss or outgoing in providing that entertainment, to the extent (if any) that the Commissioner thinks reasonable.

**Note:** This means that section 32-5 will prevent you from deducting the loss or outgoing under section 8-1 unless an exception applies.

**Example:** A company pays \$1,000 to sponsor a football game. Under the same arrangement, the company is given a viewing box at the game. To the extent the Commissioner thinks reasonable, he or she can treat the company as having incurred the \$1,000 in providing entertainment.

**Subdivision 32-F—Special rules for companies and partnerships****Table of sections**

32-80	Company directors
32-85	Directors, employees and property of wholly-owned group company
32-90	Partnerships

**32-80 Company directors**

In the case of a company, these provisions cover directors of the company as if they were the company's employees:

- item 1.1 (exception for \*in-house dining facilities) of the table in section 32-30;
- item 1.2 (exception for \*in-house dining facilities) of the table in section 32-30;
- item 1.3 (exception for \*dining facilities) of the table in section 32-30;

- item 1.5 (exception for recreational facilities) of the table in section 32-30;
- item 1.8 (exception for providing your employee with an allowance) of the table in section 32-30;
- section 32-55 (which defines *in-house dining facility*);
- subsection 32-65(3) (which defines *business meeting*).

### **32-85 Directors, employees and property of wholly-owned group company**

#### *Employees and directors of group company*

- (1) In the case of a company, these provisions cover directors and employees of another company that is a member of the same \*wholly-owned group as if they were the company's own directors and employees:
- item 1.1 (exception for \*in-house dining facilities) of the table in section 32-30;
  - item 1.2 (exception for \*in-house dining facilities) of the table in section 32-30;
  - item 1.3 (exception for \*dining facilities) of the table in section 32-30;
  - item 1.5 (exception for recreational facilities) of the table in section 32-30;
  - section 32-55 (which defines *in-house dining facility*);
  - subsection 32-60(1) (which defines *dining facility*);
  - paragraph 32-65(3)(b).

#### *Property occupied by group company*

- (2) Those provisions also cover property occupied by that other company as if the company occupied that property.

### **32-90 Partnerships**

In the case of a partnership:

- item 1.8 (exception for providing employee with an allowance) of the table in section 32-30; and
- subsection 32-65(3) (which defines *business meeting*);

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apply to a partner in the same way as they apply to an employee of the partnership, but only for the purposes of calculating, in accordance with section 90 of the *Income Tax Assessment Act 1936*, the partnership's net income or partnership loss.

*[The next Division is Division 34.]*

## Division 34

### Table of Subdivisions

	Guide to Division 34
34-A	Application of Division 34
34-B	Deduction for your non-compulsory uniform
34-C	Registering the design of a non-compulsory uniform
34-D	Appeals from Industry Secretary's decision
34-E	The Register of Approved Occupational Clothing
34-F	Approved occupational clothing guidelines
34-G	The Industry Secretary

### Guide to Division 34

#### 34-1 What this Division is about

This Division is about deductions for the costs of non-compulsory uniforms.

### Table of sections

34-3	What you need to read
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#### 34-3 What you need to read

##### *Employees*

- (1) If you incur expenditure for your non-compulsory uniform, you need to read Subdivision 34-B (which is about deductions for your non-compulsory uniform), starting at section 34-10.



*Employers*

- (2) If you have people working for you who want to deduct expenditure of that kind, you need to read:
- Subdivision 34-C (which is about registering the design of a non-compulsory uniform), starting at section 34-25; and

- Subdivision 34-D (which is about appeals from Industry Secretary's decision), starting at section 34-40.

## Subdivision 34-A—Application of Division 34

### Table of sections

34-5	This Division applies to employees, PAYE earners and others
34-7	This Division applies to employers and others

### 34-5 This Division applies to employees, PAYE earners and others

- (1) This Division applies not only to an individual who is an employee. It also applies to an individual who is *not* an employee, but who:
  - (a) is a \*PAYE earner; or
  - (b) is *not* a \*PAYE earner, but *would be* a \*PAYE earner apart from paragraph (q) of the definition of *salary or wages* in subsection 221A(1) of the *Income Tax Assessment Act 1936* (which excludes recipients of prescribed payments within the meaning of Division 3A of Part VI of that Act).
- (2) If an individual is *not* an employee, but *is* covered by paragraph (1)(a) or (b), this Division applies to him or her as if:
  - (a) he or she were an employee; and
  - (b) the entity (the *notional employer*) who pays (or is liable to pay) \*PAYE earnings because of which he or she is (or would be) a \*PAYE earner were his or her employer; and
  - (c) any other individual who receives (or is entitled to receive) \*PAYE earnings:
    - (i) because of which the other individual is (or would be) a \*PAYE earner; and
    - (ii) that the notional employer pays (or is liable to pay) to the other individual;were the employee of the notional employer.

### 34-7 This Division applies to employers and others

If an entity is *not* an employer, but pays (or is liable to pay) \*PAYE earnings, this Division applies to the entity as if:

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- (a) it were an employer; and
- (b) an individual to whom the entity pays (or is liable to pay) \*PAYE earnings were the entity's employee.

## **Subdivision 34-B—Deduction for your non-compulsory uniform**

### **Table of sections**

34-10	What you can deduct
34-15	What is a <i>non-compulsory uniform</i> ?
34-20	What are <i>occupation specific clothing</i> and <i>protective clothing</i> ?

### **34-10 What you can deduct**

- (1) If you are an employee, you can deduct expenditure you incur in respect of your \*non-compulsory uniform if:
  - (a) you can deduct the expenditure under another provision of this Act; and
  - (b) the \*design of the uniform is registered under this Division when you incur the expenditure.

Note 1: This Division also applies to PAYE earners and other individuals who are not employees: see Subdivision 34-A.

Note 2: Employers apply to register designs of uniforms: see Subdivision 34-C.

- (2) You *cannot* deduct the expenditure under this Act if the \*design is *not* registered at the time you incur the expenditure.
- (3) However, this Division does not stop you deducting expenditure you incur in respect of your \*occupation specific clothing or \*protective clothing.

### **34-15 What is a *non-compulsory uniform*?**

*What is a uniform?*

- (1) A **uniform** is one or more items of clothing (including accessories) which, when considered as a set, distinctively identify you as a person associated (directly or indirectly) with:
  - (a) your employer; or

- (b) a group consisting of your employer and one or more of your employer's \*associates.

*When is a uniform **non-compulsory**?*

- (2) Your uniform is **non-compulsory** unless your employer consistently enforces a policy that requires you and the other employees (except temporary or relief employees) who do the same type of work as you:
  - (a) to wear the uniform when working for your employer; and
  - (b) not to substitute an item of clothing *not* included in the uniform for an item of clothing included in the uniform when working for your employer;except in special circumstances.

### **34-20 What are *occupation specific clothing* and *protective clothing*?**

- (1) ***Occupation specific clothing*** is clothing that distinctively identifies you as belonging to a particular profession, trade, vocation, occupation or calling. To determine this, disregard any feature of the clothing that distinctively identifies you as a person associated (directly or indirectly) with:
  - (a) your employer; or
  - (b) a group consisting of your employer and one or more of your employer's \*associates.

Example: Occupation specific clothing includes a nurse's uniform, a chef's checked pants and a religious cleric's ceremonial robes.

- (2) ***Protective clothing*** is clothing of a kind that you mainly use to protect yourself, or someone else, from risk of:
  - (a) death; or
  - (b) \*disease (including the contraction, aggravation, acceleration or recurrence of a disease); or
  - (c) injury (including the aggravation, acceleration or recurrence of an injury); or
  - (d) damage to clothing; or
  - (e) damage to an artificial limb or other artificial substitute, or to a medical, surgical or other similar aid or appliance.

Example: Protective clothing includes overalls, aprons, goggles, hard hats and safety boots, when worn to protect the wearer.

*Meaning of **disease***

- (3) **Disease** includes any mental or physical ailment, disorder, defect or morbid condition, whether of sudden onset or gradual development and whether of genetic or other origin.

**Subdivision 34-C—Registering the design of a non-compulsory uniform**

**Table of sections**

34-25	Application to register the design
34-30	Industry Secretary's decision on application
34-33	Written notice of decision
34-35	When uniform becomes registered

**34-25 Application to register the design**

- (1) The employer of an employee who has, or will have, a \*non-compulsory uniform can apply to the Secretary to the Department of Industry, Science and Tourism (the **Industry Secretary**) for the \*design of the uniform to be registered.

Note: This Division also applies to entities that are not employers: see Subdivision 34-A.

*Meaning of **design** of a uniform*

- (2) The **design** of a \*uniform includes features such as its colouring, construction, durability, ornamentation, pattern and shape.

*Form of application*

- (3) The application must be:
- (a) in writing; and
  - (b) in a form approved in writing by the \*Industry Secretary; and
  - (c) accompanied by such information as the Industry Secretary requires.

### 34-30 Industry Secretary's decision on application

*Industry Secretary must decide to grant or refuse application*

- (1) After considering the application, the \*Industry Secretary must decide to either grant or refuse the application.

*Criteria for grant of application*

- (2) The \*Industry Secretary must not decide to grant an application unless he or she is satisfied that the design meets the criteria set out in the \*approved occupational clothing guidelines.

Note: The approved occupational clothing guidelines are created under section 34-55.

*When Industry Secretary taken to have refused application*

- (3) The \*Industry Secretary is taken to have refused an application if he or she does not make a decision by the later of the following times (the **deadline**):
  - (a) the end of 90 days (the **90-day period**) after the day the Industry Secretary receives the application;
  - (b) if the Industry Secretary, by written notice given to the applicant within the 90-day period, requests the applicant to give further information about the application—the end of 90 days after the Industry Secretary receives the further information.

### 34-33 Written notice of decision

- (1) If the \*Industry Secretary makes a decision to grant or refuse an application under subsection 34-30(1) before the \*deadline, the Industry Secretary must give the applicant written notice of the decision.

*Reasons for refusal*

- (2) If the notice is a notice of a decision to refuse the application, it must also set out the reasons for the refusal.

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*Statements to accompany notice of decision*

- (3) The notice of the decision is to include the statements set out in subsections (4) and (5).
- (4) There must be a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the \*AAT, by (or on behalf of) any entity whose interests are affected by the decision, for review of the decision.
- (5) There must also be a statement to the effect that a request may be made under section 28 of that Act by (or on behalf of) such an entity for a statement:
  - (a) setting out the findings on material questions of fact; and
  - (b) referring to the evidence or other material on which those findings were based; and
  - (c) giving the reasons for the decision;
 except where subsection 28(4) of that Act applies.

*Failure does not affect validity*

- (6) If the \*Industry Secretary fails to comply with subsection (4) or (5), that failure does not affect the validity of his or her decision.

### **34-35 When uniform becomes registered**

If the \*Industry Secretary decides to grant the application, the \*design of the \*uniform becomes registered on:

- (a) the day the decision is made; or
- (b) if the applicant requests—such earlier day as the Industry Secretary specifies.

Note: When the design becomes registered, an entry for the design is made on the Register of Approved Occupational Clothing. Subdivision 34-E is about the Register.

### **Subdivision 34-D—Appeals from Industry Secretary’s decision**

#### **Table of sections**

34-40 Review of decisions by the Administrative Appeals Tribunal

### **34-40 Review of decisions by the Administrative Appeals Tribunal**

Applications may be made to the \*AAT for review of a decision made by the \*Industry Secretary under subsection 34-30(1).

### **Subdivision 34-E—The Register of Approved Occupational Clothing**

#### **Table of sections**

34-45	Keeping of the Register
34-50	Changes to the Register

#### **34-45 Keeping of the Register**

- (1) The \*Industry Secretary must keep the Register of Approved Occupational Clothing, listing the designs that are required to be entered on the Register because of this Division.

*Register to be open for inspection*

- (2) The \*Industry Secretary must arrange for the Register to be available for inspection at any reasonable time by any person on request.

#### **34-50 Changes to the Register**

*Removal of registration*

- (1) The \*Industry Secretary must remove an entry for a \*design from the Register of Approved Occupational Clothing if requested to do so by the employer who applied for the design to be registered.

*Correcting errors and mistakes*

- (2) The \*Industry Secretary may correct a clerical error or an obvious mistake in an entry for a design in the Register and, if the Industry Secretary does so, the correction takes effect on the day on which the design to which the entry relates was registered.



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**Subdivision 34-F—Approved occupational clothing guidelines****Table of sections**

34-55	Approved occupational clothing guidelines
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**34-55 Approved occupational clothing guidelines**

- (1) The Treasurer must formulate written guidelines (the ***approved occupational clothing guidelines***) setting out criteria that \*designs of uniforms must meet if the designs are to be registered.

*Matters to be taken into account in making guidelines*

- (2) In making \*approved occupational clothing guidelines, the matters to which the Treasurer is to have regard include:
- (a) how distinctively a \*uniform's \*design identifies the wearer as a person associated (directly or indirectly) with:
    - (i) the applicant for registering the uniform's design; or
    - (ii) a group consisting of the applicant and one or more of the applicant's \*associates; and
  - (b) the nature of the \*business or activities the applicant carries on.

*Guidelines to be published*

- (3) The Treasurer must arrange for the \*approved occupational clothing guidelines to be:
- (a) published in the *Gazette*; and
  - (b) made available, without charge, to any interested entity.

**Subdivision 34-G—The Industry Secretary****Table of sections**

34-60	Industry Secretary to give Commissioner information about entries
34-65	Delegation of powers by Industry Secretary

**34-60 Industry Secretary to give Commissioner information about entries**

The \*Industry Secretary must give the Commissioner information about entries of \*designs on the Register of Approved Occupational Clothing if the Commissioner requests him or her to do so.

**34-65 Delegation of powers by Industry Secretary**

The \*Industry Secretary may, by writing, delegate any or all of his or her functions and powers under this Division to an individual who holds or performs the duties of:

- (a) a \*Senior Executive Service office; or
- (b) an office of Senior Officer Grade A, B or C; in the Department of Industry, Science and Tourism.

*[The next Division is Division 36.]*

**8 Section 41-85 (link note)**

Repeal the link note.

**9 After Division 41**

Insert:

## Division 42 Table of Subdivisions

### Guide to Division 42

42-A	Key operative provisions
42-B	Cost of plant
42-C	Effective life
42-D	Depreciation rates
42-E	Calculation of depreciation deductions
42-F	Calculation of balancing adjustments
42-G	Calculation of balancing adjustments for some cars
42-H	Balancing adjustment relief
42-I	Quasi-ownership
42-J	Partial change of ownership
42-K	Car depreciation limit
42-L	Pooling

## Guide to Division 42

### 42-1 What this Division is about

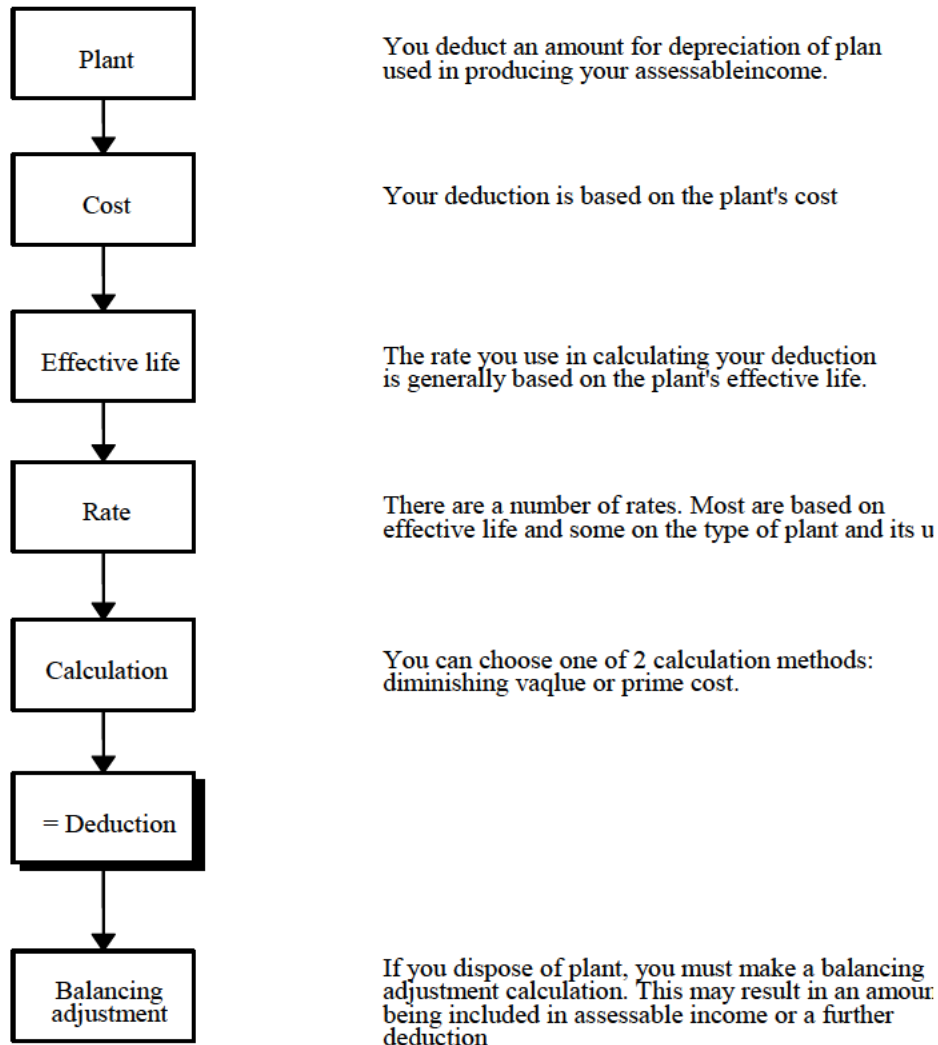
This Division sets out the basis on which you can deduct amounts for depreciation of property that is a unit of plant.

To work out how this Division applies to existing plant (and some plant where roll-overs are involved), you need to refer to the transitional provisions in Division 42 of the *Income Tax (Transitional Provisions) Act 1997*.

### Table of sections

42-5	Key concepts used in this Division
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#### 42-5 Key concepts used in this Division



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## Subdivision 42-A—Key operative provisions

### Guide to Subdivision 42-A

#### 42-10 What this Subdivision is about

This Subdivision contains the key operative provisions for depreciation, including the main deduction provision.

#### Table of sections

##### Operative provisions

42-15	Deduction for depreciation
42-18	Meaning of <i>plant</i>
42-19	References to plant
42-20	Amount you deduct
42-25	Calculation
42-30	Balancing adjustments
42-35	Application of Division 41 Common rules
42-40	Choices
42-45	Exclusions
42-48	Debt forgiveness: amounts deducted for depreciation

##### Non-operative provisions

42-50	What are other “amounts deducted for depreciation”?
42-55	Signposting to other parts of the Act

### Operative provisions

#### 42-15 Deduction for depreciation

You deduct an amount for depreciation of a unit of \*plant for an income year if, in that year:

- (a) you are its owner or \*quasi-owner; and
- (b) you use it, or have it \*installed ready for use, for the \*purpose of producing assessable income.

Note: If there is a quasi-owner, the owner cannot deduct: see section 42-320.

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## 42-18 Meaning of *plant*

(1) ***Plant*** includes:

- (a) articles, machinery, tools and rolling stock; and
- (b) animals used as beasts of burden or working beasts in a \*business, other than a \*primary production business; and
- (c) fences, dams and other structural improvements, other than those used for domestic or residential purposes, on land that is used for agricultural or pastoral operations; and
- (d) structural improvements, other than a \*forestry road or structural improvements used for domestic or residential purposes, on land used in a business involving:
  - (i) planting or tending trees in a plantation or forest that are intended to be felled; or
  - (ii) felling trees in a plantation or forest; or
  - (iii) transporting trees, or parts of trees, that you felled in a plantation or forest to the place where they are first to be milled or processed, or from which they are to be transported to the place where they are first to be milled or processed; and
- (e) structural improvements, other than those used for domestic or residential purposes, that are used wholly for operations (carried out in the course of a business) relating directly to:
  - (i) taking or culturing pearls or pearl shell; or
  - (ii) taking or catching trochus, bêche-de-mer or green snails;

and that are situated at or near a port or harbour from which the business is conducted; and
- (f) structural improvements that are excluded from paragraph (c), (d) or (e) because they are used for domestic or residential purposes if they are provided for the accommodation of employees, tenants or sharefarmers who are engaged in or in connection with the activities referred to in that paragraph.

- (2) ***Plant*** also includes plumbing fixtures and fittings (including wall and floor tiles) provided by an entity mainly for:
- (a) either or both:

- 
- (i) employees in a \*business carried on by the entity for the \*purpose of producing assessable income; or
  - (ii) employees in a business carried on for that purpose by a company that is a member of the same \*wholly-owned group of which the entity is a member; or
  - (b) \*children of any of those employees.

#### **42-19 References to plant**

References in the following provisions of this Division to \*plant are to a unit of plant.

#### **42-20 Amount you deduct**

- (1) The amount you deduct is worked out under Subdivision 42-E. However, for \*plant in a \*pool, you work out the amount under Subdivision 42-L.
- (2) You cannot deduct more than the \*undeducted cost of the \*plant.

#### **42-25 Calculation**

- (1) The calculation of your deduction is based on the \*cost of the \*plant to you.
- (2) The rate you use to calculate your deduction is set out in Subdivision 42-D. Generally, the rate is based on the \*effective life of the \*plant.
- (3) You have a choice of 2 calculation methods: the \*diminishing value method and the \*prime cost method. You make the choice for the income year in which a depreciation deduction is first allowable to you for the \*plant.

Note: The diminishing value method calculates your deduction each year as a percentage of the balance you have left to deduct.

The prime cost method calculates your deduction each year as a percentage of your cost.

## 42-30 Balancing adjustments

- (1) You must make a balancing adjustment calculation for \*plant if:
- (a) you have deducted or can deduct an amount for depreciation of it or, if Common rule 1 (roll-over relief for related entities) applied to your acquisition of it, the transferor or an earlier successive transferor deducted or can deduct an amount for depreciation of it; and
  - (b) a \*balancing adjustment event occurs.

Note 1: However, no balancing adjustment calculation is required if Common rule 1 applies to the balancing adjustment event.

Note 2: A balancing adjustment calculation may include an amount in your assessable income or allow you to deduct an amount. If you are required to include an amount in your assessable income, balancing adjustment relief may be available: see sections 42-285, 42-290 and 42-295.

- (2) Balancing adjustments are calculated under:
- (a) Subdivision 42-F; or
  - (b) Subdivision 42-G for some \*cars; or
  - (c) section 42-390 for \*plant in a \*pool.

- (3) A *balancing adjustment event* occurs as shown in the table:

A balancing adjustment event occurs:		
Item	If you are ...	when:
1	the owner of *plant	(a) you dispose of it and do not become its *quasi-owner; or (b) it is lost or destroyed; or (c) subsection 42-330(1) applies.
2	the *quasi-owner of *plant	(a) you cease to be the *quasi-owner of it and do not become its owner; or (b) it is lost or destroyed; or (c) subsection 42-330(2) applies.

Note: Section 42-330 deals with partial change of ownership.

## 42-35 Application of Division 41 Common rules

The following Common rules apply to this Division:

- (a) Common rule 1 (roll-over relief for related entities);
- (b) Common rule 2 (non-arm's length transactions);



(c) Common rule 3 (anti-avoidance—ownership).

For modifications to Common rule 1, see sections 42-275 and 42-280.

For modifications to Common rule 2, see sections 42-75 and 42-210.

#### **42-40 Choices**

- (1) Any choice you are required to make under this Division must be made:
  - (a) by the day you lodge your \*income tax return for the income year to which the choice relates; or
  - (b) within a further time allowed by the Commissioner.
- (2) Your choice, once made, applies to that income year and all later income years.

#### **42-45 Exclusions**

*Primary production expenditure*

- (1) You cannot deduct an amount for depreciation of \*plant if any expenditure incurred on it by any entity has been or can be deducted under Subdivision 387-A (Landcare operations) or 387-B (Facilities to conserve or convey water).

*Research and development plant*

- (2) You cannot deduct an amount for depreciation of \*plant that you have \*installed ready for use exclusively for the purpose of carrying on \*research and development activities unless you have elected under subsection 73B(18) of the *Income Tax Assessment Act 1936* that the research and development provisions are not to apply to the plant.

*Leisure facilities and boats*

- (3) You cannot deduct an amount for depreciation of a \*leisure facility or a boat unless, at some time in the income year:
  - (a) its use constitutes a \*fringe benefit; or
  - (b) you use the leisure facility or hold it for use as mentioned in subsection 26-50(3); or

- (c) you use the boat or hold it for use as mentioned in paragraph 26-50(5)(b), (c) or (d).

#### **42-48 Debt forgiveness: amounts deducted for depreciation**

- (1) An amount applied in reduction of deductible expenditure (within the meaning of Division 245 of Schedule 2C to the *Income Tax Assessment Act 1936*) for \*plant under section 245-155 of that Schedule is taken to be an amount you have deducted under section 42-15 for depreciation of the plant.
- (2) The amount is taken to have been deducted as at the first day of your income year that corresponds to the forgiveness year of income for the reduction within the meaning of Division 245 of that Schedule.

Note: Therefore, the amount must be taken into account for the plant under paragraph (a) of the definition of **undeducted cost** in section 42-175. Also, because the amount is taken to have been deducted as at the first day of the income year, it will reduce the opening undeducted cost of the plant if you are using the diminishing value method.

#### **Non-operative provisions**

#### **42-50 What are other “amounts deducted for depreciation”?**

- (1) A number of provisions in this Division require you to work out the amounts you have deducted or can deduct for depreciation of plant. Apart from amounts you have deducted or can deduct under section 42-15, other amounts may need to be taken into account.
- (2) Those other amounts are:
- (a) amounts you have deducted or can deduct for depreciation under Division 28 using the “log book” method or the “one-third of actual expenses” method; and
  - (b) amounts you treat as having been deducted for depreciation under section 42-285 or 42-290 (balancing adjustment relief); and
  - (c) amounts taken to be depreciation under paragraph 159GJ(1)(e) of the *Income Tax Assessment Act 1936*.

## **42-55 Signposting to other parts of the Act**

### *Entertainment*

- (1) Section 32-15 treats some property that is used for entertainment as not being used for the purpose of producing assessable income.

### *Environment*

- (2) Even if you do not use property for the purpose of producing assessable income, you will be taken to do so in some circumstances. See section 330-455 (mine site rehabilitation) and sections 82BG and 82BR of the *Income Tax Assessment Act 1936* (environmental impact or protection).

### *Debt forgiveness*

- (3) Your deductions under this Division may be reduced if any of your commercial debts have been forgiven in the income year: see Subdivision 245-E of Schedule 2C to the *Income Tax Assessment Act 1936*.

### *Anti-avoidance*

- (4) The anti-avoidance provisions in section 51AD, and Division 16D of Part III, of the *Income Tax Assessment Act 1936* may deny a depreciation deduction.

### *Record-keeping*

- (5) The rules in Division 900 requiring individuals and certain partnerships to keep written evidence of work expenses and car expenses apply to this Division.
- (6) There are special record-keeping rules that apply to this Division in section 262A of the *Income Tax Assessment Act 1936*.

## Subdivision 42-B—Cost of plant

### Guide to Subdivision 42-B

#### 42-60 What this Subdivision is about

A depreciation deduction for plant is based on its cost. This Subdivision tells you how to work out its cost.

#### Table of sections

##### Operative provisions

42-65	How to work out your <i>cost</i>
42-70	Adjustment: acquiring a car at a discount
42-75	Adjustment: non-arm's length transactions
42-80	Adjustment: car depreciation limit
42-85	Adjustment: double deduction
42-90	Adjustment: previously depreciated plant limit

#### Operative provisions

#### 42-65 How to work out your *cost*

##### *Method statement*

*Step 1.* Work out the *cost* of the \*plant using the following table. If more than one row applies, use the cost under the last applicable row.

*Step 2.* The table indicates provisions that may adjust the cost. Refer to them to see if an adjustment is necessary.

*Step 3.* If more than one provision adjusts the cost, apply them in the order they appear in the table to:

(a) the cost; or

(b) the adjusted cost after applying the last applicable provision.

*Step 4.* The result is your *cost*.

Example: An entity acquires a car in a non-arm's length transaction for \$80,000. The market value of the car is \$60,000. Assume the car depreciation limit for the year is \$55,000.

The provisional cost is \$80,000 (item 1 of the table). The non-arm's length rule is applied next to reduce it to \$60,000. Then the car depreciation limit applies to further reduce it. Your cost is \$55,000.

<b>Cost table</b>			
<b>Item</b>	<b>For *plant ...</b>	<b>The cost is:</b>	<b>May be adjusted by:</b>
1	generally	its cost to you	<ul style="list-style-type: none"> <li>• car discount (42-70)</li> <li>• non-arm's length (42-75)</li> <li>• car limit (42-80)</li> <li>• double deduction (42-85)</li> <li>• prev. dep. limit (42-90)</li> </ul>
2	you acquire with, or attached to, other assets without a specific value being allocated to it	so much of the overall cost as is reasonably attributable to the *plant	<ul style="list-style-type: none"> <li>• car discount (42-70)</li> <li>• non-arm's length (42-75)</li> <li>• car limit (42-80)</li> <li>• double deduction (42-85)</li> <li>• prev. dep. limit (42-90)</li> </ul>
3	you acquire under subsection 42-335(1)	the market value of the *plant immediately before its acquisition	<ul style="list-style-type: none"> <li>• car limit (42-80)</li> <li>• double deduction (42-85)</li> <li>• prev. dep. limit (42-90)</li> </ul>
4	attached to land over which you hold a *quasi-ownership right assigned to you	so much of any consideration for the acquisition of the right as is reasonably attributable to the *plant	<ul style="list-style-type: none"> <li>• non-arm's length (42-75)</li> <li>• double deduction (42-85)</li> <li>• prev. dep. limit (42-90)</li> </ul>
5	that reverts to you because of the expiry, surrender or termination of a *quasi-ownership right over land	so much of any consideration for the expiry, surrender or termination as is reasonably attributable to the *plant	<ul style="list-style-type: none"> <li>• double deduction (42-85)</li> <li>• prev. dep. limit (42-90)</li> </ul>
6	that reverts to you because of the expiry, surrender or termination of a *quasi-ownership right over land and you grant a new right to an *associate or an *associated government entity of the former holder	the market value of the *plant immediately before the expiry, surrender or termination, worked out as if the former holder held an estate in fee simple in the land	<ul style="list-style-type: none"> <li>• double deduction (42-85)</li> <li>• prev. dep. limit (42-90)</li> </ul>

<b>Cost table</b>			
<b>Item</b>	<b>For *plant ...</b>	<b>The cost is:</b>	<b>May be adjusted by:</b>
7	attached to land over which you hold a *quasi-ownership right and which you acquire under subsection 42-335(2)	the market value of the *plant immediately before its acquisition, worked out as if the former holder held an estate in fee simple in the land	<ul style="list-style-type: none"> <li>• double deduction (42-85)</li> <li>• prev. dep. limit (42-90)</li> </ul>
8	you stop holding as trading stock and acquire under section 70-110	the amount worked out under section 70-110	<ul style="list-style-type: none"> <li>• car limit (42-80)</li> <li>• double deduction (42-85)</li> </ul>
9	for which you have deducted or can deduct an amount under the research and development provisions	the amount worked out under subsection 73B(21) or (22) of the <i>Income Tax Assessment Act 1936</i>	<ul style="list-style-type: none"> <li>• car limit (42-80)</li> <li>• double deduction (42-85)</li> </ul>
10	you acquire in circumstances where Common rule 1 applies	the transferor's cost (see subsection 42-280(2))	
11	for which you have deducted or can deduct an amount under the mining and quarrying provisions	the amount worked out under subsection 330-590(3)	<ul style="list-style-type: none"> <li>• car limit (42-80)</li> <li>• double deduction (42-85)</li> </ul>
12	you acquire in circumstances where section 73E of the <i>Income Tax Assessment Act 1936</i> (R&D roll-over relief) applies	the amount applicable under paragraph 73E(6)(a) of the <i>Income Tax Assessment Act 1936</i>	<ul style="list-style-type: none"> <li>• car limit (42-80)</li> <li>• double deduction (42-85)</li> </ul>

#### **42-70 Adjustment: acquiring a car at a discount**

- (1) You must increase the cost of a \*car designed mainly for carrying passengers and which you acquire at a discount if:

- (a) it is reasonable to conclude that any portion (*discount portion*) of the discount is referable to you or another entity selling other \*plant for less than its market value; and
  - (b) you, or another entity, deducted or can deduct an amount for depreciation of the other plant for any income year; and
  - (c) the sum of the cost of the car and the discount portion exceeds the \*car depreciation limit calculated under section 42-345 for the \*financial year in which you first use the car for any purpose.
- (2) The cost of the \*car is increased by the discount portion.
- Note: The termination value of the other plant is also increased by the discount portion: see section 42-205.
- (3) This section does not apply to a \*car that is excluded from section 42-80 by subsection 42-80(2).

#### **42-75 Adjustment: non-arm's length transactions**

Common rule 2 applies for the purpose of working out the cost of \*plant, but with the following modifications:

- (a) it applies to cost rather than expenditure; and
- (b) it compares the cost with the amount that would have been the cost if the parties had dealt with each other at arm's length, and substitutes that amount instead of market value.

#### **42-80 Adjustment: car depreciation limit**

- (1) If the cost of a \*car designed mainly for carrying passengers would exceed the \*car depreciation limit for the \*financial year in which you first use the car for any purpose, your cost is reduced to that limit.
- (2) This section does not apply to a \*car that, immediately before you first used it for any purpose, was specially fitted out for transporting disabled people in wheelchairs unless, at that time:
  - (a) it was for your personal transportation; and
  - (b) it would be covered by subitem 96(1) or 97(1) of Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992*.



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**42-85 Adjustment: double deduction**

- (1) The cost of \*plant is reduced by any portion of its cost that you have deducted or can deduct, or that has been or will be taken into account in working out an amount you can deduct, other than for depreciation.
- (2) Subsection (1) does not apply to deductions for:
  - (a) research and development (section 73B of the *Income Tax Assessment Act 1936*);
  - (b) development and investment allowances (Subdivisions B and BA of Division 3 of Part III of that Act);
  - (c) drought investment allowance (Part XII of that Act).

**42-90 Adjustment: previously depreciated plant limit**

- (1) The Commissioner may limit the cost to you of \*plant for which an amount has been deducted or can be deducted for depreciation by any earlier owner or \*quasi-owner.
- (2) The cost of the \*plant may be limited to the sum of:
  - (a) its \*written down value, immediately before the \*balancing adjustment event occurred, in the hands of the last entity who had deducted or can deduct an amount for depreciation of it; and
  - (b) any balancing adjustment included in that entity's assessable income for the plant under Subdivision 42-F or 42-G; and
  - (c) any balancing adjustment that would have been included in that entity's assessable income for the plant if balancing adjustment relief under section 42-285 (same year relief) or 42-290 (later year relief) had not applied.
- (3) If the last entity had the \*plant in a \*pool for the income year in which the \*balancing adjustment event occurred, its cost may be limited to the sum of:
  - (a) any balancing adjustment included in that entity's assessable income for the plant under section 42-390; and
  - (b) any balancing adjustment that would have been included in that entity's assessable income for the plant if balancing

adjustment relief under section 42-285 or 42-290 had not applied.

- (4) The matters to be taken into account by the Commissioner in deciding whether to limit the cost of \*plant include:
- (a) whether you acquired the plant from an \*associate; and
  - (b) the market value of the plant; and
  - (c) how the purchase price of the plant was calculated; and
  - (d) how the acquisition was financed; and
  - (e) whether the plant is for use by the entity from whom you acquired it or by an associate of the entity.

## **Subdivision 42-C—Effective life**

### **Guide to Subdivision 42-C**

#### **42-95 What this Subdivision is about**

The rate at which you depreciate plant is generally determined by its effective life. There are 2 methods of working out effective life.

#### **Table of sections**

##### **Operative provisions**

42-100	Choice of method
42-105	How to work out effective life
42-110	Commissioner's determination of effective life

#### **Operative provisions**

##### **42-100 Choice of method**

- (1) You must either:
- (a) work out the \*effective life of \*plant; or
  - (b) adopt the \*effective life specified by the Commissioner (if any) for the plant under section 42-110.

- (2) You make the choice for the income year in which a depreciation deduction is first allowable to you for the \*plant.

#### **42-105 How to work out effective life**

- (1) You work out the \*effective life of \*plant by estimating how long it can be used by any entity for income producing purposes. You do this as at the time you first use it, or have it \*installed ready for use, for the \*purpose of producing assessable income.
- (2) In making that estimate, you assume that the \*plant:
  - (a) is new; and
  - (b) will be subject to wear and tear at a rate that was reasonable for you to expect when you were working it out having regard to the expected circumstances of your use; and
  - (c) will be maintained in reasonably good order and condition.
- (3) If, at that time, you conclude that you would be likely to scrap the \*plant, sell it for scrap or abandon it before the end of the period worked out under subsection (1), its \*effective life ends at the earlier time. This conclusion is also to be made on the assumption that the plant is new.

#### **42-110 Commissioner's determination of effective life**

- (1) The Commissioner may make a written determination specifying the \*effective life of \*plant.
- (2) Any conditions in the determination must be satisfied when you first use the \*plant, or have it \*installed ready for use, for the \*purpose of producing assessable income.

## Subdivision 42-D—Depreciation rates

### Guide to Subdivision 42-D

#### 42-115 What this Subdivision is about

This Subdivision sets out the depreciation rates. More than one rate can apply depending on the nature of the plant and its use.

#### Table of sections

##### Operative provisions

42-120	Which rate do you use?
42-123	Change of rate
42-125	General rates
42-130	Low cost plant
42-135	Cars and motor cycles
42-140	Artworks
42-145	Scientific research
42-150	Employee amenities

#### Operative provisions

##### 42-120 Which rate do you use?

- (1) If more than one rate can apply to your \*plant, choose the one you prefer. However, in any case, you may choose a lower rate.
- (2) You make the choice for the income year in which a depreciation deduction is first allowable to you for the \*plant.

##### 42-123 Change of rate

- (1) You must make a new choice of rate if you were using the \*plant as mentioned in section 42-145 (scientific research) or 42-150 (employee amenities) and you cease to use it in that way.
- (2) You may make a new choice of rate if you start using the \*plant as mentioned in section 42-150.

**42-125 General rates**

(1) The general rates are set out in the following table.

<b>General rates table</b>			
<b>Item</b>	<b>Years in *effective life</b>	<b>*Diminishing value rate</b>	<b>*Prime cost rate</b>
1	fewer than 3	not applicable	100%
2	3 to fewer than 5	60%	40%
3	5 to fewer than 6 <sup>2</sup> / <sub>3</sub>	40%	27%
4	6 <sup>2</sup> / <sub>3</sub> to fewer than 10	30%	20%
5	10 to fewer than 13	25%	17%
6	13 to fewer than 30	20%	13%
7	30 or more	10%	7%

(2) These rates do not apply to a \*car, or a motor cycle or similar vehicle, or an \*artwork.

**42-130 Low cost plant**

The \*prime cost rate for \*plant is 100% if its \*cost does not exceed \$300 (or a higher prescribed amount).

**42-135 Cars and motor cycles**

The rates for \*cars, and motor cycles or similar vehicles, are set out in the following table.

<b>Cars and motor cycles rates table</b>			
<b>Item</b>	<b>Years in *effective life</b>	<b>*Diminishing value rate</b>	<b>*Prime cost rate</b>
1	fewer than 3	not applicable	100%
2	3 to fewer than 5	50%	33%
3	5 to fewer than 6 <sup>2</sup> / <sub>3</sub>	30%	20%
4	6 <sup>2</sup> / <sub>3</sub> to fewer than 10	22.5%	15%
5	10 to fewer than 13	15%	10%
6	13 to fewer than 20	11.25%	8%
7	20 to fewer than 40	7.5%	5%

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**Cars and motor cycles rates table**

Item	Years in *effective life	*Diminishing value rate	*Prime cost rate
8	40 or more	3.75%	3%

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**42-140 Artworks**

- (1) The \*diminishing value rate for \*artworks is the percentage worked out using the formula:

$$\frac{1.8}{\text{No. of years in *effective life}} \times 100$$

- (2) The \*prime cost rate for \*artworks is the percentage worked out using the formula:

$$\frac{1.2}{\text{No. of years in *effective life}} \times 100$$

- (3) However, the \*prime cost rate for an \*artwork having an \*effective life of fewer than 3 years is 100%.

**42-145 Scientific research**

For \*plant that you acquired before 1 July 1995 and use only for scientific research in the fields of natural or applied science:

- (a) the \*diminishing value rate is 50%; and
- (b) the \*prime cost rate is 33%.

**42-150 Employee amenities**

- (1) There is a rate for \*plant an entity uses mainly for providing clothing cupboards, first aid, rest-room or recreational facilities, or meals or facilities for meals for:

- (a) either or both:
    - (i) employees in a \*business carried on by the entity for the \*purpose of producing assessable income; or
    - (ii) employees in a business carried on for that purpose by a company that is a member of the same \*wholly-owned group of which the entity is a member; or
-

- (b) \*children of any of those employees.
- (2) The \*diminishing value rate is 50%, and the \*prime cost rate is 33%.

## **Subdivision 42-E—Calculation of depreciation deductions**

### **Guide to Subdivision 42-E**

#### **42-155 What this Subdivision is about**

This Subdivision shows you how to work out the amount of a depreciation deduction. There are 2 calculation formulae: one for each calculation method.

#### **Table of sections**

##### **Operative provisions**

- 42-160 *Diminishing value method*  
 42-165 *Prime cost method*  
 42-170 Reducing deductions  
 42-175 Meaning of *undeducted cost*

### **Operative provisions**

#### **42-160 *Diminishing value method***

Calculate your deduction using the formula:

$$\frac{\text{Opening undeducted cost} \times \text{Days owned}}{365} \times \begin{matrix} \text{*Diminishing} \\ \text{value rate} \end{matrix}$$

where:

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***opening undeducted cost*** is the \*undeducted cost of the \*plant on the first day of the income year on which you were its owner or \*quasi-owner.

***days owned*** is the number of days in the income year you were the owner or \*quasi-owner of the \*plant.

#### 42-165 *Prime cost method*

- (1) Calculate your deduction using the formula:

$$\frac{\text{*Cost} \times \text{Days owned}}{365} \times \frac{\text{*Prime cost}}{\text{rate}}$$

where:

***days owned*** is the number of days in the income year you were the owner or \*quasi-owner of the \*plant.

- (2) However, if you are using the 100% rate, your deduction is your \*cost.
- (3) In applying this section, the \*cost of the \*plant is reduced by:
- (a) any amount that you choose under section 42-285 or 42-290 (balancing adjustment relief) to treat as having been deducted for depreciation of the plant; and
  - (b) any amount you are taken to have deducted for depreciation of the plant under subsection 42-48(2) (debt forgiveness).

Note: You cannot deduct more than the undeducted cost of the plant.

#### 42-170 Reducing deductions

##### *General*

- (1) Reduce your deduction by an amount that reasonably reflects the extent (if any) you neither used the \*plant, nor had it \*installed ready for use, for the \*purpose of producing assessable income during the period in the income year you were its owner or \*quasi-owner.



*Leisure facilities and boats*

- (2) You may have to make a further reduction if your \*plant is a \*leisure facility or a boat. That reduction is made for any period in the income year during which you:
- (a) were its owner or \*quasi-owner; and
  - (b) used it, or had it \*installed ready for use, for the \*purpose of producing assessable income.
- (3) The reduction must reflect the extent (if any) to which you did not satisfy any of the exceptions in paragraphs 42-45(3)(a), (b) and (c) for the \*leisure facility or boat in that period.

Note: Paragraphs 42-45(3)(a), (b) and (c) set out the limited circumstances in which you can deduct an amount for a leisure facility or a boat.

**42-175 Meaning of undeducted cost**

The **undeducted cost** of \*plant is its \*cost less the sum of:

- (a) for plant that is not a \*car—the amounts you have deducted or can deduct for depreciation of the plant; and
- (b) for plant that is not a car—any further amounts you could have deducted for depreciation of the plant for any period you were its owner or \*quasi-owner and used it, or had it \*installed ready for use, assuming that:
  - (i) you used it wholly for the \*purpose of producing assessable income during that period; and
  - (ii) you used the same rate and method during that period as you used for the income year in which a depreciation deduction was first allowable to you for the plant; and
  - (iii) no provision of this Act denied a depreciation deduction for it; and
- (c) if the plant is a car—the amounts you could have deducted under this Division for any period you were its owner and used it, or had it installed ready for use, assuming that:
  - (i) you used it wholly for the purpose of producing assessable income during that period; and
  - (ii) you used the same rate and method during that period as you used for the income year in which a depreciation deduction was first allowable to you for the car; and

- (iii) no provision of this Act denied a depreciation deduction for it; and
- (iv) Division 28 (Car expenses) did not apply; and
- (d) if Common rule 1 applied to your acquisition of the plant—the sum of the amounts that would apply under paragraphs (a), (b) and (c) to the transferor and earlier successive transferors.

## Subdivision 42-F—Calculation of balancing adjustments

### Guide to Subdivision 42-F

#### 42-180 What this Subdivision is about

This Subdivision explains how to calculate your balancing adjustment when a balancing adjustment event occurs.

The calculation may result in:

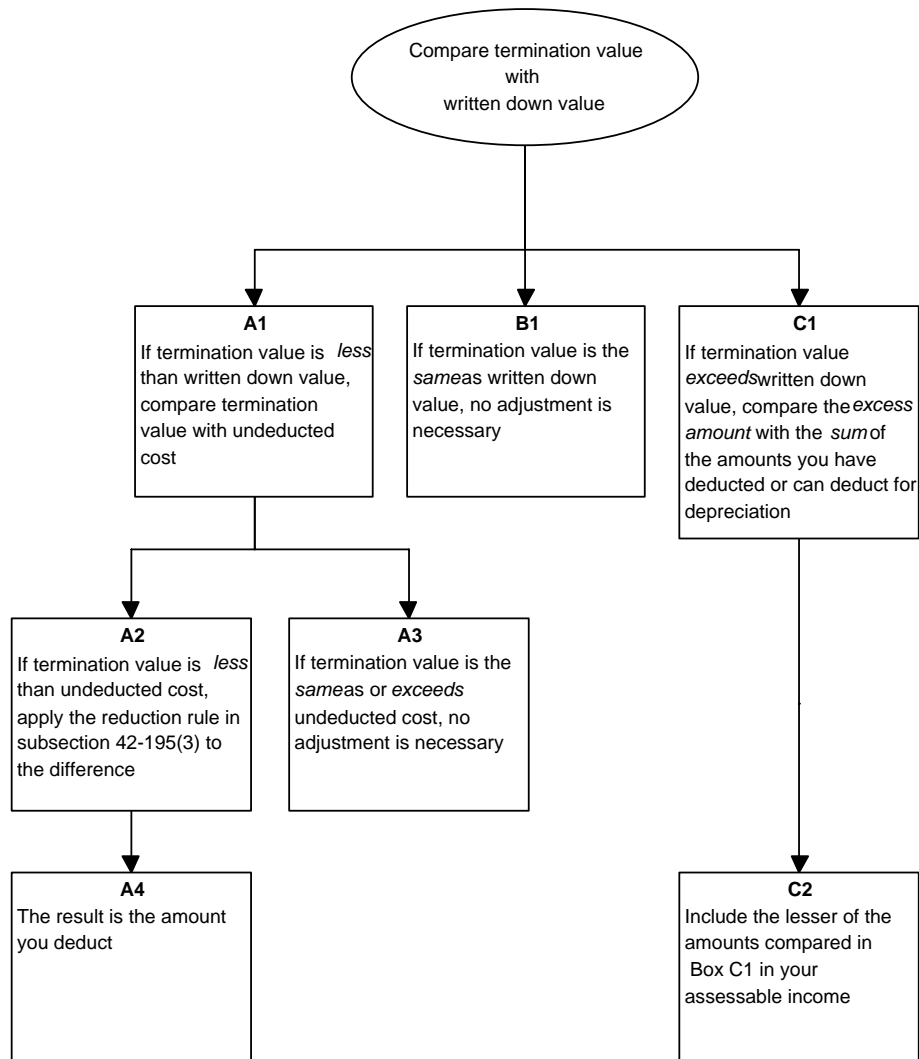
- an amount being included in your assessable income; or
- you being able to deduct an amount; or
- no further action being required.

#### Table of sections

42-182 Diagram showing the application of this Subdivision

##### Operative provisions

42-185 When do you make a balancing adjustment calculation?  
42-190 Including an amount in assessable income  
42-195 Deducting an amount  
42-200 Meaning of *written down value*  
42-205 Meaning of *termination value*  
42-210 Adjustment: non-arm's length transactions  
42-215 Adjustment: car depreciation limit  
42-220 Plant used for research and development

**42-182 Diagram showing the application of this Subdivision****Operative provisions****42-185 When do you make a balancing adjustment calculation?**

You must make a balancing adjustment calculation for the income year in which a \*balancing adjustment event occurs.

#### **42-190 Including an amount in assessable income**

- (1) You include an amount in your assessable income if the \*termination value of \*plant exceeds its \*written down value.
- (2) You include the lesser of:
  - (a) the amounts you have deducted or can deduct for depreciation of the \*plant; and
  - (b) the excess referred to in subsection (1).

For balancing adjustment relief, see sections 42-285, 42-290 and 42-295.

For plant used for research and development, see section 42-220.

- (3) If Common rule 1 applied to your acquisition of the \*plant, the amounts you have deducted or can deduct are taken to include amounts the transferor, and earlier successive transferors, deducted or can deduct for depreciation of it.

#### **42-195 Deducting an amount**

- (1) You deduct an amount if the \*termination value of \*plant is less than its \*undeducted cost.
- (2) The amount you deduct is the difference between those amounts.
- (3) However, you reduce that difference to reasonably reflect the extent (if any) to which you used the \*plant, or had it \*installed ready for use, other than for the \*purpose of producing assessable income when you were its owner or \*quasi-owner.

#### **42-200 Meaning of *written down value***

The *written down value* of \*plant is its \*cost less the sum of:

- (a) the amounts you have deducted or can deduct for depreciation of it; and
- (b) if Common rule 1 applied to your acquisition of it—the amounts the transferor, and earlier successive transferors, deducted or can deduct for depreciation of it.

**42-205 Meaning of *termination value****Method statement*

- Step 1.* Work out the ***termination value*** of the \*plant using the following table. If more than one row applies, use the value under the last applicable row.
- Step 2.* The table indicates provisions which may adjust the value. Refer to them to see if an adjustment is necessary.
- Step 3.* If more than one provision adjusts the value, apply them in the order they appear in the table to:
- (a) the termination value; or
  - (b) the adjusted termination value after applying the last applicable provision.
- Step 4.* The result is your ***termination value***.

**Termination value table**

<b>Item</b>	<b>For *plant ...</b>	<b>The termination value is:</b>	<b>May be adjusted by:</b>
1	you sell for a specific price	the sale price less the reasonably attributable expenses of sale	<ul style="list-style-type: none"> <li>• non-arm's length (42-210)</li> <li>• car limit (42-215)</li> </ul>
2	you sell with, or attached to, other assets without a specific price being allocated to it	the part of the total sale price that is reasonably attributable to the *plant less the part of the reasonably attributable expenses of the sale	<ul style="list-style-type: none"> <li>• non-arm's length (42-210)</li> <li>• car limit (42-215)</li> </ul>
3	you sell as part of a transaction involving the acquisition of a *car the *cost of which has been increased under section 42-70	the sum of the sale price (less the reasonably attributable expenses of sale) and the discount portion referred to in section 42-70	<ul style="list-style-type: none"> <li>• non-arm's length (42-210)</li> <li>• car limit (42-215)</li> </ul>

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**Termination value table**

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Item	For *plant ...	The termination value is:	May be adjusted by:
4	you dispose of other than by sale	the market value of the *plant immediately before its disposal	• car limit (42-215)
5	for which a *balancing adjustment event occurs because of subsection 42-330(1)	the market value of the *plant immediately before the *balancing adjustment event	• car limit (42-215)
6	attached to land over which you hold a *quasi-ownership right that you assign	so much of the consideration received for the assignment of the *quasi-ownership right as is reasonably attributable to the *plant	
7	attached to land over which you hold a *quasi-ownership right that you assign to an *associate or an *associated government entity	the market value of the *plant immediately before the assignment, worked out as if you had held an estate in fee simple in the land	
8	attached to land over which you hold a *quasi-ownership right that expires, is surrendered or is terminated	so much of the consideration received for the expiry, surrender or termination of the *quasi-ownership right as is reasonably attributable to the *plant	
9	attached to land over which you hold a *quasi-ownership right that expires, is surrendered or is terminated and a new right or an estate in fee simple is granted to an *associate or an *associated government entity of yours	the market value of the *plant immediately before the expiry, surrender or termination, worked out as if you had held an estate in fee simple in the land	

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**Termination value table**

<b>Item</b>	<b>For *plant ...</b>	<b>The termination value is:</b>	<b>May be adjusted by:</b>
10	attached to land over which you hold a *quasi-ownership right and for which a *balancing adjustment event occurs because of subsection 42-330(2)	the market value of the *plant immediately before the *balancing adjustment event, worked out as if you had held an estate in fee simple in the land	
11	you start holding as trading stock and you sell under section 70-30	the amount worked out under section 70-30	• car limit (42-215)
12	that is lost or destroyed	the amount or value received or receivable under an insurance policy or otherwise for the loss or destruction	• car limit (42-215)

Note 1: Section 42-70 increases the cost of a car you acquire at a discount in certain circumstances.

Note 2: Section 42-330 sets out the circumstances in which a partial change of ownership results in a balancing adjustment event.

**42-210 Adjustment: non-arm's length transactions**

- (1) Common rule 2 applies for the purpose of working out the \*termination value of \*plant.
- (2) However, that Common rule has a different application for depreciation purposes in 2 respects:
  - (a) it only applies to disposals by sale; and
  - (b) instead of requiring the party disposing of the property to have incurred capital expenditure, it is taken to require that party to have incurred a \*cost.

## 42-215 Adjustment: car depreciation limit

For a \*car the \*cost of which was worked out by applying section 42-80 (Car depreciation limit), adjust the value by multiplying it by the fraction:

$$\frac{\text{CDL}}{\text{Original cost}}$$

where:

**CDL** is the \*car depreciation limit for the \*car for the \*financial year in which you first used it for any purpose.

**original cost** is the \*cost of the \*car (ignoring the \*car depreciation limit).

## 42-220 Plant used for research and development

- (1) The amounts referred to in paragraph 42-190(2)(a) are increased if you have deducted or can deduct an amount for the \*plant under section 73B of the *Income Tax Assessment Act 1936*. However, this subsection does not apply if subsection (3) applies.
- (2) The increase for \*plant to which subsection (1) applies is the difference between:
  - (a) its cost under section 73B, ignoring subsection 73B(6); and
  - (b) its written down value under that section.

Note: Subsection 73B(6) imposed a ceiling of \$10,000,000 on the cost of certain pilot plant for research and development purposes.

- (3) The amounts referred to in paragraph 42-190(2)(a) are increased if you acquired the \*plant under a disposal to which Common rule 1 or section 73E of the *Income Tax Assessment Act 1936* (roll-over relief) applied and:
  - (a) the transferor had deducted or could deduct an amount for the plant under section 73B of that Act; or
  - (b) your acquisition of the plant was the last of 2 or more successive transfers to which Common rule 1 or section 73E applied and any of the prior transferors had deducted or could deduct an amount for the plant under section 73B.



- (4) The increase for \*plant to which subsection (3) applies is worked out using the formula:

Transferor's original cost – Modified written down value

where:

***transferor's original cost*** means:

- (a) the \*plant's cost; or
- (b) if paragraph (3)(b) applies—the plant's cost to the earliest successive transferor;

under section 73B, ignoring subsection 73B(6).

***modified written down value*** means the written down value under section 73B worked out as though:

- (a) the transferor's original cost were your cost; and
- (b) the amount mentioned in paragraph (3)(a) or (b) had been deducted or deductible by you.

## **Subdivision 42-G—Calculation of balancing adjustments for some cars**

### **Guide to Subdivision 42-G**

#### **42-225 What this Subdivision is about**

This Subdivision explains how to calculate your balancing adjustment when a balancing adjustment event occurs for a car for which you have:

- deducted depreciation; and
- chosen the “cents per kilometre” method or the “12% of original value” method for deducting your car expenses.

## Table of sections

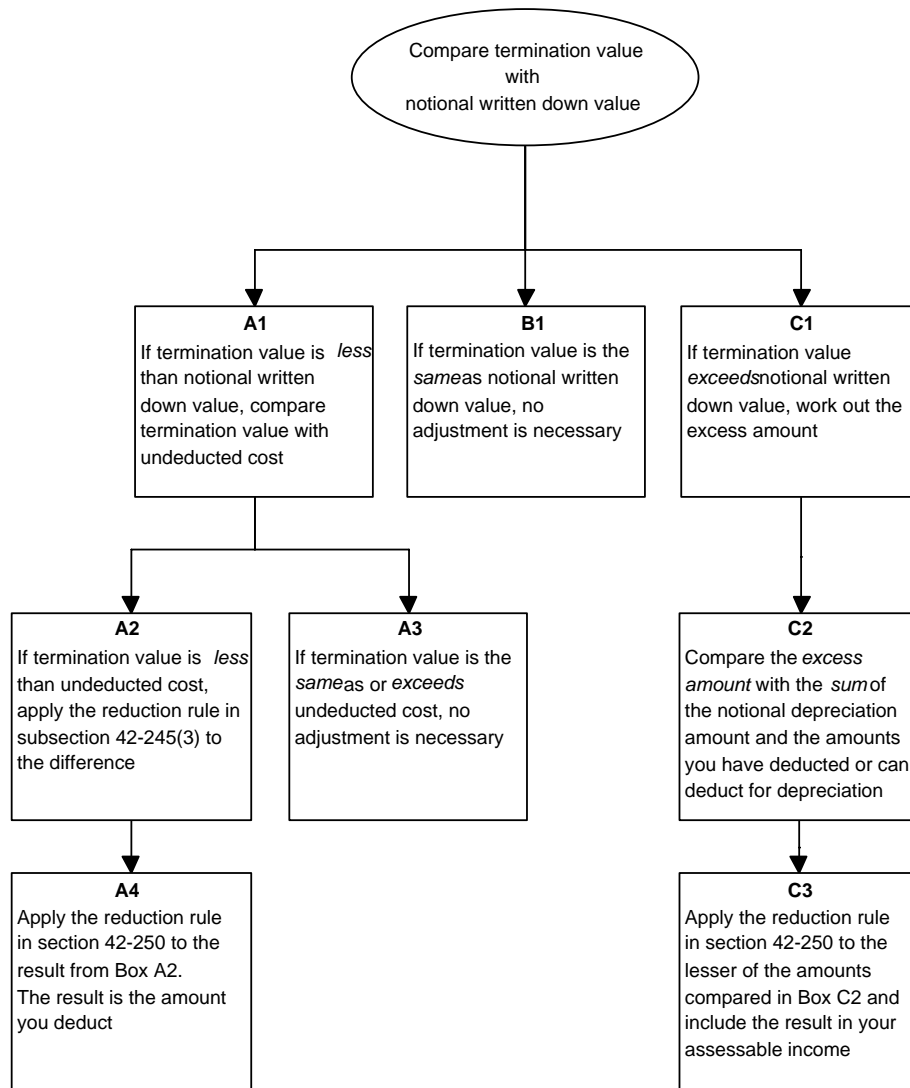
- 42-230 Explanatory material
- 42-232 Diagram showing the operation of this Subdivision

### Operative provisions

- 42-235 When do you use this Subdivision for a car?
- 42-240 Including an amount in assessable income
- 42-245 Deducting an amount
- 42-250 Reduction to take account of days when depreciation not claimed
- 42-255 Meaning of *notional depreciation amount*
- 42-260 Meaning of *notional written down value*

## 42-230 Explanatory material

- (1) This Subdivision has limited application because:
  - (a) if you have used only the “cents per kilometre” method or the “12% of original value” method since you began using the car, you will not have been able to deduct depreciation and so balancing adjustments are not relevant; and
  - (b) if you have used only the “log book” method or the “one-third of actual expenses” method since you began using the car, balancing adjustments are calculated under Subdivision 42-F.
- (2) If this Subdivision applies, you have to reduce your balancing adjustment to reflect the extent to which you have chosen the “cents per kilometre” method or the “12% of original value” method: see section 42-250.

**42-232 Diagram showing the operation of this Subdivision****Operative provisions****42-235 When do you use this Subdivision for a car?**

- (1) A balancing adjustment for a \*car is calculated under this Subdivision if, for the period you were its owner:

- (a) you deducted or can deduct an amount for depreciation of the car in one or more income years; and
- (b) you chose:
  - (i) the “cents per kilometre” method in Subdivision 28-C; or
  - (ii) the “12% of original value” method in Subdivision 28-D;for deducting your \*car expenses for the car for one or more other income years.
- (2) You must make that calculation for the income year in which a \*balancing adjustment event occurs for the \*car.

#### **42-240 Including an amount in assessable income**

- (1) You include an amount in your assessable income if the \*termination value of the \*car exceeds its \*notional written down value.
- (2) First, work out the lesser of:
  - (a) the sum of the \*notional depreciation amount and the amounts you have deducted or can deduct for depreciation of the \*car; and
  - (b) the excess referred to in subsection (1).
- (3) Then apply the reduction rule in section 42-250 and include the result in your assessable income.

For balancing adjustment relief, see sections 42-285, 42-290 and 42-295.
- (4) If Common rule 1 applied to your acquisition of the \*car, the amounts you have deducted or can deduct are taken to include amounts the transferor, and earlier successive transferors, deducted or can deduct for depreciation of it.

#### **42-245 Deducting an amount**

- (1) You deduct an amount if the \*termination value of the \*car is less than its \*undeducted cost.
- (2) Work out the difference between those amounts.

- 
- (3) Reduce that difference to reasonably reflect the extent (if any) to which you used the \*car, or had it \*installed ready for use, other than for the \*purpose of producing assessable income when you were its owner. In working out the reduction for the income years for which you chose the “cents per kilometre” method or the “12% of original value” method for the car, you apply the assumptions in section 42-255.
  - (4) Then apply the reduction rule in section 42-250 and deduct the result.

#### **42-250 Reduction to take account of days when depreciation not claimed**

Multiply the amount from subsection 42-240(2) or 42-245(3) by the fraction calculated using the formula:

$$\frac{\text{Depreciation days}}{\text{Depreciation days} + \text{Non-depreciation days}}$$

where:

***depreciation days*** is the total number of days you were the owner of the \*car in each income year for which you have deducted or can deduct an amount for depreciation of it.

***non-depreciation days*** is the total number of days you were the owner of the \*car in each income year for which you chose the “cents per kilometre” method or the “12% of original value” method for deducting your \*car expenses.

#### **42-255 Meaning of *notional depreciation amount***

The ***notional depreciation amount*** for a \*car is the sum of the amounts you could have deducted for depreciation of the car for the income years for which you chose the “cents per kilometre” method or the “12% of original value” method for the car assuming that:

- (a) you had not chosen either of those methods for the car; and
- (b) Division 28 (car expenses) had not applied to the car; and

- (c) you used the car for the \*purpose of producing assessable income:
  - (i) to the extent of 20% if you used the “cents per kilometre” method; or
  - (ii) to the extent of one-third if you used the “12% of original value” method.

#### **42-260 Meaning of *notional written down value***

The *notional written down value* of a \*car is its \*written down value less its \*notional depreciation amount.

### **Subdivision 42-H—Balancing adjustment relief**

#### **Guide to Subdivision 42-H**

#### **42-265 What this Subdivision is about**

This Subdivision explains how to apply the various forms of relief that may be available when a balancing adjustment event occurs.

#### **Table of sections**

42-270 Explanatory material

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**42-270 Explanatory material**

- (1) There are 3 forms of balancing adjustment relief.
- (2) The first is in Common rule 1. If it applies, you do not have to make a balancing adjustment calculation.
- (3) The second is an alternative, or partial alternative, to including an amount in your assessable income.
- (4) The third may reduce your income tax payable in certain circumstances where a balancing adjustment amount is included in your assessable income.

**Roll-over relief****42-275 Modifications of Common rule 1**

- (1) The following provisions of Common rule 1 do not apply for the purposes of this Division:
  - (a) section 41-40;
  - (b) section 41-45.
- (2) Despite section 41-30, the transferor and the transferee must pro-rate their depreciation deductions for the income year in which the \*roll-over event occurred on the basis of the number of days in the income year each of them was its owner or \*quasi-owner.
- (3) The obligation in subsection 41-50(4) applies to the transferee as if the period for keeping the notice referred to in subsection 41-50(2) were until the end of 5 years after the next \*balancing adjustment event occurs for the \*plant.
- (4) The obligation in subsection 41-55(5) applies to the transferee as if the period for keeping the election referred to in subsection 41-55(2) or a copy of it were until the end of 5 years after the next \*balancing adjustment event occurs for the \*plant.

**42-280 Additional consequences**

- (1) In addition to the consequences of the roll-over set out in section 41-30 (about the transferor's and transferee's right to a

deduction), the roll-over has the consequences set out in this section for the purposes of this Division.

Note: For other consequences of the roll-over, see the definitions of **written down value** in section 42-200 and **undeducted cost** in section 42-175 and the provisions dealing with balancing adjustments.

*Cost*

- (2) The \*cost of the \*plant is the same for the transferee as it is for the transferor.

*Method*

- (3) The transferee must use the same method for calculating depreciation deductions for the \*plant as the transferor was using for the income year in which the \*roll-over event occurred.

*Effective life*

- (4) The \*effective life of the \*plant in the hands of the transferee is the same as that worked out by the transferor, or the earliest successive transferor, under Subdivision 42-C.

*Scientific research*

- (5) If the transferor was deducting amounts for depreciation of the \*plant using the special rate for plant used for scientific research in the fields of natural or applied science—the transferee is taken to have acquired the plant before 1 July 1995.

Note: This subsection allows the transferee to satisfy the condition of the special rate about date of acquisition, but the transferee will still have to satisfy the other conditions of the special rate in order to use it.

## Offsetting

### 42-285 Same year relief

- (1) You do not have to include an amount in your assessable income for \*plant as a result of a balancing adjustment calculation to the extent that you choose to treat that amount as an amount you have deducted for depreciation of other \*plant.



- 
- (2) You make the choice, for the same income year in which the <sup>\*</sup>balancing adjustment event occurred, successively for:
    - (a) any replacement <sup>\*</sup>plant you acquire in that year; and
    - (b) other <sup>\*</sup>plant you acquire in that year; and
    - (c) any other <sup>\*</sup>plant.
  - (3) You can only make this choice if:
    - (a) at the end of the income year in which the <sup>\*</sup>balancing adjustment event occurred, you used the replacement or other <sup>\*</sup>plant, or had it <sup>\*</sup>installed ready for use, wholly for the <sup>\*</sup>purpose of producing assessable income; and
    - (b) you can deduct an amount for depreciation of that plant.
  - (4) The amount covered by the choice is taken to be an amount you have deducted for depreciation of the replacement or other <sup>\*</sup>plant as at the first day of the income year in which the <sup>\*</sup>balancing adjustment event occurred.

Note: Therefore, the amount must be taken into account for the plant under paragraph (a) of the definition of *undeducted cost* in section 42-175. Also, because the amount is taken to have been deducted as at the first day of the income year, it will reduce the opening undeducted cost of the plant if you are using the diminishing value method.

#### **42-290 Later year relief**

- (1) You may exclude an amount that has been included in your assessable income for <sup>\*</sup>plant as a result of a balancing adjustment calculation to the extent that you choose to treat that amount as an amount you have deducted for depreciation of replacement <sup>\*</sup>plant.
  - (2) You can only make this choice for the replacement <sup>\*</sup>plant if:
    - (a) you acquire it within 2 income years after the end of the income year in which the <sup>\*</sup>balancing adjustment event occurred; and
    - (b) at the end of the income year in which you acquired it, you used it, or had it <sup>\*</sup>installed ready for use, wholly for the <sup>\*</sup>purpose of producing assessable income; and
    - (c) you can deduct an amount for depreciation of it; and
    - (d) you have not made a choice under section 42-285 for the balancing adjustment event.
-

- (3) The amount covered by the choice is taken to be an amount you have deducted for depreciation of the replacement <sup>\*</sup>plant as at the first day of the income year in which you acquired it.

Note: Therefore, the amount must be taken into account for the plant under paragraph (a) of the definition of ***undeducted cost*** in section 42-175. Also, because the amount is taken to have been deducted as at the first day of the income year, it will reduce the opening undeducted cost of the plant if you are using the diminishing value method.

## Concessional rate

### 42-295 Concessional rate

- (1) If this section applies, you may choose to request, in writing, the Commissioner to determine a <sup>\*</sup>notional income under section 42-300 that is less than your taxable income. That notional income must be used for the purposes of any Act that fixes an income tax rate by reference to a notional income.
- (2) This section applies if:
- (a) a <sup>\*</sup>balancing adjustment event causes the cessation of a <sup>\*</sup>business carried on by:
    - (i) you; or
    - (ii) a partnership of which you are a partner; or
    - (iii) the trustee of a trust in which you have a present entitlement to a share of the net income and are not under a legal disability; and
  - (b) as a result of the following balancing adjustment calculation, an amount is included in your assessable income or the assessable income of the partnership or trust.
- (3) This section does not apply if, for the income year in which the <sup>\*</sup>balancing adjustment event occurred:
- (a) you are a company, other than a corporate trustee; or
  - (b) you are the trustee of a trust and are liable to be assessed under section 99A of the *Income Tax Assessment Act 1936* (Certain trust income to be taxed at special rate); or
  - (c) the <sup>\*</sup>plant was in a <sup>\*</sup>pool; or
  - (d) Division 16 of Part III of that Act (averaging of income) applies to your assessment; or

- (e) you chose balancing adjustment relief under section 42-285 (same year relief) or 42-290 (later year relief) for the balancing adjustment event.

#### **42-300 Working out *notional income* and *abnormal income* for the concessional rate**

- (1) Your ***notional income*** for the income year in which the \*balancing adjustment event occurred is:
- (a) if your taxable income is greater than your \*abnormal income—your taxable income less  $\frac{2}{3}$  of your abnormal income;
  - (b) if your taxable income is equal to or less than your abnormal income— $\frac{1}{3}$  of your taxable income;
  - (c) if section 86 of the *Income Tax Assessment Act 1936* (Notional income of a taxpayer deriving a premium) applies to you and your notional income under that section is:
    - (i) greater than your abnormal income—your notional income under that section less  $\frac{2}{3}$  of your abnormal income;
    - (ii) equal to or less than your abnormal income— $\frac{1}{3}$  of your notional income under that section.
- (2) Your ***abnormal income*** is worked out using the following table.

<b>Abnormal income table</b>		
<b>Item</b>	<b>If the *balancing adjustment event referred to in section 42-295 relates to assets of a *business carried on ...</b>	<b>And the balancing adjustment calculation causes an amount to be included in assessable income, your abnormal income is ...</b>
1	by you, other than in partnership or as trustee of a trust	that amount
2	by a partnership of which you were a partner	the part of the amount included in your individual interest in the net income of the partnership
3	by you as trustee of a trust and you are being assessed as trustee under Division 6 of Part III of the <i>Income Tax Assessment Act 1936</i>	the part of the amount included in the net income of the trust to which the assessment relates

**Abnormal income table**

<b>Item</b>	<b>If the *balancing adjustment event referred to in section 42-295 relates to assets of a *business carried on ...</b>	<b>And the balancing adjustment calculation causes an amount to be included in assessable income, your abnormal income is ...</b>
4	by a trustee of a trust and you were a beneficiary in the trust	the part of the amount that is included in the share of the net income of the trust to which you are presently entitled and on which you are assessed

**Subdivision 42-I—Quasi-ownership****Guide to Subdivision 42-I****42-305 What this Subdivision is about**

This Subdivision explains the circumstances in which you are the quasi-owner of plant.

**Table of sections****Operative provisions**

- 42-310 Meaning of *quasi-owner*
- 42-315 Grant of new quasi-ownership right
- 42-320 Only one entity can deduct

**Operative provisions****42-310 Meaning of *quasi-owner***

- (1) You are a *quasi-owner* of \*plant if:
  - (a) it is attached to land you hold under a \*quasi-ownership right granted by an \*exempt Australian government agency or an \*exempt foreign government agency; and
  - (b) you either:
    - (i) attached the plant to the land after you acquired the right; or

- 
- (ii) acquired the right from the entity that attached the plant or from a later successive holder of the right; and
    - (c) you are not its owner.
  - (2) You are not a \*quasi-owner under subsection (1) if, when you would otherwise have become a quasi-owner, you had entered into a \*scheme:
    - (a) under which an entity, other than the grantor of the right or that person's successor, would become the owner of the \*plant at a later time; or
    - (b) that has a purpose of providing finance to enable an entity, other than you, the grantor of the right or that person's successor, to become the end-user of the plant:
      - (i) if you attached the plant to the land—for the whole, or a substantial part, of the \*effective life of the plant as worked out or adopted by you; or
      - (ii) if the plant was already attached to the land when you acquired the \*quasi-ownership right—for the whole, or a substantial part, of the remainder of the \*effective life of the plant as worked out or adopted by the person who first attached the plant to the land.

#### **42-315 Grant of new quasi-ownership right**

If your \*quasi-ownership right over land expires, is surrendered or is terminated and that event is followed by a grant of a new \*quasi-ownership right over the land to you:

- (a) the new right is taken to be a continuation of the original right; and
- (b) you are taken not to have ceased to be the \*quasi-owner of \*plant attached to the land.

#### **42-320 Only one entity can deduct**

If there is both an owner and a \*quasi-owner of \*plant, only the quasi-owner can deduct an amount for depreciation.

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## Subdivision 42-J—Partial change of ownership

### Guide to Subdivision 42-J

#### 42-325 What this Subdivision is about

This Subdivision sets out when a partial change of ownership will result in a balancing adjustment event.

#### Table of sections

##### Operative provisions

- |        |                                  |
|--------|----------------------------------|
| 42-330 | Partial change of ownership      |
| 42-335 | Acquisition and roll-over relief |

#### Operative provisions

#### 42-330 Partial change of ownership

- (1) This subsection applies if:
  - (a) for any reason, a change occurs in the ownership of, or in the interests of entities in, \*plant; and
  - (b) the entity or one of the entities that owned the plant before the change has an interest in it after the change.
- (2) This subsection applies if:
  - (a) there is a \*quasi-owner of \*plant; and
  - (b) for any reason, a change occurs in the quasi-ownership of, or in the interests of quasi-owners in, the plant; and
  - (c) the entity or one of the entities that was a quasi-owner of the plant before the change has an interest in it after the change.

Note: If subsection (1) or (2) applies, a balancing adjustment event occurs for the plant, see subsection 42-30(3).
- (3) However, subsection (1) or (2) applies only if a \*balancing adjustment event does not otherwise occur for the \*plant.
- (4) The reasons for the change occurring include:

- 
- (a) the formation or dissolution of a partnership; and
  - (b) a variation in the constitution of a partnership, or in the interests of the partners.

#### **42-335 Acquisition and roll-over relief**

- (1) If subsection 42-330(1) applies, the owners of the \*plant after the change (the *transferee*) are taken to have acquired it from its owners before the change (the *transferor*).
- (2) If subsection 42-330(2) applies, the \*quasi-owners of the \*plant after the change (the *transferee*) are taken to have acquired it from its \*quasi-owners before the change (the *transferor*).
- (3) Common rule 1 applies if the transferor and transferee jointly elect for roll-over relief.

Note: For the conditions relating to the election, see section 41-55.

### **Subdivision 42-K—Car depreciation limit**

#### **Guide to Subdivision 42-K**

#### **42-340 What this Subdivision is about**

This Subdivision explains how to calculate the car depreciation limit referred to in section 42-80.

#### **Table of sections**

##### **Operative provisions**

42-345 Calculation of limit

#### **Operative provisions**

#### **42-345 Calculation of limit**

- (1) The *car depreciation limit* for the 1996-97 \*financial year is \$55,134.

- (2) The **car depreciation limit** for a later \*financial year is the amount calculated using the formula:

Depreciation limit  $\times$  Indexation factor

where:

**depreciation limit** is the \*car depreciation limit for the \*financial year immediately before the financial year for which the limit is being calculated.

**indexation factor** is the number calculated, to 3 decimal places, under subsection (3) for the \*financial year for which the limit is being calculated.

- (3) The indexation factor for a \*financial year is the number calculated using the formula:

$$\frac{\text{Sum of index numbers for quarters in first March year}}{\text{Sum of index numbers for quarters in second March year}}$$

where:

**index number**, for a quarter, means the index number for the motor vehicle purchase sub-group of the Consumer Price Index, being the weighted average of the 8 capital cities, first published by the Australian Statistician for the quarter.

**first March year** means the period of 12 months ending on 31 March immediately before the \*financial year for which the limit is being calculated.

**second March year** means the period of 12 months immediately before the first March year.



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- (4) If the Australian Statistician changes the reference base for the motor vehicle purchase sub-group of the Consumer Price Index, only index numbers published in terms of the new base are to be used after the change.
  - (5) The Commissioner must publish before the beginning of each <sup>\*</sup>financial year the indexation factor and the <sup>\*</sup>car depreciation limit for that financial year.

## **Subdivision 42-L—Pooling**

### **Guide to Subdivision 42-L**

#### **42-350 What this Subdivision is about**

You can reduce the number of depreciation calculations you have to make by allocating a number of units of plant that have the same depreciation rate to a pool. One calculation is made for all plant in the pool.

You cannot pool plant for the year you acquire it.

#### **Table of sections**

##### **Operative provisions**

42-355	Creating a <i>pool</i>
42-360	Allocating plant to a pool
42-365	What plant is eligible for allocation to a pool?
42-370	Removal of plant from a pool
42-375	Calculating depreciation deductions for pooled plant
42-380	Meaning of <i>opening balance</i>
42-385	Meaning of <i>closing balance</i>
42-390	Calculation of balancing adjustments for pooled plant
42-395	Application of CGT to pooled plant

## Operative provisions

### 42-355 Creating a *pool*

You may choose to create a *pool* by recording in writing:

- (a) the first income year for which \*plant may be allocated to it; and
- (b) the pool percentage.

### 42-360 Allocating plant to a pool

You may choose to allocate \*plant to a \*pool by recording in writing:

- (a) the pool to which you are allocating it; and
- (b) the income year for which it is allocated.

### 42-365 What plant is eligible for allocation to a pool?

You can only allocate \*plant to a \*pool for an income year if:

- (a) you can deduct an amount for depreciation of it for that year; and
- (b) the \*diminishing value rate for the plant matches the pool percentage; and
- (c) during the period you were its owner or \*quasi-owner before that year, you used it, or had it \*installed ready for use, wholly for the \*purpose of producing assessable income; and
- (d) you were its owner or \*quasi-owner immediately after the beginning of that year; and
- (e) it has not been allocated to another \*pool for that year.

### 42-370 Removal of plant from a pool

- (1) \*Plant is removed from a \*pool if you choose to remove it and you record the removal and the date of removal in writing.

Note: You may re-allocate the plant to a pool under section 42-360.

- (2) \*Plant is automatically removed from a \*pool if:
- (a) you cease to use it, or to have it \*installed ready for use, wholly for the \*purpose of producing assessable income and the cessation was not caused by a \*balancing adjustment event; or
  - (b) the \*diminishing value rate for the plant no longer matches the pool percentage; or
  - (c) a balancing adjustment event occurs for the plant and Common rule 1 applies to that event.

Note: Property removed from a pool because of paragraph (b) can be allocated to another pool under section 42-360.

- (3) If \*plant is removed from a \*pool:
- (a) it is taken not to have been in the pool for the income year in which it is removed; and
  - (b) you are taken to have deducted amounts for depreciation of it for the period it was in the pool as if you had used the pool percentage as your rate and the \*diminishing value method; and
  - (c) you must use the diminishing value method in calculating future depreciation deductions for it.

#### **42-375 Calculating depreciation deductions for pooled plant**

Calculate your deduction for a \*pool using the formula:

\*Opening balance × Pool percentage

#### **42-380 Meaning of *opening balance***

The *opening balance* of a \*pool for an income year is worked out using the formula:

Closing balance for last year + Undeducted cost of new plant – Reduction for removed plant

where:

***closing balance for last year*** means the \*closing balance for the \*pool for the preceding income year worked out under section 42-385.

***undeducted cost of new plant*** means the sum of the \*undeducted costs, as at the beginning of the income year, of \*plant allocated to the \*pool for that year that was not in the pool for the preceding year.

***reduction for removed plant*** means the sum of the \*undeducted costs, as at the beginning of the income year, of any \*plant removed for that year that was in the \*pool for the preceding year. You work out those undeducted costs as if you had deducted amounts for depreciation of it for the period it was in the pool using the pool percentage as your rate and the \*diminishing value method.

#### **42-385 Meaning of *closing balance***

The ***closing balance*** of a \*pool for an income year is worked out using the formula:

\*Opening balance – Total depreciation

where:

***total depreciation*** means the total amount you have deducted for depreciation for the income year for all \*plant in the \*pool for that year.

#### **42-390 Calculation of balancing adjustments for pooled plant**

- (1) You must make a balancing adjustment calculation under this section for \*plant if it is in a \*pool for the income year in which a \*balancing adjustment event occurs for it.

Note: However, if the plant is removed from the pool for the year in which the balancing adjustment event occurred, your balancing adjustment is calculated under Subdivision 42-F or 42-G.

- (2) You include in your assessable income the lesser of:
  - (a) the \*termination value of the \*plant; and
  - (b) its \*cost.

For balancing adjustment relief, see sections 42-285 and 42-290.

- (3) If a balancing adjustment calculation is made under this section, you can continue to deduct amounts for depreciation of the \*plant as part of the \*pool.

#### **42-395 Application of CGT to pooled plant**

- (1) This section applies if \*plant that is in a \*pool for an income year is disposed of within the meaning of Part IIIA of the *Income Tax Assessment Act 1936* (Capital gains and capital losses).
- (2) Section 160ZK of that Act (Reduction of amounts for purposes of reduced cost base) applies to the disposal as if you had deducted amounts for depreciation of it for the period it was in the \*pool using the pool percentage as your rate and the \*diminishing value method.

#### **10 Section 43-260 (link note)**

Repeal the link note, substitute:

*[The next Part is Part 2-15.]*

#### **11 After Part 2-10**

Insert:



## Division 50 Table of Subdivisions

50-A Various exempt entities

### Subdivision 50-A—Various exempt entities

#### Table of sections

50-1	Entities whose ordinary income and statutory income is exempt
50-5	Charity, education, science and religion
50-10	Community service
50-15	Employees and employers
50-20	Finance
50-25	Government
50-30	Health
50-35	Mining
50-40	Primary and secondary resources, and tourism
50-45	Sports, culture, film and recreation

### 50-1 Entities whose ordinary income and statutory income is exempt

The total \*ordinary income and \*statutory income of the entities covered by the following tables is exempt from income tax. In some cases, the exemption is subject to special conditions.

- Note 1: Ordinary and statutory income that is exempt from income tax is called exempt income: see section 6-20. The note to subsection 6-15(2) describes some of the other consequences of it being exempt income.
- Note 2: Even if you are an exempt entity, the Commissioner can still require you to lodge an income tax return or information under section 161 of the *Income Tax Assessment Act 1936*.

### 50-5 Charity, education, science and religion

Charity, education, science and religion		
Item	Exempt entity	Special conditions
1.1	charitable institution	none
1.2	religious institution	none
1.3	scientific institution	none

1.4	public educational institution	none
1.5	fund established for public charitable purposes by will or instrument of trust	fund applied for the purpose for which it was established
1.6	fund established to enable scientific research to be conducted by or in conjunction with a public university or public hospital	fund applied for the purpose for which it was established
1.7	society, association or club established for the encouragement of science	not carried on for the profit or gain of its individual members

## **50-10 Community service**

<b>Community service</b>		
<b>Item</b>	<b>Exempt entity</b>	<b>Special conditions</b>
2.1	society, association or club established for community service purposes (except political or lobbying purposes)	not carried on for the profit or gain of its individual members

## **50-15 Employees and employers**

<b>Employees and employers</b>		
<b>Item</b>	<b>Exempt entity</b>	<b>Special conditions</b>
3.1	(a) employee association; or (b) employer association	registered under an *Australian law relating to the settlement of industrial disputes
3.2	trade union	none

Note: Despite items 3.1 and 3.2, certain ordinary and statutory income of some associations of employees and some registered trade unions may be subject to income tax under Division 8A of Part III of the *Income Tax Assessment Act 1936*.

## **50-20 Finance**

<b>Finance</b>		
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Item	Exempt entity	Special conditions
4.1	a *friendly society (except a *friendly society dispensary)	not carried on for the profit or gain of its individual members

**50-25 Government**

Government		
Item	Exempt entity	Special conditions
5.1	(a) a municipal corporation; or (b) a local governing body	none
5.2	a public authority constituted under a *Commonwealth law	none

Note: The ordinary and statutory income of a State or Territory body is exempt: see Division 1AB of Part III of the *Income Tax Assessment Act 1936*.

**50-30 Health**

Health		
Item	Exempt entity	Special conditions
6.1	public hospital	none
6.2	hospital carried on by a society or association	not carried on for the profit or gain of its individual members
6.3	the following organisations registered for the purposes of the <i>National Health Act 1953</i> : (a) a medical benefits organisation; (b) a health benefits organisation; (c) a hospital benefits organisation	not carried on for the profit or gain of its individual members

**50-35 Mining**

Mining		
Item	Exempt entity	Special conditions

7.1	the Phosphate Mining Company of Christmas Island Limited (incorporated in the Australian Capital Territory)	none
7.2	the British Phosphate Commissioners Banaba Contingency Fund (established on 1 June 1981)	none

#### **50-40 Primary and secondary resources, and tourism**

<b>Primary and secondary resources, and tourism</b>		
<b>Item</b>	<b>Exempt entity</b>	<b>Special conditions</b>
8.1	a society or association established for the purpose of promoting the development of: (a) aviation; or (b) tourism	not carried on for the profit or gain of its individual members
8.2	a society or association established for the purpose of promoting the development of any of the following Australian resources: (a) agricultural resources; (b) horticultural resources; (c) industrial resources; (d) manufacturing resources; (e) pastoral resources; (f) viticultural resources	not carried on for the profit or gain of its individual members

#### **50-45 Sports, culture, film and recreation**

<b>Sports, culture, film and recreation</b>		
<b>Item</b>	<b>Exempt entity</b>	<b>Special conditions</b>

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<b>Sports, culture, film and recreation</b>		
<b>Item</b>	<b>Exempt entity</b>	<b>Special conditions</b>
9.1	a society, association or club established for the encouragement of: (a) animal racing; or (b) art; or (c) a game or sport; or (d) literature; or (e) music	not carried on for the profit or gain of its individual members
9.2	a society, association or club established for musical purposes	not carried on for the profit or gain of its individual members
9.3	the Australian Film Finance Corporation Pty Limited (incorporated under the <i>Companies Act 1981</i> on 12 July 1988)	none

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*[The next Division is Division 51.]*

## Division 51

### Table of sections

51-1	Amounts of ordinary income and statutory income that are exempt
51-5	Defence
51-10	Education and training
51-15	Vice-regal representatives
51-25	Mining
51-30	Welfare
51-45	Mining payments made to an Aboriginal or a distributing body
51-50	Maintenance payments to a spouse or child

### 51-1 Amounts of ordinary income and statutory income that are exempt

The amounts of \*ordinary income and \*statutory income covered by the following tables are exempt from income tax. In some cases, the exemption is subject to exceptions or special conditions, or both.

- Note 1: Ordinary and statutory income that is exempt from income tax is called exempt income: see section 6-20. The note to subsection 6-15(2) describes some of the other consequences of it being exempt income.
- Note 2: Even if an exempt payment is made to you, the Commissioner can still require you to lodge an income tax return or information under section 161 of the *Income Tax Assessment Act 1936*.

**51-5 Defence**

<b>Defence</b>			
<b>Item</b>	<b>If you are:</b>	<b>... the following amounts are exempt from income tax:</b>	<b>... subject to these exceptions and special conditions:</b>
1.1	a member of the Defence Force	(a) payments of allowances or bounty of a kind prescribed in the regulations; and (b) the market value of rations and quarters supplied to you without charge	none
1.2	a recipient of a payment in respect of a member of the Defence Force	payments of allowances or bounty of a kind prescribed in the regulations	none
1.3	a member of: (a) the Naval Emergency Reserve Force; or (b) the Regular Army Emergency Reserve; or (c) the Air Force Emergency Force	(a) pay and allowances as a member; and (b) gratuities for the calling out for continuous service of all or part of the force	except pay and allowances for continuous full time service
1.4	a member of: (a) the Australian Naval Reserve; or (b) the Australian Army Reserve; or (c) the Australian Air Force Reserve	pay and allowances as a member	except pay and allowances for continuous full time service

**51-10 Education and training**

<b>Education and training</b>
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<b>Item</b>	<b>If you are:</b>	<b>... the following amounts are exempt from income tax:</b>	<b>... subject to these exceptions and special conditions:</b>
2.1	a recipient of a grant made by the Australian-American Educational Foundation	the grant	the grant is from funds made available to the Foundation under the agreement establishing it
2.2	an employer	payments under the CRAFT Scheme (the Commonwealth Rebate for Apprentice Full-Time Training Scheme)	none

## 51-15 Vice-regal representatives

<b>Vice-regal representatives</b>			
<b>Item</b>	<b>If you are:</b>	<b>... the following amounts are exempt from income tax:</b>	<b>... subject to these exceptions and special conditions:</b>
3.1	(a) the Governor-General; or (b) a State Governor	(a) official salary; and (b) *ordinary income derived from a source outside Australia; and (c) *statutory income that has a source outside Australia	none

*[The next section is section 51-25.]*

## 51-25 Mining

<b>Mining</b>			
<b>Item</b>	<b>If you are:</b>	<b>... the following amounts are exempt from income tax:</b>	<b>... subject to these exceptions and special conditions:</b>

4.1	an *Aboriginal	a *mining payment or a payment by a *distributing body out of a *mining payment	see section 51-45
4.2	a *distributing body	a *mining payment or a payment by a *distributing body out of a *mining payment	see section 51-45

## 51-30 Welfare

<b>Welfare</b>			
<b>Item</b>	<b>If you are:</b>	<b>... the following amounts are exempt from income tax:</b>	<b>... subject to these exceptions and special conditions:</b>
5.1	an individual in receipt of periodic payments in the nature of maintenance	the payments	see section 51-50
5.2	a person who pays or is liable to pay rent	rent subsidy payments under the Mortgage and Rent Relief Scheme by an *Australian government agency	none
5.3	a recipient of an open employment incentive bonus	payments under Part VIIIA of the <i>Handicapped Persons Assistance Act 1974</i>	none

[The next section is section 51-45.]

## 51-45 Mining payments made to an Aboriginal or a distributing body

- (1) The following are exempt from income tax:
- (a) a \*mining payment made to a \*distributing body;
  - (b) a \*mining payment made to one or more \*Aboriginals, or applied for their benefit.

- (2) A payment:
  - (a) made to a \*distributing body; or
  - (b) made to one or more \*Aboriginals, or applied for their benefit;is exempt from income tax if the payment is made by a \*distributing body out of a \*mining payment that it has received.
- (3) A payment made to a \*distributing body by another distributing body, out of a \*mining payment received by the other distributing body, is taken to be a mining payment for the purposes of:
  - (a) any further applications of subsection (2); and
  - (b) any further applications of this subsection.
- (4) Subsection (2) does not exempt a payment by a \*distributing body for the purposes of meeting its administrative costs.
- (5) An amount paid to or applied for the benefit of a person is not exempt from income tax because of section 51-25 if it is remuneration or consideration for goods or services provided by that person.

#### **51-50 Maintenance payments to a spouse or child**

- (1) This section sets out the conditions on which a periodic payment, in the nature of maintenance, that:
  - (a) is made by an individual (the *maintenance payer*); or
  - (b) is attributable to a payment made by an individual (also the *maintenance payer*);is exempt from income tax under item 5.1 of the table in section 51-30.
- (2) The maintenance payment is exempt from income tax only if it is made:
  - (a) to an individual who is or has been the maintenance payer's \*spouse; or
  - (b) to or for the benefit of an individual who is or has been:
    - (i) a child of the maintenance payer; or
    - (ii) a child who is or has been a child of an individual who is or has been a \*spouse of the maintenance payer.



- 
- (3) The maintenance payment is *not* exempt if, in order to make it or a payment to which it is attributable, the maintenance payer:
- (a) divested any income-producing assets; or
  - (b) diverted \*ordinary income or \*statutory income upon which the maintenance payer would otherwise have been liable to income tax.

## **Guide to Division 52**

### **52-1 What this Division is about**

Certain payments made under various Acts are wholly or partly exempt from income tax. This Division tells you if a payment is exempt and how much is exempt.

#### **Table of Subdivisions**

- 52-A Exempt payments under the Social Security Act 1991
- 52-B Exempt payments under the Veterans' Entitlements Act 1986
- 52-C Exempt payments made because of the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986

### **Subdivision 52-A—Exempt payments under the Social Security Act 1991**

#### **Guide to Subdivision 52-A**

### **52-5 What this Subdivision is about**

This Subdivision tells you:

- (a) the payments under the *Social Security Act 1991* that are wholly or partly exempt from income tax; and

- (b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and
- (c) how to work out how much of a payment is exempt.

## Table of sections

### Operative provisions

52-10	How much of a social security payment is exempt?
52-15	Supplementary amounts of payments
52-20	Tax-free amount of an ordinary payment after the death of your partner
52-25	Tax-free amount of certain bereavement lump sum payments
52-30	Tax-free amount of certain other bereavement lump sum payments
52-35	Tax-free amount of a lump sum payment made because of the death of a person you are caring for
52-40	Provisions of the <i>Social Security Act 1991</i> under which payments are made

## Operative provisions

### 52-10 How much of a social security payment is exempt?

- (1) The table in this section tells you about the income tax treatment of social security payments.

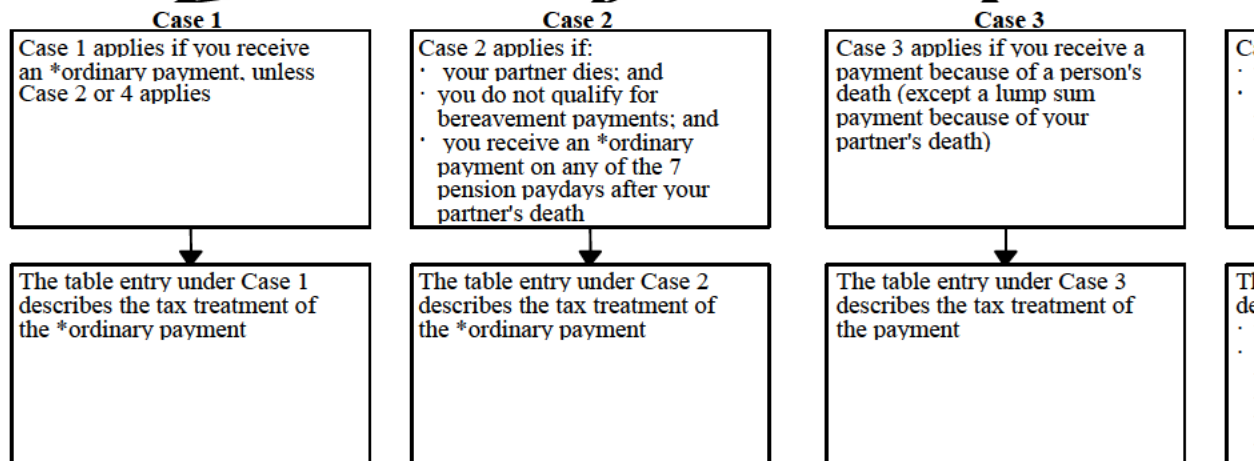
Note: Section 52-40 sets out the provisions of the *Social Security Act 1991* under which the payments are made.

- (2) Expressions used in this Subdivision that are also used in the *Social Security Act 1991* have the same meaning as in that Act.
- (3) **Ordinary payment** means a payment other than a payment made because of a person's death.

**Explanation of the table**

The table:

- lists all the payments under the *Social Security Act 1991* that are wholly or partly exempt from income tax; and
- deals with 4 different cases.

**Income tax treatment of social security payments**

Item	Payment	Case 1	Case 2	Case 3
1.1	<b>Advance pharmaceutical supplement</b>	Exempt	Exempt	Not applicable
2.1	<b>Age pension</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt
3.1	<b>Bereavement allowance</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt

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**Income tax treatment of social security payments**

<b>Item</b>	<b>Payment</b>	<b>Case 1</b>	<b>Case 2</b>	<b>Case 3</b>
4.1	<b>Carer pension:</b> you are pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt
4.2	<b>Carer pension:</b> the severely handicapped person is pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt
4.3	<b>Carer pension:</b> both you and the severely handicapped person are under pension age	Exempt	Exempt	Exempt
4.4	<b>Carer pension:</b> you are under pension age and the severely handicapped person has died	Exempt	Exempt	Exempt
5.1	<b>Child disability allowance</b>	Exempt	Exempt	Exempt

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<b>Income tax treatment of social security payments</b>				
<b>Item</b>	<b>Payment</b>	<b>Case 1</b>	<b>Case 2</b>	<b>Case 3</b>
6.1	<b>Disability support pension:</b> you are pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt
6.2	<b>Disability support pension:</b> you are under pension age	Exempt	Exempt	Exempt
7.1	<b>Disability wage supplement:</b> you are pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt
7.2	<b>Disability wage supplement:</b> you are under pension age	Exempt	Exempt	Exempt
8.1	<b>Disaster relief payment</b>	Exempt	Exempt	Not applicable
9.1	<b>Double orphan pension</b>	Exempt	Exempt	Exempt
10.1	<b>Employment entry payment</b>	Exempt	Exempt	Not applicable
11.1	<b>Family payment</b>	Exempt	Exempt	Not applicable
12.1	<b>Family payment advance</b>	Exempt	Exempt	Not applicable
13.1	<b>Family tax payment</b>	Exempt	Exempt	Not applicable
14.1	<b>Maternity allowance</b>	Exempt	Exempt	Not applicable
15.1	<b>Mature age allowance (paid under Part 2.12A)</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt
16.1	<b>Mature age allowance (paid under Part 2.12B)</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt

<b>Income tax treatment of social security payments</b>				
<b>Item</b>	<b>Payment</b>	<b>Case 1</b>	<b>Case 2</b>	<b>Case 3</b>
17.1	<b>Mature age partner allowance</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt
18.1	<b>Mobility allowance</b>	Exempt	Exempt	Not applicable
19.1	<b>Newstart allowance</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt
20.1	<b>Parenting allowance (benefit parenting allowance)</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt
21.1	<b>Parenting allowance (non-benefit parenting allowance)</b>	Exempt	Exempt	Not applicable
22.1	<b>Partner allowance</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt
23.1	<b>Sickness allowance</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt
24.1	<b>Sole parent pension</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt
25.1	<b>Special benefit</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt
26.1	<b>Special needs age pension</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt

<b>Income tax treatment of social security payments</b>				
<b>Item</b>	<b>Payment</b>	<b>Case 1</b>	<b>Case 2</b>	<b>Case 3</b>
27.1	<b>Special needs disability support pension:</b> you are pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt
27.2	<b>Special needs disability support pension:</b> you are under pension age	Exempt	Exempt	Exempt
28.1	<b>Special needs sole parent pension</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Not applicable
29.1	<b>Special needs widow B pension</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Not applicable
30.1	<b>Special needs wife pension:</b> you are pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt
30.2	<b>Special needs wife pension:</b> your partner is pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount, and tax-free amount, are exempt (see sections 52-15 and 52-20)	Exempt
30.3	<b>Special needs wife pension:</b> both you and your partner are under pension age	Exempt	Exempt	Exempt
30.4	<b>Special needs wife pension:</b> you are under pension age and your partner has died	Exempt	Exempt	Exempt
31.1	<b>Telephone allowance</b>	Exempt	Exempt	Not applicable
32.1	<b>Widow allowance</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Not applicable

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**Income tax treatment of social security payments**

Item	Payment	Case 1	Case 2	Case 3
33.1	<b>Widow B pension</b>	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt
34.1	<b>Wife pension:</b> you are pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt
34.2	<b>Wife pension:</b> your partner is pension age or over	Supplementary amount is exempt (see section 52-15)	Supplementary amount is exempt (see section 52-15)	Exempt
34.3	<b>Wife pension:</b> both you and your partner are under pension age	Exempt	Exempt	Exempt
34.4	<b>Wife pension:</b> you are under pension age and your partner has died	Exempt	Exempt	Exempt

**52-15 Supplementary amounts of payments**

You work out the *supplementary amount* of a social security payment using the following table:

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**Supplementary amount of a social security payment**

Item	For this category of social security payment:	the <i>supplementary amount</i> is the total of:
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**Supplementary amount of a social security payment**

<b>Item</b>	<b>For this category of social security payment:</b>	<b>the supplementary amount is the total of:</b>
1	Age pension	(a) so much of the payment as is included by way of rental assistance; and
	Bereavement allowance	
	Carer pension	(b) so much of the payment as is included by way of remote area allowance; and
	Disability support pension	
	Disability wage supplement	(c) so much of the payment as is included by way of pharmaceutical allowance; and
	Mature age allowance (paid under Part 2.12A)	
	Mature age partner allowance	(d) so much of the payment as is included by way of incentive allowance; and
	Sole parent pension	
	Special needs age pension	(e) so much of the payment as is included by way of residential care charge
	Special needs disability support pension	
	Special needs sole parent pension	
	Special needs widow B pension	
	Special needs wife pension	
	Widow B pension	
	Wife pension	

**Supplementary amount of a social security payment**

<b>Item</b>	<b>For this category of social security payment:</b>	<b>the <i>supplementary amount</i> is the total of:</b>
2	Mature age allowance (paid under Part 2.12B) Newstart allowance Partner allowance Sickness allowance Special benefit Widow allowance	(a) so much of the payment as is included by way of rental assistance; and (b) so much of the payment as is included by way of remote area allowance; and (c) so much of the payment as is included by way of pharmaceutical allowance; and (d) so much of the payment as is included by way of residential care charge
3	Parenting allowance (benefit parenting allowance)	(a) so much of the payment as is included by way of rental assistance; and (b) so much of the payment as is included by way of remote area allowance; and (c) so much of the payment as is included by way of pharmaceutical allowance; and (d) so much of the payment as is included by way of residential care charge; and (e) so much of the payment as is included by way of provisional rate of parenting allowance up to the maximum basic component of the parenting allowance worked out using the method statement in point 1068A-A3 of the <i>Social Security Act 1991</i>

**52-20 Tax-free amount of an ordinary payment after the death of your partner**

- (1) You work out under this section the \*tax-free amount of an \*ordinary payment made under the *Social Security Act 1991* after the death of your partner if:

- (a) you do not qualify for payments under a \*bereavement Subdivision; and
- (b) the ordinary payment became due to you on any of the 7 pension paydays after the death of your partner.

Note: For the provisions of the *Social Security Act 1991* that tell you if you qualify for payments under a bereavement Subdivision: see subsection (3).

- (2) This is how to work out the ***tax-free amount***:

*Method statement*

**Step 1.** Work out the \*supplementary amount of the payment.

Note: The supplementary amount is also exempt and is worked out under section 52-15.

**Step 2.** Subtract the \*supplementary amount from the amount of the payment.

**Step 3.** Work out what would have been the amount of the payment if your partner had not died.

**Step 4.** Work out what would have been the \*supplementary amount of the payment if your partner had not died.

**Step 5.** Subtract the amount at Step 4 from the amount at Step 3.

**Step 6.** Subtract the amount at Step 5 from the amount at Step 2: the result is the ***tax-free amount***.

- (3) This table sets out:

- (a) the Subdivisions of the *Social Security Act 1991* that are ***bereavement Subdivisions***; and
- (b) the provision of that Act that tells you if you qualify for payments under the relevant bereavement Subdivision.

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**Bereavement Subdivisions**

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<b>Item</b>	<b>For this bereavement Subdivision:</b>	<b>This provision tells you if you qualify for payments under it:</b>
1	Subdivision A of Division 9 of Part 2.2	paragraph 82(1)(e)
2	Subdivision A of Division 10 of Part 2.3	paragraph 146F(1)(e)
3	Subdivision B of Division 9 of Part 2.5	paragraph 237(1)(e)
4	Subdivision B of Division 9 of Part 2.6	paragraph 303(1)(e)
5	Subdivision A of Division 10 of Part 2.9	paragraph 469(1)(e)
6	Subdivision AA of Division 9 of Part 2.12	paragraph 660LA(1)(f)
7	Subdivision A of Division 11 of Part 2.12A	paragraph 660XKA(1)(e)
8	Subdivision C of Division 11 of Part 2.12B	paragraph 660YKC(1)(e)
9	Subdivision AA of Division 9 of Part 2.14	paragraph 728PA(1)(f)
10	Subdivision AA of Division 9 of Part 2.15	paragraph 768A(1)(f)
11	Subdivision A of Division 10 of Part 2.16	paragraph 822(1)(e)

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**52-25 Tax-free amount of certain bereavement lump sum payments**

- (1) This section applies if a lump sum of any of these categories of social security payments becomes due to you because of your partner's death.

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**Category of social security payment**

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Age pension  
 Carer pension  
 Disability support pension  
 Disability wage supplement  
 Mature age allowance (paid under Part 2.12A)  
 Mature age partner allowance  
 Sole parent pension  
 Special needs age pension  
 Special needs disability support pension  
 Special needs wife pension  
 Wife pension

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- (2) The total of the following are exempt up to the \*tax-free amount:
- (a) the lump sum payment;
  - (b) all other payments that become due to you under the *Social Security Act 1991* on pension paydays that occur during the bereavement lump sum period.
- (3) This is how to work out the ***tax-free amount***:

*Method statement*

- Step 1.* Work out the payments under the *Social Security Act 1991* that would have become due to you on each of the pension paydays during the bereavement lump sum period if:
- (a) your partner had not died; and
  - (b) your partner had been under pension age; and
  - (c) immediately before your partner died, you and your partner had been neither an illness separated couple nor a respite care couple.
- Step 2.* Work out how much of those payments would have been exempt in those circumstances.
- Step 3.* Work out the payments under the *Social Security Act 1991* or Part III of the *Veterans' Entitlements Act 1986* that would have become due to your partner on each of the pension paydays during the bereavement lump sum period if:
- (a) your partner had not died; and
  - (b) immediately before your partner died, you and your partner were neither an illness separated couple nor a respite care couple;
- even if the payments would not have been exempt.

*Step 4.* Total the payments worked out at Steps 2 and 3: the result is the *tax-free amount*.

Example: You are receiving a disability support pension of \$300 a fortnight and a pharmaceutical allowance of \$5 a fortnight. You are over pension age. Your partner is receiving a partner allowance of \$250 a fortnight and rental assistance of \$75 a fortnight.

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Your partner dies. There are 7 pension paydays during the bereavement lump sum period. You work out the tax-free amount as follows:

Step 1: The payments that would have become due to you on each of those 7 paydays are  $\$300 + \$5 = \$305$ . The total for the 7 paydays is  $\$2,135$ .

Step 2: The exempt component of the  $\$305$  you receive on each of the 7 paydays is  $\$5$ . The total for the 7 paydays is  $\$35$ .

Step 3: The payments that would have become due to your partner on each of those 7 paydays are  $\$250 + \$75 = \$325$ . The total for the 7 paydays is  $\$2,275$ .

Step 4: The tax-free amount is  $\$35 + \$2,275 = \$2,310$ .

### **52-30 Tax-free amount of certain other bereavement lump sum payments**

- (1) This section applies if a lump sum of any of these categories of social security payments becomes due to you because of your partner's death.

<b>Category of social security payment</b>
Mature age allowance (paid under Part 2.12B)
Newstart allowance
Parenting allowance (benefit parenting allowance)
Partner allowance
Sickness allowance
Special benefit

- (2) The total of the following are exempt up to the \*tax-free amount:
- (a) the lump sum payment;
  - (b) all other payments that become due to you under the *Social Security Act 1991* on pension paydays that occur during the bereavement lump sum period.

- (3) This is how to work out the *tax-free amount*:

*Method statement*

- Step 1.* Work out the payments under the *Social Security Act 1991* that would have become due to you on each of the pension paydays during the bereavement lump sum period if:
- (a) your partner had not died; and
  - (b) your partner had been under pension age; and
  - (c) immediately before your partner died, you and your partner had been neither an illness separated couple nor a respite care couple.
- Step 2.* Work out how much of those payments would have been exempt in those circumstances.
- Step 3.* Work out the payments under the *Social Security Act 1991* that would have become due to your partner on each of the pension paydays during the bereavement lump sum period if your partner had not died, even if the payments would not have been exempt.
- Step 4.* Total the payments worked out at Steps 2 and 3: the result is the *tax-free amount*.

**52-35 Tax-free amount of a lump sum payment made because of the death of a person you are caring for**

- (1) This section applies if a lump sum payment becomes due to you under section 236A of the *Social Security Act 1991* because of the death of the severely handicapped person you are caring for.
- (2) The total of the following are exempt up to the \*tax-free amount:
  - (a) the lump sum payment;



- 
- (b) all other payments that become due to you under the *Social Security Act 1991* on pension paydays that occur during the bereavement lump sum period.

(3) This is how to work out the *tax-free amount*:

*Method statement*

- Step 1.* Work out the payments under the *Social Security Act 1991* that would have become due to you on each of the pension paydays during the bereavement lump sum period if:
- (a) the severely handicapped person had not died; and
  - (b) the severely handicapped person had been under pension age.
- Step 2.* Work out how much of those payments would have been exempt in those circumstances.
- Step 3.* Work out the payments under the *Social Security Act 1991* that would have become due to the severely handicapped person on each of the pension paydays during the bereavement lump sum period if the severely handicapped person had not died, even if the payments would not have been exempt.
- Step 4.* Total the payments worked out at Steps 2 and 3: the result is the *tax-free amount*.

**52-40 Provisions of the *Social Security Act 1991* under which payments are made**

This table lists the provisions of the *Social Security Act 1991* under which social security payments are made that are wholly or partly exempt from income tax under this Subdivision.

<b>Provisions under which social security payments are made</b>				
<b>Item</b>	<b>Category of social security payment</b>	<b>Ordinary payment</b>	<b>Payment made because of a person's death (unless covered by next column)</b>	<b>Lump sum payment made because of your partner's death</b>
1	Advance pharmaceutical supplement	Part 2.23	Not applicable	Not applicable
2	Age pension	Part 2.2	Sections 83, 86 and 91	Section 84
3	Bereavement allowance	Part 2.7	Section 359	Not applicable
4	Carer pension	Part 2.5	Sections 238, 241 and 246	Sections 236A and 239
5	Child disability allowance	Part 2.19	Sections 992 and 992A	Not applicable
6	Disability support pension	Part 2.3	Sections 146G, 146K and 146Q	Section 146H
7	Disability wage supplement	Part 2.9	Sections 470, 473, 475 and 476	Section 471
8	Disaster relief payment	Part 2.24	Not applicable	Not applicable
9	Double orphan pension	Part 2.20	Sections 1034 and 1034A	Not applicable
10	Employment entry payment	Part 2.13	Not applicable	Not applicable
11	Family payment	Part 2.17	Not applicable	Not applicable
12	Family payment advance	Part 2.17	Not applicable	Not applicable
13	Family tax payment	Part 2.17AA or section 1070	Not applicable	Not applicable
14	Maternity allowance	Part 2.17A	Not applicable	Not applicable

<b>Provisions under which social security payments are made</b>				
<b>Item</b>	<b>Category of social security payment</b>	<b>Ordinary payment</b>	<b>Payment made because of a person's death (unless covered by next column)</b>	<b>Lump sum payment made because of your partner's death</b>
15	Mature age allowance (paid under Part 2.12A)	Part 2.12A	Sections 660XKB, 660XKE and 660XKG	Section 660XKC
16	Mature age allowance (paid under Part 2.12B)	Part 2.12B	Section 660YKD	Section 660YKE
17	Mature age partner allowance	Part 2.12A	Sections 660XKK and 660XKM	Section 660XKL
18	Mobility allowance	Part 2.21	Not applicable	Not applicable
19	Newstart allowance	Part 2.12	Section 660LB	Section 660LC
20	Parenting allowance (benefit parenting allowance)	Part 2.18	Sections 951Y and 951ZB	Section 951ZC
21	Parenting allowance (non-benefit parenting allowance)	Part 2.18	Not applicable	Not applicable
22	Partner allowance	Part 2.15A	Section 771NW	Section 771NX
23	Sickness allowance	Part 2.14	Section 728PB	Section 728PC
24	Sole parent pension	Part 2.6	Sections 304, 307 and 312	Section 305
25	Special benefit	Part 2.15	Section 768B	Section 768C
26	Special needs age pension	Section 772	Sections 823, 826 and 830	Section 824

**Provisions under which social security payments are made**

<b>Item</b>	<b>Category of social security payment</b>	<b>Ordinary payment</b>	<b>Payment made because of a person's death (unless covered by next column)</b>	<b>Lump sum payment made because of your partner's death</b>
27	Special needs disability support pension	Section 773	Sections 823, 826 and 830	Section 824
28	Special needs sole parent pension	Section 775	Not applicable	Not applicable
29	Special needs widow B pension	Section 778	Not applicable	Not applicable
30	Special needs wife pension	Section 774	Sections 823, 826 and 830	Section 824
31	Telephone allowance	Part 2.25	Not applicable	Not applicable
32	Widow allowance	Part 2.8A	Not applicable	Not applicable
33	Widow B pension	Part 2.8	Section 407	Not applicable
34	Wife pension	Part 2.4	Sections 189 and 191	Section 190

**Subdivision 52-B—Exempt payments under the Veterans' Entitlements Act 1986****Guide to Subdivision 52-B****52-60 What this Subdivision is about**

This Subdivision tells you:

- (a) the payments under the *Veterans' Entitlements Act 1986* that are wholly or partly exempt from income tax; and

- (b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and

(c) how to work how much of a payment is exempt.

## Table of sections

### Operative provisions

- 52-65 How much of a veterans' affairs payment is exempt?
- 52-70 Supplementary amounts of payments
- 52-75 Provisions of the *Veterans' Entitlements Act 1986* under which payments are made

## Operative provisions

### 52-65 How much of a veterans' affairs payment is exempt?

- (1) The table in this section tells you about the income tax treatment of veterans' affairs payments.

Note: Section 52-75 sets out the provisions of the *Veterans' Entitlements Act 1986* under which the payments are made.

- (2) Expressions (except "pension age") used in this Subdivision that are also used in the *Veterans' Entitlements Act 1986* have the same meaning as in that Act.
- (3) **Pension age** has the meaning given by subsection 23(1) of the *Social Security Act 1991*.
- (4) **Ordinary payment** means a payment other than a payment made because of a person's death.

#### Income tax treatment of veterans' affairs payments

Item	Category of veterans' affairs payment	Ordinary payment	Payment made because of a person's death
1.1	Age service pension	Supplementary amount is exempt (see section 52-70)	Exempt

<b>Income tax treatment of veterans' affairs payments</b>			
<b>Item</b>	<b>Category of veterans' affairs payment</b>	<b>Ordinary payment</b>	<b>Payment made because of a person's death</b>
2.1	<b>Attendant allowance</b>	Exempt	Not applicable
3.1	<b>Carer service pension:</b> unless covered by item 3.2 or 3.3	Supplementary amount is exempt (see section 52-70)	Exempt
3.2	<b>Carer service pension:</b> both you and your partner are under pension age and your partner is receiving an invalidity service pension	Exempt	Exempt
3.3	<b>Carer service pension:</b> you are under pension age, your partner has died and was receiving an invalidity service pension at death	Exempt	Exempt
4.1	<b>Clothing allowance</b>	Exempt	Not applicable
5.1	<b>Decoration allowance</b>	Exempt	Not applicable
6.1	<b>Income support supplement:</b> unless covered by item 6.2, 6.3, 6.4 or 6.5	Supplementary amount is exempt (see section 52-70)	Exempt
6.2	<b>Income support supplement:</b> you are under pension age and receiving the supplement on the grounds of permanent incapacity	Exempt	Exempt
6.3	<b>Income support supplement:</b> both you and the severely handicapped person you are caring for are under pension age and you are receiving the supplement for providing constant care for that person	Exempt	Exempt
6.4	<b>Income support supplement:</b> both you and your partner are under pension age and your partner is an invalidity service pensioner or a disability support pensioner	Exempt	Exempt

<b>Income tax treatment of veterans' affairs payments</b>			
<b>Item</b>	<b>Category of veterans' affairs payment</b>	<b>Ordinary payment</b>	<b>Payment made because of a person's death</b>
6.5	<b>Income support supplement:</b> both you and your partner are under pension age and your partner is receiving the supplement on the grounds of permanent incapacity	Exempt	Exempt
7.1	<b>Invalidity service pension:</b> you are pension age or over	Supplementary amount is exempt (see section 52-70)	Exempt
7.2	<b>Invalidity service pension:</b> you are under pension age	Exempt	Exempt
8.1	<b>Loss of earnings allowance</b>	Exempt	Not applicable
9.1	<b>Partner service pension:</b> unless covered by item 9.2 or 9.3	Supplementary amount is exempt (see section 52-70)	Exempt
9.2	<b>Partner service pension:</b> both you and your partner are under pension age and your partner is receiving an invalidity service pension	Exempt	Exempt
9.3	<b>Partner service pension:</b> you are under pension age, your partner has died and was receiving an invalidity service pension at death	Exempt	Exempt
10.1	<b>Pension for defence-caused death or incapacity</b>	Exempt	Not applicable
11.1	<b>Pension for war-caused death or incapacity</b>	Exempt	Not applicable
12.1	<b>Pharmaceutical allowance</b>	Exempt	Not applicable
13.1	<b>Recreation transport allowance</b>	Exempt	Not applicable
14.1	<b>Section 98A Bereavement payment</b>	Not applicable	Exempt
15.1	<b>Section 99 funeral benefit</b>	Not applicable	Exempt



**Income tax treatment of veterans' affairs payments**

<b>Item</b>	<b>Category of veterans' affairs payment</b>	<b>Ordinary payment</b>	<b>Payment made because of a person's death</b>
16.1	<b>Section 100 funeral benefit</b>	Not applicable	Exempt
17.1	<b>Special assistance</b>	Exempt	Not applicable
18.1	<b>Telephone allowance</b>	Exempt	Not applicable
19.1	<b>Temporary incapacity allowance</b>	Exempt	Not applicable
20.1	<b>Travelling expenses</b>	Exempt	Not applicable
21.1	<b>Vehicle Assistance Scheme</b>	Exempt	Not applicable
22.1	<b>Victoria Cross allowance</b>	Exempt	Not applicable

**52-70 Supplementary amounts of payments**

The *supplementary amount* of a veterans' affairs payment is the total of:

- (a) so much of the payment as is included by way of rental assistance; and
- (b) so much of the payment as is included by way of an additional amount for each of your dependent children; and

- (c) so much of the payment as is included by way of remote area allowance; and
- (d) so much of the payment as is included by way of residential care charge.

**52-75 Provisions of the *Veterans' Entitlements Act 1986* under which payments are made**

This table lists the provisions of the *Veterans' Entitlements Act 1986* under which veterans' affairs payments are made that are wholly or partly exempt from income tax under this Subdivision.

<b>Provisions under which veterans' affairs payments are made</b>			
<b>Item</b>	<b>Category of veterans' affairs payment</b>	<b>Ordinary payment</b>	<b>Payment made because of a person's death</b>
1	Age service pension	Division 3 of Part III	Parts III and IIIA
2	Attendant allowance	Section 98	Not applicable
3	Carer service pension	Division 6 of Part III	Parts III and IIIA
4	Clothing allowance	Section 97	Not applicable
5	Decoration allowance	Section 102	Not applicable
6	Income support supplement	Part IIIA	Parts III and IIIB
7	Invalidity service pension	Division 3 of Part III	Parts III and IIIA
8	Loss of earnings allowance	Section 108	Not applicable
9	Partner service pension	Division 5 of Part III	Parts III and IIIA
10	Pension for defence-caused death or incapacity	Part IV	Not applicable
11	Pension for war-caused death or incapacity	Part II	Not applicable
12	Pharmaceutical allowance	Part VIIA	Not applicable
13	Recreation transport allowance	Section 104	Not applicable

<b>Provisions under which veterans' affairs payments are made</b>			
<b>Item</b>	<b>Category of veterans' affairs payment</b>	<b>Ordinary payment</b>	<b>Payment made because of a person's death</b>
14	Section 98A Bereavement payment	Not applicable	Section 98A
15	Section 99 funeral benefit	Not applicable	Section 99
16	Section 100 funeral benefit	Not applicable	Section 100
17	Special assistance	Section 106	Not applicable
18	Telephone allowance	Part VIIB	Not applicable
19	Temporary incapacity allowance	Section 107	Not applicable
20	Travelling expenses	Section 110	Not applicable
21	Vehicle Assistance Scheme	Section 105	Not applicable
22	Victoria Cross allowance	Section 103	Not applicable

### **Subdivision 52-C—Exempt payments made because of the Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986**

#### **Guide to Subdivision 52-C**

#### **52-100 What this Subdivision is about**

This Subdivision tells you:

- (a) the payments made because of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* that are wholly or partly exempt from income tax; and
- (b) any special circumstances, conditions or exceptions that apply to a payment in order for it to be exempt; and

- 
- |  |
|--|
| (c) how to work out how much of a payment is exempt. |
|--|

## Table of sections

### Operative provisions

- 52-105 Supplementary amount of a payment made under the *Repatriation Act 1920* is exempt
- 52-110 Other exempt payments

## Operative provisions

### 52-105 Supplementary amount of a payment made under the *Repatriation Act 1920* is exempt

- (1) The \*supplementary amount of a payment made to you is exempt from income tax if:
  - (a) you are a parent of a \*member of the Forces who has died (but you are neither a widow nor a woman divorced or deserted by her husband) and you are of \*pension age or over; or
  - (b) you are the mother of a \*member of the Forces who has died and you are also a widow, or divorced or deserted by your husband;
 and the payment is covered by subsection (2).
- (2) The payment must be made in circumstances that are a prescribed case under:
  - (a) Table A in Schedule 3 to the *Repatriation Act 1920*; or
  - (b) that Table as applying because of the *Repatriation (Far East Strategic Reserve) Act 1956*; or
  - (c) that Table as applying because of the *Repatriation (Special Overseas Service) Act 1962*; or
  - (d) that Table as applying because of the *Interim Forces Benefits Act 1947*;
 as in force because of subsection 4(6) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*.

- (3) The **supplementary amount** is the total of:
  - (a) so much of the payment as is included by way of rental assistance; and
  - (b) so much of the payment as is included by way of an additional amount for each of your dependent children; and
  - (c) so much of the payment as is included by way of remote area allowance.
- (4) **Member of the Forces** has the same meaning as in the Act referred to in the relevant paragraph of subsection (2).
- (5) Expressions (except **pension age**) used in this Subdivision that are also used in the *Veterans' Entitlements Act 1986* have the same meaning as in that Act.
- (6) **Pension age** has the meaning given by subsection 23(1) of the *Social Security Act 1991*.

#### **52-110 Other exempt payments**

Payments (except those covered by section 52-105) made because of subsection 4(6) of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* are exempt from income tax.

## Division 53

### Guide to Division 53

#### 53-1 What this Division is about

This Division tells you:

- (a) about various payments that are wholly or partly exempt from income tax; and
- (b) any special conditions that apply to a payment in order for it to be exempt; and
- (c) how to work out how much of a payment is exempt.

#### Table of sections

##### Operative provisions

53-10	Exemption of various types of payments
53-15	Supplementary amount of a drought relief payment
53-20	Exemption of similar Australian and United Kingdom veterans' payments

#### Operative provisions

##### 53-10 Exemption of various types of payments

This table tells you about the income tax treatment of various types of payments.

**Exemption of various payments**

<b>Item</b>	<b>This type of payment:</b>	<b>... made under:</b>	<b>... is exempt subject to these exceptions and special conditions:</b>
1	<b>Disability services payment</b>	Part III of the <i>Disability Services Act 1986</i>	None
2	<b>Domiciliary nursing care benefit</b>	Part VB of the <i>National Health Act 1953</i>	None
3	<b>Drought relief payment:</b> payment made other than because of a person's death	The <i>Farm Household Support Act 1992</i>	Only the supplementary amount is exempt (see section 53-15)
4	<b>Drought relief payment:</b> payment made because of a person's death	Paragraph 49(b) of the <i>Farm Household Support Act 1992</i>	None
5	<b>Wounds and disability pension</b>	Not applicable	The payment must be: (a) of a kind specified in subsection 315(2) of the Income and Corporation Taxes Act 1988 of the United Kingdom; and (b) similar in nature to payments that are exempt under Division 52 or this Division

**53-15 Supplementary amount of a drought relief payment**

The *supplementary amount* of a drought relief payment is the total of:

- (a) so much of the payment as is included by way of rental assistance; and

- (b) so much of the payment as would have been included by way of remote area allowance if it had been a payment of newstart allowance under the *Social Security Act 1991* instead of a drought relief payment; and
- (c) so much of the payment as is included because of paragraph 24A(1)(c) (about family payment) of the *Farm Household Support Act 1992*.

**53-20 Exemption of similar Australian and United Kingdom veterans' payments**

The following payments made by the Government of Australia, or the Government of the United Kingdom, are exempt from income tax:

- (a) payments similar to payments under the *Veterans' Entitlements Act 1986* that are exempt under Subdivision 52-B;
- (b) payments similar to payments that are made because of the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986* and are exempt under Subdivision 52-C.

*[The next Division is Division 55.]*



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## **Division 55**Guide to Division 55

### **55-1 What this Division is about**

A variety of payments are not exempt from income tax even though they are similar in nature to payments that are wholly or partly exempt under this Part.

### **Table of sections**

#### **Operative provisions**

55-5	Occupational superannuation payments
55-10	Education entry payments

### **Operative provisions**

#### **55-5 Occupational superannuation payments**

- (1) This Part does not exempt from income tax any amount or pension paid under the following provisions or Acts, or under schemes established under any of them:
    - (a) *Defence Force Retirement and Death Benefits Act 1973*;
    - (b) *Defence Forces Retirement Benefits Act 1948*;
    - (c) *Military Superannuation and Benefits Act 1991*;
    - (d) *Papua New Guinea (Staffing Assistance) Act 1973*;
    - (e) *Parliamentary Contributory Superannuation Act 1948*;
    - (f) section 10 of the *Superannuation (Pension Increases) Act 1971*;
    - (g) section 9 or 14 of the *Superannuation Act (No. 2) 1956*;
    - (h) subsection 8(1) of the *Superannuation Act 1948*;
    - (i) *Superannuation Act 1922*;
    - (j) *Superannuation Act 1976*;
    - (k) *Superannuation Act 1990*.
  - (2) This section operates despite anything contained in any other provision of this Part.
-

**55-10 Education entry payments**

This Part does not exempt from income tax an education entry payment under Part 2.13A of the *Social Security Act 1991*.

*[The next Part is Part 2-20.]*

**12 At the end of section 61-320**

Add:

*[The next Part is Part 2-25.]*

**13 After Part 2-20**

Insert:



## **Division 70**Table of Subdivisions

### Guide to Division 70

- 70-A What is trading stock
- 70-B Acquiring trading stock
- 70-C Accounting for trading stock you hold at the start or end of the income year
- 70-D Assessable income arising from disposals of trading stock and certain other assets
- 70-E Miscellaneous

### **70-1 What this Division is about**

This Division deals with amounts you can deduct, and amounts included in your assessable income, because of these situations:

- you acquire an item of trading stock;
- you carry on a business and hold trading stock at the start or the end of the income year;
- you dispose of an item of trading stock outside the ordinary course of business, or it ceases to be trading stock in certain other circumstances.

### **Table of sections**

- 70-5 The 3 key features of tax accounting for trading stock

### **70-5 The 3 key features of tax accounting for trading stock**

The purpose of income tax accounting for trading stock is to produce an overall result that (apart from concessions) properly reflects your activities with your trading stock during the income year.

There are 3 key features:

- 
- (1) You bring your gross outgoings and earnings to account, not your net profits and losses on disposal of trading stock.
  - (2) Those outgoings and earnings are on revenue account, not capital account. As a result:
    - (a) the gross outgoings are usually deductible as general deductions under section 8-1 (when the trading stock becomes trading stock on hand); and
    - (b) the gross earnings are usually assessable as ordinary income under section 6-5 (when the trading stock stops being trading stock on hand).
  - (3) You must bring to account any difference between the value of your trading stock on hand at the start and at the end of the income year. This is done in such a way that, in effect:
    - (a) you account for the value of your trading stock as assessable income; and
    - (b) you carry that value over as a corresponding deduction for the next income year.

## **Subdivision 70-A—What is trading stock**

### **Table of sections**

70-10      Meaning of *trading stock*

### **70-10 Meaning of *trading stock***

***Trading stock*** includes:

- (a) anything produced, manufactured or acquired that is held for purposes of manufacture, sale or exchange in the ordinary course of a \*business; and
- (b) \*live stock.

Note 1:      Shares in a PDF are *not* trading stock. See section 124ZO of the *Income Tax Assessment Act 1936*.

Note 2:      If a company becomes a PDF, its shares are taken not to have been trading stock before it became a PDF. See section 124ZQ of the *Income Tax Assessment Act 1936*.

## **Subdivision 70-B—Acquiring trading stock**

### **Table of sections**

- 
- |       |   |
|-------|---|
| 70-15 | In which income year do you deduct an outgoing for trading stock? |
| 70-20 | Non-arm's length transactions                                     |
| 70-25 | Cost of trading stock is not a capital outgoing                   |
| 70-30 | Starting to hold as trading stock an item you already own         |

### **70-15 In which income year do you deduct an outgoing for trading stock?**

- (1) This section tells you in which income year to deduct under section 8-1 (about general deductions) an outgoing incurred in connection with acquiring an item of \*trading stock. (The outgoing must be deductible under that section.)
- (2) If the item becomes part of your \*trading stock on hand before or during the income year in which you incur the outgoing, deduct it in that income year.
- (3) Otherwise, deduct the outgoing in the first income year:
  - (a) during which the item becomes part of your \*trading stock on hand; or
  - (b) for which an amount is included in your assessable income in connection with the disposal of that item.

Note: You can deduct your capital costs of acquiring land carrying trees or of acquiring a right to fell trees, to the extent that the trees are felled for sale, or for use in manufacture, by you. (This is because the trees will then usually become your trading stock.) See section 70-120.

### **70-20 Non-arm's length transactions**

If:

- (a) you incur an outgoing that is directly attributable to your buying or obtaining delivery of an item of your \*trading stock; and
- (b) you and the seller of the item did not deal with each other at arm's length; and
- (c) the amount of the outgoing is greater than the market value of what the outgoing is for;

the amount of the outgoing is instead taken to be that market value. This has effect for the purposes of applying this Act to you and also to the seller.

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Note 1: This section also affects the value of the item of trading stock at the end of an income year if you value it at its cost under section 70-45 (Value of trading stock at end of income year).

Note 2: This section is disregarded in applying Division 13 (about transfer-pricing arrangements) of Part III of the *Income Tax Assessment Act 1936*.

## **70-25 Cost of trading stock is not a capital outgoing**

An outgoing you incur in connection with acquiring an item of \*trading stock is not an outgoing of capital or of a capital nature.

Note: This means that paragraph 8-1(2)(a) does not prevent the outgoing from being a general deduction under section 8-1.

## **70-30 Starting to hold as trading stock an item you already own**

(1) If you start holding as \*trading stock an item you already own, but do not hold as trading stock, you are treated as if:

- (a) just before it became trading stock, you had sold the item to someone else (at arm's length) for whichever of these amounts you elect:
  - its cost (as worked out under subsection (3) or (4));
  - its market value just before it became trading stock; and
- (b) you had immediately bought it back for the same amount.

Example: You start holding a unit of depreciable plant as part of your trading stock. You are treated as having sold it just before that time, and immediately bought it back, for its cost or market value, whichever you elect. (Subdivision 42-F provides for the consequences of selling depreciated property.)

The same amount is normally a general deduction under section 8-1 as an outgoing in connection with acquiring trading stock. The amount is also taken into account in working out the item's cost for the purposes of section 70-45 (about valuing trading stock at the end of the income year).

Note: Depending on how you elect under paragraph (1)(a), the sale may or may not give rise to a capital gain or a capital loss for the purposes of Part IIIA (Capital gains and capital losses) of the *Income Tax Assessment Act 1936*. It does not if you elect to be treated as having sold the item for what would have been its cost: see subsection 160ZB(7) of that Act. However, it can if you elect market value.

*When you must make the election*

- (2) You must make the election by the time you lodge your \*income tax return for the income year in which you start holding the item as \*trading stock. (If you do not make the election by then because you do not realise until later that you started to hold the item as trading stock, you must make the election as soon as is reasonable after realising that.)

However, the Commissioner can allow you to make it later (in either case).

*How to work out the item's cost*

- (3) The item's cost is what would have been its cost for the purposes of section 70-45 (about valuing trading stock at the end of the income year) if it had been your trading stock ever since you last acquired it. In working that out, disregard section 70-55 (about acquiring live stock by natural increase).
- (4) However, if you last acquired the item for no consideration and the acquisition involved:
- (a) a disposal of the item to you for the purposes of Part IIIA (Capital gains and capital losses) of the *Income Tax Assessment Act 1936*; or
  - (b) the item passing to you as someone's \*legal personal representative, or as a beneficiary in a dead person's estate;
- its cost is taken to be its market value when you last acquired it.

*Exceptions*

- (5) Subsection (1) does not apply if you start holding any of the following as \*trading stock because they are severed from land:
- (a) standing or growing crops;
  - (b) crop-stools;
  - (c) trees planted and tended for sale.

(This does not prevent subsection (1) from applying to a severed item that you later start holding as \*trading stock.)

Note: A transaction that this section treats as having occurred is disregarded for the purposes of these provisions of the *Income Tax Assessment Act 1936*:



- 
- subsection 47A(10) (which treats certain benefits as dividends paid by a CFC)
  - paragraph 103A(3A)(c) (which affects whether a company is a public company for an income year).

## **Subdivision 70-C—Accounting for trading stock you hold at the start or end of the income year**

### **Table of sections**

#### **General rules**

- 70-35 You include the value of your trading stock in working out your assessable income and deductions
- 70-40 Value of trading stock at start of income year
- 70-45 Value of trading stock at end of income year

#### **Special valuation rules**

- 70-50 Valuation if trading stock obsolete etc.
- 70-55 Working out the cost of natural increase of live stock
- 70-60 Valuation of horse breeding stock
- 70-65 Working out the *horse opening value* and the *horse reduction amount*
- 70-70 Valuing interests in FIFs

### **General rules**

#### **70-35 You include the value of your trading stock in working out your assessable income and deductions**

- (1) If you carry on a \*business, you compare:
    - (a) the \*value of all your \*trading stock on hand at the start of the income year; and
    - (b) the \*value of all your \*trading stock on hand at the end of the income year.
  - (2) Your assessable income includes any excess of the \*value at the *end* of the income year over the value at the *start* of the income year.
  - (3) On the other hand, you can deduct any excess of the \*value at the *start* of the income year over the value at the *end* of the income year.
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## **70-40 Value of trading stock at start of income year**

- (1) The **value** of an item of \*trading stock on hand at the start of an income year is the same amount at which it was taken into account under this Division at the end of the last income year.
- (2) The **value** of the item is a nil amount if the item was not taken into account under this Division at the end of the last income year.

Note: For the value of trading stock at the start of the 1997-98 income year, see section 70-40 of the *Income Tax (Transitional Provisions) Act 1997*.

## **70-45 Value of trading stock at end of income year**

- (1) You must elect to **value** each item of \*trading stock on hand at the end of an income year at:
  - (a) its \*cost; or
  - (b) its market selling value; or
  - (c) its replacement price.
- Note: An item's market selling value at a particular time may not be the same as its market value.
- (2) The rest of this Subdivision deals with cases where the normal operation of this section is modified, or where a different valuation method may or must be used. The table sets out other cases where that happens because of provisions outside this Subdivision.

<b>Rules about the value of trading stock</b>		
<b>Item</b>	<b>For this situation:</b>	<b>See:</b>
1	In working out the inter-corporate dividend rebate, a company can sometimes be treated as having chosen the lowest of the 3 values.	Subsections 46(7A) and (7B) of the <i>Income Tax Assessment Act 1936</i>
2	In working out the attributable income of a non-resident trust estate, trading stock is taken to be valued at cost.	Section 102AAY of the <i>Income Tax Assessment Act 1936</i>

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3	In working out the attributable income of a controlled foreign corporation, the corporation must value at cost.	Section 397 of the <i>Income Tax Assessment Act 1936</i>
4	Some anti-avoidance provisions reduce the amount that is taken to be the cost of an item of trading stock.	Subsections 52A(7), 82KH(1N), 82KL(6) and 100A(6B) of the <i>Income Tax Assessment Act 1936</i>

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## Special valuation rules

### 70-50 Valuation if trading stock obsolete etc.

You may elect to **value** an item of your \*trading stock below all the values in section 70-45 if:

- (a) that is warranted because of obsolescence or any other special circumstances relating to that item; and
- (b) the value you elect is reasonable.

### 70-55 Working out the cost of natural increase of live stock

- (1) The **cost** of an animal you hold as \*live stock that you acquired by natural increase is whichever of these you elect:
  - (a) the actual cost of the animal;
  - (b) the cost prescribed by the regulations for each animal in the applicable class of live stock.
- (2) However, if you incur a service fee for insemination and, as a result, acquire a horse by natural increase, its **cost** is the greater of:
  - (a) the amount worked out under subsection (1); and
  - (b) the part of the service fee that is attributable to your acquiring the horse.
- (3) An election under this section must be made by the time you lodge your \*income tax return for the income year in which you acquired the animal. However, the Commissioner can allow you to make it later.

**70-60 Valuation of horse breeding stock**

- (1) For a horse at least 3 years old that you acquired under a contract and hold for breeding, you can elect a *value* other than the values in section 70-45.
- (2) The *value* you can elect for the horse at the end of the income year is worked out using the table:

<b>Value of horse breeding stock</b>	
<b>If the horse is:</b>	<b>... you can value it at this amount:</b>
female 12 years or over	\$1
any other horse	the *horse opening value less the *horse reduction amount (see section 70-65)

- (3) However, if the value worked out under subsection (2) would be less than \$1, you must elect the *value* of \$1.
- (4) A horse's age is to be measured in whole years as at the end of the relevant income year. The age of a horse not born on 1 August is determined as if the horse had been born on the last 1 August before it was actually born.

**70-65 Working out the *horse opening value* and the *horse reduction amount***

- (1) The *horse opening value* is:
  - (a) if the horse has been your \*live stock ever since the start of the income year—its \*value as \*trading stock at the start of the income year; or
  - (b) otherwise—the horse's base amount (see subsection (3)).
- (2) The *horse reduction amount* is worked out as follows:
  - (a) for female horses under 12 years of age:

$$\frac{\text{Base amount}}{\text{Reduction factor}} \times \frac{\text{Breeding days}}{\text{Days in income year}}$$

- (b) for any male horse:

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$$\text{Base amount} \times \frac{\text{Nominated percentage}}{\text{percentage}} \times \frac{\text{Breeding days}}{\text{Days in income year}}$$

(3) In this section:

**base amount** is the lesser of:

- (a) the horse's \*cost; and
- (b) the horse's \*undeducted cost when it most recently became your \*live stock.

**breeding days** is the number of whole days in the income year since you most recently began to hold the horse for breeding.

**nominated percentage** is any percentage, up to 25%, you nominate when you make the election in section 70-60.

**reduction factor** is the greater of:

- (a) 3; and
- (b) the difference between 12 and the horse's age when you most recently began to hold it for breeding.

## 70-70 Valuing interests in FIFs

- (1) You must **value** at its cost an item of your \*trading stock that is an interest in a \*foreign investment fund (a \*FIF).

Note: For special rules about valuing an interest in a FIF that was an item of your trading stock on hand at the start of the 1991-92 income year, see section 70-70 of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) However, you may elect to value all your interests in \*FIFs at their market value instead. If you make this election, then for the income year of the election, and for all later income years, you must **value** at their market value all your interests in FIFs.
- (3) You can only make this election *before* you lodge your \*income tax return for the *first* income year in which a \*notional accounting period of any \*FIF you have an interest in ends.

## **Subdivision 70-D—Assessable income arising from disposals of trading stock and certain other assets**

### **Guide to Subdivision 70-D**

#### **70-75 What this Subdivision is about**

Your assessable income includes the market value of an item of trading stock if you dispose of it outside the ordinary course of business or it ceases to be trading stock in certain other circumstances.

This Subdivision treats certain other assets in the same way as trading stock.

#### **Table of sections**

70-80 Why the rules in this Subdivision are necessary

##### **Operative provisions**

70-85 Application of this Subdivision to certain other assets

70-90 Assessable income on disposal of trading stock outside the ordinary course of business

70-95 Purchase price is taken to be market value

70-100 Notional disposal when you stop holding an item as trading stock

70-105 Death of owner

70-110 You stop holding an item as trading stock but still own it

70-115 Compensation for lost trading stock

#### **70-80 Why the rules in this Subdivision are necessary**

- (1) When you dispose of an item of your trading stock in the ordinary course of business, what you get for it is included in your assessable income (under section 6-5) as ordinary income.

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- (2) If an item stops being your trading stock for certain other reasons, an amount is generally included in your assessable income to balance the reduction in trading stock on hand, which is a transaction on revenue account.
  - (3) The other reasons for an item to stop being your trading stock are:
    - (a) you dispose of it outside the ordinary course of \*business; or
    - (b) interests in it change; or
    - (c) you die; or
    - (d) you stop holding it as trading stock.

## **Operative provisions**

### **70-85 Application of this Subdivision to certain other assets**

This Subdivision (except section 70-115) applies to certain assets of a \*business as if they were \*trading stock on hand of the entity that carries on that business. The assets are:

- (a) standing or growing crops; and
- (b) crop-stools; and
- (c) trees planted and tended for sale.

Note: Section 70-115 assesses insurance or indemnity amounts for lost trading stock.

### **70-90 Assessable income on disposal of trading stock outside the ordinary course of business**

- (1) If you dispose of an item of your \*trading stock outside the ordinary course of a \*business:
  - (a) that you are carrying on; and
  - (b) of which the item is an asset;
 your assessable income includes the market value of the item on the day of the disposal.
- (2) Any amount that you actually receive for the disposal is not included in your assessable income (nor is it \*exempt income).

Note 1: In the case of an asset covered by section 70-85 (which applies this Subdivision to certain other assets), the disposal will usually involve disposing of the land of which the asset forms part.

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- Note 2: For certain disposals of live stock by primary producers, special rules apply: see Subdivision 385-E.
- Note 3: If the disposal is by way of gift, you may be able to deduct the gift: see Division 30 (Gifts).
- Note 4: If the disposal is of trees, you can deduct the relevant portion of your capital costs of acquiring the land carrying the trees or of acquiring a right to fell the trees: see section 70-120.

### 70-95 Purchase price is taken to be market value

If an entity disposes of an item of the entity's \*trading stock outside the ordinary course of \*business, the entity acquiring the item is treated as having bought it for the market value included in the disposing entity's assessable income under section 70-90.

### 70-100 Notional disposal when you stop holding an item as trading stock

- (1) An item of \*trading stock is treated as having been disposed of outside the ordinary course of \*business if it stops being trading stock on hand of an entity (the *transferor*) and, immediately afterwards:

- (a) the transferor is not the item's sole owner; but
- (b) an entity that owned the item (alone or with others) immediately beforehand still has an interest in the item.

Example: A grocer decides to take her daughters into partnership with her. Her trading stock becomes part of the partnership assets, owned by the partners equally. As a result, it becomes trading stock on hand of the partnership instead of the grocer. This section treats the grocer as having disposed of the trading stock to the partnership outside the ordinary course of her business.

Note: If the transferor *is* the item's sole owner after it stops being trading stock on hand of the transferor, section 70-110 applies instead of this section.

- (2) As a result, the transferor's assessable income includes the market value of the item on the day it stops being \*trading stock on hand of the transferor.
- (3) The entity or entities (the *transferee*) that own the item immediately *after* it stops being \*trading stock on hand of the transferor are treated as having bought the item for the same value on that day.



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*Election to treat item as disposed of at closing value*

- (4) However, an election can be made to treat the item as having been disposed of for what would have been its \*value as \*trading stock of the *transferor* on hand at the end of an income year ending on that day.
- (5) If this election is made, this \*value is included in the transferor's assessable income for the income year that includes that day. The transferee is treated as having bought the item for the same value on that day.
- (6) This election can only be made if:
  - (a) immediately *after* the item stops being \*trading stock on hand of the transferor, it is an asset of a \*business carried on by the transferee; and
  - (b) immediately *after* the item stops being \*trading stock on hand of the transferor, the entities that owned it immediately beforehand have (between them) interests in the item whose total value is at least 25% of the item's market value on that day; and
  - (c) the \*value elected is *less than* that market value; and
  - (d) the item is not a thing in action.
- (7) Also, the election can only be made before 1 September following the end of the \*financial year in which the item stops being \*trading stock on hand of the transferor. However, the Commissioner can allow the election to be made later.
- (8) An election must be in writing and signed by or on behalf of each of:
  - (a) the entities that own the item immediately before it stops being \*trading stock on hand of the transferor; and
  - (b) the entities that own it immediately afterwards.
- (9) If a person whose signature is required for the election has died, the \*legal personal representative of that person's estate may sign instead.

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*When election has no effect*

- (10) An election has no effect if:
- (a) the item stops being \*trading stock on hand of the transferee outside the course of ordinary family or commercial dealing; and
  - (b) the \*consideration receivable by the transferor (or by any of the entities constituting the transferor) substantially exceeds what would reasonably be expected to be the consideration receivable by the entity concerned if the market value of the item immediately before it stops being \*trading stock on hand of the transferor were the \*value elected under subsection (4).
- (11) **Consideration receivable** by an entity means so much of the value of any benefit as it is reasonable to expect that the entity will obtain in connection with the item ceasing to be \*trading stock on hand of the transferor.

**70-105 Death of owner**

- (1) When you die, your assessable income up to the time of your death includes the market value at that time of the \*trading stock of your \*business (if any).

Note: In the case of trees, you can deduct the relevant portion of your capital costs of acquiring the land carrying the trees or of acquiring a right to fell the trees: see section 70-120.

- (2) The person on whom the \*trading stock devolves is treated as having bought it for its market value at that time.
- (3) However, your \*legal personal representative can elect to have included in your assessable income (instead of the market value) the amount that would have been the \*value of the \*trading stock at the end of an income year ending on the day of your death.
- (4) In the case of an asset covered by section 70-85 (which applies this Subdivision to certain other assets), your \*legal personal representative can elect to have a nil amount included in your assessable income (instead of the market value).
- (5) Your \*legal personal representative can make an election only if:
  - (a) the \*business is carried on after your death; and

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- (b) the \*trading stock continues to be held as trading stock of that business, or the asset continues to be held as an asset of that business, as appropriate.
  - (6) If an election is made, the person on whom the \*trading stock devolves is treated as having bought it for the amount referred to in subsection (3) or (4).
  - (7) An election can only be made on or before the day when your \*legal personal representative lodges your \*income tax return for the period up to your death. However, the Commissioner can allow it to be made later.

### **70-110 You stop holding an item as trading stock but still own it**

If you stop holding an item as \*trading stock, but still own it, you are treated as if:

- (a) just before it stopped being trading stock, you had sold it to someone else (at arm's length and in the ordinary course of business) for its \*cost; and
- (b) you had immediately bought it back for the same amount.

**Example 1:** You are a sheep grazer and take a sheep from your stock to slaughter for personal consumption. You are treated as having sold it for its cost. This amount is assessable income, just like the proceeds of sale of any of your trading stock.

Although you are also treated as having bought the sheep for the same amount, it would not be deductible because the sheep is for personal consumption.

**Example 2:** You stop holding an item as trading stock and begin to use it as plant for the purpose of producing your assessable income. You are treated as having sold it for its cost. This amount is assessable income, just like the proceeds of sale of any of your trading stock.

You are also treated as having bought the item for the same amount, which is relevant to working out the item's cost for depreciation purposes: see Subdivision 42-B.

**Note:** A transaction that this section treats as having occurred is disregarded for the purposes of these provisions of the *Income Tax Assessment Act 1936*:

- subsection 47A(10) (which treats certain benefits as dividends paid by a CFC)
- paragraph 103A(3A)(c) (which affects whether a company is a public company for an income year).

## 70-115 Compensation for lost trading stock

Your assessable income includes an amount that:

- (a) you receive by way of insurance or indemnity for a loss of \*trading stock; and
- (b) is not assessable as \*ordinary income under section 6-5.

## Subdivision 70-E—Miscellaneous

### Table of sections

70-120     Deducting capital costs of acquiring trees

## 70-120 Deducting capital costs of acquiring trees

- (1) This section gives you deductions for your capital costs of acquiring land carrying trees or of acquiring a right to fell trees.

Note:     This section is included in this Division because:

- •                      trees felled for sale, or for use in manufacture, by you will usually become your trading stock; and
- •                      before they are felled, the trees are covered by sections 70-90 and 70-105 because of section 70-85.

### *Land carrying trees*

- (2) You can deduct an amount for the price you paid to acquire land carrying trees if:
  - (a) some or all of the trees are felled during the income year for sale, or for use in manufacture, by you for the \*purpose of producing assessable income; or
  - (b) some or all of the trees are felled during the income year under a right you granted to another entity in consideration of payments as or by way of \*royalty; or
  - (c) the market value of some or all of the trees is included in your assessable income for the income year by section 70-90 (because you disposed of the trees outside the ordinary course of \*business) or section 70-105 (because of your death).

(It does not matter when you acquired the land.)

Note:     The market value of trees is *not* included in your assessable income for the income year by section 70-105 (because of your death) if your

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legal personal representative elects under subsection 70-105(4) to have a nil amount included instead.

*Right to fell trees*

- (3) You can deduct an amount for the price you paid to acquire a right to fell trees if:
- (a) some or all of the trees are felled during the income year for sale, or for use in manufacture, by you for the \*purpose of producing assessable income; or
  - (b) some or all of the trees are felled during the income year under a right you granted to another entity in consideration of payments as or by way of \*royalty.
- (It does not matter when you acquired the right.)

*How much you can deduct for costs of acquiring land or right*

- (4) You can deduct for the income year so much of the price you paid as is attributable to the trees covered by a paragraph of subsection (2) or (3).
- (5) If you can deduct an amount because of paragraph (2)(c), you can also deduct for the income year so much of any other capital expenditure you incurred as is attributable to acquiring the trees covered by that paragraph (except so far as you have deducted it, or can deduct it, for any income year under a provision of this Act outside this section).

*Non-arm's length transactions*

- (6) If:
- (a) you can deduct an amount under this section for expenditure incurred in connection with a transaction; and
  - (b) the parties to the transaction did not deal with each other at arm's length; and
  - (c) the amount of the expenditure is greater than the market value of what the expenditure is for;
- the amount of the expenditure is instead taken to be that market value. This has effect for the purposes of working out what you can deduct under this section.

*[The next Chapter is Chapter 3.]*

**14 Section 375-820 (link note)**

Repeal the link note, substitute:

*[The next Division is Division 385.]*

**15 At the end of Part 3-45**

Add:

## Division 385

### Table of Subdivisions

#### Guide to Division 385

- 385-E Primary producer can elect to spread or defer tax on profit from forced disposal or death of live stock
- 385-F Insurance for loss of live stock or trees
- 385-G Double wool clips
- 385-H Rules that apply to all elections made under Subdivisions 385-E, 385-F and 385-G

### Guide to Division 385

#### 385-1 What this Division is about

This Division contains rules that are specific to primary producers.

### Table of sections

- 385-5 Where to find some other rules relevant to primary producers

#### 385-5 Where to find some other rules relevant to primary producers

<b>Rules relevant to primary producers</b>		
<b>Item</b>	<b>For rules about this topic:</b>	<b>See:</b>
1	The rules about assessable income arising from disposals of trading stock apply to live stock, because live stock is trading stock.	Subdivision 60-D
2	The rules about assessable income arising from disposals of trading stock apply to: <ul style="list-style-type: none"> <li>(a) standing or growing crops; and</li> <li>(b) crop-stools; and</li> <li>(c) trees planted and tended for sale.</li> </ul>	Subdivision 60-D

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3	There are some capital allowances for primary producers and some other land-holders.	Division 387
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*[The next Subdivision is Subdivision 385-E.]*

## **Subdivision 385-E—Primary producer can elect to spread or defer tax on profit from forced disposal or death of live stock**

### **Guide to Subdivision 385-E**

#### **385-90 What this Subdivision is about**

You can elect to exclude from your assessable income the profit on a forced disposal or death of live stock that you held as assets of a primary production business you carry on in Australia.

The excluded profit is then brought into your assessable income over a 5 year period in one of 2 ways.

#### **Table of sections**

385-95 Basic principles for elections under this Subdivision

##### **Operative provisions**

385-100 Cases where you can make an election

385-105 Election to spread tax profit over 5 years

385-110 Alternative election to defer tax profit and reduce cost of replacement live stock

385-115 Your assessable income includes an amount for replacement live stock you breed

385-120 Purchase price of replacement live stock is reduced

385-125 Alternative election because of bovine tuberculosis has effect over 10 years not 5

#### **385-95 Basic principles for elections under this Subdivision**

(1) You can elect:

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- to spread the profit on the disposal or death over the income year of the disposal or death and the next 4 income years (*election to spread*); or
  - to defer including the profit in your assessable income, if you will use the proceeds of the disposal or death mainly to replace the live stock (*election to defer*).
- (2) If you make an election to defer, the profit is “used” over the next 5 income years:
- by reducing the price for which you are taken to have bought replacement stock (as a result, your tax profit on the disposal of the replacement stock is increased); and
  - by including in your assessable income amounts for replacement stock that you breed.

Any unused part of the profit is included in your assessable income for the fifth income year.

## **Operative provisions**

### **385-100 Cases where you can make an election**

- (1) You can make an election if:
- (a) you dispose of \*live stock, or they die, because:
    - (i) land is compulsorily acquired or resumed under an Act; or
    - (ii) a State or Territory leases land for a cattle tick eradication campaign; or
    - (iii) pasture or fodder is destroyed by fire, drought or flood and you will use the \*proceeds of the disposal or death mainly to buy replacement stock or to maintain breeding stock for the purpose of replacing the live stock; or
    - (iv) they are compulsorily destroyed under an \*Australian law for the control of a \*disease or they die of such a \*disease; or
    - (v) you receive an official notification under an \*Australian law dealing with contamination of property; and
  - (b) you held the live stock as assets of a \*primary production business you carry on in Australia; and

- (c) apart from this Subdivision, your assessable income for any income year would include the \*proceeds of the disposal or death.
- (2) The *proceeds of the disposal or death* are:
  - (a) if you dispose of the \*live stock or their carcasses in the ordinary course of \*business—the total of:
    - (i) any amount you receive as payment for the live stock or carcasses; and
    - (ii) any compensation you receive for the death or destruction, or a reduction in market value, of the live stock or their carcasses from an \*Australian government agency; or
  - (b) if you dispose of the \*live stock or their carcasses outside the ordinary course of \*business—the total of:
    - (i) the market value of the live stock or their carcasses, at the time of disposal; and
    - (ii) any compensation you receive for the death or destruction, or a reduction in market value, of the live stock or their carcasses from an \*Australian government agency; or
  - (c) if the \*live stock die, and you do not dispose of their carcasses to someone else—any compensation you receive for their death or destruction from an \*Australian government agency.

### 385-105 Election to spread tax profit over 5 years

- (1) You can elect:
  - (a) to include in your assessable income for the \*disposal year the \*proceeds of the disposal or death, reduced by the \*tax profit on the disposal or death; and
  - (b) to include 20% of the tax profit on the disposal or death in your assessable income for the disposal year; and
  - (c) to include 20% of the tax profit on the disposal or death in your assessable income for each of the next 4 income years.

For rules about the making and effect of an election, see Subdivision 385-H.

- (2) The *disposal year* is the income year in which you dispose of the \*live stock, or they die, as mentioned in subsection 385-100(1).

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- (3) The ***tax profit on the disposal or death*** is any amount remaining after subtracting from the \*proceeds of the disposal or death the sum of:
- (a) the purchase price of as many of the \*live stock as you purchased during the income year; and
  - (b) the \*value of the rest of the live stock as \*trading stock on hand at the start of the income year.

### **385-110 Alternative election to defer tax profit and reduce cost of replacement live stock**

- (1) Alternatively, you can elect:
- (a) to include in your assessable income for the \*disposal year the \*proceeds of the disposal or death, reduced by the \*tax profit on the disposal or death; and
  - (b) to reduce the cost of replacement \*live stock you buy in the disposal year (or any of the next 5 income years) by amounts totalling not more than the tax profit on the disposal or death; and
  - (c) to include in your assessable income for the last of the 5 income years following the disposal year any \*unused tax profit on the disposal or death on the last day of that year.

Note: If the election is made because of bovine tuberculosis, it has effect over 10 income years instead of 5: see section 385-125.

For rules about the making and effect of an election, see Subdivision 385-H

- (2) However, you can only make this election if you will use the \*proceeds of the disposal or death mainly to buy replacement \*live stock, or to maintain breeding stock for the purpose of replacing the live stock that were disposed of or died.
- (3) The ***unused tax profit on the disposal or death*** is the \*tax profit on the disposal or death less the total of:
- (a) the amounts included in your assessable income under section 385-115 for replacement animals you breed; and
  - (b) the amounts by which the purchase price of replacement animals is reduced under section 385-120.

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**385-115 Your assessable income includes an amount for replacement live stock you breed**

If you make the election in section 385-110, then for the \*disposal year and each of the next 5 income years, your assessable income includes any amount you choose for each replacement animal you breed during that income year. (However, you can choose not to include an amount.)

**385-120 Purchase price of replacement live stock is reduced**

- (1) If you make the election in section 385-110, then the purchase price of each replacement animal you buy in the \*disposal year, or in the next 5 income years, is treated as if it were reduced by the \*reduction amount.

*Meaning of **reduction amount***

- (2) The **reduction amount** is:
- so much of the \*tax profit on the disposal or death as is attributable to live stock of the species you are replacing;
- divided by:
- the number of animals of that species that you disposed of or that died.
- (3) However, if:
- (a) you purchase a replacement animal of a different species from the \*live stock it replaces; and
  - (b) you pay substantially more for it than you could have paid for a replacement animal of the same species;
- the **reduction amount** for the animal is any reasonable amount at least equal to the amount worked out under subsection (2).

*Exception to avoid reducing unused tax profit to less than nil*

- (4) However, if applying subsection (1) to a particular purchase would reduce the \*unused tax profit on the disposal or death to less than nil, instead reduce the purchase price of each replacement animal in that purchase by:
- the \*unused tax profit on the disposal or death;
- divided by:
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- the number of animals in the purchase.

### **385-125 Alternative election because of bovine tuberculosis has effect over 10 years not 5**

If you can make an election under this Subdivision because:

- (a) \*live stock are compulsorily destroyed under an \*Australian law for the control of bovine tuberculosis; or
- (b) \*live stock die of that \*disease;

sections 385-110 to 385-120 apply as if they referred to 10 income years instead of 5 years.

## **Subdivision 385-F—Insurance for loss of live stock or trees**

### **Table of sections**

385-130 Insurance for loss of live stock or trees

### **385-130 Insurance for loss of live stock or trees**

If your assessable income for an income year would otherwise include an insurance recovery for a loss of \*live stock, or for a loss by fire of trees, that you hold as assets of a \*primary production business you carry on in Australia, you can elect:

- (a) to include only 20% of the insurance recovery in your assessable income for that income year; and
- (b) to include 20% of the insurance recovery in your assessable income for each of the next 4 income years.

For rules about the making and effect of an election, see Subdivision 385-H.

## **Subdivision 385-G—Double wool clips**

### **Table of sections**

385-135 Election to defer including profit on second wool clip

### 385-135 Election to defer including profit on second wool clip

- (1) If your assessable income for an income year would otherwise include the \*proceeds of the sale of 2 wool clips because fire, drought or flood causes you to shear your sheep earlier than normal, you can elect to include in your assessable income for the *next* income year the \*profit on the sale of the earlier than normal wool clip.

For rules about the making and effect of an election, see Subdivision 385-H.

- (2) However, at the time the wool was shorn, the sheep must have been assets of a \*primary production business you carried on in Australia. Also, the fire, drought or flood must have been in an area of Australia where you carried on that business at that time.
- (3) The *proceeds of the sale of 2 wool clips* are:
- (a) the proceeds of the sale of the earlier than normal wool clip; and
  - (b) an amount covered by one or more of the following:
    - (i) proceeds of the sale of another wool clip in the income year;
    - (ii) proceeds of the sale of wool shorn in the previous income year that you hold at the start of the income year and that you took into account at cost in working out the \*value of your trading stock under Division 60 at the end of the previous income year;
    - (iii) an amount for wool shorn in the previous income year that is included in your assessable income of the income year because of a previous election under this section.
- (4) The *profit on the sale of the earlier than normal wool clip* is the proceeds of the sale of the wool clip that would otherwise be included in your assessable income for the income year, less the expenses you incur in the income year that are directly attributable to the earlier shearing and sale.

### Subdivision 385-H—Rules that apply to all elections made under Subdivisions 385-E, 385-F and 385-G

#### Table of sections

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- 385-145 Partnerships and trusts
  - 385-150 Time for making election
  - 385-155 Amounts are assessable income from carrying on the primary production business
  - 385-160 Effect of certain events on election
  - 385-163 Disentitling events
  - 385-165 New partnership can elect to be treated as same entity as old partnership
  - 385-170 New partnership can elect to take advantage of election made by former owner of the business

### **385-145 Partnerships and trusts**

If a partnership or trustee carries on a \*primary production business, only the partnership or trustee can make an election under Subdivision 385-E, 385-F or 385-G.

### **385-150 Time for making election**

You can only make an election under Subdivision 385-E, 385-F or 385-G before you lodge your \*income tax return for the last income year for which your assessable income would (apart from the election) include any of:

- (a) the \*proceeds of the disposal or death of \*live stock; or
- (b) the insurance recovery for the loss of \*live stock or trees; or
- (c) the \*proceeds of the sale of the 2 wool clips.

The Commissioner may allow you further time to make the election.

### **385-155 Amounts are assessable income from carrying on the primary production business**

The following are taken to be assessable income from carrying on a \*primary production business in Australia:

- (a) an amount included in your assessable income because of an election under Subdivision 385-E, 385-F or 385-G; or
- (b) an amount included in your assessable income because of section 385-160 (Effect of certain events on election).

### 385-160 Effect of certain events on election

- (1) You cannot make an election under Subdivision 385-E, 385-F or 385-G after a \*disentitling event happens.
- (2) If a \*disentitling event happens *after* you make an election under Subdivision 385-E, 385-F or 385-G, your assessable income for the income year in which the event happens includes:
  - (a) the \*proceeds of the disposal or death of \*live stock; or
  - (b) the insurance recovery for the loss of \*live stock or trees; or
  - (c) the \*proceeds of the sale of 2 wool clips;reduced by each amount that, because of the election, is included in your assessable income for that or an earlier income year.
- (3) However, if a \*disentitling event happens *after* you make an election under section 385-110 (Alternative election to defer tax profit and reduce cost of replacement live stock), your assessable income for the income year in which the event happens includes any \*unused tax profit on the disposal or death on the last day of that income year.

### 385-163 Disentitling events

- (1) A *disentitling event* happens when:
  - (a) you die; or
  - (b) you become bankrupt, insolvent, commence to be wound up, apply to take the benefit of a law for the relief of bankrupt or insolvent debtors, compound with creditors, or make an assignment of any property for the benefit of creditors; or
  - (c) you leave Australia permanently, or it appears to the Commissioner that you are about to do so; or
  - (d) you cease to carry on the \*primary production business to which the election relates.



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- (2) In the case of a partnership, a *disentitling event* happens when:
- (a) a partner in the partnership becomes bankrupt, insolvent, commences to be wound up, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors, or makes an assignment of any property for the benefit of creditors; or
  - (b) a partner leaves Australia permanently, or it appears to the Commissioner that a partner is about to do so; or
  - (c) the partnership ceases to carry on the \*primary production business to which the election relates; or
  - (d) there is a variation in the constitution of the partnership or the interests of the partners.
- (3) In the case of a trust, a *disentitling event* happens when:
- (a) a beneficiary dies; or
  - (b) an order for the administration of the trust estate is made under a law relating to bankruptcy; or
  - (c) a beneficiary becomes bankrupt, insolvent, commences to be wound up, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors, or makes an assignment of any property for the benefit of creditors; or
  - (d) the trustee or a beneficiary leaves Australia permanently, or it appears to the Commissioner that the trustee or a beneficiary is about to do so; or
  - (e) the trustee ceases to carry on the \*primary production business to which the election relates.

### **385-165 New partnership can elect to be treated as same entity as old partnership**

- (1) Under Subdivision 385-E, 385-F or 385-G a new partnership can elect to be treated as a continuation of an old partnership that would otherwise cease to exist if:
- (a) it immediately takes over the relevant \*primary production business of the old partnership; and
  - (b) partners, together entitled to at least 25% of the income of the new partnership, were also partners in the old partnership.

- (2) The new partnership must make this election before it lodges its  
\*income tax return for the income year in which it takes over the  
\*business.

**385-170 New partnership can elect to take advantage of election  
made by former owner of the business**

- (1) If an entity (except a partnership):
- (a) has made an election under Subdivision 385-E, 385-F or 385-G; and
  - (b) transfers the relevant \*primary production business to a partnership; and
  - (c) is entitled to at least 25% of the income of that partnership;  
the partnership may elect to apply the Subdivision under which the entity made the election to all future events as if it were that entity.
- (2) The partnership must make this election before it lodges its  
\*income tax return for the income year in which the \*business is transferred to it.

*[The next Division is Division 387.]*

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## **Division 387**

### **Table of Subdivisions**

#### Guide to Division 387

- 387-A Landcare operations
- 387-B Facilities to conserve or convey water
- 387-D Establishing grapevines
- 387-E Mains electricity supply
- 387-F Telephone lines
- 387-G Forestry roads and timber mill buildings

### **Guide to Division 387**

#### **387-1 What this Division is about**

Primary producers, and some land-holders whose land is used for business, can deduct capital expenditure on some infrastructure, operations and plants under this Division. The period over which the expenditure can be deducted varies.

### **Subdivision 387-A—Landcare operations**

#### **Guide to Subdivision 387-A**

#### **387-50 What this Subdivision is about**

You can deduct your capital expenditure on landcare operations for:

- land that you use for a primary production business; or
- rural land that you use for business.

You deduct the expenditure for the income year in which you incur it.

## Table of sections

### Deductions

- 387-55 Deductions for expenditure on landcare operations
- 387-60 Meaning of *landcare operation* for land

### Limits on deductions

- 387-65 Limits on expenditure for which you can deduct
- 387-70 Reduced deduction if your use of the land changes

### Partnerships

- 387-75 How this Subdivision applies to partners and partnerships

### Approved management plans and farm consultants

- 387-80 Meaning of *approved management plan*
- 387-85 Approval of persons as farm consultants
- 387-90 Review of decisions relating to approvals

## Deductions

### 387-55 Deduction for expenditure on landcare operations

- (1) You can deduct capital expenditure you incur at a particular time on a \*landcare operation for:
  - (a) land in Australia you use at the time for carrying on a \*primary production business; or
  - (b) rural land in Australia you use at the time for carrying on a \*business for the \*purpose of producing assessable income from the use of that land (except a \*business of mining or quarrying).
- (2) You deduct the expenditure for the income year in which you incur it.

Note 1: Various provisions of this Act may reduce the amount you can deduct or stop you deducting. For example, see:

- 
- • Division 26 (limiting deductions generally);
  - • sections 387-65 and 387-70 (limiting your deductions under this Subdivision).

Note 2: If you recoup an amount of the expenditure, the amount will be included in your assessable income. See Subdivision 20-A.

### **387-60 Meaning of *landcare operation* for land**

(1) ***Landcare operation*** for land means:

- (a) erecting a fence (including an extension, alteration or addition to a fence) to separate different land classes on the land in accordance with an \*approved management plan for the land; or
- (b) erecting a fence (including an extension, alteration or addition to a fence) on the land primarily and principally for the purpose of excluding animals from an area affected by land degradation:
  - (i) to prevent or limit extension or worsening of land degradation in the area; and
  - (ii) to help reclaim the area; or
- (c) constructing a levee, or a similar improvement with a similar use, on the land; or
- (d) constructing surface or subsurface drainage works on the land, if the construction is primarily and principally for the purpose of controlling salinity or assisting in drainage control; or
- (e) an operation primarily and principally for the purpose of:
  - (i) eradicating or exterminating from the land animals that are pests; or
  - (ii) eradicating, exterminating or destroying plant growth detrimental to the land; or
  - (iii) preventing or fighting land degradation (except by erecting fences on the land); or
- (f) an extension of an operation described in paragraph (a), (b), (c), (d) or (e).

(2) Paragraph (1)(d) does not apply to an operation draining swamp or low-lying land.

## Limits on deductions

### 387-65 Limits on expenditure for which you can deduct

*No deductions for expenditure on most plant*

- (1) You cannot deduct an amount under this Subdivision for your capital expenditure on \*plant, except:
  - (a) a fence erected for a purpose described in paragraph 387-60(1)(a) or (b); or
  - (b) a dam or structural improvement (except a fence) covered by paragraph (c), (d), (e) or (f) of the definition of *plant* in subsection 42-18(1).

*Application of Common rule 2*

- (2) Subdivision 41-B (which sets out Common rule 2 dealing with non-arm's length transactions) applies to expenditure on \*landcare operations for land. However, subsection 41-65(2) (about disposal of property) does not apply.

### 387-70 Reduced deduction if your use of the land changes

Despite section 387-55, you can deduct only a reasonable amount under this Subdivision for your capital expenditure in an income year on \*landcare operations for land if, at some time after you incurred the expenditure but during the income year, you used the land for a purpose other than the purpose of carrying on:

- (a) a \*primary production business; or
- (b) a \*business for the \*purpose of producing assessable income from the use of rural land (except a \*business of mining or quarrying).

## **Partnerships**

### **387-75 How this Subdivision applies to partners and partnerships**

#### *Application*

- (1) This section applies to allocate expenditure to you for the purposes of this Subdivision if you were a partner in a partnership when it incurred capital expenditure during an income year.

#### *Allocation of partnership expenditure to partners*

- (2) For the purposes of this Subdivision, you are taken to have incurred during that income year:
  - (a) the amount of the expenditure that the partners agreed you should bear; or
  - (b) if there was no such agreement—the proportion of the expenditure equal to the proportion of your individual interest in the net income or partnership loss of the partnership for that income year.

#### *This Subdivision does not apply to net income or partnership loss*

- (3) Disregard this Subdivision when working out the net income or partnership loss of the partnership under section 90 of the *Income Tax Assessment Act 1936*.

## **Approved management plans and farm consultants**

### **387-80 Meaning of *approved management plan***

An ***approved management plan*** for land is a plan that:

- (a) shows:
  - (i) the different land classes within the land; and
  - (ii) the location of any fencing needed to separate any of the land classes primarily and principally to prevent land degradation; and
- (b) describes the kind of fencing and how it will prevent land degradation; and

- (c) has been prepared by, or approved in writing as a suitable plan for the land by:
  - (i) an officer of a State or Territory Government department or authority responsible for land conservation who has authority to do so; or
  - (ii) a person who was at the time approved in writing as a farm consultant under this Subdivision.

### **387-85 Approval of persons as farm consultants**

- (1) A person may be approved in writing as a farm consultant by:
  - (a) the Secretary to the Department of Primary Industries and Energy; or
  - (b) an officer of that Department who has been authorised in writing by that Secretary to approve persons as farm consultants.

Note: This subsection also allows the approval of a person as a farm consultant to be revoked. See subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The following matters must be taken into account when deciding whether to approve a person as a farm consultant:
  - (a) the person's qualifications, experience and knowledge relating to land conservation and farm management;
  - (b) the person's standing in the professional community;
  - (c) any other relevant matters.

### **387-90 Review of decisions relating to approvals**

A person may apply to the \*AAT for review of a decision (as defined in the *Administrative Appeals Tribunal Act 1975*):

- (a) to refuse to approve the person as a farm consultant; or
- (b) to revoke the approval of the person as a farm consultant.



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## Subdivision 387-B—Facilities to conserve or convey water

### Guide to Subdivision 387-B

#### 387-120 What this Subdivision is about

You can deduct over 3 years capital expenditure on a facility, if you incur the expenditure to conserve or convey water for a primary production business you conduct on land in Australia.

#### Table of sections

##### Deductions

387-125 Deduction for expenditure on water facilities

387-130 Meaning of *water facility*

##### Limits on deductions

387-135 Reduced deduction for certain uses of water facility

387-140 No deduction for acquisition of water facility if anyone can deduct certain earlier expenditure on the facility

387-145 Application of Common rule 2

##### Partnerships

387-150 How this Subdivision applies to partners and partnerships

### Deductions

#### 387-125 Deduction for expenditure on water facilities

- (1) You can deduct an amount under subsection (2) for capital expenditure that you incur on the construction, manufacture, installation or acquisition of a <sup>\*</sup>water facility, if you incur it primarily and principally for the purpose of conserving or conveying water for use in a <sup>\*</sup>primary production business that you conduct on land in Australia.
- (2) You can deduct one third of your capital expenditure:
  - (a) for the income year in which you incur the expenditure; and

(b) for each of the next 2 income years.

Note 1: Various provisions may reduce the amount you can deduct or stop you deducting. For example, see:

- Division 26 of this Act (limiting deductions generally);
- sections 387-135, 387-140 and 387-145 of this Act (limiting your deductions under this Subdivision);
- Division 245 of Schedule 2C to the *Income Tax Assessment Act 1936* (which may affect your entitlement to a deduction if your debts are forgiven).

Note 2: If you recoup an amount of the expenditure, the amount will be included in your assessable income. See Subdivision 20-A.

### **387-130 Meaning of *water facility***

(1) A *water facility* is:

- (a) an item of \*plant; or
- (b) a structural improvement; or
- (c) an alteration, addition or extension to an item of \*plant or a structural improvement.

(2) Examples of a \*water facility include a dam, earth tank, underground tank, concrete tank, metal tank, tank stand, bore, well, irrigation channel (or similar improvement), pipe, pump, water tower or windmill.

### **Limits on deductions**

#### **387-135 Reduced deduction for certain uses of water facility**

Your deduction for expenditure relating to a \*water facility is reduced to a reasonable amount if the facility:

- (a) was not wholly for use in carrying on a \*primary production business on land in Australia; or
- (b) was not wholly for use for the \*purpose of producing assessable income.

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### **387-140 No deduction for acquisition of water facility if anyone can deduct certain earlier expenditure on the facility**

- (1) You cannot deduct an amount for any income year for capital expenditure on the acquisition of a \*water facility if any person has deducted or can deduct an amount under this Subdivision for any income year for earlier capital expenditure on:

- (a) the construction or manufacture of the facility; or
- (b) a previous acquisition of the facility.

Note: Treat expenditure covered by section 75A or 75B of the *Income Tax Assessment Act 1936* as if it had been deducted under this Subdivision. See section 387-140 of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) A \*water facility and an alteration, addition or extension to that facility are not the same water facility for the purposes of subsection (1).

### **387-145 Application of Common rule 2**

Subdivision 41-B (which sets out Common rule 2 dealing with non-arm's length transactions) applies to expenditure for which you can deduct an amount under this Subdivision. However, subsection 41-65(2) (about disposal of property) does not apply.

## **Partnerships**

### **387-150 How this Subdivision applies to partners and partnerships**

#### *Application*

- (1) This section applies to allocate expenditure to you for the purposes of this Subdivision if you were a partner in a partnership when it incurred capital expenditure during an income year.

#### *Allocation of partnership expenditure to partners*

- (2) For the purposes of this Subdivision, you are taken to have incurred during that income year:
- (a) the amount of the expenditure that the partners agreed you should bear; or

- (b) if there was no such agreement—the proportion of the expenditure equal to the proportion of your individual interest in the net income or partnership loss of the partnership for that income year.

*This Subdivision does not apply to net income or partnership loss*

- (3) Disregard this Subdivision when working out the net income or partnership loss of the partnership under section 90 of the *Income Tax Assessment Act 1936*.

*[The next Subdivision is Subdivision 387-D.]*

## **Subdivision 387-D—Establishing grapevines**

### **387-300 What this Subdivision is about**

You can deduct expenditure on establishing a grapevine that you own and use in a primary production business. You can usually deduct it over 5 income years.

### **Table of sections**

#### **Deductions**

- 387-305 Deduction for establishment of grapevine
- 387-310 Expenditure on draining swamps and clearing land not counted
- 387-315 Additional deduction if grapevine is destroyed
- 387-320 Deductions for quasi-owners of land with grapevines

### **Deductions**

#### **387-305 Deduction for establishment of grapevine**

- (1) You can deduct an amount for an income year if:
  - (a) an entity has incurred capital expenditure relating to the establishment of a grapevine in Australia for use in a  
\*primary production business; and

- (b) you owned the grapevine, and used it in a \*primary production business for the \*purpose of producing assessable income, on at least one day during the income year.

Note 1: Various provisions may reduce the amount you can deduct or stop you deducting. For example, see:

- Division 26 of this Act (limiting deductions generally);
- section 387-310 of this Act (preventing you deducting expenditure on draining swamps or low-lying land);
- Division 245 of Schedule 2C to the *Income Tax Assessment Act 1936* (which may affect your entitlement to a deduction if your debts are forgiven).

Note 2: If you recoup an amount of the expenditure, the amount will be included in your assessable income. See Subdivision 20-A.

#### *Amount of deduction*

- (2) The amount you can deduct for the income year is worked out using the formula:

$$\text{Establishment expenditure} \times \frac{\text{Write-off days in income year}}{365} \times 25\%$$

where:

***establishment expenditure*** is the amount of the capital expenditure that is attributable to the establishment of the grapevine.

***write-off days in income year*** is the number of days in the income year on which you owned the grapevine and used it in a \*primary production business for the \*purpose of producing assessable income.

*No deduction for period more than 4 years after grapevine established*

- (3) Disregard your use of the grapevine on a day that is more than 4 years after the grapevine was established.

Note: That 4-year period will be spread over 5 income years, unless the grapevine is established on the first day of an income year.

### **387-310 Expenditure on draining swamps and clearing land not counted**

When working out the amount of a deduction under this Subdivision, do not count expenditure incurred in draining swamp or low-lying land or in clearing land.

### **387-315 Additional deduction if grapevine is destroyed**

- (1) If a grapevine in Australia that you own and use in a \*primary production business for the \*purpose of producing assessable income is destroyed at any time up to 4 years after the day it was established, you can deduct an amount for the income year during which the grapevine is destroyed.
- (2) Work out the amount you can deduct as follows:

#### *Method statement*

*Step 1.* Work out the total of the amounts you could have deducted under section 387-305 for that expenditure if you had owned the grapevine and used it in a \*primary production business for the \*purpose of producing assessable income for the whole of the period:

- (a) starting when the grapevine was established; and
- (b) ending when the grapevine was destroyed.

*Step 2.* Subtract from the establishment expenditure worked out under subsection 387-305(2):

- (a) the result from Step 1; and
- (b) any amount you received (under an insurance policy or otherwise) for the destruction of the grapevine.

The remaining amount (if any) is the amount you can deduct under subsection (1).

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Note: In Step 1 you must take into account any amounts you could have deducted if section 387-305 had applied to assessments for income years before the 1997-98 income year. See section 387-315 of the *Income Tax (Transitional Provisions) Act 1997*.

- (3) This deduction is in addition to a deduction under section 387-305 for expenditure on establishing the grapevine.

### **387-320 Deductions for quasi-owners of land with grapevines**

- (1) You are treated for the purposes of this Subdivision as if you own a grapevine so long as:
- (a) the grapevine is attached to land you hold under a \*quasi-ownership right granted by an \*exempt Australian government agency or an \*exempt foreign government agency; and
  - (b) the grapevine was planted by you or a previous holder of the land under the quasi-ownership right; and
  - (c) apart from this section, you do not own the grapevine.
- (2) So long as you are treated under this section as owning the grapevine, no other entity is taken to own it for the purposes of this Subdivision.

### **Subdivision 387-E—Mains electricity supply**

#### **Guide to Subdivision 387-E**

#### **387-350 What this Subdivision is about**

You can deduct over 10 years your capital expenditure on connecting or upgrading the supply of mains electricity to land for use in a business if you have an interest in the land.

#### **Table of sections**

##### **Deductions**

- |         |   |
|---------|---|
| 387-355 | Deducting expenditure on connecting power to land or upgrading the connection |
| 387-360 | Meaning of <i>connecting power to land or upgrading the connection</i>        |

### **Limits on deductions**

- 387-365 Deduction denied if electricity not used as intended
- 387-370 Expenditure relating to mining cannot be deducted
- 387-375 Deductions under this Subdivision prevent other deductions for same expenditure

### **Partnerships**

- 387-380 How this Subdivision applies to partners and partnerships

### **Other deductible expenditure**

- 387-390 Contributions to cost of connecting power to land or upgrading the connection

## **Deductions**

### **387-355 Deducting expenditure on connecting power to land or upgrading the connection**

- (1) You can deduct an amount under subsection (2) if:
  - (a) you incur capital expenditure on \*connecting power to land or upgrading the connection; and
  - (b) when you incur the expenditure:
    - (i) you have an interest in the land or are a share-farmer carrying on a \*business on the land; and
    - (ii) you or another person intends to use some or all of the electricity to be supplied as a result of the expenditure in carrying on a \*business on the land for the \*purpose of producing assessable income at a time when you have an interest in the land or are a share-farmer carrying on a \*business on the land.
- Note 1: You can also deduct your contribution to the cost of connecting power to land or upgrading the connection. See section 387-390.
- Note 2: You will be denied the deduction if the electricity is not used as intended within 12 months after it is first supplied as a result of the expenditure. See section 387-365.
- (2) You can deduct 10% of the expenditure:
  - (a) for the income year in which you incur it; and
  - (b) for each of the next 9 income years.



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Note 1: Various provisions may reduce the amount you can deduct or stop you deducting. For example, see:

- Division 26 of this Act (limiting deductions generally);
- sections 387-370 of this Act (specifying expenditure you cannot deduct under this Subdivision);
- Division 245 of Schedule 2C to the *Income Tax Assessment Act 1936* (which may affect your entitlement to a deduction if your debts are forgiven).

Note 2: If you recoup an amount of the expenditure, the amount will be included in your assessable income. See Subdivision 20-A.

### **387-360 Meaning of *connecting power to land or upgrading the connection***

- (1) Each of the following operations is ***connecting power to land or upgrading the connection***:
- (a) connecting a mains electricity cable to a \*metering point on the land (whether or not the point from which the cable is connected is on the land);
  - (b) providing or installing equipment designed to measure the amount of electricity supplied through a mains electricity cable to a \*metering point on the land;
  - (c) providing or installing equipment for use directly in connection with the supply of electricity through a mains electricity cable to a \*metering point on the land;
  - (d) work to increase the amount of electricity that can be supplied through a mains electricity cable to a \*metering point on the land;
  - (e) work to modify or replace equipment designed to measure the amount of electricity supplied through a mains electricity cable to a \*metering point on the land, if the modification or replacement results from increasing the amount of electricity supplied to the land;
  - (f) work to modify or replace equipment for use directly in connection with the supply of electricity through a mains electricity cable to the land, if the modification or replacement results from increasing the amount of electricity supplied to the land.
-

- (2) However, an operation described in subsection (1) done in the course of replacing or relocating mains electricity cable or equipment is **connecting power to land or upgrading the connection** only if done to increase the amount of electricity that can be supplied to a \*metering point on the land.
- (3) A **metering point** on land is a point where consumption of electricity supplied to the land through a mains electricity cable is measured.
- (4) Operations described in subsection (1) are the only kinds of operations that can be **connecting power to land or upgrading the connection**.

## Limits on deductions

### 387-365 Deduction denied if electricity not used as intended

- (1) You cannot deduct an amount under this Subdivision if, during the 12 months after electricity is first supplied to the land as a result of the expenditure, no electricity supplied as a result of the expenditure is used in carrying on a \*business on the land for the \*purpose of producing assessable income.
- (2) If you deducted an amount for any income year under this Subdivision for the expenditure, your assessment for that income year may be amended under section 170 of the *Income Tax Assessment Act 1936* to disallow the deduction.

### 387-370 Expenditure relating to mining cannot be deducted

You cannot deduct an amount under this Subdivision for:

- (a) expenditure in providing water, light or power for use on, access to or communication with the site of \*eligible mining operations; or
- (b) a contribution to the cost of providing water, light or power for one of those purposes.

Note: You may be able to deduct amounts for such expenditure under Subdivision 330-C: see section 330-80 and paragraph 330-85(d).

**387-375 Deductions under this Subdivision prevent other deductions for same expenditure**

- (1) If you can deduct, or have deducted, an amount for any income year under this Subdivision for your expenditure:
  - (a) an entity cannot deduct an amount for any income year under a provision of this Act (except this Subdivision) for the expenditure; and
  - (b) the expenditure cannot be taken into account to work out the amount of an entity's deduction for any income year under a provision of this Act (except this Subdivision).
- (2) Subsection (1) also applies in working out the net income, or partnership loss, of a partnership under section 90 of the *Income Tax Assessment Act 1936*.

**Partnerships**

**387-380 How this Subdivision applies to partners and partnerships**

*Application*

- (1) This section applies to allocate expenditure to you for the purposes of this Subdivision if you were a partner in a partnership when it incurred capital expenditure during an income year.

*Allocating partnership expenditure to partners*

- (2) For the purposes of this Subdivision, you are taken to have incurred during that income year:
  - (a) the amount of the expenditure that the partners agreed you should bear; or
  - (b) if there was no such agreement—the proportion of the expenditure equal to the proportion of your individual interest in the net income or partnership loss of the partnership for that income year.

*This Subdivision does not apply to net income or partnership loss*

- (3) Disregard this Subdivision when working out the net income or partnership loss of the partnership under section 90 of the *Income Tax Assessment Act 1936*.

*[The next section is section 387-390.]*

## **Other deductible expenditure**

### **387-390 Contributions to cost of connecting power to land or upgrading the connection**

For the purposes of this Subdivision, a contribution to the cost of \*connecting power to land or upgrading the connection is treated in the same way as capital expenditure on \*connecting power to land or upgrading the connection.

## **Subdivision 387-F—Telephone lines**

### **Guide to Subdivision 387-F**

#### **387-400 What this Subdivision is about**

You can deduct over 10 years your capital expenditure:

- on a telephone line on land; or
- on a telephone line extending to land;

if you have an interest in the land and the land is used for a primary production business.

## **Table of sections**

### **Deductions**

387-405 Deduction for expenditure on a telephone line

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**Limits on deductions**

- 387-410 Expenditure that you cannot deduct  
 387-415 Relationship with other deductions

**Partnerships**

- 387-420 How this Subdivision applies to partners and partnerships

**Deductions**

**387-405 Deduction for expenditure on a telephone line**

- (1) You can deduct an amount under subsection (2) for your capital expenditure on a telephone line on or extending to land if, when you incurred the expenditure:

- (a) a \*primary production business was carried on on the land; and
- (b) you had an interest in the land or you were a share-farmer carrying on a \*primary production business on the land.

Note: Special rules apply to partners and partnerships. See section 387-420.

- (2) You can deduct 10% of the expenditure:

- (a) for the income year in which you incurred the expenditure; and
- (b) for each of the next 9 income years.

Note: Various provisions may reduce the amount you can deduct or stop you deducting. For example, see:

- Division 26 of this Act (limiting deductions generally);
- sections 387-410 of this Act (specifying expenditure you cannot deduct under this Subdivision);
- Division 245 of Schedule 2C to the *Income Tax Assessment Act 1936* (which may affect your entitlement to a deduction if your debts are forgiven).

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## Limits on deductions

### 387-410 Expenditure that you cannot deduct

- (1) Despite section 387-405, you cannot deduct an amount under this Subdivision for any income year for your capital expenditure on a part of a telephone line if:
- (a) any entity has deducted, or can deduct, an amount for any income year for the cost of that part under a provision of this Act (except this Subdivision); or
  - (b) the cost of that part has been, or must be, taken into account in working out:
    - (i) the amount of any entity's deduction (including a deduction for depreciation) for any income year under a provision of this Act (except this Subdivision); or
    - (ii) the net income, or partnership loss, of a partnership under section 90 of the *Income Tax Assessment Act 1936*.

Note: The fact that you have deducted, or can deduct, an amount under section 70 of the *Income Tax Assessment Act 1936* for your expenditure on part of a telephone line does not prevent you from deducting an amount under this Subdivision for your expenditure on that part of a telephone line. See section 387-410 of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) However, you can deduct an amount under this Subdivision for your expenditure on a part of a telephone line even if:
- (a) an entity that worked on installing that part has deducted, or can deduct, an amount relating to that part for any income year under this Act (except this Subdivision); or
  - (b) the cost of that part has been, or must be, taken into account:
    - (i) in working out the amount of such an entity's deduction (including a deduction for depreciation) for any income year under a provision of this Act (except this Subdivision); or
    - (ii) under section 90 of the *Income Tax Assessment Act 1936* in working out the net income, or partnership loss, of a partnership that worked on installing that part.
- (3) Subsection (2) has effect whether the entity did the work itself or through one or more employees or agents.

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### **387-415 Relationship with other deductions**

- (1) If you can deduct or have deducted an amount under this Subdivision for any income year for expenditure on all or part of a telephone line:
  - (a) an entity cannot deduct an amount for any income year under a provision of this Act (except this Subdivision) for capital expenditure relating to that line or part of the line; and
  - (b) an amount of capital expenditure relating to that line or part of the line cannot be taken into account in working out the amount of an entity's deduction for any income year under a provision of this Act (except this Subdivision).
- (2) Subsection (1) also applies in working out the net income, or partnership loss, of a partnership under section 90 of the *Income Tax Assessment Act 1936*.

## **Partnerships**

### **387-420 How this Subdivision applies to partners and partnerships**

#### *Application*

- (1) This section applies to allocate expenditure to you for the purposes of this Subdivision if you were a partner in a partnership when it incurred capital expenditure during an income year.

#### *Allocation of partnership expenditure to partners*

- (2) For the purposes of this Subdivision, you are taken to have incurred during that income year:
  - (a) the amount of the expenditure that the partners agreed you should bear; or
  - (b) if there was no such agreement—the proportion of the expenditure equal to the proportion of your individual interest in the net income or partnership loss of the partnership for that income year.

*This Subdivision does not apply to net income or partnership loss*

- (3) Disregard this Subdivision when working out the net income or partnership loss of the partnership under section 90 of the *Income Tax Assessment Act 1936*.

## **Subdivision 387-G—Forestry roads and timber mill buildings**

### **Guide to Subdivision 387-G**

#### **387-450 What this Subdivision is about**

You can deduct your capital expenditure on constructing or acquiring a forestry road or a timber mill building.

The period over which you can deduct depends on how long you estimate the road or building can be used for the main purpose for which you constructed or acquired it.

#### **Table of sections**

387-455 How this Subdivision applies to pre-1997-98 expenditure

##### **Deductions**

387-460 What expenditure you can deduct

387-465 Meaning of *forestry road*, *timber operation* and *timber mill building*

387-470 How much you can deduct for the current year

##### **Limits on deductions**

387-475 Limits on expenditure on acquiring a road or building

387-480 When you cannot deduct

##### **Balancing adjustments**

387-485 Making a balancing adjustment when an event stops you deducting

387-490 Meaning of *termination value*

387-495 Meaning of *written down value*

##### **Resuming deductions**

387-500 Resuming deductions after you stop using a road or building



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**Application of Common rules**

387-505 Application of Common rules 1, 2 and 3

**387-455 How this Subdivision applies to pre-1997-98 expenditure**

- (1) This Subdivision applies to your capital expenditure on a forestry road or a timber mill building, even if you incurred it *before* the 1997-98 income year.

Note: Sections 387-450 to 387-507 of the *Income Tax (Transitional Provisions) Act 1997* explain how this Subdivision applies if you incurred expenditure before that income year.

- (2) In that case, you may have taken the expenditure into account in working out your deductions under Division 10A of Part III of the *Income Tax Assessment Act 1936* (which provided for deductions for expenditure on access roads and timber mill buildings for the 1996-97 income year and earlier income years).
- (3) If so, you treat any deductions that you made, or could make, under that Division for the 1996-97 income year and earlier income years as if you had made them in those years under this Subdivision.

**Deductions****387-460 What expenditure you can deduct**

You can deduct an amount for capital expenditure you have incurred:

- (a) on a \*forestry road, in connection with carrying on a \*timber operation for the \*purpose of producing assessable income; or
- (b) for the construction or acquisition of a \*timber mill building.

To work out how much you can deduct, see section 387-470.

Note: Various provisions may reduce the amount you can deduct or stop you deducting. For example, see:

- Division 26 of this Act (limiting deductions generally);
- sections 387-475 and 387-480 of this Act (limiting expenditure you can deduct and specifying when you cannot deduct under this Subdivision);

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• • Division 245 of Schedule 2C to the *Income Tax Assessment Act 1936* (which may affect your entitlement to a deduction if your debts are forgiven).

### 387-465 Meaning of *forestry road*, *timber operation* and *timber mill building*

- (1) A *forestry road* is a road constructed primarily and principally for the purpose of providing access to an area to enable:

- (a) trees to be planted or tended in the area; or
- (b) timber felled in the area to be removed.

For this purpose, a road includes any bridge, culvert or similar work forming part of the road.

- (2) A *timber operation* is:

- (a) planting or tending trees for felling; or
- (b) felling standing timber; or
- (c) removing felled timber; or
- (d) milling felled timber or processing it in another way.

- (3) A *timber mill building* is a building:

- (a) for use primarily and principally:
  - (i) in carrying on your \*business of milling timber for the \*purpose of producing assessable income; or
  - (ii) as residential accommodation for your employees engaged in connection with the \*business, or for their dependants; and
- (b) located in a forest, and in or adjacent to the area where timber milled in the business is, or is to be, felled.

### 387-470 How much you can deduct for the current year

Work out the amount you can deduct for the \*current year using the formula:

$$\frac{\text{Capital expenditure} - \text{Previous deductions}}{\text{Remaining life}}$$

where:

*capital expenditure* is the amount of your capital expenditure.

---

**previous deductions** is the sum of the amounts that you have deducted or can deduct for income years before the \*current year under this Subdivision for your capital expenditure.

**remaining life** is the number of whole years for which you estimate that the road or building will be used after the \*current year for the purpose for which it was primarily and principally constructed or acquired. However, if that number is more than 25, **remaining life** is 25.

Note 1: Section 387-475 may limit the amount of expenditure on acquiring a forestry road or timber building that you can count for this purpose.

Note 2: When working out previous deductions, take account of amounts deducted or deductible under section 124F or 124JA of the *Income Tax Assessment Act 1936* for the road or building. See section 387-472 of the *Income Tax (Transitional Provisions) Act 1997*.

## Limits on deductions

### 387-475 Limits on expenditure on acquiring a road or building

- (1) If you acquired the road or building from another entity, the Commissioner may limit your capital expenditure for the purposes of section 387-470.
  - (2) Your capital expenditure may be limited to the sum of:
    - (a) the amount that, if the entity had not disposed of the road or building to you, would have been the difference between the entity's capital expenditure and previous deductions (as those terms are defined in section 387-470) at the end of the income year during which the disposal took place; and
    - (b) any amount included in the entity's assessable income under subsection 387-485(3) as a result of a balancing adjustment required by the disposal.
  - (3) If you incurred capital expenditure acquiring a building that is \*plant for which an amount has been deducted or can be deducted for depreciation by any earlier owner or \*quasi-owner, your capital expenditure may be limited to the sum of:
    - (a) the \*written down value (as defined in section 42-200, which relates to deductions for depreciation) of the building immediately before it was disposed of by the last entity who
-

- 
- had deducted or can deduct an amount for depreciation of it; and
  - (b) any balancing adjustment included in that entity's assessable income for the building under Subdivision 42-F (which explains how to make a balancing adjustment for depreciated \*plant); and
  - (c) any balancing adjustment that would have been included in that entity's assessable income if balancing adjustment relief had not applied under section 42-285 or 42-290 (both of which let you exclude from your assessable income amounts that would be included in that income under the balancing adjustment).
- (4) The matters the Commissioner must take into account in deciding whether to limit your capital expenditure include:
- (a) whether you acquired the road or building from an \*associate; and
  - (b) the market value of the road or building; and
  - (c) how the purchase price of the road or building was calculated; and
  - (d) how your acquisition of the road or building was financed.

### **387-480 When you cannot deduct**

#### *When your deductions equal your whole expenditure*

- (1) You cannot deduct an amount under this Subdivision for the \*current year for your expenditure on a \*forestry road or a \*timber mill building if the sum of the amounts that you have deducted or can deduct under this Subdivision for that expenditure for earlier income years equals that expenditure.

Note: Take account of amounts deducted or deductible under section 124F or 124JA of the *Income Tax Assessment Act 1936* for the road or building. See section 387-472 of the *Income Tax (Transitional Provisions) Act 1997*.

#### *When you have deducted or can deduct amounts otherwise*

- (2) You cannot deduct an amount under this Subdivision for the \*current year for your expenditure on a \*forestry road or a \*timber mill building if:

- 
- (a) you can deduct, or have deducted, an amount for the expenditure under a provision of this Act (other than this Subdivision) for the \*current year or an earlier income year; or
  - (b) the expenditure is being, or was, taken into account in calculating the amount of one of your deductions for the \*current year or an earlier income year under a provision of this Act (other than this Subdivision).

Note: Disregard amounts deducted or deductible under section 124F or 124JA of the *Income Tax Assessment Act 1936* for the road or building. See section 387-472 of the *Income Tax (Transitional Provisions) Act 1997*.

*When the road or building has been disposed of or destroyed, or is no longer used*

- (3) You cannot deduct an amount under section 387-460 for the \*current year for your expenditure on a \*forestry road or a \*timber mill building if, during the current year or an earlier income year:
  - (a) you disposed of the road or building; or
  - (b) the road or building was destroyed; or
  - (c) for some other reason, you stopped using it for the purpose for which it was primarily and principally constructed or acquired.

Note: Although you cannot deduct an amount under section 387-460 if you have stopped using, or disposed of, the road or building or it has been destroyed, you may be able to deduct an amount because of the balancing adjustment that you must make in this case. See section 387-485.

## **Balancing adjustments**

### **387-485 Making a balancing adjustment when an event stops you deducting**

- (1) You must make a balancing adjustment for the \*current year if:
  - (a) you have deducted or can deduct an amount for an earlier income year under this Subdivision for your capital expenditure relating to constructing or acquiring a \*forestry road or a \*timber mill building; and

- 
- (b) one or more of the following events happens during the current year:
    - (i) you dispose of the road or building in circumstances in which Subdivision 41-A (which sets out Common rule 1 dealing with roll-over relief for related entities) does not apply;
    - (ii) the road or building is destroyed;
    - (iii) for some other reason, you stop using it for the purpose for which it was primarily and principally constructed or acquired.

Note: Take account of amounts deducted or deductible under section 124F or 124JA of the *Income Tax Assessment Act 1936* for the road or building. See section 387-472 of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) You make the balancing adjustment by comparing the \*termination value of the road or building with its \*written down value.

Note: If there has been an earlier disposal of the road or building covered by Subdivision 41-A (which sets out Common rule 1 dealing with roll-over relief for related entities), the balancing adjustment is modified as described in section 41-20.

- (3) If the \*termination value *exceeds* the \*written down value, the excess is included in your assessable income for the \*current year. However, if the excess is *more than* the total of the amounts you deducted or can deduct under this Subdivision for earlier income years for your capital expenditure relating to the road or building, that total is included in your assessable income instead.
- (4) If the \*termination value is *less than* the \*written down value, you can deduct the amount of the difference.

### 387-490 Meaning of *termination value*

- (1) The ***termination value*** of a \*forestry road or \*timber mill building is the value shown in the following table, depending on the circumstances that require you to make a balancing adjustment.

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<b>Termination value of a forestry road or timber mill building</b>		
<b>Item</b>	<b>For a road or building that ...</b>	<b>the termination value is ...</b>
1	you sell for a specific price	the sale price less the expenses reasonably attributable to the sale
2	you sell with other property without a specific price being allocated to the road or building	the difference between: <ul style="list-style-type: none"> <li>• the part of the total sale price that is reasonably attributable to selling the road or building; and</li> <li>• the part of the total expenses of the sale that is reasonably attributable to selling the road or building</li> </ul>
3	you dispose of (except by sale)	the market value of the road or building immediately before disposal
4	is destroyed	the amount or value received or receivable under an insurance policy or otherwise in respect of the destruction
5	you stop using for the purpose for which it was primarily and principally constructed or acquired (even though it has not been disposed of or destroyed)	the market value of the road or building when you stopped using it

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(2) However, the **termination value** does not include:

- (a) an amount that is included, or when received will be included, in your assessable income for any income year as a lease premium under Division 4 (Leases) of Part III of the *Income Tax Assessment Act 1936*; or
- (b) if a net capital gain is or will be included in your assessable income for any income year under Part IIIA (Capital gains and capital losses) of the *Income Tax Assessment Act 1936*—the part of the net capital gain that is attributable to a premium on the grant or assignment of a lease.

### **387-495 Meaning of written down value**

The **written down value** of a road or building is:

- your total capital expenditure of a kind that qualifies for a deduction under this Subdivision in respect of the road or building;

less:

- the total of the amounts you deducted or can deduct in relation to the road or building under this Subdivision for income years before the \*current year.

Note: Take account of amounts deducted or deductible under section 124F or 124JA of the *Income Tax Assessment Act 1936* for the road or building. See section 387-472 of the *Income Tax (Transitional Provisions) Act 1997*.

## Resuming deductions

### 387-500 Resuming deductions after you stop using a road or building

- (1) This section explains how this Subdivision applies if:
  - (a) you incurred capital expenditure relating to a \*forestry road or \*timber mill building as described in section 387-460 (which allows you to deduct for the expenditure); and
  - (b) for a reason other than the disposal or destruction of the road or building, you stopped using it for the purpose for which it was primarily and principally constructed or acquired; and
  - (c) you started to use the road or building again for that purpose.
- (2) This Subdivision applies as if:
  - (a) you had incurred a reasonable amount of capital expenditure relating to the road or building when you started to use the road or building again; and
  - (b) you had not, and could not have, deducted amounts relating to the road or building for income years ending before you started to use it again.

Note: This section allows you to make deductions for the income year during which you started to use the road or building again and for later income years, despite the fact that you stopped using the road or building as described in paragraph (b).



## **Application of Common rules**

### **387-505 Application of Common rules 1, 2 and 3**

- (1) Subdivision 41-A (which sets out Common rule 1 dealing with roll-over relief for related entities) applies to a disposal of a \*forestry road or \*timber mill building in the circumstances set out in section 41-20.
- (2) Subdivision 41-B (which sets out Common rule 2 dealing with non-arm's length transactions) applies to transactions involving expenditure on, or disposal of, a \*forestry road or \*timber mill building.
- (3) Subdivision 41-C (which sets out Common rule 3 dealing with anti-avoidance provisions relating to the ownership of property) applies in relation to a \*forestry road or \*timber mill building in relation to which you can deduct an amount.

*[The next Chapter is Chapter 4.]*

## **Schedule 2—Assessable income**

**Part 11 Chapter 2 (link note after the heading)**

Repeal the link note.

**2 Before Part 2-5**

Insert:

*[The next Division is Division 15.]*

**Table of sections**

15-1	General application provision
15-10	Application of section 15-10 of the <i>Income Tax Assessment Act 1997</i> to bounties and subsidies
15-15	Application of section 15-15 of the <i>Income Tax Assessment Act 1997</i> to profit-making plans
15-20	Application of section 15-20 of the <i>Income Tax Assessment Act 1997</i> to royalties
15-30	Application of section 15-30 of the <i>Income Tax Assessment Act 1997</i> to insurance or indemnity payments
15-35	Application of section 15-35 of the <i>Income Tax Assessment Act 1997</i> to interest on overpayments and early payments of tax

**15-1 General application provision**

- (1) Division 15 of the *Income Tax Assessment Act 1997* applies to assessments for the 1997-98 income year and later income years.
- (2) However, the sections of that Act listed in the table apply in accordance with the corresponding sections of this Act.

<b>Application provisions for specific sections</b>		
<b>Item</b>	<b>This section of the <i>Income Tax Assessment Act 1997</i> ...</b>	<b>Applies as described in this section of this Act ...</b>
1	15-10	15-10
2	15-15	15-15
3	15-20	15-20
4	15-30	15-30
5	15-35	15-35

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**15-10 Application of section 15-10 of the *Income Tax Assessment Act 1997* to bounties and subsidies**

Section 15-10 (Bounties and subsidies) of the *Income Tax Assessment Act 1997* applies to a bounty or subsidy received in the 1997-98 income year or a later income year.

**15-15 Application of section 15-15 of the *Income Tax Assessment Act 1997* to profit-making undertaking or plan**

Section 15-15 (Profit-making undertaking or plan) of the *Income Tax Assessment Act 1997* applies to a profit arising in the 1997-98 income year or a later income year, even if the undertaking or plan was entered into, or began to be carried on or carried out, before the 1997-98 income year.

**15-20 Application of section 15-20 of the *Income Tax Assessment Act 1997* to royalties**

Section 15-20 (Royalties) of the *Income Tax Assessment Act 1997* applies to an amount received as or by way of royalty in the 1997-98 income year or a later income year.

*[The next section is section 15-30.]*

**15-30 Application of section 15-30 of the *Income Tax Assessment Act 1997* to insurance or indemnity payments**

Section 15-30 (Insurance or indemnity for loss of assessable income) of the *Income Tax Assessment Act 1997* applies to an amount received in the 1997-98 income year or a later income year as insurance or indemnity for the loss at any time of an amount that would have been assessable income under the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

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**15-35 Application of section 15-35 of the *Income Tax Assessment Act 1997* to interest on overpayments and early payments of tax**

Section 15-35 (Interest on overpayments and early payments of tax) of the *Income Tax Assessment Act 1997* applies to interest that is paid or applied in the 1997-98 income year or a later income year, even if some or all of the interest became payable earlier.

*[The next Division is Division 20.]*

**Part 23 Section 10-5 (table item headed “accrued leave transfer payments”)**

Omit “26(ec)”, substitute “15-5”.

**4 Section 10-5 (table item headed “bounties”)**

Omit “26(g)”, substitute “15-10”.

**5 Section 10-5 (table item headed “compensation”)**

Omit:

lessee pays for non-compliance with covenant to repair .... 26(l)

**6 Section 10-5 (table item headed “compensation”)**

Omit:

profit or income, insurance or indemnity for loss of ..... 26(j)

substitute:

profits or income, insurance or indemnity for loss of ..... 15-30

received by lessor for lessee’s non-compliance with lease obligation to repair ..... 15-25

**7 Section 10-5 (table item headed “employment”)**

Omit “26(eb)”, substitute “15-3”.

**8 Section 10-5 (table item headed “interest”)**

Omit “26(jb)”, substitute “15-35”.

**9 Section 10-5 (table item headed “leases”)**

Before:

crown leases used for primary production, assignment of . 88A(3)

insert:

amounts received by lessor from lessee for non-compliance with lease obligation to repair ..... 15-25

**10 Section 10-5 (table item headed “leases”)**

Omit:

lessees’ payments for non-compliance with covenant to repair ..... 26(l)

**11 Section 10-5 (table item headed “leases”)**

Omit:

premiums relating to a grant or assignment..... **26AB**

substitute:

premiums relating to assignment of a lease granted before  
20 September 1985 ..... **26AB****12 Section 10-5 (table item headed “leave payments”)**

Omit “26(ec)”, substitute “15-5”.

**13 Section 10-5 (table item headed “loans”)**

Repeal the item.

**14 Section 10-5 (table item headed “profits”)**

Omit:

profit-making undertakings or the sale of property acquired  
for profit-making by sale ..... **25A**

substitute:

profit-making undertaking or plan..... 15-15

sale of property acquired before 20 September 1985 for  
profit-making by sale ..... **25A****15 Section 10-5 (table item headed “royalties”)**

Omit “26(f)”, substitute “15-20”.

**16 Section 10-5 (table item headed “subsidies”)**

Omit “26(g)”, substitute “15-10”.

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

Insert:

*royalty* has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

## Part 318 Subsection 23J(3)

After “26C”, insert “of this Act or section 15-15 of the *Income Tax Assessment Act 1997*”.

### 19 After subsection 25A(1A)

Insert:

- (1B) This section does not apply to a profit arising in the 1997-98 year of income or a later year of income from the carrying on or carrying out of a profit-making undertaking or scheme, even if the undertaking or scheme was entered into, or began to be carried on or carried out, before the 1997-98 year of income.

Note: Section 15-15 (Profit-making undertaking or plan) of the *Income Tax Assessment Act 1997* deals with such a profit.

### 20 After section 25A

Insert:

### 25B Limits on application of section 26

A paragraph of section 26 does not apply to what is shown in the following table.

Note: The last column of the table shows the provision of the *Income Tax Assessment Act 1997* that applies instead.

Limits on application of section 26			
Item	Paragraph of section 26	What the paragraph does not apply to	Provision of <i>Income Tax Assessment Act 1997</i> that applies instead
1	26(eb)	Amount paid in the 1997-98 year of income or a later year of income (regardless of when the agreement, arrangement or understanding that was the basis for the payment was entered into)	section 15-3



<b>Limits on application of section 26</b>			
<b>Item</b>	<b>Paragraph of section 26</b>	<b>What the paragraph does not apply to</b>	<b>Provision of <i>Income Tax Assessment Act 1997</i> that applies instead</b>
2	26(ec)	Amount received in the 1997-98 year of income or a later year of income (regardless of when the leave accrued that the amount relates to)	section 15-5
3	26(f)	Amount received in the 1997-98 year of income or a later year of income	section 15-20
4	26(g)	Bounty or subsidy received in the 1997-98 year of income or a later year of income	section 15-10
5	26(h)	Amount received in the 1997-98 year of income or a later year of income	section 6-5
6	26(j)	Amount received in the 1997-98 year of income or a later year of income (regardless of when the loss occurred, or the loss or outgoing was incurred, that led to payment of the amount)	<ul style="list-style-type: none"> <li>• section 15-30 (for loss of assessable income)</li> <li>• Subdivision 20-A (for deductible loss or outgoing)</li> <li>• section 70-115 (for loss of trading stock)</li> </ul>
7	26(ja)	Amount received in the 1997-98 year of income or a later year of income	none
8	26(jb)	Amount of interest paid or applied in the 1997-98 year of income or a later year of income (regardless of when the interest became payable)	section 15-35

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**Limits on application of section 26**


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Item	Paragraph of section 26	What the paragraph does not apply to	Provision of <i>Income Tax Assessment Act 1997</i> that applies instead
9	26(k)	Amount received in the 1997-98 year of income or a later year of income (regardless of when the loss occurred)	Subdivision 20-A
10	26(l)	Amount received in the 1997-98 year of income or a later year of income	section 15-25

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**21 Section 26**

Omit “The assessable income”, substitute “Subject to section 25B, the assessable income”.

**22 Before subsection 26AB(1)**

Insert:

(1A) For the purposes of assessments for the 1997-98 year of income and later years of income, this section applies only in relation to assignments of leases granted before 20 September 1985.

Note: For the 1997-98 year of income and later years of income, Part IIIA (Capital gains and capital losses) deals with the income tax treatment of premiums for:

- granting leases; and
- assigning leases granted on or after 20 September

1985.

The *Income Tax Assessment Act 1997* does not contain a rewritten version of this section.

**23 Subsection 110(1) (definition of *modified 25/25A amount*)**

After “6-5”, insert “or 15-15”.

**24 Subsection 110(1) (definition of *ordinary 25/25A amount*)**

After “6-5”, insert “or 15-15”.

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**25 Paragraph 111B(1)(e)**

After “Act”, insert “and section 15-15 of the *Income Tax Assessment Act 1997*”.

**26 Subsection 116E(1) (definition of *modified 25/25A amount*)**

After “6-5”, insert “or 15-15”.

**27 Subsection 116E(1) (definition of *ordinary 25/25A amount*)**

After “6-5”, insert “or 15-15”.

**28 Paragraph 116GC(1)(e)**

After “Act”, insert “and section 15-15 of the *Income Tax Assessment Act 1997*”.

**29 Subsection 159ZR(1) (paragraph (a) of the definition of *salary or wages*)**

After “section 26AC”, insert “of this Act or section 15-3 of the *Income Tax Assessment Act 1997*”.

**30 Subsection 221A(1) (definition of *salary or wages*)**

Omit “paragraph 26(eb) or section 26AC”, substitute “section 26AC of this Act or section 15-3 of the *Income Tax Assessment Act 1997*”.

**31 Application of amendment of subsection 221A(1) (definition of *salary or wages*)**

Section 4 of this Act does not apply to the amendment made by item 30.

**32 Subsection 221C(1AC)**

Omit “paragraph 26(eb)”, substitute “section 15-3 of the *Income Tax Assessment Act 1997*”.

**33 Saving of regulations made for purposes of subsection 221C(1AC) of the *Income Tax Assessment Act 1936***

The amendment of subsection 221C(1AC) of the *Income Tax Assessment Act 1936* does not affect the validity of regulations prescribing rates of deduction specifically for salary or wages that are amounts to which paragraph 26(eb) of that Act applies.

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**34 Subsection 221C(2B)**

Omit “paragraph 26(eb)”, substitute “section 15-3 of the *Income Tax Assessment Act 1997*”.

**35 Paragraph 304(b)**

After “Act”, insert “and section 15-15 of the *Income Tax Assessment Act 1997*”.

**36 Subsection 396(1)**

After “this Act”, insert “and the *Income Tax Assessment Act 1997*”.

**37 Subsection 396(1)**

After “52”, insert “of this Act and section 15-15 of the *Income Tax Assessment Act 1997*”.

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**Part 4***Financial Corporations (Transfer of Assets and Liabilities) Act 1993*

**38 Paragraph 15(1)(a)**

After “6-5”, insert “or 15-15”.

**39 Paragraph 15(3)(a)**

After “6-5”, insert “or 15-15”.

## **Schedule 3—Exempt income**

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**Part 11 Section 43-105 (link note)**

Repeal the link note, substitute:

*[The next Part is Part 2-15.]*

**2 At the end of Chapter 2**

Add:

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**Table of sections**

50-1 Application of Division 50 of the *Income Tax Assessment Act 1997*

**50-1 Application of Division 50 of the *Income Tax Assessment Act 1997***

Division 50 of the *Income Tax Assessment Act 1997* applies to assessments for the 1997-98 income year and later income years.

**Table of sections**

51-1 Application of Division 51 of the *Income Tax Assessment Act 1997*  
 51-5 Keeping in force old regulations about exempt allowances and bounties

**51-1 Application of Division 51 of the *Income Tax Assessment Act 1997***

Division 51 of the *Income Tax Assessment Act 1997* applies to assessments for the 1997-98 income year and later income years.

**51-5 Keeping in force old regulations about exempt allowances and bounties**

Any regulations made for the purposes of subparagraph 23(t)(iii) of the *Income Tax Assessment Act 1936* that are in force at the end of the 1996-97 income year have effect in the 1997-98 income year and later income years as if they were regulations made for the purposes of items 1.1 and 1.2 of the table in section 51-5 of the *Income Tax Assessment Act 1997*.

Note: Subparagraph 23(t)(iii) of the *Income Tax Assessment Act 1936* and items 1.1 and 1.2 of the table in section 51-5 of the *Income Tax Assessment Act 1997* exempt from income tax prescribed allowances and bounties payable to, or in respect of, a member of the Defence Force.

**Table of sections**

52-1 Application of Division 52 of the *Income Tax Assessment Act 1997*



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### **52-1 Application of Division 52 of the *Income Tax Assessment Act 1997***

Division 52 of the *Income Tax Assessment Act 1997* applies to assessments for the 1997-98 income year and later income years.

#### **Table of sections**

53-1 Application of Division 53 of the *Income Tax Assessment Act 1997*

### **53-1 Application of Division 53 of the *Income Tax Assessment Act 1997***

Division 53 of the *Income Tax Assessment Act 1997* applies to assessments for the 1997-98 income year and later income years.

*[The next Division is Division 55.]*

#### **Table of sections**

55-1 Application of Division 55 of the *Income Tax Assessment Act 1997*

### **55-1 Application of Division 55 of the *Income Tax Assessment Act 1997***

Division 55 of the *Income Tax Assessment Act 1997* applies to assessments for the 1997-98 income year and later income years.

*[The next Part is Part 2-25.]*

## Part 23 Section 11-5 (table)

Repeal the table, substitute:

<b>charity, education, religion or science</b>	
charitable fund, public .....	50-5
charitable institution .....	50-5
educational institution, public .....	50-5
religious institution .....	50-5
scientific institution .....	50-5
scientific research fund.....	50-5
scientific society etc. ....	50-5
<b>community service</b>	
community service society etc.....	50-10
<b>employees and employers</b>	
employee association .....	50-15
employer association .....	50-15
trade union.....	50-15
<b>film</b>	
Australian Film Finance Corporation .....	50-45
<b>finance</b>	
friendly society .....	50-20
<b>government</b>	
local governing body .....	50-25
municipal corporation.....	50-25
public authority.....	50-25
state/territory bodies .....	<b>24AK to 24AZ</b>
<b>health</b>	
health benefits organisation.....	50-30
hospital .....	50-30
medical benefits organisation .....	50-30
<b>mining</b>	
British Phosphate Commissioners Banaba Contingency Fund .....	50-35
Phosphate Mining Company of Christmas Island .....	50-35
<b>primary or secondary resources, and tourism</b>	
agricultural society etc. ....	50-40
aviation society etc. ....	50-40
horticultural society etc. ....	50-40

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industrial society etc. ....	50-40
manufacturing society etc. ....	50-40
pastoral society etc. ....	50-40
tourism society etc. ....	50-40
viticultural society etc. ....	50-40
<b>sports, culture or recreation</b>	
animal racing society etc. ....	50-45
art society etc. ....	50-45
game society etc. ....	50-45
literature society etc. ....	50-45
music society etc. ....	50-45
sport society etc. ....	50-45

#### **4 Section 11-10 (table item headed “foreign aspects of income taxation”)**

Omit “23(za)”, substitute “51-10”.

#### **5 Section 11-15 (table item headed “defence”)**

Repeal the item, substitute:

##### **defence**

Defence Force member, allowances .....	51-5
Emergency Defence Force member, pay and allowances ..	51-5
Reserve Defence Force member, pay and allowances .....	51-5

#### **6 Section 11-15 (table item headed “education”)**

Repeal the item, substitute:

##### **education**

bursary, educational allowance etc. ....	23(z)
CRAFT scheme, employer’s income from .....	51-10
foreign student, scholarship and bursary to .....	23(ya)
full-time student, income from a scholarship, bursary, other educational allowance or educational assistance .	23(z)
isolated child, income for the provision of education of ....	23(zaa)
secondary student, income for the provision of education of .....	23(zaa)

#### **7 Section 11-15 (table item headed “health”)**

Repeal the item.

---

## 8 Section 11-15 (table item headed “mining”)

Repeal the item, substitute:

### mining

Aboriginal and Torres Strait Islander, mining payment .....	51-25 and 51-45
distributing body, mining payment.....	51-25 and 51-45
rights to mine, sale of .....	330-60

## 9 Section 11-15 (table item headed “social security or like payments”)

Repeal the item, substitute:

### social security or like payments

disability services payment .....	53-10
domiciliary nursing care benefit .....	53-10
drought relief, payment for .....	53-10 and 53-15
persecution victim, pension etc. for .....	<b>23(kc)</b>
resistance fighter and victim of wartime persecution, pension and etc. for .....	<b>23(kca)</b>
social security, payment to .....	Subdivision 52-A
veteran, Australian and United Kingdom, payment to .....	53-20
veteran, payment to .....	Subdivisions 52-B and 52-C
wounds and disability pension .....	53-10
youth training allowance, payment of .....	<b>24ABZE and 24ABZF</b>

## 10 Section 11-15 (table item headed “vice regal”)

Repeal the item, substitute:

### vice-regal

Governor-General, official salary and foreign income.....	51-15
State Governor, official salary and foreign income.....	51-15

## 11 Section 11-15 (table item headed “welfare”)

Repeal the item, substitute:

**welfare**

<i>Handicapped Persons Assistance Act 1974</i> , bonus from ...	51-30
maintenance payment .....	51-30 and 51-50
rent subsidy.....	51-30

**12 Subparagraph 43-55(1)(a)(i)**

Repeal the subparagraph, substitute:

- (i) an entity to which section 50-5, 50-10, 50-15, 50-20, 50-25, 50-30, 50-40 or 50-45 (dealing with \*exempt income) applies; or

**13 Subparagraph 43-55(1)(a)(ii)**

Omit “that Act”, substitute “the *Income Tax Assessment Act 1936*”.

**14 Paragraph 330-375(2)(b)**

Omit “a \*public body’s”, substitute “an \*exempt Australian government agency’s”.

**15 Subsection 330-375(3)**

Omit “a \*public body’s”, substitute “an \*exempt Australian government agency’s”.

**16 Subsection 330-380(2)**

Repeal the subsection.

Note: The heading to section 330-380 is altered by omitting “**and public body**”.

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

Insert:

*Aboriginal* has the meaning given by section 128U of the *Income Tax Assessment Act 1936*.

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

Insert:

*Australian government agency* means:

- (a) the Commonwealth, a State or a Territory; or

- 
- (b) an authority of the Commonwealth or of a State or a Territory.

**19 Subsection 995-1(1)**

Insert:

*bereavement Subdivision* has the meaning given by section 52-20.

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

Insert:

*distributing body* has the meaning given by section 128U of the *Income Tax Assessment Act 1936*.

**21 Subsection 995-1(1) (definition of exempt Australian government agency)**

Repeal the definition, substitute:

*exempt Australian government agency* means:

- (a) the Commonwealth, a State or a Territory; or
- (b) an authority of the Commonwealth or of a State or a Territory whose \*ordinary income and \*statutory income is exempt from income tax because of Division 50; or
- (c) an STB (within the meaning of Division 1AB of Part III of the *Income Tax Assessment Act 1936*) whose \*ordinary income and \*statutory income is exempt from income tax under that Division of that Part.

**22 Subsection 995-1(1)**

Insert:

*friendly society* means a society registered as a friendly society under an \*Australian law.

**23 Subsection 995-1(1)**

Insert:

*friendly society dispensary* means an approved pharmacist (within the meaning of Part VII of the *National Health Act 1953*) that is:

- (a) a \*friendly society; or

- (b) a body carrying on \*business for the benefit of members of a \*friendly society.

## 24 Subsection 995-1(1)

Insert:

*member of the Forces* has the meaning given by section 52-105.

## 25 Subsection 995-1(1)

Insert:

*mining payment* has the meaning given by section 128U of the *Income Tax Assessment Act 1936*.

## 26 Subsection 995-1(1)

Insert:

*ordinary payment* has the meaning given by sections 52-10 and 52-65.

## 27 Subsection 995-1(1)

Insert:

*pension age* has the meaning given by sections 52-65 and 52-105.

## 28 Subsection 995-1(1) (definition of *public body*)

Repeal the definition.

## 29 Subsection 995-1(1)

Insert:

*supplementary amount* of a payment is defined as set out in this table:

Supplementary amount of a payment		
	Supplementary amount of this kind of payment:	has the meaning given by:
1	Drought relief payment	section 53-15

---

2	Payment made because of the <i>Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986</i>	section 52-105
3	Social security payment	section 52-15
4	Veterans' affairs payment	section 52-70

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### 30 Subsection 995-1(1)

Insert:

*tax-free amount* of a payment is defined as set out in this table:

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<b>Tax-free amount of a payment</b>		
<b><i>Tax-free amount of this kind of payment:</i></b>		<b>has the meaning given by:</b>
1	Social security payment	sections 52-20, 52-25, 52-30 and 52-35

---



## Part 331 After section 22

Insert:

### 22A Limits on application of certain exempt income provisions

A provision of this Act set out in the second column of the table does not apply to an assessment for the 1997-98 year of income or a later year of income.

Note: The last column of the table shows the provision of the *Income Tax Assessment Act 1997* that applies instead.

#### Old exempt income provisions that no longer apply

Item	Provision of this Act	Corresponding provision of the <i>Income Tax Assessment Act 1997</i>
1	Subparagraph 23(a)(i)	section 51-15
2	Paragraph 23(d)	section 50-25
3	Paragraph 23(e)	items 1.1, 1.2, 1.3 and 1.4 of the table in section 50-5
4	Paragraph 23(ea)	items 6.1 and 6.2 of the table in section 50-30
5	Paragraph 23(eb)	item 6.3 of the table in section 50-30
6	Paragraph 23(f)	section 50-15
7	Paragraph 23(g)	item 1.7 of the table in section 50-5; sections 50-10 and 50-20; and items 9.1 and 9.2 of the table in section 50-45
8	Paragraph 23(h)	section 50-40
9	Paragraph 23(j)	items 1.5 and 1.6 of the table in section 50-5
10	Paragraph 23(jc)	item 2.2 of the table in section 51-10
11	Paragraph 23(je)	item 7.1 of the table in section 50-35
12	Paragraph 23(jf)	item 7.2 of the table in section 50-35

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**Old exempt income provisions that no longer apply**

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<b>Item</b>	<b>Provision of this Act</b>	<b>Corresponding provision of the <i>Income Tax Assessment Act 1997</i></b>
13	Paragraph 23(k)	item 9.3 of the table in section 50-45
14	Paragraph 23(kba)	item 5.3 of the table in section 51-30
15	Paragraph 23(ke)	item 5.2 of the table in section 51-30
16	Paragraph 23(l)	item 5.1 of the table in section 51-30
17	Paragraph 23(s)	item 1.4 of the table in section 51-5
18	Paragraph 23(sa)	item 1.3 of the table in section 51-5
19	Paragraph 23(t)	items 1.1 and 1.2 of the table in section 51-5
20	Paragraph 23(za)	item 2.1 of the table in section 51-10

---

**32 Section 23**

Omit “The following income”, substitute “Subject to section 22A, the following income”.

**33 Paragraph 23(ec)**

Repeal the paragraph.

**34 Before subsection 23AE(1)**

Insert:

(1A) This section does not apply to an assessment for the 1997-98 year of income or a later year of income.

Note: Section 51-25 of the *Income Tax Assessment Act 1997* applies instead.

**35 Section 24**

Repeal the section.

**36 Before Subdivision A of Division 1AA of Part III**

Insert:

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## Subdivision AA—Application of this Division

### 24 Application of this Division

This Division (except Subdivision BA) does not apply to an assessment for the 1997-98 year of income or a later year of income.

Note: For the law applying to the 1997-98 year of income and later years of income, see Divisions 52, 53 and 55 of the *Income Tax Assessment Act 1997*.

### 37 Subsection 46(9)

Repeal the subsection, substitute:

- (9) A shareholder in a company is not entitled to a rebate under this section in its assessment in respect of dividends paid to it by the company if the income of the company is exempt from tax under:
  - (a) Division 1AB of this Part; or
  - (b) item 1.1, 1.2, 1.3 or 1.4 of the table in section 50-5, section 50-15 or 50-25 or item 6.1 or 6.2 of the table in section 50-30 of the *Income Tax Assessment Act 1997*.

### 38 Subsection 46A(16)

Repeal the subsection, substitute:

- (16) A shareholder in a company is not entitled to a rebate under this section in its assessment in respect of dividends paid to it by the company if the income of the company is exempt from tax under:
  - (a) Division 1AB of this Part; or
  - (b) item 1.1, 1.2, 1.3 or 1.4 of the table in section 50-5, section 50-15 or 50-25 or item 6.1 or 6.2 of the table in section 50-30 of the *Income Tax Assessment Act 1997*.

### 39 Subparagraph 97(3)(c)(i)

After “section 23”, insert “of this Act or Subdivision 50-A or section 51-5, 51-10, 51-15 or 51-30 of the *Income Tax Assessment Act 1997*”.

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**40 Subsection 102AAE(2)**

After “section 23”, insert “of this Act or Subdivision 50-A or section 51-5, 51-10, 51-15 or 51-30 of the *Income Tax Assessment Act 1997*”.

**41 Subsection 102B(4)**

Omit “the proviso to paragraph 23(l)”, substitute “subsection 51-50(3) of the *Income Tax Assessment Act 1997*”.

**42 Subsection 102B(4)**

Omit “that paragraph”, substitute “section 51-30 of that Act”.

**43 Subsection 102CA(3)**

Omit “the proviso to paragraph 23(l)”, substitute “subsection 51-50(3) of the *Income Tax Assessment Act 1997*”.

**44 Subsection 102CA(3)**

Omit “that paragraph”, substitute “section 51-30 of that Act”.

**45 Section 102M (paragraph (a) of the definition of *exempt entity*)**

Repeal the paragraph, substitute:

- (a) a body or association to which item 1.1, 1.2, 1.3, 1.4 or 1.7 of the table in section 50-5 or section 50-10, 50-15, 50-20, 50-25, 50-30, 50-40 or 50-45 of the *Income Tax Assessment Act 1997* applies;

**46 Section 102M (subparagraph (b)(ii) of the definition of *exempt entity*)**

Omit “paragraph 23(j)”, substitute “item 1.5 or 1.6 of the table in section 50-5 of the *Income Tax Assessment Act 1997*”.

**47 Application of amendments of section 102M**

The amendments made by items 45 and 46 apply for the purpose of determining whether a trust is a public trading trust or a public unit trust in relation to the 1997-98 income year or a later income year.

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**48 Section 111E**

Omit “Paragraph 23(d)”, substitute “Section 50-25 of the *Income Tax Assessment Act 1997*”.

**49 Subsection 116E(1) (definition of *registered organization*)**

Omit “by virtue of paragraph 23(f) or subparagraph 23(g)(i)”, substitute “because of section 50-15 or 50-20 of the *Income Tax Assessment Act 1997*”.

**50 Subsection 121F(1) (paragraph (a) of the definition of *relevant exempting provision*)**

Repeal the paragraph, substitute:

- (a) paragraph 23(jb) of this Act;
- (aa) section 50-5, 50-10, 50-15, 50-20, 50-25, 50-30, 50-40 or 50-45 of the *Income Tax Assessment Act 1997*;

**51 Paragraph 128B(3)(a)**

Repeal the paragraph, substitute:

- (a) income derived by a non-resident that is:
  - (i) exempt from income tax because of paragraph 23(jb) of this Act or section 50-5, 50-10, 50-15 or 50-20, item 6.1 or 6.2 of the table in section 50-30, section 50-40 or item 9.1 or 9.2 of the table in section 50-45 of the *Income Tax Assessment Act 1997*; and
  - (ii) exempt from income tax in the country in which the non-resident resides;

**52 Application of amendment of paragraph 128B(3)(a)**

The amendment made by item 51 applies to income derived on or after 1 July 1997.

**53 Paragraph 159J(5E)(e)**

Omit “under paragraph 24ABXB(2)(b) of this Act”, substitute “because of paragraph (e) of the item dealing with ‘Parenting allowance (benefit parenting allowance)’ in section 52-15 of the *Income Tax Assessment Act 1997*”.

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**54 Subsection 159J(6) (paragraph (aaa) of the definition of *separate net income*)**

Omit “under paragraph 24ABXB(2)(b) of this Act”, substitute “because of paragraph (e) of the item dealing with ‘Parenting allowance (benefit parenting allowance)’ in section 52-15 of the *Income Tax Assessment Act 1997*”.

**55 Subsection 159ZR(1) (paragraph (e) of the definition of *eligible income*)**

Repeal the paragraph, substitute:

- (e) a payment that is covered by Subdivision BA of Division 1AA of this Part or Division 52, 53 or 55 of the *Income Tax Assessment Act 1997*, but that is not exempt from income tax under that Subdivision or Division.

**56 Application of amendment of subsection 159ZR(1) (paragraph (e) of the definition of *eligible income*)**

The amendment made by item 55 applies for the purpose of determining whether a lump sum payment is eligible income in the 1997-98 income year or a later income year.

**57 Subsection 160K(1) (paragraph (a) of the definition of *relevant exempting provision*)**

Repeal the paragraph, substitute:

- (a) section 50-5, 50-10, 50-15, 50-20, 50-25, 50-30, 50-40 or 50-45 of the *Income Tax Assessment Act 1997*;

**58 Subsection 221A(1) (definition of *salary or wages*)**

Omit “Division 1AA of Part III”, substitute “Subdivision BA of Division 1AA of Part III of this Act or Division 52, 53 or 55 of the *Income Tax Assessment Act 1997*”.

**59 Application of amendment of subsection 221A(1) (definition of *salary or wages*)**

Section 4 of this Act does not apply to the amendment made by item 58.

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**60 Subsection 221YCAA(2) (sub-subparagraph (pa)(iv)(A) of the definition of *qualifying reductions*)**

After “paragraph 24ABXB(2)(b)”, insert “of this Act or because of paragraph (e) of the item dealing with ‘Parenting allowance (benefit parenting allowance)’ in section 52-15 of the *Income Tax Assessment Act 1997*”.

**61 Subsection 269B(1)**

Repeal the subsection, substitute:

(1) Nothing in:

(a) sections 23G and 24AM of this Act; and

(b) sections 50-5, 50-10, 50-15, 50-20, 50-25, 50-30, 50-40 and 50-45 of the *Income Tax Assessment Act 1997*;

exempts a trustee of an eligible entity from liability to tax as provided by this Part.

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**Part 4***Australian Industry Development Corporation Act 1970*

**62 Subsection 27(2)**

After “*Income Tax Assessment Act 1936*”, insert “or section 50-25 of the *Income Tax Assessment Act 1997*”.

*Australian National Railways Commission Act 1983*

**63 Subsection 67(5)**

After “*Income Tax Assessment Act 1936*”, insert “or section 50-25 of the *Income Tax Assessment Act 1997*”.

*Australian Postal Corporation Act 1989*

**64 Subsection 63(2)**

After “*Income Tax Assessment Act 1936*”, insert “or section 50-25 of the *Income Tax Assessment Act 1997*”.

*Australian Trade Commission Act 1985*

**65 Subsection 83(4)**

After “*Income Tax Assessment Act 1936*”, insert “or section 50-25 of the *Income Tax Assessment Act 1997*”.

*Development Allowance Authority Act 1992*

**66 Subsection 93D(1) (paragraph (b) of the definition of *government body*)**

Omit “paragraph 23(d) of the Tax Act”, substitute “section 50-25 of the *Income Tax Assessment Act 1997*”.

**67 Subsection 93D(1) (paragraph (c) of the definition of *government body*)**

Omit “Tax Act”, substitute “*Income Tax Assessment Act 1936*”.



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### ***Export Finance and Insurance Corporation Act 1991***

#### **68 Subsection 63(4)**

After “*Income Tax Assessment Act 1936*”, insert “or section 50-25 of the *Income Tax Assessment Act 1997*”.

### ***Federal Airports Corporation Act 1986***

#### **69 Subsection 45(1AB)**

After “*Income Tax Assessment Act 1936*”, insert “or section 50-25 of the *Income Tax Assessment Act 1997*”.

### ***Health Insurance Commission Act 1973***

#### **70 Subsection 39(2)**

After “*Income Tax Assessment Act 1936*”, insert “or section 50-25 of the *Income Tax Assessment Act 1997*”.

### ***Legislative Instruments Act 1997***

#### **71 Schedule 2 (table item dealing with the Income Tax Assessment Act 1997)**

Repeal the item, substitute:

Income Tax Assessment Act 1997

the whole Act other than:

- items 1.1 and 1.2 of the table in section 51-5; and
- subsection 30-85(2); and
- subsection 900-35(2).

### ***National Rail Corporation Agreement Act 1992***

#### **72 Paragraph 8(d)**

After “*Income Tax Assessment Act 1936*”, insert “or section 50-25 of the *Income Tax Assessment Act 1997*”.

---

***Social Security Act 1991***

**73 Subsection 23(1) (definition of *exempt spousal maintenance income*)**

After “paragraph 23(1)”, insert “or item 5.1 of the table in section 51-30”.

**74 Subsection 23(1) (note at the end of the definition of *exempt spousal maintenance income*)**

After “paragraph 23(1)”, insert “or item 5.1 of the table in section 51-30”.

***Superannuation Guarantee (Administration) Act 1992***

**75 Section 29**

After “*Income Tax Assessment Act 1936*”, insert “or item 1.4 of the table in section 51-5 of the *Income Tax Assessment Act 1997*”.

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## Schedule 4—Deductions

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## Part 11 Part 2-5 (link note after heading)

Repeal the link note.

## 2 Before Division 28

Insert:

*[The next Division is Division 25.]*

### Table of sections

25-1	Application of Division 25 of the <i>Income Tax Assessment Act 1997</i>
25-40	Application of section 25-40 of the <i>Income Tax Assessment Act 1997</i>
25-45	Application of section 25-45 of the <i>Income Tax Assessment Act 1997</i>

### 25-1 Application of Division 25 of the *Income Tax Assessment Act 1997*

Division 25 (Some amounts you can deduct) of the *Income Tax Assessment Act 1997* applies to assessments for the 1997-98 income year and later income years, except as provided by this Division.

*[The next section is section 25-40.]*

### 25-40 Application of section 25-40 of the *Income Tax Assessment Act 1997*

Section 25-40 (Loss from profit-making undertaking or plan) of the *Income Tax Assessment Act 1997* applies to a loss arising in the 1997-98 income year or a later income year, even if the undertaking or plan was entered into, or began to be carried on or carried out, before the 1997-98 income year.

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## **25-45 Application of section 25-45 of the *Income Tax Assessment Act 1997***

Section 25-45 (which is about deductions for losses by theft etc.) of the *Income Tax Assessment Act 1997* applies to a loss discovered in the 1997-98 income year or a later income year.

### **Table of sections**

26-1	Application of Division 26 of the <i>Income Tax Assessment Act 1997</i>
26-30	Application of section 26-30 of the <i>Income Tax Assessment Act 1997</i>

## **26-1 Application of Division 26 of the *Income Tax Assessment Act 1997***

Division 26 of the *Income Tax Assessment Act 1997* (which prevents or limits deductions) applies to assessments for the 1997-98 income year and later income years, except as provided by this Division.

*[The next section is section 26-30.]*

## **26-30 Application of section 26-30 of the *Income Tax Assessment Act 1997***

Section 26-30 (which denies a deduction for relative's travel expenses) of the *Income Tax Assessment Act 1997* applies to travel on or after 1 July 1997.

*[The next Division is Division 28.]*

### **3 Section 28-100 (link note)**

Repeal the link note.

### **4 After Division 28**

Insert:

### **Table of sections**

- 34-1 Application of Division 34 of the *Income Tax Assessment Act 1997*  
 34-5 Things done under section 51AL of the *Income Tax Assessment Act 1936*

### **34-1 Application of Division 34 of the *Income Tax Assessment Act 1997***

Division 34 (Non-compulsory uniforms) of the *Income Tax Assessment Act 1997* applies to assessments for the 1997-98 income year and later income years.

### **34-5 Things done under section 51AL of the *Income Tax Assessment Act 1936***

- (1) From 1 July 1997, anything done under or in connection with a provision of section 51AL of the *Income Tax Assessment Act 1936* has effect as if it had been done under or in connection with the corresponding provision of Division 34 of the *Income Tax Assessment Act 1997*.
- (2) From 1 July 1997, a thing described in column 2 of an item in the table (as that thing existed at the end of 30 June 1997) has effect as if it were the thing described in column 3 of that item.

Column 2 refers to provisions of the *Income Tax Assessment Act 1936*. Column 3 refers to provisions of the *Income Tax Assessment Act 1997*.

<b>As from 1 July 1997</b>		
<b>Item</b>	<b>This:</b>	<b>has effect as if it were this:</b>
1	The Register of Approved Occupational Clothing that subsection 51AL(5) requires the Industry Secretary to keep	The Register of Approved Occupational Clothing that section 34-45 requires the Industry Secretary to keep
2	Approved occupational clothing guidelines in force under subsection 51AL(7)	Approved occupational clothing guidelines made under section 34-55
3	A delegation by the Industry Secretary under subsection 51AL(23)	A delegation by the Industry Secretary under section 34-65

- (3) Subsection (2) does not limit the generality of subsection (1).

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*[The next Division is Division 36.]*

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**Part 25 Section 12-5 (table item headed “accrued leave transfer payments”)**

Omit “51(3)”, substitute “26-10”.

**6 Section 12-5 (table item headed “associated persons”)**

Repeal the item.

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

Omit:

general ..... 63, 63F

substitute:

deduction reduced because of forgiveness of debt if debtor  
and creditor are companies under common ownership ..... 245-90 of  
and agree on the reduction ..... Schedule 2C

general ..... 25-35, 63F

**8 Section 12-5 (table item headed “boats”)**

Omit “51AB”, substitute “26-50”.

**9 Section 12-5 (table item headed “borrowing expenses”)**

Omit “67”, substitute “25-25”.

**10 Section 12-5 (table item headed “club fees”)**

Omit “51AB”, substitute “26-45”.

**11 Section 12-5 (table item headed “education expenses”)**

Omit “51(6), 51(6A)”, substitute “26-20”.

**12 Section 12-5 (table item headed “election expenses”)**

Omit “74, 74B”, substitute “25-60, 25-70”.

**13 Section 12-5 (table item headed “embezzlement”)**

Repeal the item, substitute:

**embezzlement**

see *theft*



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**14 Section 12-5 (after table item headed “exploration and prospecting”)**

Insert:

**family**

no deduction for maintaining spouse or child ..... 26-40

**16 Section 12-5 (table item headed “interest”)**

Omit “51(5)”, substitute “25-5”.

**17 Section 12-5 (table item headed “larceny”)**

Repeal the item.

**18 Section 12-5 (at the end of table item headed “leases”)**

Add:

payment for failure to comply with lease obligation to  
repair premises ..... 25-15**19 Section 12-5 (table item headed “lease document expenses”)**

Omit “68”, substitute “25-20”.

**20 Section 12-5 (table item headed “leave payments”)**

Omit “51(3)” (where occurring), substitute “26-10”.

**21 Section 12-5 (table item headed “legal expenses”)**

Repeal the item.

**22 Section 12-5 (table item headed “leisure facilities”)**

Omit “51AB”, substitute “26-50”.

**23 Section 12-5 (table item headed “losses”)**

Omit “52” (wherever occurring), substitute “25-40”.

**24 Section 12-5 (table item headed “mortgage”)**

Omit “67A”, substitute “25-30”.

**25 Section 12-5 (table item headed “penalties”)**

Omit “51(4)”, substitute “26-5”.

---

**26 Section 12-5 (after table item headed “quarrying”)**

Insert:

**rates and land taxes**

premises used to produce mutual receipts ..... 25-75

**27 Section 12-5 (table item headed “relatives, payments to”)**

Repeal the item, substitute:

**related entities (including relatives)**

reduction of deduction for payment or liability to..... 26-35,  
**65(1B) and**  
**(1C)**

**28 Section 12-5 (table item headed “repairs”)**

Omit “53”, substitute “25-10”.

**29 Section 12-5 (table item headed “repairs”)**

Omit “53AA”, substitute “25-15”.

**30 Section 12-5 (table item headed “subscriptions to associations”)**

Omit “73”, substitute “25-55”.

**31 Section 12-5 (table item headed “tax-related expenses”)**

Omit “69”, substitute “25-5”.

**32 Section 12-5 (after the table item headed “telephone lines”)**

Insert:

**theft**

by employee or agent..... 25-45

**33 Section 12-5 (table item headed “travel expenses”)**

Omit “51AG”, substitute “26-30”.

**34 Section 12-5 (table item headed “uniforms”)**

Omit “51AL”, substitute “Division 34”.

**35 Paragraphs 165-55(5)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) deductions for bad debts under section 8-1 (about general deductions) or section 25-35 (about bad debts);
- (b) deductions for losses on debt/equity swaps under section 63E of the *Income Tax Assessment Act 1936*;

**36 Paragraphs 165-65(4)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) deductions for bad debts under section 8-1 (about general deductions) or section 25-35 (about bad debts);

**37 Paragraphs 165-70(3)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) deductions for bad debts under section 8-1 (about general deductions) or section 25-35 (about bad debts);

**38 Paragraph 900-30(7)(b)**

Repeal the paragraph, substitute:

- (b) expenditure you incur that qualifies as a deduction under section 25-60 (Parliament election expenses) of this Act or section 74A (about local governing body election expenses) of the *Income Tax Assessment Act 1997*.

**39 Subsection 995-1(1)**

Insert:

*AAT* means the Administrative Appeals Tribunal.

**40 Subsection 995-1(1)**

Insert:

*accrued leave transfer payment* has the meaning given by subsection 26-10(2).

**41 Subsection 995-1(1)**

Insert:

*agent* of an entity (the *principal*) includes:

- (a) if the principal is outside Australia—an entity that, in Australia, and for or on behalf of the principal, holds money of the principal or has control, receipt or disposal of money of the principal; and
- (b) an entity declared by the Commissioner (in writing) to be the principal's agent or sole agent for specified purposes of this Act.

**42 Subsection 995-1(1)**

Insert:

*approved occupational clothing guidelines* has the meaning given by subsection 34-55(1).

**43 Subsection 995-1(1)**

Insert:

*child* of a person includes the person's adopted child, step-child or ex-nuptial child.

**44 Subsection 995-1(1) (definition of *club*)**

Repeal the definition.

**45 Subsection 995-1(1)**

Insert:

*design* of a uniform has the meaning given by subsection 34-25(2).

**46 Subsection 995-1(1)**

Insert:

*disease* has the meaning given by subsection 34-20(3).

**47 Subsection 995-1(1)**

Insert:

*fringe benefit* means:

- (a) a fringe benefit as defined by subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*; and

- 
- (b) a benefit that would be a fringe benefit (as defined by subsection 136(1) of that Act) if paragraphs (d) and (e) of the definition of *employer* in that subsection of that Act were omitted.

**48 Subsection 995-1(1)**

Insert:

*Industry Secretary* has the meaning given by subsection 34-25(1).

**49 Subsection 995-1(1)**

Insert:

*legal practitioner* means a person who is enrolled as a barrister, a solicitor or a barrister and solicitor of:

- (a) a federal court; or
- (b) a court of a State or Territory.

**50 Subsection 995-1(1)**

Insert:

*leisure facility* has the meaning given by subsection 26-50(2).

**51 Subsection 995-1(1)**

Insert:

*non-compulsory*, in relation to a \*uniform, has the meaning given by subsection 34-15(2).

*non-compulsory uniform* means a \*uniform that is  
\*non-compulsory.

**52 Subsection 995-1(1)**

Insert:

*occupation specific clothing* has the meaning given by subsection 34-20(1).

**53 Subsection 995-1(1)**

Insert:

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*period of the loan* has the meaning given by subsection 25-25(5).

**54 Subsection 995-1(1)**

Insert:

*protective clothing* has the meaning given by subsection 34-20(2).

**55 Subsection 995-1(1)**

Insert:

*provide* a \*fringe benefit includes allow, confer, give, grant or perform the benefit.

Note: This is based on the definition of *provide* in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*.

**56 Subsection 995-1(1)**

Insert:

*recognised tax adviser* means:

- (a) a \*registered tax agent; or
- (b) a \*legal practitioner; or
- (c) an entity which is not a \*registered tax agent but who is exempted under subsection 251L(2) of the *Income Tax Assessment Act 1936* from the operation of section 251L (Unregistered tax agents not to charge fees) of that Act.

**57 Subsection 995-1(1)**

Insert:

*recreational club* has the meaning given by subsection 26-45(2).

**58 Subsection 995-1(1)**

Insert:

*registered tax agent* means an entity which is registered as a tax agent under Part VIIA (Registration of tax agents) of the *Income Tax Assessment Act 1936*.

**59 Subsection 995-1(1)**

Insert:

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*related entity* has the meaning given by subsections 26-35(2) and (3).

**60 Subsection 995-1(1)**

Insert:

*Senior Executive Service office* has the meaning given by section 7 (Interpretation) of the *Public Service Act 1922*.

**61 Subsection 995-1 (definition of *sporting club*)**

Omit “\*club”, substitute “club”.

**62 Subsection 995-1(1)**

Insert:

*uniform* has the meaning given by subsection 34-15(1).

**Part 363 Paragraph 51AAA(b)**

Omit “this Subdivision”, substitute “a provision listed in the table in subsection (2)”.

**64 At the end of section 51AAA**

Add:

- (2) The table lists provisions allowing deductions that are affected by subsection (1). Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

<b>Deduction provisions affected by net capital gains limit</b>		
<b>Item</b>	<b>Provision</b>	<b>Description</b>
1	<b>Subdivision A of Division 3 of Part III</b>	General
2	section 8-1	General deductions
3	Division 25	Some expenses you can deduct
4	Division 30	Gifts or contributions
5	Division 34	Non-compulsory uniforms
6	Division 36	Tax losses of earlier income years
7	Division 165	Income tax consequences of changing ownership or control of a company
8	Subdivision 170-A	Transfer of tax losses within wholly-owned groups of companies

**65 Before subsection 51(3)**

Insert:

- (3A) Subsection (3) does not apply to the 1997-98 year of income or a later year of income.

Note: Section 26-10 (Leave payments) of the *Income Tax Assessment Act 1997* deals with the deductibility of leave payments.

**66 Before subsection 51(4)**

Insert:



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(4A) Subsection (4) does not apply to the 1997-98 year of income or a later year of income.

Note: Section 26-5 (Penalties) of the *Income Tax Assessment Act 1997* denies a deduction for penalties.

## **67 Before subsection 51(5)**

Insert:

(5A) Subsection (5) does not apply to the 1997-98 year of income or a later year of income.

Note: Section 25-5 (Tax-related expenses) of the *Income Tax Assessment Act 1997* deals with the deductibility of interest.

## **68 Before subsection 51(6)**

Insert:

(6AA) Subsection (6) does not apply to the 1997-98 year of income or a later year of income.

Note: Section 26-20 (HECS and student assistance) of the *Income Tax Assessment Act 1997* denies a deduction for certain amounts paid under the *Higher Education Funding Act 1988* and the *Student Assistance Act 1973*.

## **69 Before subsection 51AB(1)**

Insert:

(1A) This section does not apply to the 1997-98 year of income or a later year of income.

Note 1: Section 26-45 (Club expenses) of the *Income Tax Assessment Act 1997* deals with the deductibility of club expenses.

Note 2: Section 26-50 (Expenses for a leisure facility or boat) of the *Income Tax Assessment Act 1997* deals with the deductibility of leisure facility and boat expenses.

## **70 Subsection 51AD(16)**

Omit “section 53”, substitute “section 25-10 (Repairs) of the *Income Tax Assessment Act 1997*”.

## **71 Paragraph 51AD(16)(b)**

After “or (13)”, insert “of this section”.

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**72 Subsection 51AD(17)**

After “section 67”, insert “of this Act or section 25-25 (Borrowing expenses) of the *Income Tax Assessment Act 1997*”.

**73 Paragraph 51AD(17)(a)**

After “subsection 67(2)”, insert “of this Act or subsection 25-25(6) of that Act”.

**74 Paragraph 51AD(17)(b)**

After “or (13)”, insert “of this section”.

**75 Subsection 51AD(18)**

After “section 68”, insert “of this Act or section 25-20 (Lease document expenses) of the *Income Tax Assessment Act 1997*”.

**76 Paragraph 51AD(18)(b)**

After “or (13)”, insert “of this section”.

**77 Before subsection 51AG(1)**

Insert:

(1AA) This section does not apply to travel on or after 1 July 1997.

Note: Section 26-30 (Relative’s travel expenses) of the *Income Tax Assessment Act 1997* deals with the deductibility of relatives’ travel expenses.

**78 Application of amendment of subsection 51AG(1)**

Section 4 of this Act does not apply to the amendment made by item 77.

**79 Before subsection 51AL(1)**

Insert:

(1A) This section does not apply to the 1997-98 year of income or a later year of income.

Note: Division 34 (Non-compulsory uniforms) of the *Income Tax Assessment Act 1997* deals with the deductibility of expenditure incurred on non-compulsory uniforms.

**80 Before subsection 52(1A)**

Insert:

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- (1AA) This section does not apply to a loss arising in the 1997-98 year of income or a later year of income from the carrying on or carrying out of a profit-making undertaking or scheme, even if the undertaking or scheme was entered into, or began to be carried on or carried out, before the 1997-98 year of income.

Note: Section 25-40 (Loss from profit-making scheme) of the *Income Tax Assessment Act 1997* deals with such a loss.

## 81 Before subsection 53(1)

Insert:

- (1A) This section does not apply to the 1997-98 year of income or a later year of income.

Note: Section 25-10 (Repairs) of the *Income Tax Assessment Act 1997* deals with the deductibility of expenditure incurred on repairs.

## 82 At the end of section 53AA

Add:

- (2) This section does not apply to the 1997-98 year of income or a later year of income.

Note: Section 25-15 (Amount paid for lease obligation to repair) of the *Income Tax Assessment Act 1997* deals with the deductibility of amounts paid pursuant to lease obligations to repair premises.

## 83 Before subsection 63(1)

Insert:

- (1AAA) This section (other than subsection (1A)) does not apply to the 1997-98 year of income or a later year of income.

Note: Section 25-35 of the *Income Tax Assessment Act 1997* deals with the deductibility of bad debts in those income years.

## 84 Subsection 63(1A)

Omit “the taxpayer shall, for the purposes of subsection (1), be taken to have brought to account as”, substitute “then, for the purposes of paragraph 25-35(1)(a) of the *Income Tax Assessment Act 1997*, there is taken to have been included in the taxpayer’s”.

## 85 Subsection 63A(1)

Repeal the subsection, substitute:

- 
- (1) This section has effect despite sections 8-1 and 25-35 of the *Income Tax Assessment Act 1997*.

**86 Subsection 63A(14)**

Omit “section 51 or 63”, substitute “section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*”.

**87 Before subsection 63B(1)**

Insert:

(1A) This section has effect:

- (a) despite sections 8-1 and 25-35 of the *Income Tax Assessment Act 1997* and section 63A of this Act; but
- (b) subject to section 63C of this Act.

**88 Subsection 63B(1)**

Omit everything before “debt” (first occurring), substitute “A”.

**89 Subsection 63B(11)**

Omit “section 51 or 63”, substitute “section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*”.

**90 Subsection 63C(4)**

Omit “section 51 or 63”, substitute “section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*”.

**91 Subsection 63CA(3)**

After “section 8-1”, insert “or 25-35”.

**92 Subparagraph 63D(1)(a)(i)**

Omit “63 of this Act or section 8-1”, substitute “8-1 or 25-35”.

**93 Subparagraph 63D(1)(a)(ii)**

After “section 63E”, insert “of this Act”.

**94 Paragraph 63D(1)(c)**

After “section 23AH”, insert “of this Act”.

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**95 Subsection 63D(1) (paragraph (d) of the definition of *Eligible debt term*)**

After “Part IIIA”, insert “of this Act”.

**96 Paragraph 63E(3)(b)**

Omit “63 of this Act or section 8-1”, substitute “8-1 or 25-35”.

**97 Subparagraph 63F(1)(a)(i)**

Omit “63 of this Act or section 8-1”, substitute “8-1 or 25-35”.

**98 Subparagraph 63F(1)(a)(ii)**

After “section 63E”, insert “of this Act”.

**99 Paragraph 63F(1)(b)**

After “sections”, insert “or under section 51 or 63 of this Act”.

**100 Paragraph 63F(1)(c)**

After “section 63E”, insert “of this Act”.

**101 At the end of section 64**

Add:

- (2) This section does not apply to the 1997-98 year of income or a later year of income.

**102 Before subsection 64A(1)**

Insert:

- (1A) This section does not apply to the 1997-98 year of income or a later year of income.

Note: This section has no equivalent in the *Income Tax Assessment Act 1997*. Legal expenses may be deductible under section 8-1 of that Act (about general deductions) or under other provisions.

**103 Before subsection 65(1)**

Insert:

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(1AA) This section (other than subsections (1B) and (1C)) does not apply to the 1997-98 year of income or a later year of income.

Note 1: Section 26-35 (Reduction of deduction for amounts paid to related entities) of the *Income Tax Assessment Act 1997* deals with the deductibility of payments made to relatives or other related entities.

Note 2: Section 26-40 (Maintaining your family) of the *Income Tax Assessment Act 1997* deals with the deductibility of expenditure incurred on certain relatives.

**104 Subsection 65(1B)**

Omit “subsection (1)”, substitute “section 26-35 (Reduction of deduction for amounts paid to related entities) of the *Income Tax Assessment Act 1997*”.

**105 Subsection 65(1B)**

After “section 90”, insert “of this Act”.

**106 Paragraph 65(1B)(b)**

Omit “subsection (1A)”, substitute “subsection 26-35(4) of the *Income Tax Assessment Act 1997*”.

**107 Before subsection 67(1A)**

Insert:

(1AA) This section does not apply to expenditure incurred in the 1997-98 year of income or a later year of income.

Note: Section 25-25 (Borrowing expenses) of the *Income Tax Assessment Act 1997* deals with the deductibility of borrowing expenses.

**108 At the end of section 67A**

Add:

(2) This section does not apply to the 1997-98 year of income or a later year of income.

Note: Section 25-30 (Expenses of discharging a mortgage) of the *Income Tax Assessment Act 1997* deals with the deductibility of expenses related to discharging mortgages.

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**109 At the end of section 68**

Add:

- (2) This section does not apply to the 1997-98 year of income or a later year of income.

Note: Section 25-20 (Lease document expenses) of the *Income Tax Assessment Act 1997* deals with the deductibility of expenses related to lease documents.

**110 Before subsection 69(1)**

Insert:

- (1A) This section (other than subsection (7)) does not apply to the 1997-98 year of income or a later year of income. Subsection (9) does not apply to the use of property in the 1997-98 year of income or a later year of income.

Note: Section 25-5 (Tax-related expenses) of the *Income Tax Assessment Act 1997* deals with the deductibility of tax-related expenses.

**111 Subsection 69(7)**

Omit “this section”, substitute “25-5 (Tax-related expenses) of the *Income Tax Assessment Act 1997*”.

**112 Paragraph 69(7)(b)**

Omit “subsection (1)”, substitute “that section”.

**113 At the end of section 71**

Add:

- (2) This section does not apply to a loss ascertained in the 1997-98 year of income or a later year of income.

Note: Section 25-45 (Loss by theft etc.) of the *Income Tax Assessment Act 1997* deals with the deductibility of losses caused by theft.

**114 Before subsection 72(1)**

Insert:

- (1AA) This section does not apply to the 1997-98 year of income or a later year of income.

Note: Rates and land tax may be deductible under section 8-1 of the *Income Tax Assessment Act 1997*. Section 25-75 (Rates and land taxes) of that

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Act deals with the deductibility of rates and land taxes paid for premises used to produce mutual receipts.

**115 Before subsection 73(1)**

Insert:

(1A) This section does not apply to the 1997-98 year of income or a later year of income.

Note: Section 25-55 (Payments to associations) of the *Income Tax Assessment Act 1997* deals with the deductibility of payments made for membership of a trade, business or professional association.

**116 Before subsection 74(1)**

Insert:

(1A) This section does not apply to the 1997-98 year of income or a later year of income.

Note: Section 25-60 (Parliament election expenses) of the *Income Tax Assessment Act 1997* deals with the deductibility of election expenses of candidates for the Parliament of the Commonwealth, State or Territory.

**117 Subsection 82KH(1) (paragraph (a) of the definition of *relevant expenditure*)**

Omit “section 67”, substitute “section 25-25 (Borrowing expenses) of the *Income Tax Assessment Act 1997*”.

**118 Subsection 82KH(1) (paragraph (b) of the definition of *relevant expenditure*)**

Omit “section 67A”, substitute “section 25-30 (Expenses of discharging a mortgage) of the *Income Tax Assessment Act 1997*”.

**119 Subsection 82KH(1) (paragraph (f) of the definition of *relevant expenditure*)**

Omit “of the *Income Tax Assessment Act 1997* or section 63 of this Act”, substitute “or section 25-35 of the *Income Tax Assessment Act 1997*”.

**120 Subsection 82KH(1ABA)**

Omit “63 of this Act or section 8-1”, substitute “section 8-1 or 25-35”.



**121 Paragraph 82KH(1G)(a)**

Omit “section 67”, substitute “section 25-25 (Borrowing expenses) of the *Income Tax Assessment Act 1997*”.

**122 Paragraph 82KH(1G)(b)**

Omit “section 67A”, substitute “section 25-30 (Expenses of discharging a mortgage) of the *Income Tax Assessment Act 1997*”.

**123 At the end of section 82KH**

Add:

- (5) A reference in this Subdivision to a provision of the *Income Tax Assessment Act 1997* includes a reference to the corresponding provision of the *Income Tax Assessment Act 1936*.

**124 Subsection 82R(5)**

Omit “section 67”, substitute “section 25-25 (Borrowing expenses) of the *Income Tax Assessment Act 1997*”.

**125 Subsection 110(1) (definition of *modified 51/52 amount*)**

Omit “52 of this Act or section 8-1”, substitute “section 8-1 or 25-40”.

**126 Subsection 110(1) (definition of *ordinary 51/52 amount*)**

Omit “52 of this Act or section 8-1”, substitute “section 8-1 or 25-40”.

**127 Paragraph 111B(1)(e)**

Omit “section 15-15”, substitute “sections 15-15 and 25-40”.

**128 Subsection 116E(1) (definition of *modified 51/52 amount*)**

Omit “52 of this Act or section 8-1”, substitute “section 8-1 or 25-40”.

**129 Subsection 116E(1) (definition of *ordinary 51/52 amount*)**

Omit “52 of this Act or section 8-1”, substitute “section 8-1 or 25-40”.

**130 Paragraph 116GC(1)(e)**

Omit “section 15-15”, substitute “sections 15-15 and 25-40”.

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**131 Paragraphs 160ZH(5)(f), 160ZH(7)(f) and 160ZH(7B)(f)**

Repeal the paragraphs, substitute:

(f) was not provided by a recognised tax adviser (as defined by section 995-1 of the *Income Tax Assessment Act 1997*).

**132 Paragraph 304(b)**

Omit “section 15-15”, substitute “sections 15-15 and 25-40”.

**133 Subsection 396(1)**

Omit “section 15-15”, substitute “sections 15-15 and 25-40”.

**134 Paragraph 399A(2)(a)**

Omit “63 of this Act or section 8-1”, substitute “section 8-1 or 25-35”.

**135 Subsection 399A(5)**

Omit “63 of this Act or section 8-1”, substitute “section 8-1 or 25-35”.

**136 Subsection 245-25(5) of Schedule 2C**

Omit “an exception contained in subsection 51(1)”, substitute “paragraphs 8-1(2)(a), (b) and (c) of the *Income Tax Assessment Act 1997* (which prevent deductions for capital, private or domestic outgoings and for outgoings relating to exempt income)”.

**137 Subsection 245-90(3) of Schedule 2C**

Omit “subsection 51(1) or section 63”, substitute “section 8-1 (about general deductions) or section 25-35 (about bad debts) of the *Income Tax Assessment Act 1997*”.

Note: The heading to section 245-90 of Schedule 2C is altered by omitting “**deduction under subsection 51(1) or section 63**” and substituting “**revenue deduction**”.

**138 Subsection 245-140(1) of Schedule 2C (table)**

Omit “Subsection 67(1)”, substitute “Section 25-25 of the *Income Tax Assessment Act 1997*”.

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**Part 4***Fringe Benefits Tax Assessment Act 1986***139 Subparagraphs 143(1)(ja)(ii), 143A(e)(ii) and 143C(1)(k)(ii)**

Repeal the subparagraphs, substitute:

- (ii) where the circumstances referred to in subsection 26-30(2) of the *Income Tax Assessment Act 1997* do not apply; and

**140 Application of amendment**

The amendment made by item 139 applies to travel on or after 1 July 1997.

**Schedule 5—Trading stock (and some related matters)**

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## Part 11 At the end of Chapter 2

Add:

*[The next Division is Division 70.]*

### Table of sections

70-1	Application of Division 70 of the <i>Income Tax Assessment Act 1997</i>
70-5	Treatment of items that become trading stock because of the change of definition
70-10	Accounting for your disposal of items that stop being trading stock because of the change of definition
70-20	Application of section 70-20 of the <i>Income Tax Assessment Act 1997</i> to trading stock bought on or after 1 July 1997
70-40	Value of trading stock at the start of the 1997-98 income year
70-55	Cost of live stock acquired by natural increase
70-70	Valuing interests in FIFs on hand at the start of 1991-92
70-90	Application of sections 70-90 and 70-95 of the <i>Income Tax Assessment Act 1997</i> to disposals of trading stock outside the ordinary course of business
70-100	Application of section 70-100 of the <i>Income Tax Assessment Act 1997</i> to disposals of trading stock outside ordinary course of business
70-105	Application of section 70-105 of the <i>Income Tax Assessment Act 1997</i> to deaths on or after 1 July 1997
70-115	Application of section 70-115 of the <i>Income Tax Assessment Act 1997</i> to insurance and indemnity payments in 1997-98 and later income years

### 70-1 Application of Division 70 of the *Income Tax Assessment Act 1997*

- (1) Division 70 (Trading stock) of the *Income Tax Assessment Act 1997* applies to assessments for the 1997-98 income year and later income years. (It applies to assessments for the 1997-98 income year as if the value of trading stock on hand at the start of that year were the value specified in section 70-40 of this Act.)
- (2) However, the sections of that Division listed in the table apply in accordance with the corresponding sections of this Act.

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#### Application provisions for specific sections

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Item	This section of the <i>Income Tax Assessment Act 1997</i> ...	Applies as described in this provision of this Act ...
1	70-20	70-20
2	70-55	70-55(1)
3	70-70	70-70
4	70-90	70-90
5	70-95	70-90
6	70-100	70-100
7	70-105	70-105
8	70-115	70-115

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### 70-5 Treatment of items that become trading stock because of the change of definition

If:

- (a) immediately *before* the 1997-98 income year you owned an item that was *not* trading stock as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* as in force at that time; and
- (b) at the *start* of that income year you hold the item as trading stock as defined in section 70-10 of the *Income Tax Assessment Act 1997* (the **1997 Act**);

section 70-30 of the 1997 Act applies as if you had *started* to hold the item as trading stock as defined in section 70-10 of the 1997 Act *immediately after* the start of that income year.

### 70-10 Accounting for your disposal of items that stop being trading stock because of the change of definition

- (1) This section explains how to account for your disposal of an item if:
    - (a) immediately before 1 July 1997, the item was an item of your trading stock, as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* as in force at that time; and
    - (b) the item has *not* been an item of your trading stock, as defined in section 70-10 of the *Income Tax Assessment Act 1997*, after that time; and
-

- 
- (c) the disposal occurs on or after 1 July 1997; and
  - (d) subsection 36(1) of the *Income Tax Assessment Act 1936* would have applied to the disposal if it had occurred before 1 July 1997.

Example: This section applies to your disposal on or after 1 July 1997 of an item you produced, manufactured, acquired or purchased before that day for manufacture, sale or exchange, but did not hold for that purpose immediately before that day or since the start of that day.

- (2) Sections 70-90 and 70-95 of the *Income Tax Assessment Act 1997* (dealing with disposals of trading stock outside the ordinary course of business) apply to your disposal of the item as if it were an item of your trading stock (as defined in section 70-10 of the *Income Tax Assessment Act 1997*).

Note: Applying those sections ensures that your assessable income includes the market value of the item on the day of disposal. This counters your deduction under the *Income Tax Assessment Act 1936* for your expenditure to acquire the item as trading stock.

[The next section is section 70-20.]

## **70-20 Application of section 70-20 of the *Income Tax Assessment Act 1997* to trading stock bought on or after 1 July 1997**

Section 70-20 (Non-arm's length transactions) of the *Income Tax Assessment Act 1997* applies to purchases that take place on or after 1 July 1997.

[The next section is section 70-40.]

## **70-40 Value of trading stock at the start of the 1997-98 income year**

- (1) The *value* of an item of trading stock on hand at the start of the 1997-98 income year is its value as taken into account at the end of the 1996-97 income year under Subdivision B (Trading stock) of Division 2 of Part III of the *Income Tax Assessment Act 1936*.
  - (2) The *value* of the item is a nil amount if the item was not taken into account as described in subsection (1).
-

*[The next section is section 70-55.]*

### **70-55 Cost of live stock acquired by natural increase**

- (1) Section 70-55 of the *Income Tax Assessment Act 1997* applies to animals acquired by natural increase in or after the 1997-98 income year.
- (2) For the purposes of Subdivision 70-C of the *Income Tax Assessment Act 1997*, the **cost** of an animal acquired by natural increase before the 1997-98 income year is the cost price of the animal under section 34 of the *Income Tax Assessment Act 1936*.

*[The next section is section 70-70.]*

### **70-70 Valuing interests in FIFs on hand at the start of 1991-92**

- (1) If:
  - (a) an interest in a FIF was an item of your trading stock on hand at the *start* of the 1991-92 income year; and
  - (b) that interest was also an item of your trading stock on hand at the *end* of the 1997-98 income year or a later income year;the **value** of the item at the *end* of the 1997-98 or later income year is the value of the item as taken into account under Subdivision B (Trading stock) of Division 2 of Part III of the *Income Tax Assessment Act 1936* at the *start* of the 1991-92 income year.
- (2) This section has effect despite section 70-45 (the general rule about how to value your trading stock at the end of the income year) of the *Income Tax Assessment Act 1997*, but subject to subsection 70-70(2) (which allows you to elect to value all your interests in FIFs at their market value instead) of that Act.



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*Effect of election under subsection 31(5) of the Income Tax Assessment Act 1936 on valuation of interests in FIFs*

- (3) If you made an election under subsection 31(5) of the *Income Tax Assessment Act 1936* (to value all your interests in FIFs at market value), subsection 70-70(2) of the *Income Tax Assessment Act 1997* applies to your interests in FIFs as if you had made an election under subsection 70-70(2).

*[The next section is section 70-90.]*

**70-90 Application of sections 70-90 and 70-95 of the *Income Tax Assessment Act 1997* to disposals of trading stock outside the ordinary course of business**

Sections 70-90 (Assessable income on disposal of trading stock outside the ordinary course of business) and 70-95 (Purchase price is taken to be market value) of the *Income Tax Assessment Act 1997* apply to a disposal of an item of trading stock that takes place on or after 1 July 1997.

*[The next section is section 70-100.]*

**70-100 Application of section 70-100 of the *Income Tax Assessment Act 1997* to disposals of trading stock outside ordinary course of business**

*Basic application*

- (1) Section 70-100 (Notional disposal when you stop holding an item as trading stock) of the *Income Tax Assessment Act 1997* applies to trading stock that stops being trading stock on hand of an entity on or after 1 July 1997.

*Transitional provision if that section affects an assessment for 1996-97*

- (2) The value of trading stock to which subsection (4) of that section applies is to be worked out using the rules in the *Income Tax*

*Assessment Act 1936* (and not the rules in Subdivision 70-C of the *Income Tax Assessment Act 1997*) if:

- (a) that section affects an assessment for the 1996-97 year of income under the *Income Tax Assessment Act 1936*; and
- (b) an election is made under subsection (4) of that section to value trading stock at what would have been its value at the end of an income year ending on the day it became trading stock on hand of the second entity.

Note: Section 70-100 of the *Income Tax Assessment Act 1997* may affect an assessment for the 1996-97 income year if any of the entities with an interest in the trading stock (either before or after it becomes trading stock on hand of the second entity) has a 1996-97 income year ending on or after 1 July 1997.

### **70-105 Application of section 70-105 of the *Income Tax Assessment Act 1997* to deaths on or after 1 July 1997**

- (1) Section 70-105 (Death of owner) of the *Income Tax Assessment Act 1997* applies to trading stock that devolves as a result of a person dying on or after 1 July 1997.

*Transitional provision if that section affects an assessment for 1996-97*

- (2) The value of an item to which subsection (3) or (4) of that section applies is to be worked out using the rules in the *Income Tax Assessment Act 1936* (and not the rules in Subdivision 70-C of the *Income Tax Assessment Act 1997*) if:
  - (a) that section affects an assessment for the 1996-97 year of income under the *Income Tax Assessment Act 1936*; and
  - (b) an election is made under subsection (3) or (4) of that section to value the item at an amount other than its market value.

Note: Section 70-105 of the *Income Tax Assessment Act 1997* may affect an assessment for the 1996-97 income year if an entity on which the item devolves has a 1996-97 income year ending on or after 1 July 1997.

*[The next section is section 70-115.]*

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**70-115 Application of section 70-115 of the *Income Tax Assessment Act 1997* to insurance and indemnity payments in 1997-98 and later income years**

Section 70-115 (Compensation for lost trading stock) of the *Income Tax Assessment Act 1997* applies to an amount received in the 1997-98 income year or a later income year by way of insurance or indemnity for a loss of trading stock, even if the loss occurred earlier. However, that section does not apply to an amount that is assessable income for an income year before the 1997-98 income year.

**2 At the end of Part 3-45**

Add:

*[The next Division is Division 385.]*

**Table of sections**

- |         |   |
|---------|---|
| 385-100 | Application of Subdivision 385-E of the <i>Income Tax Assessment Act 1997</i> to disposal or death of live stock on or after 1 July 1997          |
| 385-130 | Application of Subdivision 385-F of the <i>Income Tax Assessment Act 1997</i> to loss of live stock or trees in 1997-98 and later income years    |
| 385-135 | Application of Subdivision 385-G of the <i>Income Tax Assessment Act 1997</i> to earlier than normal wool clips in 1997-98 and later income years |

**385-100 Application of Subdivision 385-E of the *Income Tax Assessment Act 1997* to disposal or death of live stock on or after 1 July 1997**

Subdivision 385-E (Primary producer can elect to spread or defer tax on profit from forced disposal or death of live stock) of the *Income Tax Assessment Act 1997* applies to a disposal or death of live stock on or after 1 July 1997.

*[The next section is section 385-130.]*

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**385-130 Application of Subdivision 385-F of the *Income Tax Assessment Act 1997* to loss of live stock or trees in 1997-98 and later income years**

Subdivision 385-F (Insurance for loss of live stock or trees) of the *Income Tax Assessment Act 1997* applies if your assessable income for the 1997-98 income year or a later income year would include an insurance recovery.

**385-135 Application of Subdivision 385-G of the *Income Tax Assessment Act 1997* to earlier than normal wool clips in 1997-98 and later income years**

- (1) Subdivision 385-G (Double wool clips) of the *Income Tax Assessment Act 1997* applies if your assessable income for the 1997-98 income year or a later income year would include the proceeds of the sale of 2 wool clips.

*Election to defer including profit on second wool clip in 1997-98 income year*

- (2) Section 385-135 (Election to defer including profit on second wool clip) of the *Income Tax Assessment Act 1997* applies to the 1997-98 income year as if:
- (a) subparagraph 385-135(3)(b)(ii) referred to wool that you took into account at cost price under section 31 of the *Income Tax Assessment Act 1936* (instead of wool you took into account at cost under Division 70 of the *Income Tax Assessment Act 1997*); and
  - (b) subparagraph 385-135(3)(b)(iii) referred to an election under section 26BA of the *Income Tax Assessment Act 1936* (instead of an election under section 385-135 itself).

**Part 23 Section 10-5 (table item headed “compensation”)**

Omit “26B”, substitute “385-130”.

**4 Section 10-5 (table item headed “compensation”)**

Omit “26(j)” (last occurring), substitute “70-115”.

**5 Section 10-5 (table item headed “live stock”)**

Omit “36, 36AAA, 36AA” (first occurring), substitute  
“Subdivision 385-E”.

**6 Section 10-5 (table item headed “live stock”)**

Omit “36, 36AAA, 36AA” (second and third occurring), substitute  
“385-160, 385-163”.

**7 Section 10-5 (table item headed “live stock”)**

Omit “36, 36AAA, 36AA” (last occurring), substitute  
“Subdivision 385-E, 385-160”.

**8 Section 10-5 (table item headed “trading stock”)**

Omit “36A”, substitute “70-100”.

**9 Section 10-5 (table item headed “trading stock”)**

Omit “37”, substitute “70-105”.

**10 Section 10-5 (table item headed “trading stock”)**

Omit “28”, substitute “70-35”.

**11 Section 10-5 (table item headed “trading stock”)**

Omit “31C”, substitute “70-20”.

**12 Section 10-5 (table item headed “trading stock”)**

Omit “36(1)”, substitute “70-90, 70-95”.

**13 Section 12-5 (after table item headed “currency exchange  
gains and losses”)**

Insert:

death of timber owner

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see *timber*

**14 Section 12-5 (table item headed “primary production”)**

After “*electricity connections*”, insert “and *timber*”.

**15 Section 12-5 (table item headed “tax avoidance schemes”)**

Omit “**31C**”, substitute “70-20”.

**16 Section 12-5 (table item headed “timber”)**

Omit:

land attributable to felled timber, part of purchase price.... **124J**

substitute:

death of owner of land carrying trees, deduction of the part  
of land price paid for trees ..... 70-120

disposal of land carrying trees, deduction of the part of  
land price paid for trees ..... 70-120

felling trees, deduction of price of land attributable to trees  
felled or of price of right to fell trees..... 70-120

**17 Section 12-5 (table item headed “trading stock”)**

Omit “**28(3)**”, substitute “70-35(3)”.

**18 Section 12-5 (table item headed “trading stock”)**

Omit “**51(2)**”, substitute “70-25”.

**19 Section 12-5 (table item headed “trading stock”)**

Omit “**51(2A)**”, substitute “70-15”.

**20 Section 12-5 (table item headed “trading stock”)**

After “*tax avoidance schemes*”, insert “and *timber*”.

**21 Paragraph 165-60(3)(a) (note)**

After “See”, insert “section 385-130 of this Act and”.

**22 Paragraph 165-60(3)(b) (note)**

After “See”, insert “Subdivision 385-E and section 385-160 of this Act and”.

### 23 Subsection 165-60(4)

Omit “26BA (Double wool clips) of the *Income Tax Assessment Act 1936*”, substitute “385-135 (Election to defer including profit on second wool clip)”.

### 24 Application of amendment of subsection 165-60(4)

The amendment made by item 23 applies for assessments for the 1998-99 income year and later income years.

### 25 Subsection 995-1(1)

Insert:

*consideration receivable:*

- (a) *consideration receivable* on the disposal of a leased \*car has the meaning given by section 20-115; and
- (b) *consideration receivable* for trading stock changing hands has the meaning given by subsection 70-100(11).

### 26 Subsection 995-1(1)

Insert:

*cost:*

- (a) *cost* of a unit of \*plant for depreciation purposes has the meaning given by Subdivision 42-B; and
- (b) *cost* of an item of \*trading stock, in the case of an animal that you acquired by natural increase, has the meaning given by section 70-55.

Note: The cost of an animal acquired by natural increase before the 1997-98 income year is the cost price of the animal under section 34 of the *Income Tax Assessment Act 1936*. See subsection 70-55(2) of the *Income Tax (Transitional Provisions) Act 1997*.

### 27 Subsection 995-1(1)

Insert:

*disentitling event* has the meaning given by section 385-163.

### 28 Subsection 995-1(1)

Insert:

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*disposal year* has the meaning given by subsection 385-105(2).

**29 Subsection 995-1(1)**

Insert:

*FIF* has the meaning given by section 481 of the *Income Tax Assessment Act 1936*.

**30 Subsection 995-1(1)**

Insert:

*foreign investment fund* means a FIF as defined by section 481 of the *Income Tax Assessment Act 1936*.

**31 Subsection 995-1(1)**

Insert:

*horse opening value* has the meaning given by subsection 70-65(1).

**32 Subsection 995-1(1)**

Insert:

*horse reduction amount* has the meaning given by subsection 70-65(2).

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

Insert:

*live stock* does *not* include animals used as beasts of burden or working beasts in a \*business other than a \*primary production business.

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

Insert:

*notional accounting period* has the meaning given by section 486 of the *Income Tax Assessment Act 1936*.

**35 Subsection 995-1(1)**

Insert:

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***primary production business***: you carry on a ***primary production business*** if you carry on a \*business of:

- (a) cultivating or propagating plants, fungi or their products or parts (including seeds, spores, bulbs and similar things), in any physical environment; or
- (b) maintaining animals for the purpose of selling them or their bodily produce (including natural increase); or
- (c) manufacturing dairy produce from raw material that you produced; or
- (d) conducting operations relating directly to taking or catching fish, turtles, dugong, bêche-de-mer, crustaceans or aquatic molluscs; or
- (e) conducting operations relating directly to taking or culturing pearls or pearl shell; or
- (f) planting or tending trees in a plantation or forest that are intended to be felled; or
- (g) felling trees in a plantation or forest; or
- (h) transporting trees, or parts of trees, that you felled in a plantation or forest to the place:
  - (i) where they are first to be milled or processed; or
  - (ii) from which they are to be transported to the place where they are first to be milled or processed.

### 36 Subsection 995-1(1)

Insert:

***proceeds of the disposal or death*** has the meaning given by subsection 385-100(2).

### 37 Subsection 995-1(1)

Insert:

***proceeds of the sale of 2 wool clips*** has the meaning given by subsection 385-135(3).

### 38 Subsection 995-1(1)

Insert:

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*reduction amount* has the meaning given by subsections 385-120(2) and (3).

**39 Subsection 995-1(1)**

Insert:

*tax profit on the disposal or death* has the meaning given by subsection 385-105(3).

**40 Subsection 995-1(1)**

Insert:

*trading stock* has the meaning given by section 70-10, as modified by sections 124ZO and 124ZQ of the *Income Tax Assessment Act 1936*.

**41 Subsection 995-1(1)**

Insert:

*unused tax profit on the disposal or death* has the meaning given by subsection 385-110(3).

**42 Subsection 995-1(1)**

Insert:

*value* of an item of \*trading stock has the meaning given by Subdivision 70-C.

Note: For the value of trading stock at the start of the 1997-98 income year, see section 70-40 of the *Income Tax (Transitional Provisions) Act 1997*.

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**Part 343 Subsection 6(1) (definition of *trading stock*)**

Repeal the definition, substitute:

*trading stock* has the meaning given by section 70-10 of the *Income Tax Assessment Act 1997*.

**44 Paragraph 6BA(3)(a)**

Repeal the paragraph, substitute:

- (a) the value of such of the original shares and bonus shares as the taxpayer elects under section 70-45 of the *Income Tax Assessment Act 1997* to value at cost; and

**45 Subsection 26B(2)**

After “year of income”, insert “before the 1997-98 year of income”.

**46 At the end of subsection 26B(2)**

Add:

Note: Subdivision 385-F (Insurance for loss of live stock or trees) of the *Income Tax Assessment Act 1997* allows an election to reduce the amount of an insurance recovery received in or after the 1997-98 year of income.

**47 Before subsection 26BA(2)**

Insert:

- (1A) A taxpayer cannot make an election under subsection (3) relating to the 1997-98 year of income or a later year of income. However, this does not limit the effect of paragraph (6)(b) or subsection (7) in relation to an election that relates to the 1996-97 year of income.

Note: Subdivision 385-G (Double wool clips) of the *Income Tax Assessment Act 1997* provides for elections for the 1997-98 year of income and later years of income.

**48 Before subsection 28(1)**

Insert:

- (1A) This section does not apply to the 1997-98 year of income or a later year of income.

Note: Subdivision 70-C (Accounting for trading stock you hold at the start or end of the income year) of the *Income Tax Assessment Act 1997* applies to those years of income.

#### **49 At the end of section 29**

Add:

- (2) This section does not apply to the valuation of live stock or other trading stock at the beginning of the 1997-98 year of income or at the beginning of a later year of income.

Note: Section 70-40 (Value of trading stock at start of income year) of the *Income Tax Assessment Act 1997* applies to the valuation of trading stock at the beginning of those years of income. Section 70-40 (Value of trading stock at the start of the 1997-98 income year) of the *Income Tax (Transitional Provisions) Act 1997* is also relevant.

#### **50 Before subsection 31(1)**

Insert:

- (1A) This section does not apply to the valuation of trading stock at the end of the 1997-98 year of income or at the end of a later year of income.

Note: Section 70-45 (Value of trading stock at end of income year) of the *Income Tax Assessment Act 1997* deals with the valuation of trading stock at the end of those years of income. Section 70-70 (Valuing interests in FIFs) of that Act provides special rules for valuing interests in FIFs for those years of income.

#### **51 Before subsection 31C(1)**

Insert:

- (1A) This section applies only to a purchase that takes place before 1 July 1997.

Note: Section 70-20 (Non-arm's length transactions) of the *Income Tax Assessment Act 1997* deals with purchases taking place on or after 1 July 1997.

#### **52 Before subsection 32(1)**

Insert:

- (1A) This section does not apply to the valuation of live stock at the end of the 1997-98 year of income or at the end of a later year of income.

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Note: Section 70-45 (Value of trading stock at end of income year) of the *Income Tax Assessment Act 1997* applies to the valuation of live stock at the end of those years of income. Section 70-60 (Valuation of horse breeding stock) of the *Income Tax Assessment Act 1997* also applies to the valuation of horse breeding stock at the end of those years.

### 53 After subsection 32A(1)

Insert:

(1A) This section does not apply to the valuation of horse breeding stock at the end of the 1997-98 year of income or at the end of a later year of income.

Note: Section 70-45 (Value of trading stock at end of year) or 70-60 (Valuation of horse breeding stock) of the *Income Tax Assessment Act 1997* applies to such a valuation.

### 54 At the end of section 33

Add:

(2) This section does not apply to the valuation of live stock at the end of the 1997-98 year of income or at the end of a later year of income.

Note: For those income years, the *Income Tax Assessment Act 1997* does not prevent a change in the basis for valuing your live stock.

### 55 Before subsection 34(1)

Insert:

(1A) This section does not apply to animals acquired by natural increase in the 1997-98 year of income or a later year of income.

Note: Section 70-55 (Working out the cost of natural increase of live stock) of the *Income Tax Assessment Act 1997* applies to live stock acquired by natural increase in those years of income.

### 56 Before subsection 36(1)

Insert:

(1A) Subsection (1) applies to a disposal of property only if the disposal takes place before 1 July 1997.

Note: Sections 70-90 (Assessable income on disposal of trading stock outside the ordinary course of business) and 70-95 (Purchase price is taken to be market value) of the *Income Tax Assessment Act 1997* deal with a disposal occurring on or after 1 July 1997.

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**57 After subsection 36(1)**

Insert:

(2A) Subsection (3) does not apply to a disposal of live stock that takes place on or after 1 July 1997.

Note: Subdivision 385-E (Primary producer can elect to spread or defer tax on profit from forced disposal or death of live stock) of the *Income Tax Assessment Act 1997* deals with such a disposal.

**58 After subsection 36(7)**

Insert:

(7AA) Subsection (7A) does not allow a deduction for the 1997-98 year of income or a later year of income.

Note: Paragraph 70-120(2)(c) and subsection 70-120(5) of the *Income Tax Assessment Act 1997* allow you to deduct the price you paid for trees on land, and associated capital expenditure, if you dispose of the trees in one of those years of income outside the ordinary course of carrying on a business.

**59 Before subsection 36AAA(1)**

Insert:

(1AAA) This section does not apply to a disposal or death of live stock on or after 1 July 1997.

Note: Subdivision 385-E (Primary producer can elect to spread or defer tax on profit from forced disposal or death of live stock) of the *Income Tax Assessment Act 1997* deals with such a disposal or death.

**60 Before subsection 36AA(1)**

Insert:

(1AA) This section does not apply to a disposal or death of live stock on or after 1 July 1997.

Note: Subdivision 385-E (Primary producer can elect to spread or defer tax on profit from forced disposal or death of live stock) of the *Income Tax Assessment Act 1997* deals with such a disposal or death.

**61 Before subsection 36A(1)**

Insert:

- 
- (1A) Subsection (1) applies to a change of ownership of, or interests in, property only if the change takes place before 1 July 1997.

Note: Section 70-100 (Notional disposal when you stop holding an item as trading stock) of the *Income Tax Assessment Act 1997* deals with a change taking place on or after 1 July 1997.

## **62 Before subsection 37(1)**

Insert:

- (1A) Subsection (1) applies only to property devolving as a result of a person dying before 1 July 1997.

Note: Section 70-105 (Death of owner) of the *Income Tax Assessment Act 1997* applies to property devolving as a result of a person dying on or after 1 July 1997.

## **63 Subsection 46(7A)**

Repeal the subsection, substitute:

- (7A) Subsection (7B) applies if:

- (a) a shareholder that is a company elects to value an item of trading stock in a particular way under section 70-45 of the *Income Tax Assessment Act 1997*; and
- (b) that value is *greater* than it would have been if the shareholder had elected to value the item in a different way; and
- (c) the shareholder made the actual election for the purpose, or for purposes including the purpose, of increasing the rebate to which the shareholder would be entitled under subsection (2) or (2A), or the rebate that might be allowed to the shareholder under subsection (3).

- (7B) In calculating the rebate, the following are determined as if the shareholder had instead elected to value the item at the *lowest* amount at which the shareholder could have elected to value it under section 70-45 of the *Income Tax Assessment Act 1997*:

- (a) the part of any dividends (except PDF dividends) included in the shareholder's taxable income;
  - (b) the part of any private company dividends included in the shareholder's taxable income;
  - (c) the part of any PDF dividends included in the shareholder's taxable income.
-

**64 After subsection 47A(10)**

Insert:

(10A) Subsection (10) does not apply to a transfer that is taken by section 70-30 or 70-110 of the *Income Tax Assessment Act 1997* to have occurred.

**65 After subsection 51(2)**

Insert:

(2AA) Subsection (2A) does not apply to expenditure incurred in the 1997-98 year of income or a later year of income.

Note: Section 70-15 (In which income year do you deduct an outgoing for trading stock?) of the *Income Tax Assessment Act 1997* deals with deduction of expenditure incurred in those years of income.

**66 Paragraph 51(2A)(c)**

After “this subsection”, insert “and subsection (1A)”.

**67 Subsection 51(2A)**

After “subsection (1)” (last occurring), insert “or section 8-1 of the *Income Tax Assessment Act 1997* (as appropriate)”.

**68 Subsection 52A(7)**

Omit “or cost price”.

**69 Subsection 52A(7)**

Omit “Subdivision B of Division 2 of Part III”, substitute “Divisions 70 (Trading stock) and 385 (Primary production) of the *Income Tax Assessment Act 1997*”.

**70 Subsection 82KH(1N)**

Omit “Subdivision B of Division 2 of Part III”, substitute “Division 70 (Trading stock) or 385 (Primary production) of the *Income Tax Assessment Act 1997*”.

**71 Subsection 82KH(1N)**

Omit “or cost price”.



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**72 Subsection 82KL(6)**

After “this Act” (first occurring), insert “and the *Income Tax Assessment Act 1997*”.

**73 Subsection 82KL(6)**

After “this Act” (second occurring), insert “or that Act”.

**74 Subsection 82KL(6)**

After “Subdivision B of Division 2 of Part III”, insert “of this Act or Division 70 (Trading stock) or 385 (Primary production) of the *Income Tax Assessment Act 1997*”.

**75 Subsection 83(2)**

Omit “paragraph 36(8)(a) and to”.

**76 Subsection 83(2)**

After “subsection 73A(4)”, insert “of this Act and to sections 70-90 and 70-95 of the *Income Tax Assessment Act 1997*”.

**77 Subsection 100A(6B)**

After “this Act” (first occurring), insert “and the *Income Tax Assessment Act 1997*”.

**78 Subsection 100A(6B)**

After “this Act” (second occurring), insert “or that Act”.

**79 Subsection 100A(6B)**

After “Subdivision B of Division 2”, insert “of Part III of this Act or Division 70 (Trading stock) or 385 (Primary production) of the *Income Tax Assessment Act 1997*”.

**80 Section 102AAY**

Repeal the section, substitute:

**102AAY Modified application of trading stock provisions**

When applying this Act and the *Income Tax Assessment Act 1997* in calculating the attributable income of the trust estate,

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Division 70 of the *Income Tax Assessment Act 1997* has effect as if the cost of the item of trading stock were the value to be taken into account at the start of the year of income.

**81 After subsection 103A(3B)**

Insert:

- (3C) Paragraph (3A)(c) does not apply to an acquisition that is taken by section 70-30 or 70-110 of the *Income Tax Assessment Act 1997* to have occurred.

**82 Subsection 121G(10)**

Omit all the words after “in respect of”, substitute “expenditure:

- (a) taken under sections 36 and 36A of this Act to have been incurred in the acquisition of trading stock by the partnership; or
- (b) taken under sections 70-90 and 70-95 and subsection 70-100(3) of the *Income Tax Assessment Act 1997* to have been incurred in the acquisition of trading stock by the partnership.”.

**83 Subsection 136AB(2)**

Omit “31C”, substitute “70-20 of the *Income Tax Assessment Act 1997*”.

**84 Paragraphs 160L(3)(a) and (4)(a)**

Omit “throughout the period when the asset was owned by the taxpayer”, substitute “at the time of the disposal”.

**85 Paragraph 160L(5)(a)**

Omit “throughout the period when the asset was a partnership asset of the partnership”, substitute “at the time of the disposal”.

**86 At the end of section 160ZB**

Add:

- (7) When an item already owned by a taxpayer becomes trading stock of the taxpayer:
- (a) a capital gain does not accrue to the taxpayer; and

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(b) the taxpayer does not make a capital loss;  
if the taxpayer elects under paragraph 70-30(1)(a) of the *Income Tax Assessment Act 1997* to be treated as having sold the item for its cost (as worked out under that section).

**87 After paragraph 170(10AA)(a)**

Insert:

(h) section 70-20;

**88 After paragraph 170(10AA)(m)**

Insert:

(r) Subdivision 385-E and section 385-160;

**89 Subsection 225(5)**

Omit “section 31C,”.

**90 Subsection 225(5)**

After “Part IVA”, insert “of this Act or section 70-20 of the *Income Tax Assessment Act 1997*”.

**91 Section 397**

Repeal the section, substitute:

**397 Modified application of trading stock provisions**

When applying this Act and the *Income Tax Assessment Act 1997* in calculating the attributable income of the eligible CFC:

- (a) Subdivision B of Division 2 of Part III of this Act has effect as if the value of any article of trading stock to be taken into account at the beginning or end of a year of income were its cost price; and
- (b) Division 70 of the *Income Tax Assessment Act 1997* has effect as if the value of any item of trading stock to be taken into account at the beginning or end of an income year were its cost.

**92 Section 520**

Omit “31”, substitute “70-70 of the *Income Tax Assessment Act 1997*”.

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**93 Paragraph 521(a)**

Omit “31(5)”, substitute “70-70(2) of the *Income Tax Assessment Act 1997*”.

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**Part 4** *Cattle Transaction Levy Act 1995*

**94 At the end of paragraph 4(2)(f)**

Add:

- (iv) as described in subsection 70-100(1) of the *Income Tax Assessment Act 1997*; or

***Financial Corporations (Transfer of Assets and Liabilities) Act 1993***

**95 Paragraph 21(1)(c)**

After “*Income Tax Assessment Act 1936*”, insert “or section 70-35 of the *Income Tax Assessment Act 1997*”.

**96 Subparagraph 21(1)(d)(ii)**

After “*Income Tax Assessment Act 1936*”, insert “or section 70-45 of the *Income Tax Assessment Act 1997*”.

**97 Paragraph 21(1)(e)**

Omit “does”, substitute “and sections 70-90 and 70-95 of the *Income Tax Assessment Act 1997* do”.

**98 Paragraph 21(2)(e)**

Omit “does”, substitute “and sections 70-90 and 70-95 of the *Income Tax Assessment Act 1997* do”.

**99 Application of amendments**

- (1) The amendments of section 21 of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* apply in relation to years of income after the 1996-97 year of income.
- (2) However, the amendments of paragraphs 21(1)(e) and (2)(e) apply in relation to years of income after the 1995-96 year of income.

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## **Schedule 6—Depreciation**

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## Part 11 Part 2-10 (link note after heading)

Omit “43”, substitute “42”.

### 2 Before Division 43

Insert:

#### Table of sections

42-1	Definitions
42-2	Application of Division 42 of the 1997 Act
42-6	General transitional provision
42-7	Special rules for plant used but not depreciated before the 1997-98 income year
42-8	Rules where Common rule 1 applies
42-9	Amounts deducted under old law taken to be amounts deducted under new law
42-18	Meaning of <i>plant</i>
42-45	Exclusions
42-48	Debt forgiveness: amounts deducted for depreciation
42-70	Adjustment: acquiring a car at a discount
42-80	Adjustment: car depreciation limit
42-90	Adjustment: previously depreciated plant limit
42-95	Application of Subdivision 42-C of the 1997 Act
42-110	Commissioner’s determination of effective life
42-120	Which rate do you use? (application of old transitional provision)
42-175	Meaning of <i>undeducted cost</i>
42-195	Deducting an amount
42-215	Adjustment: car depreciation limit
42-220	Plant used for research and development
42-235	Balancing adjustments for cars
42-255	Meaning of <i>notional depreciation amount</i>
42-280	Additional consequence of Common rule 1
42-290	Later year relief
42-310	Meaning of <i>quasi-owner</i>
42-355	Creating a pool
42-360	Allocating plant to a pool
42-365	What plant is eligible for allocation to a pool?
42-370	Removal of plant from a pool
42-375	Calculating depreciation deductions for pooled plant
42-380	Meaning of <i>opening balance</i>
42-400	Whether plant acquired or constructed after 26 February 1992

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- |        |   |
|--------|---|
| 42-405 | Modifying Common rule 1 so that it may apply to a disposal of plant under the new depreciation provisions |
| 42-410 | Application of Common rule 2 where amounts deducted only under the old depreciation provisions            |
| 42-415 | Meaning of <i>associate</i>   |

## 42-1 Definitions

In this Division:

**1997 Act** means the *Income Tax Assessment Act 1997*.

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

**new depreciation provisions** means the provisions of Division 42 of the 1997 Act.

**old depreciation provisions** means:

- (a) sections 54 to 62AAV (inclusive) of the 1936 Act; and
- (b) relevant transitional provisions in Acts that amended that Act.

## 42-2 Application of Division 42 of the 1997 Act

- (1) The provisions of Division 42 of the 1997 Act apply to assessments for the 1997-98 income year and later income years.
- (2) However, that Division does not apply to a ship for an income year if a deduction under, or a deduction calculated in accordance with, section 57AM of the 1936 Act is allowable for the ship for the income year.

Note: Deductions for these ships continue to be calculated under the 1936 Act. See subsection 53I(2) of the 1936 Act.

## 42-6 General transitional provision

- (1) The following subsections have effect if you have deducted or can deduct an amount for depreciation of plant:
  - (a) under the old depreciation provisions; or
  - (b) using the “log book” method or the “one-third of actual expenses” method under section 82KUD or 82KW, or Schedule 2A, of the 1936 Act;



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and you can deduct an amount for depreciation of it under the new depreciation provisions or Division 28 of the 1997 Act.

*Method*

- (2) You use the same method of calculation that you were using for the plant under the old depreciation provisions.

*Cost*

- (3) The cost of the plant is the cost you were using under the old depreciation provisions.
- (4) However, if you are using the diminishing value method for the plant and section 58 of the 1936 Act applied to its acquisition by you, the cost is:
- (a) the cost used by the transferor; or
  - (b) if there were earlier successive transferors—the cost used by the earliest successive transferor.

*Rate*

- (5) Your rate is the annual depreciation percentage worked out under the old depreciation provisions.
- (6) However, if you are using the diminishing value method and you acquired or constructed the plant before 27 February 1992, you multiply that percentage by 1.5.
- (7) However, if you are using the prime cost method and you acquired or constructed the plant after 26 February 1992, you multiply that percentage by two thirds.

Note: Section 42-400 of this Act is relevant in working out whether plant was acquired or constructed after 26 February 1992.

#### **42-7 Special rules for plant used but not depreciated before the 1997-98 income year**

- (1) This section applies to you if:
- (a) you can first deduct an amount for depreciation of plant for the 1997-98 income year or a later income year; and
  - (b) you owned and used it before that income year but:

- (i) you did not use it for the purpose of producing assessable income; or
- (ii) a provision of the 1936 Act denied a depreciation deduction for it.

*Method*

- (2) If section 58 of the 1936 Act applied to your acquisition of the plant, you use the method of calculation that the transferor was using or would have been required to use.

Note:        However, for other plant to which this section applies, you choose your method under the 1997 Act.

*Cost*

- (3) The cost of the plant is the cost you would have been required to use if you had been deducting amounts for depreciation of it under the 1936 Act.
- (4) However, if you are using the diminishing value method for the plant and section 58 of the 1936 Act applied to your acquisition of the plant, the cost is:
  - (a) the cost used by the transferor; or
  - (b) if there were earlier successive transferors—the cost used by the earliest successive transferor.

*Rate*

- (5) You use the rate worked out under subsections 42-6(5), (6) and (7).

**42-8 Rules where Common rule 1 applies**

*Effective life*

- (1) Subdivision 42-C of the 1997 Act does not apply to plant if:
  - (a) Common rule 1 in Subdivision 41-A of the 1997 Act applied to your acquisition of it; and
  - (b) the transferor, or an earlier successive transferor, acquired or constructed it before 13 March 1991.

*Rate*

- (2) If:
- (a) Common rule 1 applied to your acquisition of plant; and
  - (b) the rate for the transferor, or an earlier successive transferor, was an annual depreciation percentage worked out under the old depreciation provisions;
- you use the rate worked out under subsections 42-6(5), (6) and (7).
- (3) In working out that rate, you are taken to have acquired or constructed the plant at the time when:
- (a) the transferor; or
  - (b) if there were earlier successive transferors—the earliest successive transferor;
- acquired or constructed it for the purposes of the old depreciation provisions.

**42-9 Amounts deducted under old law taken to be amounts deducted under new law**

- (1) This section applies to the various references in Division 42 of the 1997 Act to an amount you have deducted or can deduct for depreciation of plant. However, it does not apply for the purpose of working out the undeducted cost of the plant (see section 42-175 of this Act).
- (2) Those references are taken to include:
- (a) amounts you have deducted or can deduct for depreciation of the plant under the old depreciation provisions, other than an amount that is taken by subsection 59(2E) of the 1936 Act to be depreciation allowed for the plant because of paragraph 59(2A)(a) or (b) or subsection 59(2D) of that Act; and
  - (b) amounts you have deducted or can deduct for depreciation of the plant using the “log book” method or the “one-third of actual expenses” method under section 82KUD or 82KW, or Schedule 2A, of the 1936 Act; and
  - (c) if section 58 of the 1936 Act, or Common rule 1, applied to your acquisition of the plant—the sum of the amounts that would apply under paragraph (a) or (b) to the transferor and earlier successive transferors.

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- (3) Also, the references in sections 42-30, 42-190 and 42-240 of the 1997 Act to amounts you have deducted or can deduct for depreciation of the plant are taken to include an amount that is taken by subsection 59(2E) of the 1936 Act to be depreciation allowed for the plant because of paragraph 59(2A)(a) or (b) or subsection 59(2D) of that Act.

*[The next section is section 42-18.]*

#### **42-18 Meaning of *plant***

- (1) Paragraph 42-18(1)(d) of the 1997 Act applies to structural improvements completed after 30 June 1963.
- (2) Paragraph 42-18(1)(e) of the 1997 Act applies to structural improvements completed after 30 June 1958.

*[The next section is section 42-45.]*

#### **42-45 Exclusions**

The reference in subsection 42-45(1) of the 1997 Act to an amount that has been or can be deducted for plant under Subdivision 387-A or 387-B of that Act includes a reference to an amount that:

- (a) has been or can be deducted for the plant under section 75B or 75D of the 1936 Act; or
- (b) would have been so deducted or deductible apart from subsection 75B(4) or 75D(4) of the 1936 Act.

#### **42-48 Debt forgiveness: amounts deducted for depreciation**

- (1) Section 42-48 of the 1997 Act applies to debts forgiven after the beginning of your 1997-98 income year.
- (2) An amount you applied in reduction of deductible expenditure (within the meaning of Division 245 of Schedule 2C to the *Income Tax Assessment Act 1936*) for plant under section 245-155 of that Schedule for a debt forgiven before the beginning of your 1997-98 income year is taken to be an amount you have deducted under the old depreciation provisions for depreciation of the plant.

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*[The next section is section 42-70.]*

#### **42-70 Adjustment: acquiring a car at a discount**

The reference in paragraph 42-70(1)(c) of the 1997 Act to section 42-345 of that Act includes a reference to section 57AF of the 1936 Act.

*[The next section is section 42-80.]*

#### **42-80 Adjustment: car depreciation limit**

If you:

- (a) have a substituted accounting period; and
- (b) acquire a car designed mainly for carrying passengers in your 1997-98 income year but before 1 July 1997;

you must use the car depreciation limit for the car that is fixed for the 1996-97 financial year under section 57AF of the 1936 Act.

*[The next section is section 42-90.]*

#### **42-90 Adjustment: previously depreciated plant limit**

- (1) The reference in subsection 42-90(1) of the 1997 Act to an amount that has been deducted or can be deducted for depreciation of plant includes a reference to an amount that has been deducted or can be deducted for it under the old depreciation provisions.
- (2) The reference in subsection 42-90(2) of the 1997 Act to the written down value of plant includes, for plant for which an amount has been or can be deducted for depreciation under the old depreciation provisions, a reference to its depreciated value under those provisions.
- (3) A reference in subsection 42-90(2) or (3) of the 1997 Act to a balancing adjustment event for plant includes a reference to a disposal of the plant under the old depreciation provisions.
- (4) In working out the cost of plant under section 42-90 of the 1997 Act, the sum of the amounts that:

- (a) were included in a person's assessable income for the plant under section 59 or 62AAT of the 1936 Act; and
- (b) would have been so included if balancing adjustment relief under subsection 59(2A) or (2D) of the 1936 Act had not applied;

is taken to be a balancing adjustment included in the person's assessable income under section 42-190, 42-240 or 42-390.

#### **42-95 Application of Subdivision 42-C of the 1997 Act**

Subdivision 42-C of the 1997 Act does not apply to plant that you acquired or constructed before 13 March 1991.

*[The next section is section 42-110.]*

#### **42-110 Commissioner's determination of effective life**

The Commissioner's determination of effective lives of units of property in Taxation Ruling IT2685 is taken to be a determination made under section 42-110 of the 1997 Act.

*[The next section is section 42-120.]*

#### **42-120 Which rate do you use? (application of old transitional provision)**

- (1) This section applies to you if:
  - (a) you acquire plant after the beginning of the 1997-98 income year; and
  - (b) if the 1997 Act had not been enacted, you would be taken to have acquired the plant under a contract entered into before 27 February 1992 by section 66 of the *Taxation Laws Amendment Act (No. 2) 1992*.
- (2) Your rate is the annual depreciation percentage worked out under the old depreciation provisions.
- (3) If you are using the diminishing value method, you multiply that percentage by 1.5.

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*[The next section is section 42-175.]*

### **42-175 Meaning of *undeducted cost***

- (1) In working out the undeducted cost of plant under section 42-175 of the 1997 Act, the amounts that you deduct from the cost of the plant include:
    - (a) for plant that is not a car—any amounts that you have deducted or can deduct for the plant under the old depreciation provisions, other than an amount that is taken by subsection 59(2E) of the 1936 Act to be depreciation allowed for the plant because of paragraph 59(2A)(a) or (b) or subsection 59(2D) of that Act; and
    - (b) for plant that is not a car—any further amount you could have deducted for depreciation of the plant under the old depreciation provisions for any period you owned and used it, or had it installed ready for use, assuming that:
      - (i) you used it wholly for the purpose of producing assessable income during that period; and
      - (ii) you used the same rate and method during that period as you used for the income year in which a depreciation deduction was first allowable to you for the plant; and
      - (iii) no provision of the 1936 Act or the 1997 Act denied a depreciation deduction for it; and
    - (c) if the plant is a car—the amount you could have deducted under the old depreciation provisions during any period you were its owner and used it, or had it installed ready for use, assuming that:
      - (i) you used it wholly for the purpose of producing assessable income during that period; and
      - (ii) you used the same rate and method during that period as you used for the income year in which a depreciation deduction was first allowable to you for the car; and
      - (iii) no provision of the 1936 Act denied a depreciation deduction for it; and
      - (iv) Subdivision F of Division 3 of Part III, or Schedules 2A and 2B, of the 1936 Act did not apply; and
    - (d) if section 58 of the 1936 Act, or Common rule 1, applied to your acquisition of the plant—the sum of the amounts that
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would apply under paragraphs (a), (b) and (c) to the transferor and earlier successive transferors.

- (2) If paragraph 38(3)(e) of the *Taxation Laws Amendment Act (No. 3) 1992* applied to you for the plant, the amount referred to in that paragraph as being an amount that would have been allowable to you for depreciation of the plant is to be taken into account under paragraph (1)(a) of this section as an amount that you have deducted under the old depreciation provisions.

Note: Subsection (2) applies to pre-27 February 1992 plant that was attached to a Crown Lease if you were using the prime cost method.

- (3) In working out your undeducted cost, you can apply a different rate to the rate required by subparagraphs (1)(b)(ii) and (1)(c)(ii) of this section and subparagraphs 42-175(b)(ii) and 42-175(c)(ii) of the 1997 Act for an income year for plant you acquired or constructed before 27 February 1992 if subsection (4) applies to you.
- (4) This subsection applies to you if subsection 55(5) or 55(8) of the 1936 Act (as it applied immediately before the commencement of section 1 of the *Taxation Laws Amendment Act (No. 2) 1992*) applied in working out your rate for the income year in which a depreciation deduction was first allowable to you for the plant or a later income year.
- (5) For an income year in which you did not deduct an amount for depreciation of the plant, that different rate must be one you could have used in calculating the depreciation that would have been an allowable deduction for the plant had you used it for the purpose of producing assessable income.
- (6) For any other income year, that different rate is the rate you used to deduct an amount for depreciation of the plant for that year.

*[The next section is section 42-195.]*



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**42-195 Deducting an amount**

For the purpose of applying subsection 42-195(3) of the 1997 Act, you are taken to be the quasi-owner of plant during any period before the commencement of the new depreciation provisions when you were deemed to be its owner by section 54AA of the 1936 Act.

*[The next section is section 42-215.]*

**42-215 Adjustment: car depreciation limit**

- (1) This section applies for the purpose of applying section 42-215 of the 1997 Act to a car that you first used for any purpose before 1 July 1997.
- (2) The reference in section 42-215 of the 1997 Act to section 42-80 of that Act includes a reference to section 57AF of the 1936 Act.
- (3) For the component “CDL” in the fraction, use the car depreciation limit applicable under section 57AF of the 1936 Act.
- (4) Unless you first used the car for any purpose in your 1997-98 income year, for the component “original cost” in the fraction, use the component “C” in the formula in subsection 59(6) of the 1936 Act.

**42-220 Plant used for research and development**

The references in subsection 42-220(3) of the 1997 Act to Common rule 1 include references to section 58 of the 1936 Act.

*[The next section is section 42-235.]*

**42-235 Balancing adjustments for cars**

- (1) References in Subdivision 42-G of the 1997 Act to the “cents per kilometre” method include references to that method under section 82KX, and Division 3 of Schedule 2A, of the 1936 Act.
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- (2) References in Subdivision 42-G of the 1997 Act to the “12% of original value” method include references to that method under subsection 82KW(3), and Division 4 of Schedule 2A, of the 1936 Act.

*[The next section is section 42-255.]*

#### **42-255 Meaning of *notional depreciation amount***

The reference in section 42-255 of the 1997 Act to Division 28 of that Act includes a reference to Subdivision F of Division 3 of Part III, and Schedule 2A, of the 1936 Act.

*[The next section is section 42-280.]*

#### **42-280 Additional consequence of Common rule 1**

The reference in subsection 42-280(4) of the 1997 Act to Subdivision 42-C of that Act includes a reference to section 54A of the 1936 Act.

*[The next section is section 42-290.]*

#### **42-290 Later year relief**

- (1) The reference in subsection 42-290(1) of the 1997 Act to an amount that has been included in your assessable income for plant as a result of a balancing adjustment calculation includes a reference to an amount that has been included in your assessable income for the plant under subsection 59(2) or 62AAT(1) of the 1936 Act.
- (2) The reference in paragraph 42-290(2)(a) of the 1997 Act to a balancing adjustment event for plant includes a reference to a disposal, loss or destruction of the plant under the old depreciation provisions before the 1997-98 income year.

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- (3) The reference in paragraph 42-290(2)(d) of the 1997 Act to a choice under section 42-285 of that Act for plant includes a reference to an election under subsection 59(2A) of the 1936 Act for the plant.

*[The next section is section 42-310.]*

#### **42-310 Meaning of *quasi-owner***

- (1) You cannot be the quasi-owner of plant that is attached to land you hold under a quasi-ownership right granted by an exempt Australian government agency or an exempt foreign government agency if, before the 1997-98 income year, section 54AA of the 1936 Act did not apply to you for the plant because of subparagraph 54AA(1)(d)(ii) or 54AA(1)(e)(iii).
- (2) The references in subsection 42-310(2) of the 1997 Act to the effective life of plant include references to its effective life worked out or adopted under section 54A of the 1936 Act.
- (3) For plant that an entity acquired or constructed before 13 March 1991, references in subsection 42-310(2) of the 1997 Act to the effective life of plant include references to the period that would have been worked out or adopted as its effective life if the contract was entered into or the construction commenced on or after that date.

*[The next section is section 42-355.]*

#### **42-355 Creating a pool**

A pool created under the 1936 Act continues in existence for the 1997-98 income year and later income years as if it had been created under section 42-355 of the 1997 Act.

#### **42-360 Allocating plant to a pool**

Plant that was allocated to such a pool immediately before the 1997-98 income year remains allocated to it, but may be removed under section 42-370 of the 1997 Act.

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#### **42-365 What plant is eligible for allocation to a pool?**

- (1) In applying paragraph 42-365(b) of the 1997 Act to work out whether you can allocate plant that you acquired or constructed before 27 February 1992 to a pool, use the annual depreciation percentage worked out under the old depreciation provisions rather than the diminishing value rate.
- (2) You cannot allocate plant you acquired before that date and plant you acquired on or after that date to the same pool.

#### **42-370 Removal of plant from a pool**

In applying paragraph 42-370(2)(b) of the 1997 Act to work out whether plant that you acquired or constructed before 27 February 1992 is automatically removed from a pool, you also use the annual depreciation percentage worked out under the old depreciation provisions rather than the diminishing value rate.

#### **42-375 Calculating depreciation deductions for pooled plant**

In calculating depreciation deductions for pooled plant that you acquired or constructed before 27 February 1992, multiply the result you get by using the formula in section 42-375 of the 1997 Act by 1.5.

#### **42-380 Meaning of *opening balance***

The component “closing balance for last year” in the formula in section 42-380 is, for the 1997-98 income year, the closing balance of the pool for the preceding year worked out under section 62AAO of the 1936 Act.

*[The next section is section 42-400.]*

**42-400 Whether plant acquired or constructed after 26 February 1992**

The rules in section 66 of the *Taxation Laws Amendment Act (No. 2) 1992* apply for the purpose of working out whether plant was acquired or constructed after 26 February 1992.

**42-405 Modifying Common rule 1 so that it may apply to a disposal of plant under the new depreciation provisions**

If:

- (a) you have deducted or can deduct an amount for depreciation of plant under the old depreciation provisions; and
- (b) in the 1997-98 income year or a later income year, a roll-over event occurs for the plant;

Subdivision 41-A of the 1997 Act (Common rule 1) applies as if:

- (c) you had deducted or could deduct an amount for depreciation of the plant under the new depreciation provisions; and
- (d) if in the 1996-97 income year or an earlier income year there was a disposal of the plant where roll-over relief was available under section 58 of the 1936 Act—that Common rule had applied to the disposal.

**42-410 Application of Common rule 2 where amounts deducted only under the old depreciation provisions**

If:

- (a) you have deducted or can deduct an amount for depreciation of plant under the old depreciation provisions; and
- (b) you have not deducted and cannot deduct an amount for depreciation of the plant under the new depreciation provisions; and
- (c) in the 1997-98 income year or a later income year, you dispose of the plant;

subsection 41-65(2) of the 1997 Act applies as if you had deducted or could deduct an amount for depreciation of the plant under the new depreciation provisions.

**42-415 Meaning of *associate***

The definition of *associate* in section 318 of the 1936 Act applies for the purposes of Division 42 of the 1997 Act as if paragraphs (1)(b) and (2)(a) also applied to a partnership in which the primary entity referred to in those paragraphs is or was a partner (whether or not the partnership still exists).

**Part 23 Section 10-5 (table item headed “depreciation”)**

Repeal the item, substitute:

**depreciation**

excess of termination value over written down value	
generally .....	42-190
for some cars .....	42-240
lesser of termination value or cost (pooled plant) .....	42-390

**4 Section 12-5 (table item headed “depreciation”)**

Repeal the item, substitute:

**depreciation**

generally .....	Division 42
balancing adjustments on disposal	
generally .....	Subdivision 42-F
for some cars .....	Subdivision 42-G
calculation of .....	Subdivision 42-E
cars, limit on cost.....	42-80
deduction for .....	42-15
reducing deductions.....	42-170
roll-over relief, unpooled property .....	Subdivision 41-A
trading ships, special depreciation .....	<b>57AM</b>

**5 Section 12-5 (table item headed “iron and steel production”)**

Repeal the item.

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## 6 Section 28-30

Repeal the section, substitute:

### 28-30 Depreciation

If a \*balancing adjustment event occurs for the \*car, you will need to refer to the depreciation rules to find out how using this method affects the operation of those rules. See Subdivision 42-G (Calculation of balancing adjustments for some cars).

## 7 Subsection 28-45(2)

Omit “motor vehicle”, substitute “\*car”.

## 8 Subsection 28-45(2) (note)

Repeal the note, substitute:

Note: Subdivision 42-K deals with the car depreciation limit.

## 9 Section 28-55

Repeal the section, substitute:

### 28-55 Depreciation

If a \*balancing adjustment event occurs for the \*car, you will need to refer to the depreciation rules to find out how using this method affects the operation of those rules. See Subdivision 42-G (Calculation of balancing adjustments for some cars).

## 10 Paragraph 40-15(1)(a)

Repeal the paragraph, substitute:

(a) depreciation of \*plant (Division 42); and

## 11 Section 40-30 (table item dealing with depreciation, column headed “What expenditure qualifies?”)

Omit “or articles”.

## 12 Section 40-30 (table item dealing with depreciation, column headed “Who may deduct?”)

Omit “some lessees”, substitute “quasi-owners”.



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**13 Section 40-30 (table item dealing with depreciation, column headed “Over how long?”)**

Omit “or article”.

**14 Section 40-30 (table item dealing with depreciation, column headed “For more detail, see ...”)**

Omit “Section 54”, substitute “Division 42”.

**15 Section 41-5 (after the table item dealing with capital works)**

Insert:

Depreciation	Applies as modified by sections 42-275 and 42-280	Applies as modified by sections 42-75 and 42-210	Applies without modification
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**16 Section 41-15**

Repeal the section, substitute:

**41-15 When does this Common rule apply?**

This Common rule applies if an entity (the *transferor*) disposes of property to another entity (the *transferee*):

- (a) in the circumstances set out in section 41-20; and
- (b) during an income year for which rules for a \*capital allowance apply that apply this Common rule.

The disposal is called the *roll-over event*.

Note: This Common rule also applies as mentioned in section 41-23.

**17 Subsection 41-20(1) (note)**

Repeal the note, substitute:

Note: If roll-over relief is available, the transferor must give the transferee a notice, and the transferee must keep it: see section 41-50.

**18 Subsection 41-20(2)**

Repeal the subsection.

**19 Subsection 41-20(2) (notes)**

Repeal the notes.

## 20 After section 41-20

Insert:

### 41-23 Additional roll-over events for some capital allowances

- (1) Roll-over relief under this Common rule is also available as shown in the table.

Additional roll-over events			
Item	For this capital allowance:	Roll-over relief is also available if:	See:
1.1	Depreciation	the transferor and transferee jointly elect for it	Subsection 42-335(3)
2.1	Mining and quarrying: exploration or prospecting	the transferor and transferee jointly elect for it	Subsection 330-520(4)
2.2	Mining and quarrying: exploration or prospecting	there is a disposal covered by subsection 330-547(1)	Subsection 330-547(1)
3.1	Mining and quarrying: development and operation of a mine or quarry	the transferor and transferee jointly elect for it	Subsection 330-520(4)
3.2	Mining and quarrying: development and operation of a mine or quarry	there is a disposal covered by subsection 330-547(1)	Subsection 330-547(1)
4.1	Mining and quarrying: transporting minerals or quarry materials	the transferor and transferee jointly elect for it	Subsection 330-520(4)

Note: If the transferor and the transferee make a joint election, it must include certain information and be kept by the transferor and transferee: see section 41-55.

- (2) The entities referred to as the transferor and transferee in a provision listed in the table are also referred to in this Common rule as the ***transferor*** and the ***transferee***.

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- (3) The event referred to in the table is called the *roll-over event* (except in the case of a joint election).
  - (4) In the case of a joint election, the event that gave rise to the right to make the election is called the *roll-over event*.

## **21 Subsection 41-25(1)**

Omit “disposal”, substitute “\*roll-over event”.

## **22 Subsection 41-25(1) (note)**

Omit “disposal of the property”, substitute “roll-over event for the property”.

## **23 Subsection 41-25(2)**

Repeal the subsection, substitute:

- (2) If roll-over relief is available in relation to 2 or more \*roll-over events for the same property, this section is applied to each of the events in succession.

## **24 Subsection 41-30(1)**

Omit “disposal”, substitute “\*roll-over event”.

## **25 Subsection 41-30(3)**

Repeal the subsection, substitute:

- (3) If roll-over relief is available in relation to 2 or more \*roll-over events for the same property, this section is applied to each of the events in succession.

## **26 Section 41-35**

Repeal the section, substitute:

### **41-35 Subsequent applications of this Common rule—relief available even if subsequent transferor got no deduction**

If this Common rule has applied to a \*roll-over event, then, in working out whether it applies to a later event that occurs for the same property, this Common rule has effect as if paragraph 41-20(1)(a) (which deals with deductions) were omitted unless

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there has been an intervening disposal or \*balancing adjustment event to which this Common rule did not apply.

**27 Subsection 41-40(1)**

Omit “after the disposal of the property to the transferee”, substitute “after the \*roll-over event”.

**28 Paragraph 41-40(1)(b)**

Omit “or”.

**29 Paragraph 41-40(1)(c)**

Repeal the paragraph.

**30 At the end of Subdivision 41-A**

Add:

**41-50 Notice to allow transferee to work out how this Subdivision applies**

- (1) This section applies if this Common rule applies because of section 41-15.
- (2) The transferor must give the transferee a notice containing enough information about the transferor’s holding of the property for the transferee to work out how this Common rule applies to the transferee’s holding of the property.
- (3) The transferor must give the notice within 6 months after the end of the transferee’s income year in which the \*roll-over event occurred, or within any longer period allowed by the Commissioner.
- (4) The transferee must keep the notice until the end of 5 years after the earlier of the following events:
  - (a) the transferee disposes of the property;
  - (b) the property is lost or destroyed.

Penalty: 30 penalty units.

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**41-55 Joint elections for roll-over relief**

- (1) This section applies if roll-over relief is available because the transferor and transferee have jointly elected for it.
- (2) The election must:
  - (a) be in writing; and
  - (b) contain enough information about the transferor's holding of the property for the transferee to work out how this Common rule applies to the transferee's holding of the property; and
  - (c) be made within 6 months after the end of the transferee's income year in which the \*roll-over event occurred, or within any longer period allowed by the Commissioner.
- (3) If a person dies before the end of the time allowed for jointly electing for roll-over relief, the trustee of the person's estate may be a party to the election.
- (4) The transferor must keep the election or a copy of it for 5 years after the \*roll-over event occurred.

Penalty: 30 penalty units.

- (5) The transferee must keep the election or a copy of it until the end of 5 years after the earlier of the following events:
  - (a) the transferee disposes of the property;
  - (b) the property is lost or destroyed.

Penalty: 30 penalty units.

**31 Paragraph 41-65(1)(b)**

After "allowance", insert "that apply this Common rule".

**32 Paragraph 41-65(2)(c)**

After "allowance", insert "that apply this Common rule".

**33 Paragraph 41-85(1)(a)**

After "allowance", insert "that apply this Common rule".

**34 Paragraph 165-55(2)(a) (note)**

Repeal the note, substitute:

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See Division 42.

**35 Paragraph 330-95(1)(a)**

After “\*plant”, insert “within the meaning of Division 42”.

**36 Subsection 330-480(4)**

Omit “hold it in reserve and install it ready to be used”, substitute “have it \*installed ready for use”.

**37 Subsections 330-520(5) and (6)**

Repeal the subsections.

**38 Paragraph 330-545(2)(a)**

After “property)”, insert “or subsection 330-520(4) (which is about partial changes of ownership)”.

**39 Subsection 330-545(2) (note)**

Repeal the note.

**40 At the end of section 330-545**

Add:

- (3) Section 330-552 extends the application of some provisions of Common rule 1 in those cases.

Note: Section 330-75 of the *Income Tax (Transitional Provisions) Act 1997* modifies the application of Common rule 1 if you have deducted amounts in respect of property under the *Income Tax Assessment Act 1936* and in the 1997-98 income year or a later income year you dispose of the property.

**41 After section 330-550**

Insert:

**330-552 Modification of sections 41-40, 41-50 and 41-55**

If the transferee becomes required to make a balancing adjustment *otherwise* than because the property is disposed of, lost or destroyed, then:

- (a) section 41-40 (about a balancing adjustment on a subsequent disposal); and

- (b) subsection 41-50(4) (about the transferee's obligation to keep a notice from the transferor about the property); and
  - (c) subsection 41-55(5) (about the transferee's obligation to keep an election made jointly with the transferor);
- apply in the same way as if the property had been lost at that time.

## **42 Subsection 330-590(3)**

Omit "section 56 or 62 of the *Income Tax Assessment Act 1936*", substitute "Division 42 (Depreciation of plant)".

## **43 Subsection 330-590(3) (note)**

Repeal the note.

## **44 Paragraph 900-30(7)(a)**

Omit "installed ready for use", substitute "installed ready for use".

## **45 Subsection 995-1(1)**

Insert:

*abnormal income* has the meaning given by subsection 42-300(2).

## **46 Subsection 995-1(1)**

Insert:

*artwork* means:

- (a) a painting, sculpture, drawing, engraving or photograph; or
- (b) a reproduction of such a thing; or
- (c) property of a similar description or use.

## **47 Subsection 995-1(1)**

Insert:

*associated government entity* means:

- (a) for the Commonwealth—each authority of the Commonwealth; or
- (b) for an authority of the Commonwealth—each other authority of the Commonwealth; or
- (c) for a State—each authority of the State; or

- 
- (d) for an authority of a State—each other authority of the State;  
or
  - (e) for a Territory—each authority of the Territory; or
  - (f) for an authority of a Territory—each other authority of the  
Territory.

**48 Subsection 995-1(1)**

Insert:

*balancing adjustment event* has the meaning given by subsection 42-30(3).

**49 Subsection 995-1(1)**

Insert:

*car depreciation limit* has the meaning given by section 42-345.

**50 Subsection 995-1(1)**

Insert:

*closing balance* has the meaning given by section 42-385.

**51 Subsection 995-1(1)**

Insert:

*diminishing value method* means the method of calculating depreciation deductions for \*plant set out in section 42-160.

**52 Subsection 995-1(1)**

Insert:

*diminishing value rate* means the rate, chosen under Subdivision 42-D, for depreciating \*plant using the \*diminishing value method.

**53 Subsection 995-1(1)**

Insert:

*effective life* of \*plant has the meaning given by Subdivision 42-C.

**54 Subsection 995-1(1)**

Insert:

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*installed ready for use* means installed ready for use and held in reserve.

## 55 Subsection 995-1(1)

Insert:

*notional depreciation amount* has the meaning given by section 42-255.

## 56 Subsection 995-1(1)

Insert:

*notional income* has the meaning given by subsection 42-300(1).

## 57 Subsection 995-1(1)

Insert:

*notional written down value* has the meaning given by section 42-260.

## 58 Subsection 995-1(1)

Insert:

*opening balance* has the meaning given by section 42-380.

## 59 Subsection 995-1(1) (definition of *plant*)

Repeal the definition, substitute:

*plant* has the meaning given by section 42-18.

## 60 Subsection 995-1(1)

Insert:

*pool* has the meaning given by section 42-355.

## 61 Subsection 995-1(1)

Insert:

*prime cost method* means the method of calculating depreciation deductions for \*plant set out in section 42-165.

**62 Subsection 995-1(1)**

Insert:

*prime cost rate* means the rate, chosen under Subdivision 42-D, for depreciating \*plant using the \*prime cost method.

**63 Subsection 995-1(1)**

Insert:

*quasi-owner* has the meaning given by section 42-310.

**64 Subsection 995-1(1)**

Insert:

*roll-over event* has the meaning given by section 41-15 and subsections 41-23(3) and (4).

**65 Subsection 995-1(1) (before the first item in the table in the definition of *termination value*)**

Insert:

1A	Depreciation	section 42-205
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**66 Subsection 995-1(1)**

Insert:

*undeducted cost* has the meaning given by section 42-175.

**67 Subsection 995-1(1) (before the first item in the table in the definition of *written down value*)**

Insert:

1A	Depreciation	section 42-200
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## Part 368 Subparagraphs 23AH(6)(b)(i) and (7)(b)(i)

After “section 54”, insert “of this Act or Division 42 of the *Income Tax Assessment Act 1997*”.

## 69 After section 53G

Insert:

### 53I Application of depreciation provisions

- (1) Sections 54 to 62AAV (inclusive) do not apply to the 1997-98 year of income or later years of income except to the extent they are applied under the *Income Tax (Transitional Provisions) Act 1997*.

Note: The provisions of Division 42 of the *Income Tax Assessment Act 1997* apply instead.

- (2) However, the provisions mentioned in subsection (1) continue to apply for the purposes of the operation of section 57AM for the 1997-98 year of income and later years of income.

## 70 Subsection 73B(1) (definition of *consideration receivable*)

Repeal the definition, substitute:

*consideration receivable* means termination value within the meaning of section 42-205 of the *Income Tax Assessment Act 1997* as if that definition applied to property rather than plant.

## 71 Subsection 73B(1) (paragraphs (a) and (b) of the definition of *plant*)

Repeal the paragraphs, substitute:

- (a) things that are plant within the meaning of section 42-18 of the *Income Tax Assessment Act 1997* (whether or not depreciation is allowable under Division 42 of that Act in respect of the things); or
- (b) things to which section 42-18 of that Act would apply if the carrying on of research and development activities were the carrying on of a business for the purpose of producing assessable income; or

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**72 Paragraph 73B(23)(d)**

After “section 54”, insert “of this Act or Division 42 (Depreciation) of the *Income Tax Assessment Act 1997*”.

**73 Paragraph 73B(24)(d)**

After “section 54”, insert “of this Act or Division 42 (Depreciation) of the *Income Tax Assessment Act 1997*”.

**74 Paragraph 73E(1)(c)**

After “section 54”, insert “of this Act or Division 42 (Depreciation) of the *Income Tax Assessment Act 1997*”.

**75 Subsection 73E(3)**

Omit “section 54”, substitute “Division 42 (Depreciation) of the *Income Tax Assessment Act 1997*”.

**76 Subsection 73E(6)**

Omit “this Act relating to depreciation”, substitute “Division 42 (Depreciation) of the *Income Tax Assessment Act 1997*”.

**77 Paragraph 73E(6)(c)**

Repeal the paragraph, substitute:

- (c) in relation to the year of income of the transferee in which the disposal took place, the component “days owned” in the formulae in sections 42-160 and 42-165 of the *Income Tax Assessment Act 1997* included the number of days in that year when the transferor both:
  - (i) owned the unit, or was its quasi-owner within the meaning of Division 42 of the *Income Tax Assessment Act 1997*; and
  - (ii) used it for the purpose of producing assessable income or had it installed ready for use for that purpose.

**78 Paragraph 82AE(aa)**

Repeal the paragraph, substitute:

- (aa) structural improvements that, apart from section 42-18 of the *Income Tax Assessment Act 1997*, are plant within the meaning of Division 42 (Depreciation) of that Act; or

**79 Paragraph 82AE(a)**

Omit “paragraph 54(2)(c)”, substitute “paragraph (g) of the definition of *plant* in subsection 42-18(1) of the *Income Tax Assessment Act 1997*”.

**80 Paragraph 82AM(3)(b)**

Repeal the paragraph, substitute:

- (b) the depreciation rate for the property under Subdivision 42-D of the *Income Tax Assessment Act 1997* could have been 100%, whether or not the taxpayer chose that rate.

**81 Subsection 82AQ(1) (definition of *eligible property*)**

Omit “plant or articles within the meaning of section 54”, substitute “plant within the meaning of section 42-18 of the *Income Tax Assessment Act 1997*”.

**82 Subsections 82AQ(3A) and (3B)**

Repeal the subsections, substitute:

(3A) If:

- (a) a unit of property is attached to land that a taxpayer holds under a quasi-ownership right granted by an exempt Australian government agency or an exempt foreign government agency; and
- (b) the taxpayer is the quasi-owner of the property for the purposes of Division 42 of the *Income Tax Assessment Act 1997*;

this Subdivision applies as if the taxpayer were the owner of the property instead of any other person.

- (3B) In subsection (3A), *exempt Australian government agency*, *exempt foreign government agency*, *quasi-owner* and *quasi-ownership right* have the same meanings as in the *Income Tax Assessment Act 1997*.

**83 Subsection 83(2)**

After “sections”, insert “42-205,”.

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**84 Subsection 102AAZ(3)**

After “54 to 62 (inclusive)”, insert “of this Act, or under Division 42 (Depreciation) of the *Income Tax Assessment Act 1997* (other than Subdivision 42-L)”.

**85 Subsection 159GE(1) (at the end of the definition of *depreciation deduction*)**

Add “of this Act or Division 42 of the *Income Tax Assessment Act 1997*”.

**86 Subsection 159GE(1) (paragraph (a) of the definition of *eligible amount*)**

After “subsection 62(1)” insert “of this Act or Subdivision 42-B of the *Income Tax Assessment Act 1997*”.

**87 Subsection 159GE(1) (paragraph (a) of the definition of *eligible amount*)**

After “that subsection” (wherever occurring) insert “or that Subdivision”.

**88 Subsection 159GE(1) (definition of *eligible depreciation property*)**

After “section 54”, insert “of this Act or plant within the meaning of section 42-18 of the *Income Tax Assessment Act 1997*”.

**89 Subsection 159GF(1)**

After “Division 3” (wherever occurring), insert “of this Part of this Act or Division 42 (Depreciation) of the *Income Tax Assessment Act 1997*”.

**90 Subparagraph 159GF(1)(a)(ii)**

After “paragraph 56(1)(a)”, insert “of this Act or using the diminishing value method under Division 42 of the *Income Tax Assessment Act 1997*”.

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**91 Sub-subparagraph 159GJ(1)(c)(iii)(A) (component B in the formula)**

After “paragraph 56(1)(a)”, insert “of this Act or using the diminishing value method under Division 42 of the *Income Tax Assessment Act 1997*”.

**92 Sub-subparagraph 159GJ(1)(c)(iii)(A) (component C in the formula)**

After “depreciated value”, insert “under this Act, or the undeducted cost under Division 42 of the *Income Tax Assessment Act 1997*”.

**93 Sub-subparagraph 159GJ(1)(c)(iii)(B)**

After “section 59”, insert “of this Act, or subsection 42-20(2) or Subdivisions 42-F and 42-G of the *Income Tax Assessment Act 1997*”.

**94 Sub-subparagraph 159GJ(1)(c)(iii)(B)**

After “Division 3”, insert “of this Part, or the undeducted cost under Division 42 of the *Income Tax Assessment Act 1997*”.

**95 Sub-subparagraph 159GJ(1)(c)(iii)(C)**

After “paragraph 56(1)(a)”, insert “of this Act or the diminishing value method under Division 42 of the *Income Tax Assessment Act 1997*”.

**96 Sub-subparagraph 159GJ(1)(c)(iii)(C)**

After “Division 3”, insert “of this Part, or the undeducted cost, under Division 42 of the *Income Tax Assessment Act 1997*”.

**97 Paragraph 159GJ(1)(e)**

After “Division 3”, insert “of this Part and Division 42 of the *Income Tax Assessment Act 1997*”.

**98 Paragraph 159GM(b)**

After “subsection 62(1)”, insert “of this Act or Subdivision 42-B of the *Income Tax Assessment Act 1997*”.

**99 Paragraph 159GM(b)**

After “that subsection” (wherever occurring), insert “or that Subdivision”.

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**100 Section 159UC**

Omit “plant or articles within the meaning of section 54”, substitute “plant within the meaning of section 42-18 of the *Income Tax Assessment Act 1997*”.

**101 Paragraph 160ZK(1)(a)**

Repeal the paragraph, substitute:

- (a) the amount of the consideration, the amount of the costs or the amount of the expenditure, as the case may be, reduced by any part of the consideration, of the costs or of the expenditure that:
  - (i) has been allowed or is allowable as a deduction to the taxpayer; or
  - (ii) would, but for section 61 of this Act, have been so allowable; or
  - (iii) would be taken into account under paragraph (b) of the definition of *undeducted cost* in section 42-175 of the *Income Tax Assessment Act 1997*; and

**102 Subsection 160ZK(2)**

Repeal the subsection, substitute:

- (2) The reference in paragraph (1)(b) to an amount that is included in the assessable income of a taxpayer includes a reference to an amount:
  - (a) that is taken by subsection 60(1A) of this Act to be so included for the asset for the purposes of subsection 60(1); or
  - (b) that is treated as being deducted for depreciation of another asset under section 42-285 or 42-290 of the *Income Tax Assessment Act 1997*.

**103 Paragraph 160ZK(3)(a)**

Repeal the paragraph, substitute:

- (a) the amount of the consideration, the amount of the costs or the amount of the expenditure, as the case may be, reduced by any part of the consideration, of the costs or of the expenditure that:
    - (i) has been allowed or is allowable as a deduction to the partnership; or
-



- 
- (ii) would, but for section 61 of this Act, have been so allowable; or
  - (iii) would be taken into account under paragraph (b) of the definition of *undeducted cost* in section 42-175 of the *Income Tax Assessment Act 1997*; and

#### **104 Subsection 160ZK(4)**

Repeal the subsection, substitute:

- (4) The reference in paragraph (3)(b) to an amount that is included in the assessable income of the partnership includes a reference to an amount:
  - (a) that is taken by subsection 60(1A) of this Act to be so included for the asset for the purposes of subsection 60(1); or
  - (b) that is treated as being deducted for depreciation of another asset under section 42-285 or 42-290 of the *Income Tax Assessment Act 1997*.

#### **105 Paragraph 160ZSA(1)(n)**

After “section 54”, insert “of this Act or Division 42 (Depreciation) of the *Income Tax Assessment Act 1997*”.

#### **106 Subsection 160ZWB(1) (definition of *Crown lease*)**

Repeal the definition.

#### **107 Subsection 160ZWB(1) (definition of *interest*)**

Repeal the definition, substitute:

*interest*, in relation to a unit of property, means an interest attributable to a quasi-ownership right granted by an exempt Australian government agency or an exempt foreign government agency.

#### **108 Subsection 160ZWB(1) (definition of *lessee*)**

Repeal the definition.

#### **109 Subsection 160ZWB(1) (definition of *lessor*)**

Repeal the definition.

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**110 After subsection 160ZWB(1)**

Insert:

- (1A) In this Division, *exempt Australian government agency*, *exempt foreign government agency*, *quasi-owner* and *quasi-ownership right* have the same meanings as in the *Income Tax Assessment Act 1997*.

**111 Paragraphs 160ZWC(1)(a), (b), (c) and (d)**

Repeal the paragraphs, substitute:

- (a) an entity holds land under a quasi-ownership right granted by an exempt Australian government agency or an exempt foreign government agency; and
- (b) a unit of property is attached to the land; and
- (c) the entity is the quasi-owner of the unit under subsection 42-310(1) of the *Income Tax Assessment Act 1997*; and
- (d) the quasi-ownership right expires or is surrendered or terminated; and

**112 Subparagraph 160ZWC(1)(e)(i)**

Omit “Crown leases of the land”, substitute “quasi-ownership rights over the land”.

**113 Paragraphs 160ZWC(1)(f) and (g)**

Omit “Crown lease”, substitute “quasi-ownership right”.

**114 Paragraphs 160ZWD(1)(a), (b), (c) and (d)**

Repeal the paragraphs, substitute:

- (a) an entity holds land under a quasi-ownership right granted by an exempt Australian government agency or an exempt foreign government agency; and
- (b) a unit of property is attached to the land; and
- (c) the entity is the quasi-owner of the unit under subsection 42-310(1) of the *Income Tax Assessment Act 1997*; and
- (d) the quasi-ownership right expires or is surrendered or terminated; and

**115 Subparagraph 160ZWD(1)(e)(i)**

Omit “Crown leases of the land”, substitute “quasi-ownership rights over the land”.

**116 Paragraphs 160ZWD(1)(f) and (g)**

Omit “Crown lease”, substitute “quasi-ownership right”.

**117 Subsections 160ZWD(2) and (3)**

Omit “depreciated value of the unit”, substitute “undeducted cost of the unit under Division 42 (Depreciation) of the *Income Tax Assessment Act 1997*”.

**118 Subsections 160ZWD(2) and (3)**

Omit “Crown lease”, substitute “quasi-ownership right”.

**119 Section 160ZZRA (paragraph (b) of the definition of *written down value*)**

After “section 62”, insert “of this Act, or the written down value of the asset under Division 42 of the *Income Tax Assessment Act 1997*”.

**120 After paragraph 170(10AA)(a)**

Insert:

(f) section 42-290;

**121 Subsection 221YCAA(2) (paragraph (a) of the formula component *Adjusted preceding year's tax*)**

After “or 86”, insert “of this Act or section 42-300 of the *Income Tax Assessment Act 1997*”.

**122 Subsection 262A(4AB)**

After “or 62AAF”, insert “of this Act or section 42-355, 42-360 or 42-370 of the *Income Tax Assessment Act 1997*”.

**123 After subsection 262A(4AB)**

Insert:

(4ACA) Subsection (4AC) does not apply in relation to a disposal of property:

- (a) to which subsection 58(1), 122JAA(1), 122JG(1), 123BBA(1), 123BF(1), 124AMAA(1), 124GA(1) or 124JD(1) applies; and
- (b) that occurs in the 1997-98 year of income or a later year of income.

Note: Subdivision 41-A of the *Income Tax Assessment Act 1997* (which sets out Common rule 1) requires notices relating to such disposals to be given and kept.

#### **124 Section 317 (definition of *depreciation provision*)**

Before “Division 43”, insert “Division 42 (other than Subdivision 42-L),”.

#### **125 Subsection 398(3)**

After “54 to 62”, insert “of this Act, or Division 42 (Depreciation) of the *Income Tax Assessment Act 1997* (other than Subdivision 42-L)”.

#### **126 Sub-subparagraph 439(1)(a)(iii)(A)**

After “section 54”, insert “of this Act or Division 42 of the *Income Tax Assessment Act 1997*”.

#### **127 Subparagraph 570(1)(a)(i)**

After “section 54”, insert “of this Act or plant within the meaning of section 42-18 of the *Income Tax Assessment Act 1997*”.

#### **128 Paragraph 632(3)(b)**

Repeal the paragraph, substitute:

- (b) the depreciation rate for the item under Subdivision 42-D of the *Income Tax Assessment Act 1997* could have been 100%, whether or not the taxpayer chose that rate.

#### **129 Paragraph 642(3)(b)**

Repeal the paragraph, substitute:

- (b) the depreciation rate for the item under Subdivision 42-D of the *Income Tax Assessment Act 1997* could have been 100%, whether or not the taxpayer chose that rate.

#### **130 Section 673**

Repeal the section, substitute:

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**673 Ownership of item where it is attached to land held under a quasi-ownership right**

(1) If:

- (a) an item of property is attached to land that a taxpayer holds under a quasi-ownership right granted by an exempt Australian government agency or an exempt foreign government agency; and
- (b) the taxpayer is the quasi-owner of the property for the purposes of Division 42 of the *Income Tax Assessment Act 1997*;

this Part applies as if the taxpayer were the owner of the property instead of any other person.

(2) In subsection (1), *exempt Australian government agency*, *exempt foreign government agency*, *quasi-owner* and *quasi-ownership right* have the same meanings as in the *Income Tax Assessment Act 1997*.

**131 Subsection 245-140(1) of Schedule 2C (at the end of the table item dealing with cost of plant or articles used (or installed ready for use) to produce assessable income)**

Add “of this Act or Division 42 of the *Income Tax Assessment Act 1997*”.

**132 After subparagraph 245-155(1)(b)(iii) of Schedule 2C**

Insert:

- (iv) because a balancing adjustment event within the meaning of Division 42 of the *Income Tax Assessment Act 1997* occurs for that asset;

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**Part 4***Bounty and Capitalisation Grants (Textile Yarns) Act 1981*

**133 Paragraph 3(3)(p)**

Repeal the paragraph, substitute:

- (p) depreciation of machinery, plant or equipment, other than depreciation of the machinery, plant or equipment that is an allowable deduction to the producer under the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*;

***Income Tax Rates Act 1986***

**134 Subsection 3(1) (definition of *reduced notional income*)**

After “Assessment Act”, insert “or section 42-300 of the *Income Tax Assessment Act 1997*”.

**135 Subsection 12(5)**

After “Assessment Act”, insert “or section 42-295 of the *Income Tax Assessment Act 1997*”.

**136 Section 20H**

After “Assessment Act”, insert “or section 42-300 of the *Income Tax Assessment Act 1997*”.

**137 Schedule 9**

After “Assessment Act” (wherever occurring), insert “or section 42-300 of the *Income Tax Assessment Act 1997*”.

***Sales Tax Assessment Act 1992***

**138 Section 5 (definition of *motor vehicle depreciation limit*)**

After “1936”, insert “or the car depreciation limit that applies under Division 42 of the *Income Tax Assessment Act 1997*”.

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***Social Security Act 1991*****139 Paragraph 1075(1)(b)**

Omit “that Act”, substitute “the *Income Tax Assessment Act 1936* or Division 42 of the *Income Tax Assessment Act 1997*”.

**140 Paragraph 1075(1)(c)**

Omit “that Act”, substitute “the *Income Tax Assessment Act 1936*”.

***Student and Youth Assistance Act 1973*****141 Paragraph 177(1)(b)**

After “1936”, insert “or Division 42 of the *Income Tax Assessment Act 1997*”.

***Veterans’ Entitlements Act 1986*****142 Paragraph 46C(1)(b)**

Omit “that Act”, substitute “the *Income Tax Assessment Act 1936* or Division 42 of the *Income Tax Assessment Act 1997*”.

**143 Paragraph 46C(1)(c)**

Omit “that Act”, substitute “the *Income Tax Assessment Act 1936*”.

## **Schedule 7—Leased cars**



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## Part 11 After Division 15

Insert:

### Subdivision 20-B—Disposal of a car for which lease payments have been deducted

#### Table of sections

20-100	Application of Subdivision 20-B of the <i>Income Tax Assessment Act 1997</i>
20-105	The cost of a car acquired in the 1996-97 income year or an earlier income year
20-110	The termination value of a car disposed of in the 1996-97 income year or an earlier income year
20-115	Reducing the assessable amount for the disposal of a car in the 1997-98 income year or later if there has been an earlier disposal of it

#### 20-100 Application of Subdivision 20-B of the *Income Tax Assessment Act 1997*

Subdivision 20-B of the *Income Tax Assessment Act 1997* applies to assessments for the 1997-98 income year and later income years.

#### 20-105 The cost of a car acquired in the 1996-97 income year or an earlier income year

(1) If:

- (a) in the 1997-98 income year or a later income year you dispose of a car that was leased to you or your associate; and
- (b) the lessor acquired the car in the 1996-97 income year or an earlier income year;

the cost of the car to the lessor for the purposes of section 20-120 of the *Income Tax Assessment Act 1997* is worked out under the depreciation provisions of the *Income Tax Assessment Act 1936*.

Note 1: Section 20-120 of the *Income Tax Assessment Act 1997* is about a limit on the amount to be included in your assessable income because of your disposal of the car.

Note 2: The depreciation provisions are in Subdivision A of Division 3 of Part III of the *Income Tax Assessment Act 1936*.

- (2) In working out the cost of the car to the lessor, disregard any election the lessor made under subsection 59(2A) or (2D) of the *Income Tax Assessment Act 1936* to reduce the cost of the car.

**20-110 The termination value of a car disposed of in the 1996-97 income year or an earlier income year**

If:

- (a) in the 1997-98 income year or a later income year you dispose of a car that was leased to you or your associate; and
- (b) the lessor disposed of the car in the 1996-97 income year or an earlier income year;

the car's termination value (in respect of the disposal by the lessor) for the purposes of section 20-120 of the *Income Tax Assessment Act 1997* is the consideration receivable by the lessor for the disposal (worked out under section 59 of the *Income Tax Assessment Act 1936*).

Note: Section 20-120 of the *Income Tax Assessment Act 1997* is about a limit on the amount to be included in your assessable income because of your disposal of the car.

**20-115 Reducing the assessable amount for the disposal of a car in the 1997-98 income year or later if there has been an earlier disposal of it**

If:

- (a) section 20-110 or 20-125 of the *Income Tax Assessment Act 1997* includes an amount in your assessable income for the 1997-98 income year or a later income year because of your disposal of a car; and
- (b) in the 1996-97 income year or an earlier income year (but after the lease period began) there was an earlier disposal of the car, or an interest in it, by you or another entity in a situation described in the following table;

each limit on the amount to be included in your assessable income is reduced as follows:

Reducing each limit on the amount to be included		
Item	In this situation:	reduce each limit by:

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<b>Reducing each limit on the amount to be included</b>		
<b>Item</b>	<b>In this situation:</b>	<b>reduce each limit by:</b>
1	Section 26AAB of the <i>Income Tax Assessment Act 1936</i> included an amount in your assessable income in respect of such an earlier disposal by you	that amount
2	Section 26AAB of the <i>Income Tax Assessment Act 1936</i> included an amount in another entity's assessable income in respect of such an earlier disposal by the other entity	that amount
3	Section 26AAB of the <i>Income Tax Assessment Act 1936</i> would have included an amount in your assessable income in respect of such an earlier disposal by you but for the operation of subsection 26AAB(12) of that Act	that amount
4	Section 26AAB of the <i>Income Tax Assessment Act 1936</i> would have included an amount in another entity's assessable income in respect of such an earlier disposal by the other entity but for the operation of subsection 26AAB(12) of that Act	that amount
5	Subsection 26AAB(9) of the <i>Income Tax Assessment Act 1936</i> reduced the amount to be included in your assessable income in respect of such an earlier disposal by you	the amount of the reduction
6	Subsection 26AAB(9) of the <i>Income Tax Assessment Act 1936</i> reduced the amount to be included in another entity's assessable income in respect of such an earlier disposal by the other entity	the amount of the reduction

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**Part 22 Section 10-5 (table item headed “leases”)**

Omit “26AAB”, substitute “Subdivision 20-B”.

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

Insert:

*notional depreciation* for a lease period has the meaning given by section 20-120.

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

Insert:

*profit* on the disposal of a leased \*car has the meaning given by section 20-115.

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**Part 35 Paragraph 26AAB(1)(d)**

Omit “at any later time”, substitute “before the 1997-98 year of income”.

**6 At the end of subsection 26AAB(1)**

Add:

Note: Subdivision 20-B of the *Income Tax Assessment Act 1997* applies to the disposal of a car, or of an interest in a car, by a relevant taxpayer in the 1997-98 year of income or a later year of income.

**7 Before paragraph 170(10AA)(a)**

Insert:

(aa) Subdivision 20-B;

## **Schedule 8—Recoupment**

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## Part 11 Before Subdivision 20-B

Insert:

### Table of Subdivisions

20-A	Insurance, indemnity or recoupment for deductible expenses
20-B	Disposal of a car for which lease payments have been deducted

### Subdivision 20-A—Insurance, indemnity or recoupment for deductible expenses

#### Table of sections

20-1	Application of Subdivision 20-A of the <i>Income Tax Assessment Act 1997</i>
20-5	Continued application of some 1936 Act provisions about recoupment

#### 20-1 Application of Subdivision 20-A of the *Income Tax Assessment Act 1997*

- (1) Subdivision 20-A of the *Income Tax Assessment Act 1997* applies to an assessable recoupment received in the 1997-98 income year or a later income year of a loss or outgoing whenever incurred.
- (2) That Subdivision also applies to an amount by which you are taken because of paragraph 70A(5)(b) of the *Income Tax Assessment Act 1936* to be recouped in the 1997-98 income year.

Note: Paragraph 70A(5)(b) of the *Income Tax Assessment Act 1936* carries forward to the next income year a recoupment of mains electricity connection expenditure that is not assessable in the current year.

#### 20-5 Continued application of some 1936 Act provisions about recoupment

The provisions of the *Income Tax Assessment Act 1936* listed in the table continue to apply to assessments for the 1997-98 income year and later income years (except in relation to an amount received as recoupment in the 1997-98 income year or a later income year).

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Note: The provisions in the table generally treat expenditure as not having been incurred to the extent that it has been recouped.

Item	Provision	Description of expense provision relates to:
1	73D	research and development activity expenditure
2	82BE	environmental impact study expenditure
3	124ZZN	horticultural plant establishment expenditure



**Part 22 Section 10-5 (table item headed “bad debt”)**

Repeal the item, substitute:

**bad debts**

*see recoupment*

**3 Section 10-5 (table item headed “compensation”)**

Omit:

deductible loss or outgoing, insurance or indemnity for .... **26(j)**

**4 Section 10-5 (table item headed “compensation”)**

Omit “*embezzlement, insurance, live stock*”, substitute “*insurance, live stock, recoupment*”.

**5 Section 10-5 (after the table item headed “currency gains”)**

Insert:

**currency losses**

*see recoupment*

**6 Section 10-5 (at the end of the table item headed “development allowance”)**

Add:

*see also recoupment*

**7 Section 10-5 (at the end of the table item headed “drought investment allowance”)**

Add:

*see also recoupment*

**8 Section 10-5 (table items headed “elections” and “electricity connections”)**

Repeal the items, substitute:

**elections**

local government, reimbursement of expenses of ..... **74A(4)**

*see also recoupment*

**electricity connections**

*see recoupment*

**9 Section 10-5 (table item headed “embezzlement”)**

Repeal the item.

**10 Section 10-5 (after the table item headed “employment”)**

Insert:

**environment**

*see recoupment*

**11 Section 10-5 (at the end of the table item headed “foreign exchange”)**

Add:

*see also recoupment*

**12 Section 10-5 (after the table item headed “franked dividends”)**

Insert:

**grapevines**

*see recoupment*

**horticultural plants**

*see recoupment*

**13 Section 10-5 (after the table item headed “income equalisation deposits”)**

Insert:

**indemnity**

*see compensation and recoupment*

**14 Section 10-5 (table item headed “insurance”)**

Omit “*embezzlement and life assurance companies*”, substitute “*life assurance companies and recoupment*”.

**15 Section 10-5 (after the table item headed “investments”)**

Insert:

**landcare operations**

*see recoupment*

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**16 Section 10-5 (at the end of the table item headed “mining”)**

Add:

see also *recoupment***17 Section 10-5 (after the table item headed “premiums”)**

Insert:

**primary production**see *recoupment***18 Section 10-5 (at the end of the table item headed “quarrying”)**Add “and *recoupment*”.**19 Section 10-5 (table item headed “rates”)**

Repeal the item, substitute:

**rates**see *recoupment***recoupment**

insurance or indemnity for deductible losses or

Subdivision

outgoings.....

20-A

other recoupment for certain deductible losses or outgoings

Subdivision

20-A

see also *car expenses, compensation, elections and petroleum***20 Section 10-5 (table item headed “reimbursements”)**Omit “*electricity connections, embezzlement, insurance, petroleum and taxes*”, substitute “*petroleum and recoupment*”.**21 Section 10-5 (table item headed “taxes”)**

Repeal the item, substitute:

**taxes**see *dividends, foreign investment funds, interest and recoupment***22 Section 10-5 (after the table item headed “termination of employment”)**

Insert:

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**theft**

*see recoupment*

**23 Section 10-5 (after the table item headed “units”)**

Insert:

**water conservation**

*see recoupment*

**24 Section 41-45**

Repeal the section.

**25 Paragraph 165-60(3)(c) (note)**

Repeal the note, substitute:

See items 1.16 and 2.5 in section 20-30, which lists deductions for which  
recoupments are assessable under Subdivision 20-A.

**26 Subsection 330-485(2)**

Omit all the words after “cannot”, substitute:

exceed:

- the sum of the amounts covered by paragraph  
330-480(1)(a) (your deductions);

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reduced by:

- each amount (if any) that Subdivision 20-A included in your assessable income for an earlier income year because you received an amount by way of insurance or indemnity for, or as \*recoupment of, your expenditure in respect of the property.

## **27 Section 330-585**

Repeal the section.

## **28 Subsection 995-1(1)**

Insert:

*assessable recoupment* has the meaning given by section 20-20.

## **29 Subsection 995-1(1)**

Insert:

*current year* means the income year for which you are working out your assessable income and deductions.

## **30 Subsection 995-1(1)**

Insert:

*previous recoupment law* has the meaning given by section 20-55.

## **31 Subsection 995-1(1)**

Insert:

*recoupment* has the meaning given by section 20-25.

## **Part 332 After subsection 63(2)**

Insert:

- (2A) Subsection (3) does not apply to an amount received in the 1997-98 year of income or in a later year of income if the amount is received as recoupment as defined by section 20-25 of the *Income Tax Assessment Act 1997*.

Note: Subdivision 20-A of the *Income Tax Assessment Act 1997* applies instead.

## **33 Paragraph 63E(3)(c)**

After “subsection 63(3)”, insert “of this Act or Subdivision 20-A of the *Income Tax Assessment Act 1997*”.

## **34 After subsection 69(7)**

Insert:

- (7A) Subsection (8) does not apply to an amount received in the 1997-98 year of income or in a later year of income if the amount is received as recoupment as defined by section 20-25 of the *Income Tax Assessment Act 1997*.

Note: Subdivision 20-A of the *Income Tax Assessment Act 1997* applies instead.

## **35 After subsection 70A(4)**

Insert:

- (4A) Paragraph (5)(a) does not apply to an amount by which a taxpayer is recouped in the 1997-98 or a later year of income (including an amount by which the taxpayer is taken because of paragraph (5)(b) to be recouped in that year of income).

Note: Subdivision 20-A of the *Income Tax Assessment Act 1997* applies instead.

## **36 After subsection 72(1H)**

Insert:

- (1J) So far as it relates to a refund of an amount allowed or allowable as a deduction, subsection (2) does not apply to an amount received in the 1997-98 year of income or in a later year of income if the

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amount is received as recoupment as defined by section 20-25 of the *Income Tax Assessment Act 1997*.

Note: Subdivision 20-A of the *Income Tax Assessment Act 1997* applies instead.

**37 Paragraph 73B(3A)(c)**

Omit “and sections 73C, 73CA and 73D”, substitute “, sections 73C, 73CA and 73D of this Act, and Subdivision 20-A of the *Income Tax Assessment Act 1997*,”.

**38 Paragraph 73B(3A)(d)**

Omit “and sections 73C, 73CA and 73D”, substitute “, sections 73C, 73CA and 73D of this Act, and Subdivision 20-A of the *Income Tax Assessment Act 1997*,”.

**39 Paragraph 73B(3A)(f)**

Omit “and sections 73C, 73CA and 73D”, substitute “, sections 73C, 73CA and 73D of this Act, and Subdivision 20-A of the *Income Tax Assessment Act 1997*,”.

**40 Before subsection 73D(1)**

Insert:

- (1A) This section does not apply to an amount received in the 1997-98 year of income or a later year of income if the amount is received as recoupment as defined by section 20-25 of the *Income Tax Assessment Act 1997*.

Note: Subdivision 20-A of the *Income Tax Assessment Act 1997* applies instead.

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**41 After subsection 74(1)**

Insert:

- (2A) Subsection (2) does not apply to an amount received in the 1997-98 year of income or in a later year of income if the amount is received as recoupment as defined by section 20-25 of the *Income Tax Assessment Act 1997*.

Note: Subdivision 20-A of the *Income Tax Assessment Act 1997* applies instead.

**42 After subsection 75AA(7)**

Insert:

- (7A) Subsection (8) does not apply to an amount received in the 1997-98 year of income or a later year of income if the amount is received as recoupment as defined by section 20-25 of the *Income Tax Assessment Act 1997*.

Note: Subdivision 20-A of the *Income Tax Assessment Act 1997* applies instead.

**43 After subsection 75B(3D)**

Insert:

- (3E) Subsection (4) does not apply to an amount received in the 1997-98 year of income or a later year of income if the amount is received as recoupment as defined by section 20-25 of the *Income Tax Assessment Act 1997*.

Note: Subdivision 20-A of the *Income Tax Assessment Act 1997* applies instead.

**44 After subsection 75D(3)**

Insert:

- (3A) Subsection (4) does not apply to an amount received in the 1997-98 year of income or a later year of income if the amount is received as recoupment as defined by section 20-25 of the *Income Tax Assessment Act 1997*.

Note: Subdivision 20-A of the *Income Tax Assessment Act 1997* applies instead.



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**45 Before subsection 82AO(1)**

Insert:

- (1A) This section does not apply to an amount received in the 1997-98 year of income or a later year of income if the amount is received as recoupment as defined by section 20-25 of the *Income Tax Assessment Act 1997*.

Note: Subdivision 20-A of the *Income Tax Assessment Act 1997* applies instead.

**46 Before subsection 82BE(1)**

Insert:

- (1A) This section does not apply to an amount received in the 1997-98 year of income or a later year of income if the amount is received as recoupment as defined by section 20-25 of the *Income Tax Assessment Act 1997*.

Note: Subdivision 20-A of the *Income Tax Assessment Act 1997* applies instead.

**47 Before subsection 82BP(1)**

Insert:

- (1A) This section does not apply to an amount received in the 1997-98 year of income or a later year of income if the amount is received as recoupment as defined by section 20-25 of the *Income Tax Assessment Act 1997*.

Note: Subdivision 20-A of the *Income Tax Assessment Act 1997* applies instead.

**48 After subsection 82Z(3)**

Insert:

- (3A) Subsection (4) does not apply to an amount received in the 1997-98 year of income or a later year of income if the amount is received as recoupment as defined by section 20-25 of the *Income Tax Assessment Act 1997*.

Note: Subdivision 20-A of the *Income Tax Assessment Act 1997* applies instead.

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**49 Before subsection 124ZZN(1)**

Insert:

- (1A) This section does not apply to an amount received in the 1997-98 year of income or a later year of income if the amount is received as recoupment as defined by section 20-25 of the *Income Tax Assessment Act 1997*.

Note: Subdivision 20-A of the *Income Tax Assessment Act 1997* applies instead.

**50 Before subsection 635(1)**

Insert:

- (1A) This section does not apply to an amount received in the 1997-98 year of income or a later year of income if the amount is received as recoupment as defined by section 20-25 of the *Income Tax Assessment Act 1997*.

Note: Subdivision 20-A of the *Income Tax Assessment Act 1997* applies instead.

**51 Before subsection 646(1)**

Insert:

- (1A) This section does not apply to an amount received in the 1997-98 year of income or a later year of income if the amount is received as recoupment as defined by section 20-25 of the *Income Tax Assessment Act 1997*.

Note: Subdivision 20-A of the *Income Tax Assessment Act 1997* applies instead.

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**Part 4** *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*

**52 Subsection 22(4) (definition of *Unrecouped deductions*)**

After “subsection 63(3)”, insert “of this Act or Subdivision 20-A of the *Income Tax Assessment Act 1997*”.

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## **Schedule 9—Gifts or contributions**

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## Part 11 At the end of section 28-100

Add:

*[The next Division is Division 30.]*

## 2 After Division 28

Insert:

### Table of sections

30-1	Application of Division 30 of the <i>Income Tax Assessment Act 1997</i>
30-5	Keeping in force old declarations and instruments
30-10	Applications for approval of testamentary gifts not yet decided
30-15	Keeping in force the guidelines for deciding testamentary gifts
30-20	Keeping in force certificates approving testamentary gifts
30-25	Keeping in force the old gifts registers

### 30-1 Application of Division 30 of the *Income Tax Assessment Act 1997*

Division 30 of the *Income Tax Assessment Act 1997* applies to assessments for the 1997-98 income year and later income years.

### 30-5 Keeping in force old declarations and instruments

- (1) This section applies to a declaration or other instrument (described in column 2 of an item in the table in this section) that is in force at the end of 30 June 1997 for the purposes of the provision of the *Income Tax Assessment Act 1936* referred to in that column of the item.
- (2) On and after 1 July 1997 the declaration or other instrument also has effect as if it were an approval or declaration (described in column 3 of the same item) made for the purposes of the provision of the *Income Tax Assessment Act 1997* referred to in that column of the item.

Anything done on or after 1 July 1997 in relation to an approval or declaration described in column 3 of an item in the table also has

effect as if it had been done in relation to the declaration or other instrument described in column 2 of that item.

<b>On and after 1 July 1997</b>		
<b>Item</b>	<b>This approval, declaration or other instrument:</b>	<b>also has effect as if it were:</b>
1	An instrument certifying an institution to be a technical and further education institution for the purposes of item 2.1.7 of table 2 in subsection 78(4)	A declaration that the institution is a technical and further education institution for the purposes of item 2.1.7 of the table in subsection 30-25(1)
2	An instrument certifying that purposes of an institution covered by item 2.1.7 of table 2 in subsection 78(4), or of the college covered by item 2.2.14 of that table, relate exclusively to tertiary education	A declaration (for the purposes of section 30-30) that those purposes of the institution, or of the college, relate solely to tertiary education
3	An instrument approving an organisation, or a branch or section of an organisation, to be a marriage guidance organisation for the purposes of item 8.1.1 of table 8 in subsection 78(4)	A declaration that the organisation, or branch or section of the organisation, is a marriage guidance organisation for the purposes of item 8.1.1 of the table in subsection 30-70(1)
4	A declaration that a public fund is an eligible fund for the purposes of item 9.1.1 of table 9 in subsection 78(4)	A declaration that the public fund is a relief fund for the purposes of item 9.1.1 of the table in subsection 30-80(1)
5	An instrument approving a person as a valuer under subsection 78(18)	An approval of the person as a valuer under section 30-210
6	An instrument approving an organisation as an approved organisation for the purposes of subsection 78(21)	A declaration that the organisation is an approved organisation for the purposes of section 30-85
7	An instrument certifying a country to be a developing country for the purposes of subsection 78(21)	A declaration that the country is a developing country for the purposes of section 30-85

### **30-10 Applications for approval of testamentary gifts not yet decided**

If, at the end of the 1996-97 income year, the Minister for Communications and the Arts has not decided a written application that you made under subsection 78(6B) of the *Income Tax Assessment Act 1936*, you are taken, at the start of the 1997-98 income year, to have made a written application to the Minister under section 30-235 of the *Income Tax Assessment Act 1997*.

Note: Subsection 78(6B) of the *Income Tax Assessment Act 1936*, and section 30-235 of the *Income Tax Assessment Act 1997*, are about applying for a certificate for approval of a gift as a testamentary gift.

### **30-15 Keeping in force the guidelines for deciding testamentary gifts**

- (1) Written guidelines made by the Minister for Communications and the Arts under subsection 78(6C) of the *Income Tax Assessment Act 1936* that are in force at the end of the 1996-97 income year are taken, in the 1997-98 income year or a later income year, to be written guidelines made by the Minister under section 30-235 of the *Income Tax Assessment Act 1997*.

Note: The Minister must decide an application for a certificate approving a gift as a testamentary gift in accordance with these guidelines.

- (2) They have effect in the 1997-98 income year or a later income year as if a reference in them to a provision of the *Income Tax Assessment Act 1936* were a reference to the corresponding provision of the *Income Tax Assessment Act 1997*.

### **30-20 Keeping in force certificates approving testamentary gifts**

A certificate given by the Minister for Communications and the Arts under subsection 78(6B) of the *Income Tax Assessment Act 1936* that is in force at the end of the 1996-97 income year is taken, in the 1997-98 income year or a later income year, to be a certificate given by the Minister under section 30-235 of the *Income Tax Assessment Act 1997*.

Note: Such a certificate is an approval of a gift as a testamentary gift.

### 30-25 Keeping in force the old gifts registers

- (1) On and after 1 July 1997, the register described in column 2 of an item in the table in this section (as the register existed at the end of 30 June 1997) also has effect as if it were the register described in column 3 of that item.

Column 2 refers to provisions of the *Income Tax Assessment Act 1936*. Column 3 refers to provisions of the *Income Tax Assessment Act 1997*.

- (2) Anything done on or after 1 July 1997 in relation to the register described in column 3 of an item in the table also has effect as if it had been done in relation to the register described in column 2 of that item.

<b>On and after 1 July 1997</b>		
<b>Item</b>	<b>This register:</b>	<b>also has effect as if it were:</b>
1	The register of cultural organisations kept under section 78AA	The register of cultural organisations kept under Subdivision 30-F
2	The register of environmental organisations kept under section 78AB	The register of environmental organisations kept under Subdivision 30-E

[The next Division is Division 32.]



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**Part 23 Section 12-5 (table item headed “employees”)**

Omit “78”, substitute “25-50”.

**4 Section 12-5 (table item headed “gifts”)**

Repeal the item, substitute:

**gifts**

general .....	Division 30
limit on deduction .....	26-55
see also <i>tax avoidance schemes</i>	

**5 Section 12-5 (after the table item headed “plant and articles”)**

Insert:

**political parties**

contributions to .....	Division 30
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**6 Subsection 26-55(1)**

Omit “of the *Income Tax Assessment Act 1936*”.

**7 Paragraph 26-55(1)(a)**

Repeal the paragraph, substitute:

- (a) section 25-50 (which is about payments of pensions, gratuities or retiring allowances) of this Act;
- (ba) Division 30 (which is about deductions for gifts or contributions) of this Act;

**8 Paragraph 26-55(1)(b)**

After “(Promoters recoupment tax)”, insert “of the *Income Tax Assessment Act 1936*”.

**9 Paragraph 26-55(1)(c)**

After “Part III”, insert “of the *Income Tax Assessment Act 1936*”.

**10 Paragraph 26-55(1)(d)**

After “(Deductions for superannuation contributions by eligible persons)”, insert “of the *Income Tax Assessment Act 1936*”.

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**11 Paragraph 26-55(1)(e)**

After “(Drought investment allowance)”, insert “of the *Income Tax Assessment Act 1936*”.

**12 Paragraph 165-55(5)(d)**

Omit “section 78 (Deductions for gifts, pensions etc.) or”.

**13 After paragraph 165-55(5)(e)**

Insert:

- (fa) deductions for payments of pensions, gratuities or retiring allowances under section 25-50;
- (fb) deductions for gifts under Division 30;

**14 Subsection 995-1(1)**

Insert:

*cultural organisation* has the meaning given by section 30-300.

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

Insert:

*environmental organisation* has the meaning given by sections 30-260 and 30-275.

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**Part 316 Subsection 6(1) (paragraph (aa) of the definition of *apportionable deductions*)**

Repeal the paragraph, substitute:

- (aa) deductions allowed or allowable under subsection 78(4) or (5) of this Act or section 30-15 of the *Income Tax Assessment Act 1997* (the **1997 Act**) because of item 1 or 2 of the table in that section (except deductions allowed or allowable for gifts of property that is trading stock of the taxpayer to which subsection 36(1) of this Act or section 70-90 of the 1997 Act applies, if the taxpayer has not made, and does not make, an election under subsection 36(3) or section 36AAA of this Act, or Subdivision 385-E of the 1997 Act, in relation to the property); or

**17 Subsection 78(4)**

After “A gift by a taxpayer”, insert “in the 1996-97 income year or an earlier income year”.

**18 At the end of paragraph 78(4)(f)**

Add:

- Note: Division 30 of the *Income Tax Assessment Act 1997* deals with the deductibility of gifts made in the 1997-98 year of income or a later year of income.

**19 Subsection 78(5)**

After “A gift by a taxpayer”, insert “in the 1996-97 income year or an earlier income year”.

**20 At the end of subsection 78(5)**

Add:

- Note: Division 30 of the *Income Tax Assessment Act 1997* deals with the deductibility of gifts made in the 1997-98 year of income or a later year of income.

**21 Subsection 78(6)**

After “A gift by a taxpayer”, insert “in the 1996-97 income year or an earlier income year”.

**22 At the end of subsection 78(6)**

Add:

Note: Division 30 of the *Income Tax Assessment Act 1997* deals with the deductibility of gifts made in the 1997-98 year of income or a later year of income.

**23 Subsection 78(6A)**

After “a testamentary gift made by a taxpayer”, insert “in the 1996-97 income year or an earlier income year”.

**24 At the end of subsection 78(6A)**

Add:

Note: Division 30 of the *Income Tax Assessment Act 1997* deals with the deductibility of testamentary gifts made in the 1997-98 year of income or a later year of income.

**25 Subsection 78(7)**

After “A gift by a taxpayer”, insert “in the 1996-97 income year or an earlier income year”.

**26 At the end of subsection 78(7)**

Add:

Note: Division 30 of the *Income Tax Assessment Act 1997* deals with the deductibility of gifts made in the 1997-98 year of income or a later year of income.

**27 Subsection 78(8)**

After “A gift by a taxpayer”, insert “in the 1996-97 income year or an earlier income year”.

**28 At the end of subsection 78(8)**

Add:

Note: Division 30 of the *Income Tax Assessment Act 1997* deals with the deductibility of gifts made in the 1997-98 year of income or a later year of income.

**29 Subsection 78(9)**

After “A contribution by a taxpayer”, insert “in the 1996-97 income year or an earlier income year”.

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**30 At the end of subsection 78(9)**

Add:

Note: Division 30 of the *Income Tax Assessment Act 1997* deals with the deductibility of contributions made in the 1997-98 year of income or a later year of income.

**31 Subsection 78(11)**

After “An amount paid by a taxpayer”, insert “in the 1996-97 income year or an earlier income year”.

**32 At the end of subsection 78(11)**

Add:

Note: Section 25-50 of the *Income Tax Assessment Act 1997* deals with the deductibility of amounts paid as pensions, gratuities or retiring allowances in the 1997-98 year of income or a later year of income.

**33 Subsection 78A(2)**

Omit “after 7 April 1978 to a fund, authority or institution is not an allowable deduction under section 78”, substitute “to a fund, authority or institution is not an allowable deduction under Division 30 of the *Income Tax Assessment Act 1997*”.

**34 Paragraph 78A(2)(c)**

Omit “section 78”, substitute “Division 30 of the *Income Tax Assessment Act 1997*”.

**35 Subsection 78A(4)**

Omit “section 78”, substitute “Division 30 of the *Income Tax Assessment Act 1997*”.

**36 Subsection 78A(5)**

Omit “subsection 78(6), (7) or (8)”, substitute “section 30-15 of the *Income Tax Assessment Act 1997* (because of item 4, 5 or 6 of the table in that section)”.

**37 Subsection 78A(5)**

Omit “agreement entered into in association with the making or receipt of the gift is such, that the value of the gift may be reduced in accordance with subsection 78(15)”, substitute “arrangement (within the meaning of that Act) entered into in association with the making or receipt of the gift is such, that the value of the gift may be reduced in accordance with section 30-220 of that Act”.

**38 Subsection 82KH(1) (paragraph (s) of the definition of *relevant expenditure*)**

Omit “section 78”, substitute “Division 30 (which is about gifts) of the *Income Tax Assessment Act 1997*”.

**39 Subsection 102AAH(5)**

Omit “subsection 78(4) or (5)”, substitute “an item in any of the tables in Subdivision 30-B of the *Income Tax Assessment Act 1997*, or item 2 of the table in section 30-15 of that Act,”.

**40 Subsection 328(5)**

Omit “subsection 78(4) or (5)”, substitute “an item in any of the tables in Subdivision 30-B of the *Income Tax Assessment Act 1997*, or item 2 of the table in section 30-15 of that Act,”.

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**Part 4***Customs Tariff Act 1995*

**41 Item 1B of Part I of Schedule 4**

Omit “s.78(4) Items 12.1.2, 12.1.3, 12.1.4, or 12.1.5 of the *Income Tax Assessment Act 1936*”, substitute “subsection 78(4) of the *Income Tax Assessment Act 1936* (because of item 12.1.2, 12.1.3, 12.1.4 or 12.1.5 of table 12 in that subsection) or section 30-15 of the *Income Tax Assessment Act 1997* (because of item 12.1.2, 12.1.3, 12.1.4 or 12.1.5 of the table in subsection 30-100(1) of that Act)”.

***Sales Tax (Exemptions and Classifications) Act 1992***

**42 Item 163A of Schedule 1**

Omit “table 4 in subsection 78(4) of the *Income Tax Assessment Act 1936*”, substitute “the table in subsection 30-45(2) of the *Income Tax Assessment Act 1997*”.

## **Schedule 10—Entertainment expenses**



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## Part 11 After Division 30

Insert:

### Table of sections

32-1 Application of Division 32 of the *Income Tax Assessment Act 1997*

#### **32-1 Application of Division 32 of the *Income Tax Assessment Act 1997***

Division 32 of the *Income Tax Assessment Act 1997* applies to assessments for the 1997-98 income year and later income years.

*[The next Division is Division 34.]*

**Part 22 Section 10-5 (table item headed “benefits”)**

Omit “26AAAC”, substitute “32-70”.

**3 Section 12-5 (table item headed “entertainment”)**

Omit “51AE”, substitute “Division 32”.

**4 Subsection 43-50(4)**

Repeal the subsection, substitute:

- (4) Section 32-15 treats some property that is used for \*entertainment as not being used for the \*purpose of producing assessable income.

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

Insert:

*business meeting* has the meaning given by subsections 32-65(3) and (4).

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

Insert:

*dining facility* has the meaning given by section 32-60.

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

Insert:

*entertainment* has the meaning given by section 32-10.

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

Insert:

*goes for at least 4 hours*, in relation to a \*seminar, has the meaning given by subsection 32-65(2).

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

Insert:

*in-house dining facility* has the meaning given by section 32-55.

**10 Subsection 995-1(1) (at the end of the definition of  
*purpose of producing assessable income*)**

Add:

Note 1: These provisions treat use of property as being for the purpose of producing assessable income:

- section 330-45 (about using property for rehabilitation relating to mining or quarrying)

Note 2: These provisions treat use of property as *not* being for the purpose of producing assessable income:

- section 32-15 (about using property in providing entertainment)

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

Insert:

*seminar* has the meaning given by subsection 32-65(1).

**Part 312 Subsection 21A(5) (paragraph (a) of the definition of non-deductible entertainment expenditure)**

Omit “subsection 51AE(4)”, substitute “section 32-5 of the *Income Tax Assessment Act 1997*”.

**13 Subsection 21A(5) (paragraph (b) of the definition of non-deductible entertainment expenditure)**

Omit “subsection”, substitute “section”.

**14 Before subsection 26AAAC(1)**

Insert:

(1A) This section does not apply to a meal provided in the 1997-98 year of income or a later year of income.

Note: Section 32-70 of the *Income Tax Assessment Act 1997* is about when amounts are included in your assessable income for meals provided to persons in an in-house dining facility.

**15 Before subsection 51AE(1)**

Insert:

(1A) This section does not apply to an assessment for the 1997-98 year of income or a later year of income.

Note: Division 32 of the *Income Tax Assessment Act 1997* deals with the deductibility of entertainment expenses.

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**Part 4Fringe Benefits Tax Assessment Act 1986**

**16 Paragraph 37CE(1)(f)**

Omit all the words after “of”, substitute “section 32-55 of the *Income Tax Assessment Act 1997*”.

**17 Paragraph 63A(1)(b)**

Omit “(within the meaning of subsection 51AE(3) of the *Income Tax Assessment Act 1936*)”.

**18 Subsection 136(1) (definition of *business premises*)**

Omit all the words after paragraph (d).

**19 Subsection 136(1) (definition of *deductible expenses*)**

After “28”, insert “, 32”.

**20 Subsection 136(1)**

Insert:

*entertainment* has the meaning given by section 32-10 of the *Income Tax Assessment Act 1997*.

**21 Subsection 136(1) (definition of *non-deductible entertainment expenditure*)**

Repeal the definition, substitute:

*non-deductible entertainment expenditure* means a loss or outgoing to the extent to which:

- (a) one or other of these provisions applies to it, or would apply if it were incurred in producing assessable income:
  - (i) subsection 51AE(4) of the *Income Tax Assessment Act 1936*;
  - (ii) section 32-5 of the *Income Tax Assessment Act 1997*;
  - and
- (b) apart from those provisions, it would be deductible under section 51 of the *Income Tax Assessment Act 1936* or section 8-1 of the *Income Tax Assessment Act 1997*, or would be if it were incurred in producing assessable income;

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(on the assumption that subsection 51AE(5AA) of the *Income Tax Assessment Act 1936* and section 32-20 of the *Income Tax Assessment Act 1997* had not been enacted).

**22 Section 152**

Repeal the section.

**23 Application**

The amendments made by items 16 to 22 apply to the providing of entertainment on or after 1 July 1997.

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## **Schedule 11—Capital allowances for primary producers and some land-holders**

## Part 11 At the end of Part 3-45

Add:

*[The next Division is Division 387.]*

### Table of Subdivisions

387-A	Landcare operations
387-B	Installations to conserve or convey water
387-D	Establishing grapevines
387-E	Mains electricity supply
387-F	Telephone lines
387-G	Forestry roads and timber mill buildings

### Subdivision 387-A—Landcare operations

#### Table of sections

387-50	Application of Subdivision 387-A of the <i>Income Tax Assessment Act 1997</i>
387-80	Transitional provision for approved management plans
387-85	Transitional provisions for approvals of farm consultants

### 387-50 Application of Subdivision 387-A of the *Income Tax Assessment Act 1997*

Subdivision 387-A of the *Income Tax Assessment Act 1997* applies to expenditure incurred in the 1997-98 income year or a later income year.

*[The next section is section 387-80.]*

### 387-80 Transitional provision for approved management plans

- (1) An approved land management plan under section 75D of the *Income Tax Assessment Act 1936* is taken to be an approved



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management plan for the purposes of Subdivision 387-A of the *Income Tax Assessment Act 1997* also.

Note: This means that you can deduct amounts for capital expenditure in the 1997-98 income year or a later income year on fencing under an approved management plan that was prepared or approved before the 1997-98 income year.

- (2) An approved management plan for the purposes of Subdivision 387-A of the *Income Tax Assessment Act 1997* also has effect as if it were an approved land management plan under section 75D of the *Income Tax Assessment Act 1936*.

Note: This allows an entity whose 1996-97 income year ends after 30 June 1997 to deduct expenditure incurred after that date on fencing under a management plan prepared or approved after 30 June 1997 but before the end of the entity's 1996-97 income year.

### **387-85 Transitional provisions for approvals of farm consultants**

- (1) An approval of a person as a farm consultant for the purposes of section 75D of the *Income Tax Assessment Act 1936* that was in force immediately before 1 July 1997 also has effect on and after that day as an approval of the person as a farm consultant for the purposes of Subdivision 387-A of the *Income Tax Assessment Act 1997* (until the approval is revoked).
- (2) Anything done in relation to the approval under that Subdivision also has effect for the purposes of section 75D of the *Income Tax Assessment Act 1936*.
- (3) If:
- (a) the Secretary to the Department of Primary Industries and Energy has authorised an officer of that Department to approve persons as farm consultants for the purposes of section 75D of the *Income Tax Assessment Act 1936*; and
  - (b) the authority was in force immediately before 1 July 1997;
- the authority also has effect on and after that day as an authority to approve persons as farm consultants for the purposes of Subdivision 387-A of the *Income Tax Assessment Act 1997* (until the authority is revoked).

- 
- (4) Anything relating to an authority done under that Subdivision also has effect for the purposes of section 75D of the *Income Tax Assessment Act 1936*.

### **Subdivision 387-B—Installations to conserve or convey water**

#### **Table of sections**

- 387-120 Application of Subdivision 387-B of the *Income Tax Assessment Act 1997*  
387-140 *Income Tax Assessment Act 1997* taken to apply to expenditure covered by section 75A or 75B of the *Income Tax Assessment Act 1936*

#### **387-120 Application of Subdivision 387-B of the *Income Tax Assessment Act 1997***

- (1) Subdivision 387-B of the *Income Tax Assessment Act 1997* applies to assessments for the 1997-98 income year and later income years, in relation to capital expenditure relating to a water facility, regardless of when it was incurred.
- (2) For the purpose of applying that Subdivision in relation to expenditure you incurred before the 1997-98 income year, you are taken to have incurred the amount of expenditure for which you could deduct an amount under section 75B of the *Income Tax Assessment Act 1936* for an income year before the 1997-98 income year.

Note: This means that you cannot get a deduction under that Subdivision for expenditure that you recouped before the 1997-98 income year.

[The next section is section 387-140.]

#### **387-140 *Income Tax Assessment Act 1997* taken to apply to expenditure covered by section 75A or 75B of the *Income Tax Assessment Act 1936***

In determining whether section 387-140 of the *Income Tax Assessment Act 1997* prevents you from deducting expenditure on acquiring a water facility, treat the following amounts as if they had been deducted under Subdivision 387-B of that Act:

- (a) an amount that was or can be deducted for any income year under section 75A or 75B of the *Income Tax Assessment Act*

1936 for earlier expenditure by any person on constructing or manufacturing the facility or on a previous acquisition of the facility;

- (b) an amount that could have been so deducted if the person who incurred the earlier expenditure had neither recouped it nor become entitled to recoup it.

*[The next Subdivision is Subdivision 387-D.]*

## **Subdivision 387-D—Establishing grapevines**

### **Table of sections**

387-300	Application of Subdivision 387-D of the <i>Income Tax Assessment Act 1997</i>
387-315	Deduction for destruction of grapevine established before 1997-98 income year

### **387-300 Application of Subdivision 387-D of the *Income Tax Assessment Act 1997***

- (1) Subdivision 387-D of the *Income Tax Assessment Act 1997* applies to assessments for the 1997-98 income year and later income years, in relation to expenditure incurred on or after 1 July 1993.
- (2) For the purpose of applying that Subdivision in relation to expenditure you incurred before the 1997-98 income year, you are taken to have incurred the amount of expenditure for which you could deduct an amount under section 75AA of the *Income Tax Assessment Act 1936* for an income year before the 1997-98 income year.

Note: This means that you cannot get a deduction under that Subdivision for expenditure that you recouped before the 1997-98 income year.

*[The next section is section 387-315.]*

### **387-315 Deduction for destruction of grapevine established before 1997-98 income year**

Despite section 387-300 of this Act, section 387-315 of the *Income Tax Assessment Act 1997* applies in relation to a grapevine

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established before the 1997-98 income year and destroyed in that income year or later, as if section 387-305 of that Act had applied to assessments for income years before that income year.

### **Subdivision 387-E—Mains electricity supply**

#### **Table of sections**

387-350	Application of Subdivision 387-E of the <i>Income Tax Assessment Act 1997</i>
387-375	Saving of deductions under section 70A of the <i>Income Tax Assessment Act 1936</i>

#### **387-350 Application of Subdivision 387-E of the *Income Tax Assessment Act 1997***

Subdivision 387-E of the *Income Tax Assessment Act 1997* applies to assessments for the 1997-98 income year and later income years, in relation to:

- (a) capital expenditure on connecting power to land or upgrading the connection, regardless of when it was incurred; and
- (b) contributions to the cost of connecting power to land or upgrading the connection, regardless of when they were made.

*[The next section is section 387-375.]*

#### **387-375 Saving of deductions under section 70A of the *Income Tax Assessment Act 1936***

Subdivision 387-E of the *Income Tax Assessment Act 1997* does not affect a deduction, or an entitlement to a deduction, under section 70A of the *Income Tax Assessment Act 1936* for the 1996-97 income year or an earlier income year.

### **Subdivision 387-F—Telephone lines**

#### **Table of sections**

387-400	Application of Subdivision 387-F of the <i>Income Tax Assessment Act 1997</i>
387-410	Disregarding deductions under section 70 of the <i>Income Tax Assessment Act 1936</i>

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387-415 Saving of deductions under section 70 of the *Income Tax Assessment Act 1936*

**387-400 Application of Subdivision 387-F of the *Income Tax Assessment Act 1997***

Subdivision 387-F of the *Income Tax Assessment Act 1997* applies to assessments for the 1997-98 income year and later income years, in relation to capital expenditure on a telephone line, regardless of when it was incurred.

[The next section is section 387-410.]

**387-410 Disregarding deductions under section 70 of the *Income Tax Assessment Act 1936***

- (1) In applying subsection 387-410(1) of the *Income Tax Assessment Act 1997* to work out whether you can deduct an amount under Subdivision 387-F of that Act for your expenditure, disregard any amount that you have deducted, or can deduct, for that expenditure under section 70 of the *Income Tax Assessment Act 1936*.

Note: This ensures that you can deduct amounts under Subdivision 387-F of the *Income Tax Assessment Act 1997* for the 1997-98 income year and later income years, even if you did or can deduct amounts for your expenditure under section 70 of the *Income Tax Assessment Act 1936* for one or more income years before the 1997-98 income year.

- (2) Disregard an amount deducted or deductible for any income year under section 70 of the *Income Tax Assessment Act 1936* for capital expenditure on a part of a telephone line by an entity that worked on installing that part, when applying subsection 387-410(2) of the *Income Tax Assessment Act 1997* to work out whether you can deduct an amount under that Subdivision.

Note: This helps prevent deductions by different entities for capital expenditure on the same part of a telephone line.

**387-415 Saving of deductions under section 70 of the *Income Tax Assessment Act 1936***

Subdivision 387-F of the *Income Tax Assessment Act 1997* does not affect a deduction, or an entitlement to a deduction, under

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section 70 of the *Income Tax Assessment Act 1936* for the 1996-97 income year or an earlier income year.

## **Subdivision 387-G—Forestry roads and timber mill buildings**

### **Table of sections**

387-450	Application of Subdivision 387-G of the <i>Income Tax Assessment Act 1997</i>
387-470	Expenditure incurred before the 1997-98 income year
387-472	Treatment of deductions for income years before 1997-98
387-485	How the balancing adjustment is affected if there has only been old roll-over relief
387-505	Application of Common rule 1 to disposal of road or building under new law
387-507	Transitional provision for certain non-arm's length transactions

### **387-450 Application of Subdivision 387-G of the *Income Tax Assessment Act 1997***

Subdivision 387-G of the *Income Tax Assessment Act 1997* applies to assessments for the 1997-98 income year and later income years, in relation to expenditure, regardless of when it was incurred.

*[The next section is section 387-470.]*

### **387-470 Expenditure incurred before the 1997-98 income year**

- (1) The purpose of this section is to ensure that the amount of capital expenditure you must take into account for the purposes of working out the amount of a deduction under Subdivision 387-G of the *Income Tax Assessment Act 1997* is the same as the amount of your capital expenditure taken into account as a basis for working out a deduction under section 124F or 124JA of the *Income Tax Assessment Act 1936*.
- (2) This section applies if, before the 1997-98 income year, you incurred capital expenditure (the *original expenditure*) on an access road or a timber mill building for which you did or can deduct an amount for an income year before the 1997-98 income year under section 124F or 124JA of the *Income Tax Assessment Act 1936*.

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(3) For the purposes of Subdivision 387-G of the *Income Tax Assessment Act 1997*:

- (a) you are taken to have incurred an amount (the **base amount**) of capital expenditure on the road or building equal to:
  - (i) what was your residual capital expenditure for the road or building for the purposes of section 124F or 124JA of the *Income Tax Assessment Act 1936* immediately after you incurred the original expenditure; or
  - (ii) if you incurred the original expenditure before the first income year for which you could deduct an amount for it—what was your residual capital expenditure for the road or building for the purposes of section 124F or 124JA of that Act at the start of that first income year; and
- (b) you are taken to have incurred the base amount:
  - (i) when you incurred the original expenditure; or
  - (ii) if you incurred the original expenditure before the first income year for which you could deduct an amount for it—at the start of that first income year.

Note: Your residual capital expenditure mentioned in subparagraph (3)(a)(i) will equal your capital expenditure (as affected by section 124H or 124JC of the *Income Tax Assessment Act 1936*) if you incurred the original expenditure on construction of an access road after the 1955-56 income year, or on construction of a timber mill building after the 1962-63 income year.

(4) Despite subsection (3), if before the 1997-98 income year:

- (a) you incurred capital expenditure on constructing or acquiring an access road for which you did or can deduct an amount under section 124F of the *Income Tax Assessment Act 1936*; and
  - (b) you stopped using the road for the purpose for which it was primarily and principally constructed; and
  - (c) you started using the road again for that purpose;
- you are taken to have incurred an amount of capital expenditure on the road equal to the amount described in subsection 124F(4) of that Act in the income year in which you started using the road again.

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**387-472 Treatment of deductions for income years before 1997-98**

- (1) If you deducted, or can deduct, an amount for an income year (the *old law year*) before the 1997-98 income year under section 124F or 124JA of the *Income Tax Assessment Act 1936* for your expenditure on an access road or a timber mill building:
  - (a) you are taken to have deducted that amount for the old law year under Subdivision 387-G of the *Income Tax Assessment Act 1997* (which allows deductions for the 1997-98 income year and later income years for expenditure on forestry roads and timber mill buildings), as if that Subdivision had applied to assessments for the old law year; and
  - (b) the amount is taken not to have been deducted or be deductible under section 124F or 124JA of the *Income Tax Assessment Act 1936*.
- (2) This section applies only for the purposes of Subdivision 387-G of the *Income Tax Assessment Act 1997*. It does not affect a deduction, or an entitlement to a deduction, under section 124F or 124JA of the *Income Tax Assessment Act 1936* for an income year before the 1997-98 income year for the purposes of that Act.

[The next section is section 387-485.]

**387-485 How the balancing adjustment is affected if there has only been old roll-over relief**

- (1) If:
  - (a) before the 1997-98 income year, roll-over relief was available under section 124GA or section 124JD of the *Income Tax Assessment Act 1936* in relation to the disposal of an access road or a timber mill building by a taxpayer (the *transferor*) to another taxpayer (the *transferee*); and
  - (b) in the 1997-98 income year or a later income year:
    - (i) the road or building is destroyed; or
    - (ii) the transferee disposes of it in circumstances where Subdivision 41-A of the *Income Tax Assessment Act 1997* (which sets out Common rule 1 dealing with roll-over relief for related entities) does not apply to the disposal; or



- (iii) for some other reason, the transferee stops using it for the purpose for which it was primarily and principally constructed or acquired; and
- (c) there has been no earlier disposal of the road or building where roll-over relief was available under Common rule 1; the balancing adjustment is affected in 2 ways.

(2) First:

- (a) the total amounts deductible by the transferor under section 124F or 124JA of the *Income Tax Assessment Act 1936* in relation to the road or building; or
  - (b) if there have been 2 or more prior applications of section 124GA or 124JA of that Act in relation to the road or building—the total amounts deductible by the prior transferors under section 124F or 124JA of that Act in relation to the road or building;
- are taken to have been deductible by the transferee under Subdivision 387-G of the *Income Tax Assessment Act 1997* in relation to the road or building.

(3) Second:

- (a) the transferor's total capital expenditure (of a kind that qualified for a deduction under section 124F or 124JA of the *Income Tax Assessment Act 1936*) relating to the road or building; or
- (b) if there have been 2 or more prior applications of section 124GA or 124JD of that Act—the prior transferors' total capital expenditure (of a kind that qualified for a deduction under section 124F or 124JA of that Act) relating to the road or building;

is taken to have been the transferee's total capital expenditure (of a kind that qualified for a deduction under Subdivision 387-G of the *Income Tax Assessment Act 1997*) relating to the road or building.

[The next section is section 387-505.]

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**387-505 Application of Common rule 1 to disposal of road or building under new law**

If:

- (a) you deducted or can deduct amounts for capital expenditure relating to an access road or a timber mill building under Division 10A of Part III of the *Income Tax Assessment Act 1936* (except section 124J of that Act) for the 1996-97 income year or an earlier income year; and
- (b) in the 1997-98 income year or a later income year you dispose of the road or building;

Subdivision 41-A of the *Income Tax Assessment Act 1997* (which sets out Common rule 1 dealing with roll-over relief for related entities) applies as if:

- (c) a reference in that Common rule to the rules for the capital allowance included a reference to that Division (except section 124J); and
- (d) that Common rule had applied to any disposal of the road or building during or before the 1996-97 income year for which roll-over relief was available under section 124GA or 124JD of the *Income Tax Assessment Act 1936*.

**387-507 Transitional provision for certain non-arm's length transactions**

(1) If:

- (a) an entity incurred capital expenditure on an access road or a timber mill building for which the entity has deducted, or can deduct, an amount for a year of income before the 1997-98 income year under Division 10A of Part III of the *Income Tax Assessment Act 1936* (except section 124J); and
- (b) the entity disposes of the road or building during the 1997-98 income year or a later income year in a transaction in which the parties do not deal at arm's length; and
- (c) under the transaction the entity receives an amount less than the market value of what the amount is for; and

- 
- (d) subsection 41-65(2) of the *Income Tax Assessment Act 1997* does not apply;  
the entity is taken to have received that market value for the disposal.
- (2) In determining whether the parties to the transaction dealt at arm's length, consider any connection between them, as well as any other relevant circumstance.

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**Part 22 Section 10-5 (table item headed “timber”)**

Omit:

access road, balancing adjustment on the disposal of ..... **124G**

substitute:

forestry road, balancing adjustment on the disposal of ..... 387-485

**3 Section 10-5 (table item headed “timber”)**

Omit “**124JB**”, substitute “387-485”.

**4 Section 12-5 (table item headed “electricity connections”)**

Omit “**70A**”, substitute “Subdivision 387-E”.

**5 Section 12-5 (table item headed “primary production”)**

Omit:

grape vines, expenditure incurred in establishing ..... **75AA**

substitute:

grapevines, expenditure incurred in establishing ..... Subdivision  
387-D

**6 Section 12-5 (table item headed “primary production”)**

Omit:

land degradation, expenses incurred in preventing ..... **75D**

substitute:

landcare operations, expenditure on ..... Subdivision  
387-A

**7 Section 12-5 (table item headed “primary production”)**

Omit “**70**”, substitute “Subdivision 387-F”.

**8 Section 12-5 (table item headed “primary production”)**

Omit “**75B**”, substitute “Subdivision 387-B”.

**9 Section 12-5 (table item headed “timber”)**

Omit:

access roads for timber operations, expenditure on ..... **124F**

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**10 Section 12-5 (table item headed “timber”)**

After:

felling trees, deduction of price of land attributable to trees felled or of price of right to fell trees.....	70-120
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insert:

forestry roads, expenditure on .....	Subdivision 387-G
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**11 Section 12-5 (table item headed “timber”)**

Omit “124JA to 124JD”, substitute “Subdivision 387-G”.

**12 Section 40-30 (table item dealing with electricity connections, column headed “What expenditure qualifies?”)**

Omit “mains electricity facilities on land used or intended for use in producing assessable income”, substitute “supply of mains electricity for use in a business for producing assessable income on land in Australia”.

**13 Section 40-30 (table item dealing with electricity connections, column headed “For more detail, see ...”)**

Omit “Section 70A”, substitute “Subdivision 387-E”.

**14 Section 40-30 (table item dealing with grapevines, column headed “For more detail, see ...”)**

Omit “Section 75AA”, substitute “Subdivision 387-D”.

**15 Section 40-30 (table item dealing with land degradation)**

Omit “Land degradation”, substitute “Landcare operations”.

**16 Section 40-30 (table item dealing with land degradation, column headed “What expenditure qualifies?”)**

Omit “activities to prevent degradation of land”, substitute “landcare operations”.

**17 Section 40-30 (table item dealing with land degradation, column headed “For more detail, see ...”)**

Omit “Section 75D”, substitute “Subdivision 387-A”.

**18 Section 40-30 (table item dealing with telephone lines, column headed “For more detail, see ...”)**

Omit “Section 70”, substitute “Subdivision 387-F”.

**19 Section 40-30 (table item dealing with timber mill buildings, column headed “For more detail, see ...”)**

Omit “Subdivision B of Division 10A of Part III”, substitute “Subdivision 387-G”.

**20 Section 40-30 (table item dealing with timber operations)**

Omit “operations: access”, substitute “operations: forestry”.

**21 Section 40-30 (table item dealing with timber operations, column headed “What expenditure qualifies?”)**

Omit “on access”, substitute “on forestry”.

**22 Section 40-30 (table item dealing with timber operations, column headed “For more detail, see ...”)**

Omit “Subdivision A of Division 10A of Part III”, substitute “Subdivision 387-G”.

**23 Section 40-30 (table item dealing with water conservation, column headed “For more detail, see ...”)**

Omit “Section 75B”, substitute “Subdivision 387-B”.

**24 Section 41-5 (after the table item dealing with depreciation)**

Insert:

Electricity connections	Does not apply	Does not apply	Does not apply
Grapevines	Does not apply	Does not apply	Does not apply
Landcare operations	Does not apply	Applies as modified by subsection 387-65(2)	Does not apply

**25 Section 41-5 (at the end of the table)**

Add:

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Telephone lines	Does not apply	Does not apply	Does not apply
Timber mill buildings	Applies without modification	Applies without modification	Applies without modification
Timber operations: forestry roads	Applies without modification	Applies without modification	Applies without modification
Water conservation	Does not apply	Applies as modified by section 387-145	Does not apply

## 26 Paragraph 43-70(2)(f)

Repeal the paragraph, substitute:

- (f) expenditure on property for which a deduction is allowable, or would be allowable if the property were for use for the \*purpose of producing assessable income, under:
- (i) Division 330 of this Act or Division 10, 10AAA or 10AA of Part III of the *Income Tax Assessment Act 1936* (all of which deal with mining and/or quarrying); or
  - (ii) section 73A of the *Income Tax Assessment Act 1936* (Expenditure on scientific research); or
  - (iii) Subdivision 387-A of this Act or section 75D of the *Income Tax Assessment Act 1936* (both of which allow deductions for capital expenditure to prevent land degradation); or
  - (iv) Subdivision 387-B of this Act or section 75B of the *Income Tax Assessment Act 1936* (both of which allow deductions for capital expenditure on facilities to conserve or convey water); or
  - (v) Subdivision 387-G of this Act or section 124F or 124JA of the *Income Tax Assessment Act 1936* (all of which allow deductions for capital expenditure on forestry roads and/or timber mill buildings); or

## 27 Subsection 995-1(1)

Insert:

***approved management plan*** for land has the meaning given by section 387-80.

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**28 Subsection 995-1(1)**

Insert:

*connecting power to land or upgrading the connection* has the meaning given by subsections 387-360(1) and (2).

**29 Subsection 995-1(1)**

Insert:

*forestry road* has the meaning given by subsection 387-465(1).

**30 Subsection 995-1(1)**

Insert:

*landcare operation* has the meaning given by section 387-60.

**31 Subsection 995-1(1)**

Insert:

*metering point* on land has the meaning given by subsection 387-360(3).

**32 Subsection 995-1(1) (at the end of the table in the definition of *termination value*)**

Add:

4	Timber mill building	section 387-490
5	Timber operation: forestry road	section 387-490

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

Insert:

*timber mill building* has the meaning given by subsection 387-465(3).

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

Insert:

*timber operation* has the meaning given by subsection 387-465(2).

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**35 Subsection 995-1(1)**

Insert:

*water facility* has the meaning given by section 387-130.

**36 Subsection 995-1(1) (at the end of the table in the definition of *written down value*)**

Add:

4	Timber mill building	section 387-495
5	Timber operation: forestry road	section 387-495

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**Part 337 Subsection 51AAA(2) (at the end of the table)**

Add:

9	Subdivision 387-A	Landcare operations
10	Subdivision 387-B	Facilities to conserve or convey water
11	Subdivision 387-D	Establishing grapevines
12	Subdivision 387-E	Mains electricity supply
13	Subdivision 387-F	Telephone lines

**38 Before subsection 70(1)**

Insert:

(1AA) A deduction is not allowable under this section for the 1997-98 year of income or a later year of income.

Note: Subdivision 387-F of the *Income Tax Assessment Act 1997* provides for deductions for the cost of a telephone line for the 1997-98 year of income and later years of income (even if the cost was incurred before the 1997-98 year of income—see Subdivision 387-F of the *Income Tax (Transitional Provisions) Act 1997*).

**39 Before subsection 70A(1A)**

Insert:

(1AA) A deduction is not allowable under this section for the 1997-98 year of income or a later year of income.

Note: Subdivision 387-E of the *Income Tax Assessment Act 1997* provides for deductions for the 1997-98 year of income and later years of income for capital expenditure on the connection of mains electricity facilities (including expenditure incurred before the 1997-98 year of income—see Subdivision 387-E of the *Income Tax (Transitional Provisions) Act 1997*).

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#### **40 Before subsection 75AA(1A)**

Insert:

(1AA) A deduction is not allowable under this section for the 1997-98 year of income or a later year of income.

Note: Subdivision 387-D of the *Income Tax Assessment Act 1997* provides for deductions for the 1997-98 year of income and later years of income for expenditure in respect of the establishment of a grape vine (including expenditure incurred before the 1997-98 year of income—see Subdivision 387-D of the *Income Tax (Transitional Provisions) Act 1997*).

#### **41 Before subsection 75B(1)**

Insert:

(1AA) A deduction is not allowable under this section for the 1997-98 year of income or a later year of income.

Note: Subdivision 387-B of the *Income Tax Assessment Act 1997* provides for deductions for the 1997-98 year of income and later years of income for expenditure on plant or a structural installation for conserving or conveying water (including expenditure incurred before the 1997-98 year of income—see Subdivision 387-B of the *Income Tax (Transitional Provisions) Act 1997*).

#### **42 Before subsection 75D(1)**

Insert:

(1AA) A deduction is not allowable under this section for the 1997-98 year of income or a later year of income.

Note: Subdivision 387-A of the *Income Tax Assessment Act 1997* provides for deductions for the 1997-98 year of income and later years of income for capital expenditure on operations of the kind described in subsection (1B).

#### **43 Subsection 82AM(2)**

Omit “section 70A, 73B, 75B or 75D of this Act or section 330-15”, substitute “section 73B of this Act or section 330-15 or Subdivision 387-A, 387-B or 387-E”.

#### **44 Before Subdivision A of Division 10A of Part III**

Insert:

##### **Subdivision AA—Application of this Division**

##### **124EAA This Division does not apply after 1996-97 year of income**

An amount is not deductible under this Division for an income year after the 1996-97 year of income.

Note 1: Subdivision 387-G of the *Income Tax Assessment Act 1997* allows deductions for the 1997-98 year of income and later years of income for capital expenditure on forestry roads for timber operations and for capital expenditure on timber mill buildings (including capital expenditure incurred before the 1997-98 year of income: see Subdivision 387-G of the *Income Tax (Transitional Provisions) Act 1997*).

Note 2: Paragraphs 70-120(2)(a) and (b) and subsection 70-120(3) of the *Income Tax Assessment Act 1997* allow deductions for the 1997-98 year of income and later years of income for the price paid (at any time) for land carrying trees or for a right to fell trees.

#### **45 Subsection 159GE(1) (definition of *capital expenditure deduction*)**

Omit “or 330-H”, substitute “, 330-H or 387-G”.

#### **46 Subsection 159GE(1) (paragraph (c) of the definition of *Division 10, 10AA or 10A property*)**

After “124JA(1)”, insert “of this Act or section 387-460 of the *Income Tax Assessment Act 1997*”.

#### **47 After paragraph 159GF(3)(f)**

Insert:

- (g) the difference between capital expenditure and previous deductions as defined in subsection 387-470(1) of the *Income Tax Assessment Act 1997*;

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**48 Paragraph 159GJ(2)(a)**

After “330-C”, insert “or 387-G”.

**49 Paragraph 159GJ(2)(c)**

After “330-C”, insert “or 387-G”.

**50 Section 317 (definition of *depreciation provision*)**

Omit “and 330-H”, substitute “, 330-H and 387-G”.

**51 Subsection 245-140(1) of Schedule 2C (table item dealing with expenditure on a telephone line, column 2)**

Repeal the cell, substitute:

Subdivision 387-F of the  
*Income Tax Assessment Act*  
1997

**52 Subsection 245-140(1) of Schedule 2C (table item dealing with expenditure in connecting or upgrading mains electricity facilities, column 2)**

Repeal the cell, substitute:

Subdivision 387-E of the  
*Income Tax Assessment Act*  
1997

**53 Subsection 245-140(1) of Schedule 2C (table item dealing with expenditure on establishing a grape vine, column 2)**

Repeal the cell, substitute:

Subdivision 387-D of the  
*Income Tax Assessment Act*  
1997

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**54 Subsection 245-140(1) of Schedule 2C (table item dealing with expenditure on plant or structural improvements for conserving or conveying water, column 2)**

Repeal the cell, substitute:

Subdivision 387-B of the  
*Income Tax Assessment Act*  
1997

**55 Subsection 245-140(1) of Schedule 2C (table item dealing with expenditure on access roads to an area of timber operations, column 1)**

Omit “access roads”, substitute “forestry roads”.

**56 Subsection 245-140(1) of Schedule 2C (table item dealing with expenditure on access roads to an area of timber operations, column 2)**

Repeal the cell, substitute:

Subdivision 387-G of the  
*Income Tax Assessment Act*  
1997

**57 Subsection 245-140(1) of Schedule 2C (table item dealing with expenditure on buildings used for timber milling business, column 2)**

Repeal the cell, substitute:

Subdivision 387-G of the  
*Income Tax Assessment Act*  
1997

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## Schedule 12—Miscellaneous

## Part 11 At the end of section 2-30

Add “Each of these notes is a *link note*.”.

## 2 Section 11-15 (before the table item headed “defence”)

Insert:

**credit unions**

interest ..... 23G

## 3 Section 13-1 (table item headed “trusts”)

Omit “98A(2)”, substitute “98A(2)(a)”.

## 4 At the end of section 36-15

Add:

Note: Your tax losses under this Division may be reduced if any of your commercial debts have been forgiven in the income year: see Subdivision 245-E of Schedule 2C to the *Income Tax Assessment Act 1936*.

## 5 Paragraph 36-40(1)(b)

Omit “referred to in”, substitute “covered by”.

## 6 Paragraph 36-40(2)(c)

Omit “referred to in”, substitute “covered by”.

## 7 At the end of section 43-50

Add:

(7) Your deductions under this Division may be reduced if any of your commercial debts have been forgiven in the income year: see Subdivision 245-E of Schedule 2C to the *Income Tax Assessment Act 1936*.

## 8 At the end of section 165-165

Add:

[The next section is section 165-175.]



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**9 Subsection 170-5(2)**

Omit “\*wholly-owned group”, substitute “wholly-owned group”.

**10 Subsection 330-15(1) (note)**

Repeal the note, substitute:

Note 1: The amount you can deduct for an income year is subject to the excess deduction rules: see Subdivision 330-F.

Note 2: Your deductions under this Subdivision may be reduced if any of your commercial debts have been forgiven in the income year: see Subdivision 245-E of Schedule 2C to the *Income Tax Assessment Act 1936*.

**11 Section 330-80 (after note 1)**

Insert:

Note 1A: Your deductions under this Subdivision may be reduced if any of your commercial debts have been forgiven in the income year: see Subdivision 245-E of Schedule 2C to the *Income Tax Assessment Act 1936*.

**12 Section 330-370 (note)**

Repeal the note, substitute:

Note 1: Your deductions under this Subdivision may be reduced if any of your commercial debts have been forgiven in the income year: see Subdivision 245-E of Schedule 2C to the *Income Tax Assessment Act 1936*.

Note 2: Section 330-60 of the *Income Tax (Transitional Provisions) Act 1997* converts amounts of undeducted capital expenditure at the end of the 1996-97 income year into transport capital expenditure incurred by you in the 1997-98 income year. It also tells you how to deduct that expenditure.

**13 Subsection 995-1(1) (definition of *car*)**

Omit “or fewer”, substitute “and fewer”.

**14 Subsection 995-1(1)**

Insert:

*link note* has the meaning given by section 2-30.

**Part 215 Subsection 124ZZJ(5)**

Repeal the subsection, substitute:

- (5) Expenditure is taken not to be establishment expenditure in respect of the establishment of a horticultural plant to the extent to which the expenditure:
- (a) is qualifying expenditure within the meaning of Division 10D of this Act; or
  - (b) is part of a pool of construction expenditure within the meaning of Division 43 of the *Income Tax Assessment Act 1997*.

Note: Those Divisions deal with buildings, structural improvements and other capital works.

**16 Section 245-110 of Schedule 2C (definition of *table of deductible revenue losses*)**

Repeal the table, substitute:

<b>Table of deductible revenue losses</b>		
<b>Item</b>	<b>Column 1 General description of losses</b>	<b>Column 2 Provision under which loss is deductible</b>
1	Tax losses	Section 36-15 of the <i>Income Tax Assessment Act 1997</i>
2	Foreign losses of pre-1990 years of income	Subsection 160AFD(1)
3	Foreign losses of post-1989 years of income	Subsection 160AFD(2)

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**17 Subsection 245-140(1) of Schedule 2C (table item dealing with expenditure incurred in relation to mining or quarrying operations)**

Repeal the item, substitute:

Expenditure incurred in relation to mining or quarrying operations	Subdivision 330-C of the <i>Income Tax Assessment Act 1997</i>
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**18 Subsection 245-140(1) of Schedule 2C (table item dealing with expenditure incurred on exploration or prospecting for minerals obtainable by prescribed mining operations)**

Repeal the item, substitute:

Expenditure incurred on exploration or prospecting for minerals or quarry materials	Subdivision 330-A of the <i>Income Tax Assessment Act 1997</i>
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**19 Subsection 245-140(1) of Schedule 2C (table item dealing with expenditure incurred in transporting minerals or quarry materials)**

Omit “Subsections 123B(1) and 123BE(1)”, substitute “Subdivision 330-H of the *Income Tax Assessment Act 1997*”.

**20 Subsection 245-140(1) of Schedule 2C (table item dealing with expenditure on prospecting and mining for petroleum)**

Repeal the item.

**21 Subsection 245-140(1) of Schedule 2C (table item dealing with construction costs of building for short term traveller accommodation)**

Repeal the item, substitute:

Expenditure on assessable income producing buildings and other capital works	Section 43-10 of the <i>Income Tax Assessment Act 1997</i>
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**22 Subsection 245-140(1) of Schedule 2C (table item dealing with construction costs of buildings, structural improvements etc.)**

Repeal the item.

**23 After subsection 245-140(1) of Schedule 2C**

Insert:

- (1A) If the forgiveness year of income is the 1997-98 year of income, paragraph (a) of the definition of *deductible expenditure* in subsection (1) applies to expenditure that is taken by Division 330 of the *Income Tax (Transitional Provisions) Act 1997* to be incurred in that year of income as if it had been incurred before the forgiveness year of income.

Note: Division 330 of the *Income Tax (Transitional Provisions) Act 1997* deals with mining and quarrying expenditure.

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**Part 324 Item 20 of Schedule 1**

Repeal the item.

Note: This item commences immediately before 1 July 1997.

**25 Items 35 and 36 of Schedule 1**

Repeal the items.

Note: This item commences immediately before 1 July 1997.

**26 Items 37 and 38 of Schedule 1**

Repeal the items.

Note: This item commences immediately before 1 July 1997.

**27 Item 39 of Schedule 1 (heading)**

Omit “51(4), (6), (7), (8) and (9)”, substitute “51(8) and (9)”.

Note: This item commences immediately before 1 July 1997.

**28 Items 40, 41, 42, 47, 53, 55, 56, 57, 66, 67 and 196 of Schedule 1**

Repeal the items.

Note: This item commences immediately before 1 July 1997.

**29 Items 253 and 254 of Schedule 1**

Repeal the items.

Note: This item commences immediately before 1 July 1997.

**30 Items 117, 118, 121, 122, 135 and 136 of Schedule 3**

Repeal the items.

Note: This item commences immediately before 1 July 1997.

## **Part 4***Airports (Transitional) Act 1996*

### **31 After section 54**

Insert:

#### **54A Airport-lessee company to be capital works owner for the purposes of Division 43 of the *Income Tax Assessment Act 1997***

(1) For the purposes of Division 43 of the *Income Tax Assessment Act 1997*, if:

- (a) capital works are situated on land leased under an airport lease; and
- (b) there is a pool of construction expenditure for the capital works; and
- (c) immediately before the land was transferred from the FAC to the Commonwealth under Part 2 of this Act, the FAC was the owner of the capital works for the purposes of Division 43 of the *Income Tax Assessment Act 1997*;

then, so long as the airport-lessee company concerned continues to hold the airport lease, the airport-lessee company is taken to be the owner of the capital works.

(2) In this section:

***pool of construction expenditure*** has the meaning given by section 43-85 of the *Income Tax Assessment Act 1997*.

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***Legislative Instruments Act 1997***

**32 Schedule 2 (after the table item dealing with the Income Tax Assessment Act 1936)**

Insert:

Income Tax Assessment Act 1997

the whole Act other than:

- subsection 900-35(2).

***Social Security Act 1991***

**33 Paragraph 1075(1)(a)**

Omit “of the Income Tax Assessment Act”, substitute “of the *Income Tax Assessment Act 1936* or section 8-1 of the *Income Tax Assessment Act 1997*, as appropriate”.

***Student and Youth Assistance Act 1973***

**34 Paragraph 177(1)(a)**

Omit “of the Income Tax Assessment Act”, substitute “of the *Income Tax Assessment Act 1936* or section 8-1 of the *Income Tax Assessment Act 1997*, as appropriate”.

***Veterans’ Entitlements Act 1986***

**35 Paragraph 46C(1)(a)**

Omit “of the Income Tax Assessment Act”, substitute “of the *Income Tax Assessment Act 1936* or section 8-1 of the *Income Tax Assessment Act 1997*, as appropriate”.

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[Minister’s second reading speech made in—  
House of Representatives on 11 December 1996  
Senate on 26 March 1997]

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