



Taxation Laws Amendment Act (No. 4) 1997

Act No. 174 of 1997 as amended

This compilation was prepared on 28 October 2003

[This Act was amended by Act No. 101 of 2003]

Amendment from Act No. 101 of 2003

[Schedule 6 (item 39) repealed Schedule 5 (item 9)

Schedule 6 (item 39) commenced on 21 November 1997]

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An Act to amend the law relating to taxation, and for related purposes

[Assented to 21 November 1997]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Taxation Laws Amendment Act (No. 4) 1997*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Items 18 and 19 of Schedule 6 commence on the later of the day on which this Act receives the Royal Assent and the day on which the *Taxation Laws Amendment Act (No. 3) 1997* receives the Royal Assent.
- (3) The remaining items of Schedule 6 commence on the day on which this Act receives the Royal Assent or on the day on which the *Taxation Laws Amendment Act (No. 3) 1997* receives the Royal Assent, whichever is the later.
- (4) Schedule 8 is taken to have commenced on 1 July 1997.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the

Section T4T

commencement of this section for the purposes of giving effect to
this Act.

Schedule 1—Thin capitalisation

Income Tax Assessment Act 1936

1 Section 159GZA (definition of *foreign equity product*)

Omit “3” (wherever occurring), substitute “2”.

2 Section 159GZA (definition of *foreign investor*)

Omit all the words after “Australia”.

3 After subsection 159GZF(1)

Insert:

(1A) Where:

- (a) there is a balance outstanding on an amount owing by a resident company other than a financial institution; and
- (b) interest is or may become payable in respect of the amount owed to a non-resident other than a foreign controller, or a non-resident associate of a foreign controller, of the company; and
- (c) the interest is or will be, apart from this Division, allowable as a deduction from the assessable income of the company of any year of income; and
- (d) the interest is not, or would not be, assessable income of any year of income of the person to whom it is or becomes payable; and
- (e) the amount owing is wholly or partially guaranteed (whether directly or indirectly) by, or subject to a security provided by, a foreign controller, or a non-resident associate of a foreign controller, of the company;

the foreign debt of the company is increased by so much of the balance as is so guaranteed or secured.

- (1B) Subsection (1A) does not apply in relation to an amount owing if the Commissioner is satisfied that the resident company could have borrowed that amount from a prudent arm’s length lender even if

the amount had not been guaranteed by another person or subject to a security provided by another person.

4 Paragraph 159GZF(1)(c)

Omit “, 159GZN or 159GZO”, substitute “or 159GZN”.

5 Paragraph 159GZF(2)(c)

Omit “or 159GZO”.

6 Paragraph 159GZF(3)(c)

Omit “or 159GZO”.

7 Paragraph 159GZF(4)(b)

Omit “(other than as a partner in a partnership or a trustee or beneficiary of a trust estate)”.

8 Paragraph 159GZF(4)(c)

Omit “or 159GZO”.

9 Subsections 159GZG(3) and (4)

Repeal the subsections, substitute:

- (3) In this Division, *foreign equity*, in relation to a partnership in relation to a year of income, means the amount worked out using the formula:

$$\text{Total partnership equity} \times \frac{1}{2} \left[\frac{A}{A + B} + \frac{C}{C + D} \right]$$

where:

A is:

- (a) the amount that would be shown, if a partnership balance sheet were prepared at the end of the year of income, as the partners’ equity to which foreign controllers, or non-resident associates of foreign controllers, are entitled;

reduced by:

- (b) the balance outstanding on amounts owing to the partnership (other than short-term trade credit amounts) by foreign

controllers, or non-resident associates of foreign controllers, of the partnership.

B is:

- (a) the amount that would be shown, if a partnership balance sheet were prepared at the end of the year of income, as the partners' equity to which persons other than foreign controllers, or non-resident associates of foreign controllers, are entitled;

reduced by:

- (b) the balance outstanding on amounts owing to the partnership (other than short-term trade credit amounts) by such persons.

C is the individual interest in the net income of the partnership, or the partnership loss, for the year of income that is held by foreign controllers, or non-resident associates of foreign controllers.

D is the individual interest in the net income of the partnership, or the partnership loss, for the year of income that is held by persons other than foreign controllers, or non-resident associates of foreign controllers.

- (4) In this Division, **foreign equity**, in relation to a trust estate in relation to a year of income in which the trust estate has net income, means the amount worked out using the formula:

$$\text{Total trust equity} \times \frac{1}{2} \left[\frac{A}{A + B} + \frac{C}{C + D} \right]$$

where:

A is:

- (a) the amount that would be shown as the beneficiaries' equity to which foreign controllers, or non-resident associates of foreign controllers, are entitled as a result of fixed interests in the equity of the trust estate held by those foreign controllers, or non-resident associates of foreign controllers, if:
 - (i) a trust estate balance sheet were prepared at the end of the year of income; and
 - (ii) regard were had only to the use of the trust property in producing assessable income of those foreign

controllers, or non-resident associates of foreign controllers;

reduced by:

- (b) the balance outstanding on amounts owing to the trustee of the trust estate (other than short-term trade credit amounts) by foreign controllers, or non-resident associates of foreign controllers, of the trust estate.

B is:

- (a) the amount that would be shown, if a trust estate balance sheet were prepared at the end of the year of income, as the beneficiaries' equity to which persons other than foreign controllers, or non-resident associates of foreign controllers, are entitled as a result of fixed interests in the equity of the trust estate held by those other persons;

reduced by:

- (b) the balance outstanding on amounts owing to the trustee of the trust estate (other than short-term trade credit amounts) by such persons.

C is the net income of the trust estate for the year of income to which foreign controllers, or non-resident associates of foreign controllers, are entitled as a result of fixed interests in the income of the trust estate held by those foreign controllers, or non-resident associates of foreign controllers.

D is the net income of the trust estate for the year of income to which persons other than foreign controllers, or non-resident associates of foreign controllers, are entitled as a result of fixed interests in the income of the trust estate held by those persons.

- (4A) In this Division, **foreign equity**, in relation to a trust estate in relation to a year of income in which the trust estate has no net income, means the amount worked out using the formula:

$$\text{Total trust equity} \times \frac{A}{A + B}$$

where:

A is:

-
- (a) the amount that would be shown as the beneficiaries' equity to which foreign controllers, or non-resident associates of foreign controllers, are entitled as a result of fixed interests in the equity of the trust estate held by those foreign controllers, or non-resident associates of foreign controllers, if:
 - (i) a trust estate balance sheet were prepared at the end of the year of income; and
 - (ii) regard were had only to the use of the trust property in producing assessable income of those foreign controllers, or non-resident associates of foreign controllers;

reduced by:

- (b) the balance outstanding on amounts owing to the trustee of the trust estate (other than short-term trade credit amounts) by foreign controllers, or non-resident associates of foreign controllers, of the trust estate.

B is:

- (a) the amount that would be shown, if a trust estate balance sheet were prepared at the end of the year of income, as the beneficiaries' equity to which persons other than foreign controllers, or non-resident associates of foreign controllers, are entitled as a result of fixed interests in the equity of the trust estate held by those other persons;

reduced by:

- (b) the balance outstanding on amounts owing to the trustee of the trust estate (other than short-term trade credit amounts) by such persons.

(4B) For the purposes of subsections (3), (4) and (4A):

- (a) an asset revaluation reserve of the partnership or trust estate may be taken to be applicable only if the partnership or trust estate provides for asset revaluation reserves in its accounting records; and
- (b) where, if regard were had only to changes in the arm's length value of assets, the amount of an asset revaluation reserve would be less than the amount of that reserve as shown in those accounting records—that lesser amount is to be taken to be the amount of the asset revaluation reserve; and

- (c) where amounts were credited to the asset revaluation reserve during the year of income—the amount of the asset revaluation reserve is taken to be the amount that it would be if those amounts had not been credited.

10 Paragraph 159GZG(5)(a)

Omit “(other than as a partner in a partnership or a trustee or beneficiary of a trust estate)”.

11 After subsection 159GZG(5)

Insert:

- (5A) In calculating the foreign investor’s equity for the purpose of subsection (5), any interest in a discretionary trust (within the meaning of subsection (13)) is to be disregarded to the extent that:
 - (a) the interest is subject to the power or discretion mentioned in paragraph (13)(a); or
 - (b) the interest is a contingent or defeasible interest as mentioned in paragraph (13)(b).
- (5B) In calculating the foreign investor’s equity for the purpose of subsection (5), any interest in a discretionary trust (within the meaning of subsection (13)) to which paragraph (13)(c) applies is to be disregarded.

12 Paragraph 159GZG(9)(a)

After “apart from this subsection”, insert “and subsection (12)”.

13 At the end of section 159GZG

Add:

- (12) Where:
 - (a) apart from this subsection, there would be an amount of foreign equity (the *current equity amount*) of a trust estate of a year of income (the *current year of income*); and
 - (b) at any time during the current year of income the trust was a discretionary trust;the foreign equity of the trust estate of the current year of income is taken to be reduced by the amount worked out using the following formula:

Current equity amount \times Maximum discretionary percentage

where:

maximum discretionary percentage means the amount worked out using the following table:

Maximum discretionary percentage		
Paragraphs of definition of <i>discretionary trust</i> (see subsection (13)) that apply at any time during current year		
Case	Paragraphs of definition of <i>discretionary trust</i> (see subsection (13)) that apply at any time during current year	Maximum discretionary percentage
1	Paragraph (a) only	The greater of the percentage of the corpus, or the percentage of the income, of the trust that is subject, at any time during the current year, to the power or discretion mentioned in that paragraph.
2	Paragraph (b) only	The greater of the percentage of the corpus, or the percentage of the income, of the trust to which one or more of the beneficiaries have, at any time during the current year, a contingent or defeasible interest as mentioned in that paragraph.
3	Paragraphs (a) and (b) but not paragraph (c)	The greater of the percentage of the corpus, or the percentage of the income, of the trust that either is subject, at any time during the current year, to the power or discretion mentioned in paragraph (a) or to which one or more of the beneficiaries have, at any time during the current year, a contingent or defeasible interest as mentioned in paragraph (b).
4	Paragraph (c) (whether or not either of the other paragraphs applies)	100%.

(13) In subsection (12):

discretionary trust means a trust where:

(a) both of the following conditions are satisfied:

(i) a person (who may include the trustee) is empowered (either unconditionally or on the fulfilment of a

condition) to exercise any power of appointment or other discretion;

- (ii) the exercise of the power or discretion, or the failure to exercise the power or discretion, has the effect of determining, to any extent, either or both of the following:
 - (A) the identities of those who may benefit under the trust;
 - (B) how beneficiaries are to benefit, as between themselves, under the trust; or
- (b) one or more of the beneficiaries under the trust have a contingent or defeasible interest in some or all of the corpus or income of the trust; or
- (c) the trustee of another trust, being a trust where both of the conditions in paragraph (a) are satisfied, benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the first-mentioned trust.

14 Paragraph 159GZM(d)

Omit “number 3” (wherever occurring), substitute “number 2”.

15 Section 159GZO

Repeal the section.

16 Section 159GZP

Repeal the section.

17 Application of amendments

The amendments made by this Schedule apply in relation to the 1997-98 year of income and all later years of income.

18 Transitional—taxpayers with substituted accounting periods

Late balancing taxpayers

- (1) If the 1996-97 year of income of a taxpayer ends on a day after 30 June 1997, Division 16F of Part III of the *Income Tax Assessment Act 1936* applies as if:

-
- (a) so much of the year of income as occurs on or before 30 June 1997 were one year of income (the ***first notional year***) and so much of the year of income as occurs after that date were a separate year of income (the ***second notional year***); and
 - (b) the foreign equity of the taxpayer for the first notional year and the second notional year were equal to the amount that would be the foreign equity of the taxpayer for the 1996-97 year of income; and
 - (c) the amendments made by this Schedule applied in relation to the second notional year (as well as in relation to the years specified in item 17) and for the purpose of working out the foreign equity for the purposes of paragraph (b); and
 - (d) for the purposes of the application of whichever of subsections 159GZS(3), 159GZT(4), 159GZU(3), 159GZV(3) and 159GZW(3) of the *Income Tax Assessment Act 1936* are applicable, in relation to both the first notional year and the second notional year, the term ***Days in year of income*** were defined to mean 365.

Early balancing taxpayers

- (2) If the 1997-98 year of income of a taxpayer ends on a day before 30 June 1998, Division 16F of Part III of the *Income Tax Assessment Act 1936* applies as if:
 - (a) so much of the year of income as occurs on or before 30 June 1997 were one year of income (the ***first notional year***) and so much of the year of income as occurs after that date were a separate year of income (the ***second notional year***); and
 - (b) the foreign equity of the taxpayer for the first notional year and the second notional year were equal to the amount that would be the foreign equity of the taxpayer for the 1997-98 year of income; and
 - (c) the amendments made by this Schedule applied in relation to the second notional year but not in relation to the first notional year and for the purpose of working out the foreign equity for the purposes of paragraph (b); and
 - (d) for the purposes of the application whichever of subsections 159GZS(3), 159GZT(4), 159GZU(3), 159GZV(3) and 159GZW(3) of the *Income Tax Assessment Act 1936* are applicable, in relation to both the first notional year and the
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second notional year, the term *Days in year of income* were defined to mean 365.

Schedule 2—Finance shares

Income Tax Assessment Act 1936

1 Paragraph 160AFB(4)(a)

After “shares”, insert “(other than eligible finance shares or widely distributed finance shares within the meaning of Part X)”.

2 At the end of section 160AO

Add:

- (3) Notwithstanding anything in this Act or in the *International Tax Agreements Act 1953*, where a credit is allowable to a taxpayer in respect of an eligible finance share dividend or widely distributed finance share dividend (within the meaning of Part X), that credit must not exceed the amount of tax paid by the taxpayer to a foreign country in respect of that dividend.
- (4) In subsection (3), tax paid by the taxpayer does not include tax that is deemed by section 160AFC to have been paid by the taxpayer.

3 Section 317 (definition of *non-portfolio dividend*)

After “a dividend” insert “(other than an eligible finance share dividend or a widely distributed finance share dividend)”.

4 Paragraph 402(2)(c)

Omit “a widely distributed finance share dividend or”.

5 Paragraph 402(2)(d)

Omit “a widely distributed finance share dividend or”.

6 Application

The amendments made by this Schedule apply in relation to dividends paid on or after 3 February 1997.

Schedule 3—Group certificates for employees ceasing employment

Part 1—Amendment of the Income Tax Assessment Act 1936

1 Subsection 221F(5C)

Repeal the subsection, substitute:

- (5C) Subject to subsections (5E) and (5H), if, during a particular period of 12 months ending on 30 June, an employee ceases to be employed by an employer, the employer must complete a group certificate form in respect of the employee and give the employee 2 copies of the completed form no later than the day specified in whichever of subsection (5CA) or (5CB) is applicable.
- (5CA) If an employee requests his or her employer in writing to provide a group certificate after the employee:
- (a) ceases to be employed; or
 - (b) has been notified that his or her employment will cease; or
 - (c) notifies his or her employer that he or she will be ceasing to be employed by the employer;
- the day is the later of:
- (d) the 14th day after the day on which the employee ceases to be an employee; and
 - (e) the 14th day after the day on which the employer receives the request.
- (5CB) If subsection (5CA) does not apply, the day is the first 14 July to occur after the period of 12 months referred to in subsection (5C).

2 Subsection 221F(5H)

Omit “7 days”, substitute “14 days”.

Part 2—Application

3 Application

The amendments made by Part 1 apply in relation to employees who cease to be employed on or after the 28th day after the day on which this Act receives the Royal Assent.

Schedule 4—Tax exempt entities that become taxable

Part 1—Amendment of Schedule 2D to the Income Tax Assessment Act 1936

1 Paragraph 57-40(1)(b)

Omit “defined benefit scheme”, substitute “defined benefit superannuation scheme”.

2 Paragraph 57-40(5)(c)

Omit “defined benefit schemes”, substitute “defined benefit superannuation schemes”.

Note: The heading to section 57-45 of Schedule 2D to the *Income Tax Assessment Act 1936* is altered by inserting “**superannuation**” after “**defined benefit**”.

3 Paragraphs 57-45(a) and (b)

Repeal the paragraphs, substitute:

- (a) at the transition time, according to a particular defined benefit superannuation scheme’s accounts, an amount is available to meet liabilities of the transition taxpayer under the scheme to provide superannuation benefits for, or for dependants of, employees of the transition taxpayer; and
- (b) the amount exceeds the total value (as worked out according to actuarial principles) of the liabilities of that kind that have accrued as at the transition time; and
- (c) before the transition time, the transition taxpayer makes a written election that the excess is to be used solely to meet liabilities of that kind accruing after the transition time, and the excess is later used solely to meet such liabilities;

4 Subsection 57-50(5) (step 2)

After “actually contributed”, insert “before the start of the transition year”.

5 Subsection 57-50(5) (step 2)

Omit “start of the transition year” (last occurring), substitute “transition time”.

6 After section 57-50

Insert:

57-52 Section 57-50 does not apply if there is a surplus at transition time

Section 57-50 does not apply to a deduction of the kind mentioned in subsection 57-50(1) if:

- (a) at the transition time, according to the accounts of the fund concerned, an amount is available to meet liabilities of the transition taxpayer in relation to the fund to provide superannuation benefits for, or for dependants of, employees of the transition taxpayer; and
- (b) the amount exceeds the value (as worked out according to actuarial principles) of the liabilities of that kind that have accrued as at the transition time.

7 At the end of section 57-65

Add:

Reduction of limit if debt later disposed of

(7) If:

- (a) at the transition time, a debt is owed to the transition taxpayer; and
- (b) there is an amount (the ***debt provision amount***) greater than nil that, under generally accepted accounting principles, would be the appropriate doubtful debt provision in relation to the debt as at the transition time; and
- (c) after the transition time, the transition taxpayer disposes of the debt to another person;

the ***pre-transition doubtful debt limit*** is reduced by:

- (d) if, after the transition time, the transition taxpayer wrote off part of the debt as bad—the excess (if any) of the debt

provision amount over the amount or amounts so written off;
or
(e) in any other case—the debt provision amount.

Part 2—Application and transitional

8 Application

The amendments made by Part 1 apply if the transition time is after 2 July 1995.

9 Transitional—when election may be made

Despite paragraph 57-45(c) of Schedule 2D to the *Income Tax Assessment Act 1936* (as amended by this Act), if the transition time is before the end of the 28th day after the commencement of this item (the *later time*), the transition taxpayer may make a written election under that subparagraph at any time before the later time.

Schedule 5—Charitable trusts

Income Tax Assessment Act 1936

1 At the end of paragraph 23(e)

Add:

which:

- (i) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or
- (ii) is an institution to which a gift by a taxpayer is an allowable deduction because the institution is referred to in a table in subsection 78(4); or
- (iii) is a prescribed institution which is located outside Australia and is exempt from income tax in the country in which it is resident; or
- (iv) is a prescribed charitable or religious institution that has a physical presence in Australia but which incurs its expenditure and pursues its objects principally outside Australia;

2 At the end of paragraph 23(ea)

Add:

and which:

- (i) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or
- (ii) is an institution to which a gift by a taxpayer is an allowable deduction because the institution is referred to in a table in subsection 78(4); or
- (iii) is a prescribed institution which is located outside Australia and is exempt from income tax in the country in which it is resident;

3 At the end of paragraph 23(f)

Add:

, and which is located in Australia and incurs its expenditure and pursues its objectives principally in Australia;

4 Paragraph 23(g)

Repeal the paragraph, substitute:

- (g) the income of a society, association or club that:
 - (i) is a friendly society, not being a friendly society dispensary; or
 - (ii) is established for musical purposes, or for the encouragement of music, art, science or literature; or
 - (iii) is established for the encouragement or promotion of a game or sport; or
 - (iv) is established for the encouragement or promotion of animal races; or
 - (v) is established for community service purposes (not being political purposes or lobbying purposes);
 and is a society, association or club not carried on for the purposes of profit or gain to its individual members which:
 - (vi) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or
 - (vii) is a society, association or club to which a gift by a taxpayer is an allowable deduction because the society, association or club is referred to in a table in subsection 78(4); or
 - (viii) is a prescribed society, association or club which is located outside Australia and is exempt from income tax in the country in which it is resident;

5 Subparagraph 23(j)(ii)

Omit “or instrument of trust”, substitute “before 1 July 1997”.

6 After subparagraph 23(j)(ii)

Insert:

- (ia) a fund established in Australia by will or instrument of trust for public charitable purposes which:
 - (A) incurs, and has at all times since 1 July 1997 incurred, its expenditure principally in Australia

and pursues, and has at all times since 1 July 1997, pursued its charitable purpose solely in Australia; or

- (B) is a fund to which a gift by a taxpayer is an allowable deduction because it is referred to in a table in subsection 78(4) or is an ancillary fund as defined in subsection 78(5); or
- (C) distributes solely, and has at all times since 1 July 1997 distributed solely, to a charitable fund, foundation or institution which, to the best of the trustee's knowledge, is located in Australia and incurs its expenditure principally in Australia and pursues its objects solely in Australia; or
- (D) distributes solely, and has at all times since 1 July 1997 distributed solely, to a charitable fund, foundation or institution which, to the best of the trustee's knowledge, is a charitable fund, foundation or institution to which a gift by a taxpayer is an allowable deduction because it is referred to in a table in subsection 78(4) or is an ancillary fund as defined in subsection 78(5); and

7 Subparagraph 23(j)(iii)

Repeal the subparagraph, substitute:

- (iii) a fund that is located in, and which incurs its expenditure principally in, Australia and that is established for the purpose of enabling scientific research to be conducted principally in Australia by or in conjunction with a public university or public hospital; or
- (iv) a scientific research fund that is referred to in subsection 78(4) or 78(5);

8 After section 23

Insert:

23AAAA Certain distributions may be made overseas

- (1) In determining for the purposes of paragraphs 23(e), (ea), (f), (g) or subparagraph 23(j)(iii) whether an institution, fund or other body incurs its expenditure or pursues its objectives principally in Australia, distributions of any amount received by the institution as a gift whether of money or other property or by way of government grant are to be disregarded.
- (2) In determining for the purposes of paragraph 23(e), (ea) or (g) whether an institution or other body incurs its expenditure or pursues its objectives principally in Australia, distributions of any amount from a fund that is referred to in subsection 78(4) and operated by the institution or other body are to be disregarded.
- (3) In determining for the purposes of subparagraph 23(j)(ia) whether a fund:
 - (a) incurs, and has at all times since 1 July 1997 incurred, its expenditure principally in Australia and pursues, and has at all times since 1 July 1997, pursued its charitable purpose solely in Australia; or
 - (b) distributes solely, and has at all times since 1 July 1997 distributed solely, to a charitable fund, foundation or institution described in sub-subparagraph 23(j)(ia)(C) or (D);
 distributions of any amount received by the fund as a gift (whether of money or property) or by way of government grant are to be disregarded.

23AAB Testamentary trusts may be treated as 2 trusts

- (1) If:
 - (a) a trust (the *existing trust*) covered by subparagraph 23(j)(ii) is in existence immediately before 1 July 1997; and
 - (b) on or after 1 July 1997 one or more assets are given to the existing trust (other than in return for valuable consideration) or become part of the trust property under a will;
 then, for the purposes of subparagraphs 23(j)(ii) and (ia), the existing trust is taken to be 2 separate trusts (the *new trust* and the *old trust*) where:

- (c) the new trust is taken to be a trust created after the start of 1 July 1997 that consists of so much of the trust property as consists of those assets together with any income derived from those assets; and
 - (d) the old trust is taken to be a trust created before 1 July 1997 that consists of the remainder of the trust property.
- (2) In relation to the new trust, subparagraph 23(j)(ia) applies as if the words “in Australia” (first occurring) were omitted from the subparagraph.
- (3) Where an asset is received in substitution for another asset, subsection (1) applies as if the substituted asset were the other asset.

10 After subsection 262A(1B)

Insert:

- (1C) Without limiting subsection (1), if a trust is taken to be 2 separate trusts under section 23AAAB, the trustee must maintain accounting records in respect of, and separately account for, those 2 trusts.

11 Application

The amendments of the *Income Tax Assessment Act 1936* made by items 1 to 4 and 6 to 10 of this Schedule apply in relation to income derived on or after 1 July 1997.

Schedule 6—Quasi-ownership of fixtures

Part 1—Amendment of the Income Tax Assessment Act 1997

1 Paragraph 20-155(a)

Omit “hire purchase”, substitute “*hire purchase”.

2 Subsection 28-12(1)

Omit “hire purchase”, substitute “*hire purchase”.

3 Subsection 28-45(1)

Omit “hire purchase”, substitute “*hire purchase”.

4 Subsection 28-90(6)

Omit “hire purchase”, substitute “*hire purchase”.

5 Section 42-65 (at the end of the table)

Add:

- | | | | |
|----|---|-----------------|---|
| 12 | of which you are the
*quasi-owner under
section 42-312 (about
leased plant that has
become a fixture) | its cost to you | <ul style="list-style-type: none"> • sale and lease-back of
fixtures (section 42-82) • non-arm’s length (42-75) • double deduction (42-85) |
|----|---|-----------------|---|

6 After section 42-80

Insert:

42-82 Adjustment: sale and lease-back of plant that has become a fixture

If the conditions in subsection 42-312(3) (about plant previously owned by lessee) are satisfied, the cost of the *plant to you is taken to be the lesser of:

- (a) the sum of:

- (i) the *written down value of the plant, when you acquired it, in the hands of the entity from which you acquired it; and
 - (ii) any amount included in that entity's assessable income under Subdivision 42-F (about balancing adjustments) as a result of the acquisition; and
- (b) the consideration that you paid for the plant.

7 Section 42-205 (after item 10 of the table)

Insert:

10A	of which you cease to be the *quasi-owner because of paragraph 42-313(a), (b) or (c) (about leased plant that becomes a fixture)	any termination or residual amount received or receivable under the lease, or, if there is no such amount, any amount received or receivable by way of compensation in lieu of recovery of the *plant	
10B	of which you cease to be the quasi owner because of paragraph 42-313(a), (b) or (c), if you and the *plant lessee did not deal with each other at arm's length	the market value of the *plant immediately before the disposal referred to in that paragraph, worked out as if the plant had been removed from the land	
10C	of which you cease to be the *quasi-owner because of paragraph 42-313(d)	so much of the consideration received for the disposal as is reasonably attributable to the *plant	• non-arm's length (42-210)

8 Subsection 42-210(2)

Repeal the subsection, substitute:

- (2) However, that Common rule applies with the modifications set out in the following subsections.
- (3) It only applies to the following:

-
- (a) disposals by sale;
 - (b) a person ceasing to be a *quasi-owner because of paragraph 42-313(d) (about disposal of interest in lease).
 - (4) 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.
 - (5) If a person ceases to be a *quasi-owner because of paragraph 42-313(d), the market value of the *plant is to be worked out as if the plant had been removed from the land.

9 At the end of paragraph 42-310(1)(c)

Add “and there is no quasi-owner under section 42-312”.

Note: The heading to section 42-310 is altered by adding at the end “: **plant attached to land you hold under quasi-ownership right**”.

10 After section 42-310

Insert:

42-312 Meaning of *quasi-owner*: leased plant that has become a fixture on land

- (1) You are the *quasi-owner* of *plant if:
 - (a) you grant to another entity (the *plant lessee*) a right to use the plant for monetary or other consideration; and
 - (b) you grant the right under a lease (except a lease of land or a *hire purchase agreement); and
 - (c) because the plant is a fixture on land (not owned by you), you are not the owner of the plant; and
 - (d) if the plant were not a fixture, you would own it; and
 - (e) if the plant lessee owns the land—you have the right to sever and remove the plant from the land if there is a default under the lease or the lease terminates; and
 - (f) if a third entity owns the land—the plant lessee has the right to sever and remove the plant from the land, and you have a right under the lease to recover the plant; and
 - (g) the plant can be removed without causing substantial damage to the plant or to the land.
-

Note: You can stop being the quasi-owner under this section: see section 42-313.

- (2) However, you are not the *quasi-owner* of the *plant if, at any time before the lease was entered into, the *plant lessee or an *associate of the plant lessee owned the plant and used it or held it for use.
- (3) Subsection (2) does not prevent you from being the *quasi-owner if:
 - (a) at the time when the *plant lessee or an *associate first owned the *plant and used it or held it for use:
 - (i) it was not a fixture on land; and
 - (ii) there existed an *arrangement for you (or another entity) to acquire it and then lease it to the plant lessee; and
 - (b) you acquired the plant from the plant lessee or an associate of the plant lessee within 6 months after that time.

(For this purpose, you are taken to acquire the plant if you purport to acquire it, but do not do so as a matter of law because it is a fixture on land.)

42-313 Ceasing to be the quasi-owner: plant that becomes a fixture

You cease to be the *quasi-owner of *plant under section 42-312 if:

- (a) the lease expires, or is otherwise terminated, without you exercising your right to sever and remove the plant from the land, or to recover it (as appropriate); or
- (b) there is a default under the lease and you cease to have that right; or
- (c) the *plant lessee discharges his or her obligations under the lease and the plant is not returned to you; or
- (d) you dispose of your interest in the lease, including the residual interest in the plant; or
- (e) the plant is lost or destroyed.

11 Paragraph 900-15(2)(b)

Omit “hire purchase”, substitute “*hire purchase”.

12 Paragraph 900-70(2)(b)

Omit “hire purchase”, substitute “*hire purchase”.

13 Paragraph 900-80(2)(b)

Omit “hire purchase”, substitute “*hire purchase”.

14 Section 995-1

Insert:

hire purchase agreement means:

- (a) a contract for the hire of goods where:
 - (i) the hirer has the right or obligation to buy the goods; and
 - (ii) the charge that is or may be made for the hire, together with any other amount payable under the contract (including an amount to buy the goods or to exercise an option to do so), exceeds the price of the goods; and
 - (iii) title in the goods does not pass to the hirer until the option to purchase is exercised; or
- (b) an agreement for the purchase of goods by instalments where title in the goods does not pass until the final instalment is paid.

15 Section 995-1

Insert:

plant lessee has the meaning given by section 42-312.

16 Section 995-1 (definition of *quasi-owner*)

Omit “section 42-310”, substitute “Subdivision 42-I”.

Part 2—Amendment of the Income Tax Assessment Act 1936

17 After subsection 51AD(3)

Insert:

- (3A) If a taxpayer is the quasi-owner of property under section 42-312 of the *Income Tax Assessment Act 1997*, this section applies as if the taxpayer were the owner of the property instead of any other person.

18 Subsection 54AB(3)

Omit “and Division 16D”, substitute “, Subdivision B of Division 3, Division 16D and Part XII”.

19 Paragraph 54AD(2)(d)

After “lessor”, insert “or another person”.

20 After subsection 82AQ(3A)

Insert:

- (3AA) If a taxpayer is the quasi-owner of property under section 42-312 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.

21 At the end of section 159GE

Add:

- (9) If a taxpayer is the quasi-owner of property under section 42-312 of the *Income Tax Assessment Act 1997*, this Division applies as if the taxpayer were the owner of the property instead of any other person.

22 After subsection 673(1)

Insert:

- (1A) If a taxpayer is the quasi-owner of property under section 42-312 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.

Note: The heading to section 673 is altered by omitting “**where it is attached to land held under a quasi-ownership right**” and substituting “**: quasi-ownership**”.

Part 3—Application of amendments

23 Application

- (1) The amendments made by Part 1 of this Schedule apply to assessments for the 1997-98 income year and later income years.
- (2) The amendments made by Part 2 of this Schedule (apart from items 18 and 19) apply to assessments for the 1997-98 year of income and later years of income.
- (3) The amendments made by items 18 and 19 apply in relation to units of property first used on or after 1 July 1996 for the purposes of producing assessable income of the lessor of the property.

Schedule 7—Electronic lodgment and electronic funds transfers

Part 1—Amendment of the Income Tax Assessment Act 1936

1 Subsection 6(1)

Insert:

electronic signature, in relation to a person, means a unique identification in an electronic form that is approved by the Commissioner.

2 Subsection 6(1)

Insert:

registered tax agent has the meaning given by section 251A.

3 Subsection 160ARXA(1) (definition of *taxation statement*)

After “any other way”, insert “(including by way of electronic transmission)”.

4 At the end of section 160ARXA

Add:

- (3) If a document is given on a data processing device, or by way of electronic transmission, by a registered tax agent on behalf of a taxpayer, then for the purposes of this Part, all statements in the document are taken to have been made by the taxpayer unless the taxpayer can show that the taxpayer did not authorise the statement.

5 Subsection 161(1)

Repeal the subsection, substitute:

Requirement to lodge a return

- (1) Every person must, if required by the Commissioner by notice published in the *Gazette*, give to the Commissioner a return for a year of income within the period specified in the notice or such further period as the Commissioner allows.

6 After section 161

Insert:

161A Form and content of returns

- (1) The return must be in a form approved in writing by the Commissioner for the purpose and must contain the prescribed information.

Electronic returns

- (2) An approval given by the Commissioner of a form of return may require or permit the return to be given on a specified kind of data processing device, or by way of electronic transmission, in accordance with specified software requirements.

161B Manner of giving return

The return must be given in the manner provided for in the regulations.

161C Returns to be signed etc.

The return must be signed in accordance with section 264B.

161D Declaration to be given to registered tax agent

- (1) This section applies where a taxpayer's return or application for amendment is given on a data processing device, or by way of electronic transmission, by, or on behalf of, a registered tax agent on behalf of the taxpayer.

-
- (2) Before the return or application for amendment is given, the taxpayer must make a signed declaration in a form approved by the Commissioner that:
- (a) authorises the registered tax agent to give the return or application for amendment to the Commissioner; and
 - (b) states that the taxpayer agrees with all statements in the return or application for amendment.
- The declaration must also contain all of the information required for the proper completion of the declaration.
- (3) If the taxpayer is making a request to the Commissioner under section 264C (directing payments to specified accounts), the declaration must also include a statement making the request and specifying the account.

161E Duties of taxpayer and registered tax agent in relation to declaration

- (1) The taxpayer must retain the declaration for 5 years after it is made.
- (2) The taxpayer must produce the declaration if requested to within the 5 year period by the Commissioner.
- (3) The registered tax agent must not give the Commissioner the return or application for amendment before the taxpayer makes the declaration.

Penalty: 30 penalty units.

161G Tax agent to give taxpayer copy of notice of assessment

Where a taxpayer has given the address of a registered tax agent as the taxpayer's address for service, the registered tax agent must give the taxpayer the original of, or a copy of, any notice of assessment in respect of that taxpayer that is delivered to that address.

Penalty: 30 penalty units.

7 Subsection 165(1)

Repeal the subsection, substitute:

- (1) Any person (the *tax agent*) who charges directly or indirectly any fee for preparing or assisting in the preparation of a return required by this Act or the regulations or by the Commissioner or an application for amendment must sign a certificate (an *agent's certificate*).

Penalty: 30 penalty units.

- (1AA) The agent's certificate must be in the prescribed form, setting out such information as to the sources available for the compilation of the return as is prescribed, to be endorsed on or annexed to:
- (a) for a return or application for amendment that is given on a data processing device or by way of electronic transmission by a person on behalf of the tax agent—the declaration made by the taxpayer under section 161D; or
 - (b) in any other case—the return or the application for amendment.
- (1AB) Where a certificate is endorsed on or annexed to a return or application for amendment that is given on a data processing device or by way of electronic transmission, the agent's certificate must be signed in accordance with subsection 264B(3).

8 Subsection 165(2)

Repeal the subsection, substitute:

- (2) Every person carrying on business who does not give an agent's certificate with his or her return or application for amendment, or have an agent's certificate endorsed on or annexed to his or her declaration under section 161D, must give particulars in the prescribed form, endorsed on or annexed to the return or application for amendment, setting out such information as to the sources available for the compilation of the return or application for amendment as is prescribed.

9 Subsection 166A(2)

Omit “If Division 1C of Part VI applies to the taxpayer for a year of income and the taxpayer lodges a return for that year, the following provisions apply:”, substitute:

Where:

- (aa) at a particular time, a taxpayer to which Division 1C of Part VI applies gives a return in respect of income of a year of income to which that Division applies; and
- (ab) before that time, no return has been given, and no assessment has been made, in relation to the taxpayer in respect of the income of the year of income:

the following provisions apply:

10 After subsection 170(6)

Insert:

- (6A) An application for amendment must be made in writing, on a data processing device or by way of electronic transmission and must be signed in accordance with section 264B.
- (6B) An application for amendment must be given in the prescribed manner and contain the prescribed information.

11 At the end of section 177

Add:

- (5) To avoid doubt, subsection (4) applies to a copy or an extract of a document that was given to the Commissioner on a data processing device or by way of electronic transmission unless the taxpayer can show that the taxpayer did not authorise the document.

12 Subsection 221H(1) and (1A)

Repeal the subsections, substitute:

- (1) An employee who is given a group certificate in respect of salary or wages received by the employee in any year of income must retain the group certificate for 5 years after the employee’s assessment for that year of income is made.
 - (1A) The employee must produce the group certificate if requested to within the 5 year period by the Commissioner.
-

(1B) A person who purchases tax vouchers during a year of income must retain them for 5 years after the person's assessment for that year of income is made.

(1C) The person must produce the tax vouchers if requested to within the 5 year period by the Commissioner.

13 Subsection 222A(1) (definition of *taxation officer statement*)

After "any other way", insert "(including by way of electronic transmission)".

14 Subsection 222A(1) (definition of *taxation purpose statement*)

After "any other way", insert "(including by way of electronic transmission)".

15 At the end of section 222A

Add:

- (3) If a document is given on a data processing device, or by way of electronic transmission, by a registered tax agent on behalf of a taxpayer, then, for the purposes of this Part, each statement in the document is taken to have been made by the taxpayer unless the taxpayer can show that the taxpayer did not authorise the statement.

16 After section 264A

Insert:

264B Notices etc. to be signed

Non-electronic notices etc.

- (1) A notice, return or application for amendment that is given to the Commissioner by a taxpayer (other than one that is given on a data processing device or by way of electronic transmission) must be signed by the taxpayer.

Electronic notices etc. lodged by taxpayer

- (2) A notice, return or application for amendment that is given to the Commissioner by a taxpayer on a data processing device or by way of electronic transmission (other than one that is given or transmitted by a registered tax agent on behalf of the taxpayer) must contain the electronic signature of the taxpayer.

Electronic notices etc. lodged by registered tax agent

- (3) A notice, return or application for amendment that is given to the Commissioner on a data processing device or by way of electronic transmission by a registered tax agent on behalf of the taxpayer must contain the electronic signature of the registered tax agent.

264C Taxpayer may direct payments to specified accounts

- (1) A taxpayer may, by written notice, or by notice included on a data processing device or in an electronic transmission to the Commissioner, request the Commissioner to pay any amounts that are payable to the taxpayer under this Act to a specified account with a financial institution. The taxpayer may only specify one account in the notice.

Note: The specified account may be held by a person other than the taxpayer.

- (2) The Commissioner may pay any amounts that are payable to the taxpayer under this Act to that account.
- (3) If the Commissioner pays an amount to the account, the Commissioner is taken to have paid the amount to the person unless the Commissioner is satisfied that the person did not authorise the notice under subsection (1).
- (4) If a notice under subsection (1) is included in an electronic transmission made by a registered tax agent on behalf of a taxpayer, the taxpayer is taken not to have authorised the notice unless a declaration under section 161D includes a statement making the request and specifying the account.
- (5) If the taxpayer gives the Commissioner a later notice under subsection (1), the later notice applies to all payments made after

the notice is received by the Commissioner and the earlier notice ceases to apply.

Part 2—Amendment of the Taxation Administration Act 1953

17 Subsection 8J(2)

After “data processing device”, insert “, by way of electronic transmission”.

18 After subsection 8J(2)

Insert:

- (2A) If a document is given on a data processing device, or by way of electronic transmission, by a registered tax agent on behalf of a taxpayer, then, for the purposes of this Subdivision, each statement in the document is taken to have been made by the taxpayer unless the taxpayer can show that the taxpayer did not authorise the statement.

Part 3—Amendment of the Fringe Benefits Tax Assessment Act 1986

19 Paragraph 70(a)

Omit “the form provided or authorised”, substitute “a form approved in writing”.

20 Paragraph 70(c)

Repeal the paragraph, substitute:

(c) be signed in accordance with section 124B;

21 At the end of section 70

Add:

Electronic returns

- (2) An approval given by the Commissioner of a form may require or permit the return to be given on a specified kind of data processing device, or by way of electronic transmission, in accordance with specified software requirements.

22 After section 70

Insert:

70A Declaration to be given to registered tax agent

- (1) This section applies where a taxpayer’s return or application for amendment is given on a data processing device, or by way of electronic transmission, by, or on behalf of, a registered tax agent on behalf of the taxpayer.
- (2) Before the return or application for amendment is given, the taxpayer must make a signed declaration in a form approved by the Commissioner that:
- (a) authorises the registered tax agent to give the return or application for amendment to the Commissioner; and
 - (b) states that the taxpayer agrees with all statements in the return or application for amendment.

The declaration must also contain all of the information required for the proper completion of the declaration.

- (3) If the taxpayer is making a request to the Commissioner under section 124C (directing payments to specified accounts), the declaration must also include a statement making the request and specifying the account.

70B Duties of taxpayer and registered tax agent in relation to declaration

- (1) The taxpayer must retain the declaration for 5 years after it is made.
- (2) The taxpayer must produce the declaration if requested to within the 5 year period by the Commissioner.
- (3) The registered tax agent must not give the Commissioner the return or application for amendment before the taxpayer makes the declaration.

Penalty: 30 penalty units.

70D Tax agent to give taxpayer copy of notice of assessment

Where a taxpayer has given the address of a registered tax agent as the taxpayer's address for service, the registered tax agent must give the taxpayer the original of, or a copy of, any notice of assessment in respect of that taxpayer that is delivered to that address.

Penalty: 30 penalty units.

23 Subsection 71(1)

Repeal the subsection, substitute:

- (1) Any person (the ***tax agent***) who charges directly or indirectly any fee for preparing or assisting in the preparation of a return required by this Act or the regulations or by the Commissioner or an application for amendment must sign a certificate (an ***agent's certificate***).

Penalty: 30 penalty units.

- (1AA) The agent's certificate must be in the prescribed form, setting out such information as to the sources available for the compilation of the return as is prescribed, to be endorsed on or annexed to:
- (a) for a return or application for amendment that is given on a data processing device or by way of electronic transmission by a person on behalf of the tax agent—the declaration made by the taxpayer under section 70A; or
 - (b) in any other case—the return or the application for amendment.
- (1AB) Where a certificate is endorsed on or annexed to a return or application for amendment that is given on a data processing device or by way of electronic transmission, the agent's certificate must be signed in accordance with subsection 124B(3).

24 After subsection 74(6)

Insert:

- (6A) An application for amendment must be made in writing, on a data processing device or by way of electronic transmission and must be signed in accordance with section 124B.
- (6B) An application for amendment must be given in the prescribed manner and contain the prescribed information.

25 Subsection 115(3)

After “any other form”, insert “(including by way of electronic transmission)”.

26 Subsection 115(4)

After “any other form”, insert “(including by way of electronic transmission)”.

27 At the end of section 115

Add:

- (6) If a document is given on a data processing device, or by way of electronic transmission, by a registered tax agent on behalf of a taxpayer, then, for the purposes of this Part, each statement in the

document is taken to have been made by the taxpayer unless the taxpayer can show that the taxpayer did not authorise the statement.

28 After section 124A

Insert:

124B Notices etc. to be signed

Non-electronic notices etc.

- (1) A notice, return or application for amendment that is given to the Commissioner by a taxpayer (other than one that is given on a data processing device or by way of electronic transmission) must be signed by the taxpayer.

Electronic notices etc. lodged by taxpayer

- (2) A notice, return or application for amendment that is given to the Commissioner by a taxpayer on a data processing device or by way of electronic transmission (other than one that is given or transmitted by a registered tax agent on behalf of the taxpayer) must contain the electronic signature of the taxpayer.

Electronic notices etc. lodged by registered tax agent

- (3) A notice, return or application for amendment that is given to the Commissioner on a data processing device or by way of electronic transmission by a registered tax agent on behalf of the taxpayer must contain the electronic signature of the registered tax agent.

124C Taxpayer may direct payments to specified accounts

- (1) A taxpayer may, by written notice, or by notice included on a data processing device or in an electronic transmission to the Commissioner, request the Commissioner to pay any amounts that are payable to the taxpayer under this Act to a specified account with a financial institution. The taxpayer may only specify one account in the notice.

Note: The specified account may be held by a person other than the taxpayer.

- (2) The Commissioner may pay any amounts that are payable to the taxpayer under this Act to that account.
- (3) If the Commissioner pays an amount to the account, the Commissioner is taken to have paid the amount to the person unless the Commissioner is satisfied that the person did not authorise the notice under subsection (1).
- (4) If a notice under subsection (1) is included in an electronic transmission made by a registered tax agent on behalf of a taxpayer, the taxpayer is taken not to have authorised the notice unless a declaration under section 70A includes a statement making the request and specifying the account.
- (5) If the taxpayer gives the Commissioner a later notice under subsection (1), the later notice applies to all payments after the notice is received by the Commissioner and the earlier notice ceases to apply.

29 After subsection 126(3)

Insert:

- (3A) To avoid doubt, subsection (3) applies to a copy or an extract of a document that was given to the Commissioner on a data processing device or by way of electronic transmission unless the taxpayer can show that the taxpayer did not authorise the document.

30 Subsection 136(1)

Insert:

electronic signature, in relation to a person, means a unique identification in an electronic form that is approved by the Commissioner.

31 Subsection 136(1)

Insert:

registered tax agent has the meaning given by section 251A of the *Income Tax Assessment Act 1936*.

Part 4—Application of amendments

32 Application of amendments

Income Tax

- (1) The amendments made by this Schedule apply in relation to:
- (a) returns, applications for amendments or other documents given to the Commissioner for the purposes of the *Income Tax Assessment Act 1936* on or after 1 July 1998; and
 - (b) statements made for the purposes of the *Income Tax Assessment Act 1936* on or after 1 July 1998; and
 - (c) payments made under the *Income Tax Assessment Act 1936* on or after 1 July 1998.

Fringe Benefits Tax

- (2) The amendments made by this Schedule apply in relation to:
- (a) returns, applications for amendments or other documents given to the Commissioner for the purposes of the *Fringe Benefits Tax Assessment Act 1986* on or after 1 April 1998; and
 - (b) statements made for the purposes of the *Fringe Benefits Tax Assessment Act 1986* on or after 1 April 1998; and
 - (c) payments made under the *Fringe Benefits Tax Assessment Act 1986* on or after 1 April 1998.

Schedule 8—Rate of tax for Friendly Societies etc.

Taxation (Deficit Reduction) Act (No. 2) 1993

1 Subsection 2(3)

Repeal the subsection, substitute:

(3) Subdivision D of Division 3 of Part 3 commences on 1 July 2000.

(4) Subdivision C of Division 2 of Part 4 commences on 1 July 1999.

2 Subdivision B of Division 3 of Part 3 (heading)

Repeal the heading, substitute:

**Subdivision B—Increase for 1995-96, 1996-97, 1997-98, 1998-99
and 1999-2000**

3 Subdivision D of Division 3 of Part 3 (heading)

Repeal the heading, substitute:

Subdivision D—Increase for 2000-2001 and later years

4 Subsection 15(2)

Omit “1997”, substitute “2000”.

5 Subdivision B of Division 2 of Part 4 (heading)

Repeal the heading, substitute:

**Subdivision B—Rate for 1994-95, 1995-96, 1996-97, 1997-98
and 1998-99**

6 Subsection 18(2)

Omit “and of the 1996-97 year of income”, substitute “, of the 1996-97 year of income, of the 1997-98 year of income, and of the 1998-99 year of income”.

7 Subdivision C of Division 2 of Part 4 (heading)

Repeal the heading, substitute:

Subdivision C—Rate for 1999-2000 and later years

8 Subsection 19(2)

Omit “1997-98”, substitute “1999-2000”.

Schedule 9—Leases of luxury cars

Part 1—Amendment of the Income Tax Assessment Act 1997

1 Section 10-5 (table)

Insert in its appropriate alphabetical position determined on a letter-by-letter basis:

leases of luxury cars

accrual amounts.....	Schedule 2E (42A-35(1))
adjustment amounts (lessee)	Schedule 2E (42A-70(2))
adjustment amounts (lessor).....	Schedule 2E (42A-65(2))
profit on actual sale.....	Schedule 2E (42A-35(3))
profit on notional sale	Schedule 2E (42A-35(2))

2 Section 12-5 (table)

Insert in its appropriate alphabetical position determined on a letter-by-letter basis:

leases of luxury cars

accrual amounts.....	Schedule 2E (42A-50)
adjustment amounts (lessee)	Schedule 2E (42A-70(1))
adjustment amounts (lessor).....	Schedule 2E (42A-65(3))
lease payments not deductible.....	Schedule 2E (42A-55)
payments to acquire car not deductible	Schedule 2E (42A-85 and 42A-100)

3 After subsection 25-35(4)

Insert:

Limit on deductions for bad debts under leases of luxury cars

- (4A) There is a limit to how much you can deduct under this section for debts you write off that relate to lease payments that have become or will become liable to be made under a lease of a *car to which Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936* applies.

(4B) The most you can deduct for an income year is:

- the finance charge for the notional loan you are taken to have made to the lessee;

reduced by:

- each amount that you have deducted, or can deduct, for an earlier income year under this section (or section 63 of the *Income Tax Assessment Act 1936*) for debts relating to lease payments that have become or will become liable to be made under the lease.

(4C) An expression (except *car*) has the same meaning in subsection (4A) or (4B) as in Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936*.

4 Subsection 28-12(1) (note)

Renumber the note as note 1.

5 At the end of subsection 28-12(1)

Add:

Note 2: In certain circumstances the lessee of a luxury car is taken to be its owner (see subsection 42A-15(2) in Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936*).

6 At the end of subsection 28-45(1)

Add:

Note: The cost to a lessee of a luxury car to which Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936* applies is to be worked out under section 42A-20 in that Division.

7 At the end of subsection 28-90(6)

Add:

Note: In certain circumstances the lessee of a luxury car is taken to be its owner (see subsection 42A-15(2) in Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936*).

8 At the end of section 41-65

Add:

- (4) If a transaction relating to a *luxury car to which Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936* applies has

been entered into between parties who were not dealing with each other at arm's length, there are special rules applying under section 42A-20 in that Division.

9 Section 42-15 (note)

Renumber the note as note 1.

10 At the end of section 42-15

Add:

Note 2: In certain circumstances the lessee of a luxury car is taken to be its owner (see subsection 42A-15(2) in Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936*).

11 Subsection 42-30(3) (table, item 1, after paragraph (a))

Insert:

- (aa) you are taken to have ceased to be its owner as mentioned in subsection 42A-15(3) or 42A-80(3) in Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936*; or
- (ab) you are taken to have disposed of it as mentioned in subsection 42A-15(1), 42A-90(2) or 42A-105(2) in Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936*.

12 At the end of section 42-55

Add:

Leases of luxury cars

- (7) Schedule 2E to the *Income Tax Assessment Act 1936* has special rules in respect of the depreciation of certain leased *luxury cars.

13 Section 42-65 (table, after item 9)

Insert:

9A	that is a *luxury car of which you are taken to be the owner under subsection 42A-15(2) in Division 42A of Schedule 2E to the <i>Income Tax Assessment Act 1936</i>	the amount worked out under subsection 42A-20(1) or (2) in Division 42A of Schedule 2E to the <i>Income Tax Assessment Act 1936</i> or subsection 42-90(2) of this Act	car discount (42-70) car limit (42-80) double deduction (42-85) prev. dep. limit (42-90)
9B	that is a *luxury car that you are taken to acquire as mentioned in subsection 42A-90(2) in Division 42A of Schedule 2E to the <i>Income Tax Assessment Act 1936</i>	the amount applying under subsection 42A-90(3) in Division 42A of Schedule 2E to the <i>Income Tax Assessment Act 1936</i>	car discount (42-70) car limit (42-80) double deduction (42-85) prev. dep. limit (42-90)
9C	that is a *luxury car that you acquire as mentioned in subsection 42A-90(4) in Division 42A of Schedule 2E to the <i>Income Tax Assessment Act 1936</i>	the amount applying under subsection 42A-90(4) in Division 42A of Schedule 2E to the <i>Income Tax Assessment Act 1936</i> or subsection 42-90(2) of this Act	
9D	that is a *luxury car that you are taken to acquire as mentioned in subsection 42A-105(2) in Division 42A of Schedule 2E to the <i>Income Tax Assessment Act 1936</i>	the amount worked out under subsection 42A-105(3) in Division 42A of Schedule 2E to the <i>Income Tax Assessment Act 1936</i>	

9E	that is a *luxury car that you acquire as mentioned in subsection 42A-105(4) in Division 42A of Schedule 2E to the <i>Income Tax Assessment Act 1936</i>	the amount worked out under subsection 42A-105(4) in Division 42A of Schedule 2E to the <i>Income Tax Assessment Act 1936</i> or subsection 42-90(2) of this Act
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14 Paragraph 42-70(1)(c)

After “section 42-345”, insert “or under section 57AF of the *Income Tax Assessment Act 1936*”.

15 At the end of section 42-75

Add:

Note: In the case of a non-arm’s length transaction in respect of a luxury leased car, special rules apply under section 42A-20 in Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936*.

16 Subsection 42-80(1)

After “car depreciation limit”, insert “or the limit in section 57AF of the *Income Tax Assessment Act 1936*”.

17 Paragraph 42-90(2)(b)

After “42-G”, insert “or under subsection 59(2) of the *Income Tax Assessment Act 1936*”.

18 At the end of subsection 42-90(2)

Add:

; and (d) any balancing adjustment that would have been included in that entity’s assessable income for the plant if balancing adjustment relief under section 58 or any of subsections 59(2A) to (2D) had not applied.

19 Section 42-205 (table, after item 5)

Insert:

5A	that is a *luxury car that you are taken to have disposed of under subsection 42A-15(1) in Division 42A of Schedule 2E to the <i>Income Tax Assessment Act 1936</i>	the amount worked out under section 42A-20 in Division 42A of Schedule 2E to the <i>Income Tax Assessment Act 1936</i>	car limit (42-215)
5B	that is a *luxury car of which you are taken to have ceased to be the owner under subsection 42A-15(3) or 42A-80(3) in Division 42A of Schedule 2E to the <i>Income Tax Assessment Act 1936</i>	the amount worked out under section 42A-20 in Division 42A of Schedule 2E to the <i>Income Tax Assessment Act 1936</i>	car limit (42-215)
5C	that is a *luxury car that you are taken to have disposed of under subsection 42A-90(2) in Division 42A of Schedule 2E to the <i>Income Tax Assessment Act 1936</i>	the amount worked out under subsection 42A-90(3) in Division 42A of Schedule 2E to the <i>Income Tax Assessment Act 1936</i>	car limit (42-215)
5D	that is a *luxury car that you are taken to have disposed of under subsection 42A-105(2) in Division 42A of Schedule 2E to the <i>Income Tax Assessment Act 1936</i>	the amount worked out under subsection 42A-105(3) in Division 42A of Schedule 2E to the <i>Income Tax Assessment Act 1936</i>	car limit (42-215)

20 Section 42-215

After “section 42-80”, insert “or by applying section 57AF of the *Income Tax Assessment Act 1936*”.

21 After subsection 42-235(1)

Insert:

Note: In certain circumstances the lessee of a luxury car is taken to be its owner (see subsection 42A-15(2) in Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936*).

22 At the end of section 42-250

Add:

Note: In certain circumstances the lessee of a luxury car is taken to be its owner (see subsection 42A-15(2) in Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936*).

23 Subsection 995-1(1)

Insert:

luxury car has the same meaning as in Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936*.

Part 2—Amendment of the Income Tax Assessment Act 1936

24 Subsection 42A-10(3)

After “this Act”, insert “(including, to avoid doubt, the *Income Tax Assessment Act 1997*)”.

25 Section 42A-40

Repeal the section, substitute:

42A-40 Treatment of lease payments

- (1) The lease payments that the lessor receives, or is entitled to receive, under the lease:
 - (a) are not to be included in the lessor’s assessable income of any year of income; but
 - (b) are not taken to be exempt income of the lessor.
- (2) However, those lease payments are taken into account in calculating accrual amounts that are included in the lessor’s assessable income under section 42A-35.
- (3) A loss or outgoing incurred by the lessor in deriving any such lease payments is not taken to be a loss or outgoing incurred by the lessor in relation to gaining or producing exempt income.

26 Subparagraph 42A-90(4)(a)(ii)

After “subsection 59(2)”, insert “or under Subdivision 42F or 42G of the *Income Tax Assessment Act 1997*”.

27 Subparagraph 42A-105(4)(a)(ii)

After “subsection 59(2)”, insert “or under Subdivision 42F or 42G of the *Income Tax Assessment Act 1997*”.

28 At the end of section 42A-120

Add “or section 42-80 of the *Income Tax Assessment Act 1997*”.

29 Section 42A-130 (at the end of the definition of *other payments*)

Add “, less any of those amounts that are refunded by the lessor to the lessee”.

Part 3—Application of amendments

30 Application

- (1) The amendments made by Part 1 of this Schedule apply to assessments for the 1997-98 income year and later income years.
- (2) The amendments made by Part 2 of this Schedule (apart from item 25) apply to assessments for the 1997-98 year of income and later years of income.
- (3) The amendment made by item 25 applies in relation to leases to which Schedule 2E to the *Income Tax Assessment Act 1936* applies.

*[Minister's second reading speech made in—
House of Representatives on 26 June 1997
Senate on 1 October 1997]*

(91/97)