Taxation Laws Amendment Act (No. 3) 1997

Act No. 147 of 1997 as amended

This compilation was prepared on 6 August 2002

[This Act was amended by Acts No. 131 of 1999 and No. 57 of 2002]

Amendment from Act No. 131 of 1999
[Schedule 6 (item 1) repealed and substituted item 44 of Schedule 1
Schedule 6 (item 1) commenced on 14 October 1997]

Amendment from Act No. 57 of 2002
[Schedule 12 (item 54) added subsection 2(6A)
Schedule 12 (item 54) commenced on 14 October 1997]

Prepared by the Office of Legislative Drafting,
Attorney-General's Department, Canberra

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An Act to amend the law relating to taxation

[*Assented to 14 October 1997*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Taxation Laws Amendment Act (No. 3) 1997*.

2 Commencement

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Item 4 of Schedule 6 commences, or is taken to have commenced, immediately after the commencement of item 76 of Schedule 6 to the *Tax Law Improvement Act 1997*.

(3) Part 2 of Schedule 6 commences, or is taken to have commenced, immediately after the commencement of the *Income Tax Assessment Act 1997*.

(4) Items 2 and 5 of Schedule 10 commence immediately after the later of the commencement of item 1 of that Schedule or the *Retirement Savings Accounts Act 1997*.

(5) Schedule 11 is taken to have commenced immediately after the commencement of item 38 of Schedule 4 to the *Taxation Laws Amendment Act (No. 3) 1996*.

(6) Schedule 12 is taken to have commenced at 7.00 pm, by legal time in the Australian Capital Territory, on 7 November 1996.

(6A) Item 40 of Schedule 14 is taken to have commenced on 1 July 1997, immediately before the commencement of item 248 of Schedule 1 to the *Income Tax (Consequential Amendments) Act 1997*.

(7) Part 4 of Schedule 14 commences, or is taken to have commenced, on 1 July 1997, immediately after the commencement of the *Income Tax Assessment Act 1997*.

(8) Part 5 of Schedule 14 commences, or is taken to have commenced, on 1 July 1997, immediately after the commencement of the *Income Tax (Consequential Amendments) Act 1997*.

(9) Part 2 of Schedule 15 commences at the later of:

(a) the start of the day on which this Act receives the Royal Assent; and

(b) immediately after the commencement of Schedule 1 to the *Tax Law Improvement Act 1997*.

(10) Item 1 of Schedule 16 is taken to have commenced immediately after the commencement of section 44 of the *Taxation Laws Amendment Act 1993*.

(11) Items 2 and 3 of Schedule 16 are taken to have commenced immediately after the commencement of Part 1 of the Schedule to the *Taxation Laws Amendment Act (No. 3) 1994*.

(12) Item 4 of Schedule 16 is taken to have commenced immediately after the commencement of item 1 of Schedule 2 to the *Taxation Laws Amendment Act (No. 4) 1995*.

(13) Items 5 and 6 of Schedule 16 are taken to have commenced immediately after the commencement of item 134 of Schedule 2 to the *Taxation Laws Amendment Act (No. 4) 1995*.

(14) Item 7 of Schedule 16 is taken to have commenced immediately after the commencement of item 74 of Schedule 4 to the *Taxation Laws Amendment Act (No. 3) 1996*.

(15) Item 8 of Schedule 16 is taken to have commenced immediately after the commencement of item 9 of Schedule 1 to the *Taxation Laws Amendment Act (No. 2) 1997*.

(16) Item 9 of Schedule 16 is taken to have commenced immediately after the commencement of item 1 of Schedule 3 to the *Taxation Laws Amendment (Private Health Insurance Incentives) Act 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 commencement of this section for the purposes of giving effect to this Act.

Schedule 1—CGT exemption: disposing of small business retirement assets

Part 1—Amendment of the Income Tax Assessment Act 1936

Division 1—Amendment of CGT provisions

1 Section 160AZA (Sub Index—Exemptions, after entry relating to principal residence)

Insert:

Small business retirement assets	Division 17B of Part IIIA

2 After section 160ZZPQ

Insert:

160ZZPQA No election if election already made under Division 17B

A taxpayer must not make an election under paragraph 160ZZPQ(1)(f) in respect of the disposal of an asset if the taxpayer has previously made an election under Division 17B in respect of the disposal.

3 After Division 17A of Part IIIA

Insert:

Division 17B—Disposal of small business assets: proceeds used for retirement

Subdivision A—Introduction

160ZZPZA What this Division is about

Broadly, a capital gain accruing on the disposal of an asset by a small business is exempt from tax under this Part, if the proceeds of the disposal are used in connection with the retirement of an

individual, or 2 individuals, who control that business. The amount of the gain will be treated as a special kind of eligible termination payment made to the individuals.

160ZZPZB Structure of the Division

Sole traders and partnerships

(1) For a taxpayer who is an individual (carrying on business as a sole trader or as a partner in a partnership) to get an exemption, and for the other consequences set out in this Division to apply, the conditions in Subdivision B must be satisfied.

Companies and trusts

(2) For a taxpayer that is a private company or trust to get an exemption, and for the other consequences set out in this Division to apply, the conditions in Subdivision C must be satisfied.

Lifetime exemption limit

(3) There is a lifetime limit of $500,000 on the total of amounts that may be exempt in relation to a particular individual under this Division (see section 160ZZPZN). The single limit applies to all exempt amounts involving the individual, whether under Subdivision B or C.

Previous years' net capital losses

(4) An exemption under this Division is not available to the extent that the taxpayer has net capital losses from previous years of income available to set off against the capital gain (see Subdivision D).

Definitions

(5) Definitions of various expressions used in the Division are in Subdivision E.

Subdivision B—Taxpayers who are individuals

160ZZPZC Scope of Subdivision

The consequences set out in section 160ZZPZE apply to a taxpayer who is an individual if the conditions in section 160ZZPZD are met.

160ZZPZD Conditions for exemption

First condition

(1) The first condition is that:

(a) the requirements of paragraphs 160ZZPQ(1)(a) to (d) must be satisfied in relation to the disposal of an asset by the taxpayer other than as a trustee; and

(b) the taxpayer must receive all of the actual consideration (see section 160ZZPZO), if any, in respect of the disposal within the period beginning one year before, and ending 2 years after, the disposal.

The whole of the actual consideration mentioned in paragraph (b) need not be received all at once; parts of the actual consideration may be received at different times during the period.

Second condition

(2) The second condition is that:

(a) the taxpayer must elect in writing, on or before the date of lodgment of the taxpayer's return of income for the year of income mentioned in paragraph 160ZZPQ(1)(a), that this Division is to apply to the taxpayer in respect of the disposal; and

(b) the election must specify an amount as the asset's ***CGT exempt amount***; and

(c) that amount must not be greater than the amount of the capital gain concerned (possibly as reduced by Subdivision D, which deals with previous years' net capital losses); and

(d) the asset's CGT exempt amount must not exceed the individual's CGT retirement exemption limit (see section 160ZZPZN) immediately before the election is made; and

(e) the taxpayer must not have already made an election under section 160ZZPQ in respect of the disposal.

160ZZPZE What happens if the disposal is exempt

(1) If the conditions in section 160ZZPZD are met, the following consequences apply.

Capital gain reduced by asset's CGT exempt amount

(2) The amount of the capital gain that otherwise would have accrued to the taxpayer in respect of the disposal of the asset concerned is reduced (but not below nil) by the asset's CGT exempt amount.

Other CGT exemptions/concessions are not available

(3) Divisions 15, 17, 17A, 18 and 19 do not apply in respect of the disposal.

Proceeds of disposal taken to be an ETP

(4) Also, for each amount the taxpayer receives as actual consideration in respect of the disposal at a particular time, an ETP of that amount (but possibly reduced by subsection (5)) is taken, for the purposes of this Act, to have been made in relation to the taxpayer at the later of the following times:

(a) the time the election is made;

(b) the time the actual consideration is received.

Note: For the rules about ETPs (eligible termination payments), see Subdivision AA of Division 2 of Part III.

No ETP to the extent that the total actual consideration received exceeds the asset's CGT exempt amount

(5) However, if the sum of:

(a) the amount of the actual consideration; and

(b) the total amount of any actual consideration the taxpayer received earlier in respect of the disposal;

exceeds the asset's CGT exempt amount, the amount of the ETP is reduced by the amount of the excess.

Note: In some cases, this will reduce the amount of the ETP to nil.

Example: Assume that the asset's CGT exempt amount is $1,000. Assume that the taxpayer receives an amount of actual consideration of $300, and has previously received $900 as actual consideration in respect of the disposal. The sum of that actual consideration is $1,200, which exceeds the asset's CGT exempt amount by $200. Therefore the amount of this ETP is reduced by $200 to $100.

160ZZPZF Taxpayers under 55 must roll over proceeds, or lose exemption

(1) If the taxpayer was under 55 immediately before the disposal, an amount equal to the amount of each ETP that is taken to have been made under subsection 160ZZPZE(4) must be rolled over (within the meaning of Subdivision AA of Division 2 of Part III, but assuming that paragraph 27A(12)(c) had not been enacted) by the taxpayer.

(2) If the taxpayer does not comply with subsection (1), the election is taken never to have been made.

Note: Because making the election is a condition (see paragraph 160ZZPZD(2)(a)), the taxpayer will lose the benefit of this Subdivision in such a case.

Subdivision C—Taxpayers that are private companies or trusts

160ZZPZG Scope of Subdivision

The consequences set out in section 160ZZPZJ apply to a taxpayer that is a company (other than a public company) or a trust (other than a publicly traded unit trust) if either:

(a) the single-controller conditions set out in section 160ZZPZH are met; or

(b) the dual-controller conditions set out in section 160ZZPZI are met.

160ZZPZH Single-controller conditions

(1) This section sets out the conditions that are the ***single-controller conditions***.

First condition

(2) The first condition is that:

(a) the requirements of paragraphs 160ZZPQ(1)(a) to (d) must be satisfied in relation to the disposal of an asset by the taxpayer; and

(b) the taxpayer must receive all of the actual consideration (see section 160ZZPZO), if any, in respect of the disposal within the period beginning one year before, and ending 2 years after, the disposal.

The whole of the actual consideration mentioned in paragraph (b) need not be received all at once; parts of the actual consideration may be received at different times during the period.

Second condition

(3) The second condition is that, immediately before the disposal, there must be one, and only one, controlling individual (see section 160ZZPZP) of the taxpayer.

Third condition

(4) The third condition is that:

(a) the taxpayer must elect in writing, on or before the date of lodgment of the taxpayer's return of income for the year of income mentioned in paragraph 160ZZPQ(1)(a), that this Division is to apply to the taxpayer in respect of the disposal; and

(b) the election must specify an amount as the asset's ***CGT exempt amount***; and

(c) that amount must not be greater than the amount of the capital gain concerned (possibly as reduced by Subdivision D, which deals with previous years' net capital losses); and

(d) the asset's CGT exempt amount must not exceed the controlling individual's CGT retirement exemption limit (see section 160ZZPZN) immediately before the election is made; and

(e) the taxpayer must not have already made an election under section 160ZZPQ in respect of the disposal.

Fourth condition

(5) The fourth single-controller condition is that, within:

(a) 7 days after making the election; or

(b) 7 days after the taxpayer receives the whole or a part (the ***payment amount***) of the actual consideration as mentioned in paragraph (2)(b);

whichever comes later, the taxpayer must make an ETP in relation to the controlling individual whose amount is at least equal to the payment amount.

Note: The payment amount may be reduced under subsection (8).

If there are 2 or more ETPs required

(6) If, at a particular time, subsection (5) requires a taxpayer to make 2 or more ETPs to the controlling individual (whether or not by the same time), the taxpayer may meet that requirement either:

(a) by making separate ETPs whose amounts are in total at least equal to the sum of the payment amounts; or

(b) by making a single ETP whose amount is at least equal to the sum of the payment amounts.

Fifth condition

(7) The fifth condition is that, if the controlling individual was under 55 immediately before the disposal, an amount, in relation to the ETP, at least equal to the payment amount must be rolled over (within the meaning of Subdivision AA of Division 2 of Part III, reading references in that Subdivision to "the taxpayer" as references to the controlling individual instead, and assuming that paragraph 27A(12)(c) had not been enacted) by the controlling individual.

Note: The payment amount may be reduced under subsection (8).

ETP not required to the extent that the total actual consideration received exceeds the asset's CGT exempt amount

(8) However, if the sum of:

(a) the payment amount; and

(b) the total amount of any actual consideration the taxpayer received, as mentioned in paragraph (2)(b), earlier in respect of the disposal;

exceeds the asset's CGT exempt amount, the payment amount is reduced, for the purposes of subsections (5), (6) and (7), by the amount of the excess.

Note: In some cases, this will reduce that amount to nil.

Example: Assume that the asset's CGT exempt amount is $1,000. Assume that the taxpayer receives a payment amount of $300, and has previously received $900 as actual consideration in respect of the disposal. The sum of those amounts is $1,200, which exceeds the asset's CGT exempt amount by $200. Therefore the amount of this payment amount is reduced by $200 to $100.

160ZZPZI Dual-controller conditions

(1) This section sets out the conditions that are the ***dual-controller conditions***.

First condition

(2) The first condition is that:

(a) the requirements of paragraphs 160ZZPQ(1)(a) to (d) must be satisfied in relation to the disposal of an asset by the taxpayer; and

(b) the taxpayer must receive all of the actual consideration (see section 160ZZPZO), if any, in respect of the disposal within the period beginning one year before, and ending 2 years after, the disposal.

The whole of the actual consideration mentioned in paragraph (b) need not be received all at once; parts of the actual consideration may be received at different times during the period.

Second condition

(3) The second condition is that, immediately before the disposal, there must be 2 controlling individuals (see section 160ZZPZP) of the taxpayer.

Third condition

(4) The third condition is that:

(a) the taxpayer must elect in writing, on or before the date of lodgment of the taxpayer's return of income for the year of income mentioned in paragraph 160ZZPQ(1)(a), that this

Division is to apply to the taxpayer in respect of the disposal; and

(b) the election must specify an amount as the asset's ***CGT exempt amount***; and

(c) that amount must not be greater than the amount of the capital gain concerned (possibly as reduced by Subdivision D, which deals with previous years' net capital losses); and

(d) the election must specify the percentages (the ***exemption percentages***) of the asset's CGT exempt amount that are to be regarded as attributable to each of the 2 controlling individuals. One of the percentages may be nil, but the 2 percentages must add up to 100%; and

(e) for each of the 2 controlling individuals, the individual's exemption percentage of the asset's CGT exempt amount must not exceed that individual's CGT retirement exemption limit immediately before the election is made; and

Example: Fiona is a controlling individual of a taxpayer. Her exemption percentage is 10% (which means that the other controlling individual's exemption percentage must be 90%). Fiona's CGT retirement exemption limit is $500,000. To determine whether paragraph (e) is complied with, she would take 10% of the asset's CGT exempt amount and see whether that amount exceeds $500,000.

(f) the taxpayer must not have already made an election under section 160ZZPQ in respect of the disposal.

Fourth condition

(5) The conditions in subsections 160ZZPZH(5) to (8) are also dual-controller conditions, except that the subsections apply separately in respect of each of the 2 controlling individuals as if:

(a) each were the only controlling individual; and

(b) references (other than in paragraph (5)(b) and subsection (8)) to the payment amount were, in relation to each controlling individual, instead a reference to the following amount:

Controlling individual's exemption percentage ◈ Payment amount

160ZZPZJ What happens if the disposal is exempt

(1) If the conditions in section 160ZZPZH or 160ZZPZI are met, the following consequences apply.

Capital gain reduced by asset's CGT exempt amount

(2) The amount of the capital gain that otherwise would have accrued in respect of the disposal concerned is reduced (but not below nil) by the asset's CGT exempt amount.

Other CGT exemptions/concessions are not available

(3) Divisions 15, 17, 17A, 18 and 19 do not apply in respect of the disposal.

Treatment of ETP

(4) Any ETP, or part of an ETP, the taxpayer makes, to the extent required to comply with subsection 160ZZPZH(5) (including as it is applied by subsection 160ZZPZI(5)):

(a) is taken, for the purposes of this Act, to consist solely of a CGT exempt component; and

(b) is not an allowable deduction of the taxpayer.

Note: For the rules about ETPs (eligible termination payments), see Subdivision AA of Division 2 of Part III.

160ZZPZK Exemption reduced if controlling individual did not control taxpayer throughout taxpayer's ownership of asset

(1) If:

(a) immediately before the disposal of the asset concerned, there was only one controlling individual of the taxpayer; and

(b) at any time during the period (the ***ownership period***) from the later of:

(i) the start of the 1992-93 year of income; and

(ii) the time when the taxpayer acquired the asset;

until immediately before the disposal, the individual was not the controlling individual of the taxpayer;

the asset's CGT exempt amount is reduced by the following amount:

$$\text{Asset's CGT exempt amount} \times \frac{\text{Part of ownership period when individual was not controlling individual of the taxpayer}}{\text{Ownership period}}$$

(2) However, if, disregarding subparagraph (1)(b)(i), the asset's CGT exempt amount would be reduced by a lesser amount, the asset's CGT exempt amount is instead reduced by that lesser amount.

If there are 2 controlling individuals

(3) If, immediately before the disposal, there were 2 controlling individuals of the taxpayer, the asset's CGT exempt amount is reduced by the sum of the amounts, worked out for each controlling individual, using the formula:

Individual's exemption percentage (see paragraph 160ZZPZI(4)(d)) ◈ Reduction required under subsection (1) or (2) if the individual were the only controlling individual

Subdivision D—Previous years' net capital losses

160ZZPZL Exemption reduced if net capital losses available from previous years

(1) This section applies if:

(a) a taxpayer makes one or more elections under paragraph 160ZZPZD(2)(a), 160ZZPZH(4)(a) or 160ZZPZI(4)(a) in respect of disposals of assets during a particular year of income (the ***current year***); and

(b) the taxpayer incurred one or more net capital losses in respect of years of income before the current year, but after the 1994-95 year of income, that have not been fully applied under section 160ZC in respect of years of income before the current year; and

(c) the losses would, apart from this Division, be fully or partly applied in determining whether a net capital gain accrues to the taxpayer in respect of the current year (if sufficient capital gains accrue in the current year). The extent to which a loss would be so applied is called the ***unapplied loss***.

Capital gains are reduced

(2) The capital gain in respect of each of the disposals is reduced (but not below nil) by an amount (the ***reduction amount***) equal to so much of the total amount of the unapplied losses as has not already (see subsection (4)) been applied in reducing other capital gains under this subsection for the current year or an earlier year of income.

Losses are also reduced, in the order in which they were incurred

(3) The net capital losses are reduced (but not below nil) by the reduction amount, in the order in which the taxpayer incurred the losses.

Order of reduction of capital gains is the order in which elections were made

(4) Capital gains in respect of disposals are to be reduced under subsection (2) in the order in which the taxpayer made the elections as mentioned in paragraph (1)(a) in respect of the disposals.

This section applies before other net capital loss provisions

(5) For any given year of income, this section is to be applied in reduction of net capital losses before section 160ZC and Division 17A are to be applied in relation to those losses.

Example

(6) The following is an example of how this section works:

Example: Assume that a taxpayer has net capital losses from previous years of income of $200 and $300 (incurred in that order). Assume that the taxpayer made elections in respect of the disposal of assets A, B and C (in that order) and that the amounts of the respective capital gains were $200, $400 and $700.

First, the capital gain in respect of asset A is reduced to nil by the $200 loss. (Note that the election for asset A must therefore specify nil as that asset's CGT exempt amount.) The $300 loss is then applied against the capital gain in respect of asset B, reducing it to $100.

Now that all of the total amount of the losses has been applied, the capital gain in respect of asset C is not reduced under this section.

Subdivision E—Definitions

160ZZPZM List of expressions

In this Division:

actual consideration has the meaning given by section 160ZZPZO.

asset has the same meaning as in Division 17A.

CGT retirement exemption limit has the meaning given by section 160ZZPZN.

controlling individual has the meaning given by section 160ZZPZP.

ETP means an eligible termination payment within the meaning of section 27A.

pattern of distributions test has the meaning given by subsection 160ZZPZQ(1).

public company has the same meaning as in Division 17A.

publicly traded unit trust has the same meaning as in Division 17A.

test year has the meaning given by subsection 160ZZPZQ(2).

trust has the same meaning as in Division 17A.

160ZZPZN CGT retirement exemption limit

(1) An individual's ***CGT retirement exemption limit*** at a particular time is the amount worked out as follows:

$$\$500{,}000 - \text{Total of CGT exempt amounts specified in previous elections}$$

where:

previous elections means elections under paragraph 160ZZPZD(2)(a), 160ZZPZH(4)(a) or 160ZZPZI(4)(a) made before the particular time by:

(a) the individual; or

(b) a company or trust whose controlling individual, or one of whose controlling individuals, was the individual.

If there are 2 controlling individuals

(2) If the individual was one of 2 controlling individuals of a company or trust that made a previous election, only the individual's exemption percentage (see paragraph 160ZZPZI(4)(d)) of the CGT exempt amount specified in the election is to be taken into account under subsection (1).

160ZZPZO Actual consideration

(1) For the purposes of this Division, ***actual consideration*** means consideration disregarding the effect of subsection 160ZD(2).

(2) For the purposes of this Division, if the actual consideration in respect of the disposal of an asset is an obligation to pay money or do any other thing, the actual consideration is taken to be received when the money is paid or the other thing is done.

160ZZPZP Controlling individual

(1) This section sets out the meaning of ***controlling individual*** of (in turn) a company, a fixed trust and any other trust.

Companies

(2) An individual is the ***controlling individual*** of a company at a particular time if, at that time, the individual:

(a) is an employee (see subsection (6)) of the company; and

(b) holds all of the legal and equitable interests in shares that carry (between them) the right to exercise at least 50% of the voting power in the company; and

(c) holds all of the legal and equitable interests in shares that carry (between them) the right to receive at least 50% of any dividends that the company may pay; and

(d) holds all of the legal and equitable interests in shares that carry (between them) the right to receive at least 50% of any distribution of capital of the company.

Control of fixed trusts

(3) An individual is the ***controlling individual*** of a fixed trust (see subsection (5)) at a particular time if, at that time, the individual:

(a) is an employee (see subsection (6)) of the trust; and

(b) has, for his or her own benefit, entitlements to at least a 50% share of the income of the trust; and

(c) has, for his or her own benefit, entitlements to at least a 50% share of the capital of the trust.

Control of other trusts

(4) An individual is the ***controlling individual*** of a trust, other than a fixed trust, at a particular time (the ***test time***) if:

(a) the individual is an employee (see subsection (6)) of the trust at the test time; and

(b) the trust passes the pattern of distributions test, for the test year, in relation to the individual (see section 160ZZPZQ).

Fixed trust

(5) A trust is a ***fixed trust*** if persons have entitlements to all of the income and capital of the trust.

Employee

(6) In this section:

employee has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*, except that subsection 12(11) of that Act is to be disregarded.

Redeemable shares to be disregarded

(7) For the purposes of subsection (2), a person who, at a particular time, holds a legal or equitable interest in a share:

(a) that is liable to be redeemed; or

(b) that, at the option of the company that issued it, is liable to be redeemed;

is taken not to hold the interest at that time.

160ZZPZQ Pattern of distributions test

(1) A trust passes the ***pattern of distributions test*** for the test year (see subsection (2)) in relation to an individual if:

(a) during the test year, the trust made a distribution of income, a distribution of capital or both; and

(b) if the trust made at least one such distribution of income—the trust distributed to the individual, for the individual's benefit, at least a 50% share of all distributions of income made by the trust during the test year; and

(c) if the trust made at least one such distribution of capital—the trust distributed to the individual, for the individual's benefit, at least a 50% share of all distributions of capital made by the trust during the test year.

Test year

(2) For the purposes of subsection (1), the ***test year*** is:

(a) if the test time concerned (see subsection 160ZZPZP(4)) is in the same year of income as the disposal concerned—the year of income immediately before that year of income; or

(b) in any other case—the year of income in which the test time occurs.

Division 2—Amendment of superannuation-related provisions

4 Subsection 27A(1)

Insert:

CGT exempt component, in relation to an ETP, means:

(a) if the ETP is covered by subsection 160ZZPZE(4)—the amount of the ETP; or

(b) if the whole or a part of the ETP is taken by subsection 160ZZPZJ(4) to consist solely of a CGT exempt component—the amount of that component.

5 Subsection 27A(1) (paragraph (h) of the definition of eligible termination payment)

Omit "or".

6 Subsection 27A(1) (after paragraph (j) of the definition of eligible termination payment)

Insert:

or (jaa) an amount that is taken to be an ETP by subsection 160ZZPZE(4);

7 After paragraph 27AA(1)(ca)

Insert:

(cb) the CGT exempt component;

8 Subparagraph 27AA(1)(d)(i) (formula)

Repeal the formula, substitute:

$$(\text{ETP} - \text{C} - \text{IC} - \text{NQ} - \text{EC} - \text{CGT}) \times \frac{\text{Pre - July 83}}{\text{Total period}}$$

9 Subparagraph 27AA(1)(d)(i) (after the definition of EC)

Insert:

CGT is the CGT exempt component.

10 Subparagraph 27AA(1)(d)(ii)

Repeal the subparagraph, substitute:

(ii) the amount represented by the component:

$$(\text{ETP} - \text{C} - \text{IC} - \text{NQ} - \text{EC} - \text{CGT})$$

in subparagraph (i), reduced by the undeducted contributions;

11 Subsection 27AA(3)

Omit "paragraphs (1)(ca), (d) and (e)", substitute "paragraphs (1)(ca), (cb), (d) and (e)".

12 Subsection 27AB(1) (table item 1)

Omit "(fe) or (ff)", substitute "(fe), (ff) or (jaa)".

13 After paragraph 27AC(2)(c)

Insert:

(ca) the retained amount of the CGT exempt component is so much of the CGT exempt component as was not rolled-over; and

14 Subparagraph 27AC(2)(d)(i) (formula)

Repeal the formula, substitute:

$$\text{Reduced retained amount of ETP} \times \frac{\text{Pre - July 83}}{\text{Total period}}$$

15 Subparagraph 27AC(2)(d)(i) (before the definition of Pre-July 83)

Insert:

Reduced retained amount of ETP is the retained amount of the ETP, reduced by the sum of the amounts listed in subsection (2A).

16 Subparagraph 27AC(2)(d)(ii)

Repeal the subparagraph, substitute:

(ii) the retained amount of the ETP, reduced by the sum of the amounts listed in subsection (2A) and further reduced by the retained amount of the undeducted contributions; and

17 After subparagraph 27AC(2)(e)(ii)

Insert:

(iia) the retained amount of the CGT exempt component of the ETP; and

18 After subsection 27AC(2)

Insert:

Reduced retained amount of ETP

(2A) For the purposes of subparagraphs (2)(d)(i) and (ii), the amounts are as follows:

(a) the retained amount of the concessional component of the ETP;

(b) the retained amount of the post-June 1994 invalidity component of the ETP;

(c) the retained amount of the CGT exempt component of the ETP;

(d) the non-qualifying component of the ETP;

(e) the excessive component of the ETP.

19 After subparagraph 27CB(1)(b)(i)

Insert:

(ia) a CGT exempt component;

20 After sub-subparagraph 27D(1)(b)(iii)(D)

Insert:

(DA) a CGT exempt component;

21 After paragraph 27D(5)(aa)

Insert:

(ab) the notional CGT exempt component, which is the amount (including a nil amount) specified in the taxpayer's election under subsection (1) as the extent to which the taxpayer wishes the applied amount to be regarded as consisting of the eligible component covered by sub-subparagraph (1)(b)(iii)(DA);

22 Subparagraph 27D(5)(c)(i) (formula)

Repeal the formula, substitute:

$$\text{Reduced applied amount} \times \frac{\text{Pre - July 83}}{\text{Total period}}$$

23 Subparagraph 27D(5)(c)(i) (before the definition of Pre-July 83)

Insert:

Reduced applied amount is the applied amount, reduced by the sum of the amounts listed in subsection (5A).

24 Subparagraph 27D(5)(c)(ii)

Repeal the subparagraph, substitute:

(ii) the applied amount, reduced by the sum of the amounts listed in subsection (5A) and further reduced by the amount of the notional undeducted contributions;

25 After subsection 27D(5)

Insert:

(5A) For the purposes of subparagraphs (5)(c)(i) and (ii), the amounts are as follows:

(a) the notional concessional component;

(b) the notional post-June 1994 invalidity component;

(c) the notional CGT exempt component.

26 Section 140C

Insert:

CGT exempt component has the same meaning as in section 27A.

27 Section 140C (at the end of the definition of payer)

Add "and, if the benefit is an ETP covered by subsection 160ZZPZE(4), includes the taxpayer mentioned in that subsection".

28 At the end of section 140H

Add:

; and (g) a reference to the CGT exempt component of the amount rolled over is a reference to so much of the ETP as is taken, because of section 27D, to consist of an amount to which sub-subparagraph 27D(1)(b)(iii)(DA) applies.

29 Subparagraph 140M(1)(a)(iii)

Omit "and".

30 After subparagraph 140M(1)(a)(iii)

Insert:

(iv) a payer makes an ETP, consisting in whole or in part of a CGT exempt component, in relation to a person; and

31 At the end of section 140M

Add:

ETPs covered by subsection 160ZZPZE(4)—special rules

(6) If an ETP is taken to have been made to a person under subsection 160ZZPZE(4):

(a) the ETP is taken to be an ETP to which subsection (1) of this section applies; and

(b) for the purposes of this section, the person is taken to be the payer of the ETP; and

(c) paragraph (3)(b) of this section does not apply in relation to the ETP; and

(d) the notice mentioned in subsection (1) must be given to the Commissioner before the end of the 14th day of the month after the payment month mentioned in subparagraph (3)(b)(i), or before the end of such further period as the Commissioner allows.

32 At the end of section 140N

Add:

Automatic quotation of TFN for certain CGT exempt ETPs

(4) If:

(a) the ETP is covered by subsection 160ZZPZE(4); and

(b) the person has a tax file number;

the person is taken to have quoted the tax file number to the payer when the ETP was made.

Note: The reason for this rule is that, in such cases, the person and the payer are the same person.

33 At the end of section 140P

Add:

(3) This section does not apply if the benefit is an ETP covered by subsection 160ZZPZE(4).

Note: The reason for this exception is that, in such cases, the recipient and the payer are the same person.

34 At the end of section 140ZH

Add:

; and (d) 100% of the retained amount of the CGT exempt component of the ETP.

35 Subparagraph 140ZJ(1)(a)(ii)

Omit "or", substitute "and".

36 After subparagraph 140ZJ(1)(a)(ii)

Add:

(iii) 100% of the retained amount of the CGT exempt component of the ETP; or

37 Paragraph 140ZJ(1)(b)

After "in any other case—", insert "the sum of 100% of the retained amount of the CGT exempt component of the ETP and".

38 After section 140ZJ

Insert:

140ZJA RBL amount—certain CGT exempt ETPs

The RBL amount of an ETP covered by subsection 160ZZPZE(4) is 100% of the retained amount of the CGT exempt component of the ETP.

39 Subparagraph 140ZM(a)(iii)

Omit "or"

40 After subparagraph 140ZM(a)(iii)

Add:

(iv) 100% of the retained amount of the CGT exempt component; or

41 After subparagraph 140ZM(b)(iii)

Add:

(iv) 100% of the retained amount of the CGT exempt component;

42 Subsection 140ZO(1) (definition of Undeducted purchase price)

Repeal the definition, substitute:

Undeducted purchase price means the undeducted purchase price of the pension, reduced by so much of the purchase price of the pension as is taken, because of section 27D, to consist of an amount to which sub-subparagraph 27D(1)(b)(iii)(DA) applies.

43 Subsection 140ZO(3) (definition of Excess undeducted purchase price)

Repeal the definition, substitute:

Excess undeducted purchase price means the amount by which the undeducted purchase price of the new pension (as reduced by so much of the purchase price of the pension as is taken, because of section 27D, to consist of an amount to which sub-subparagraph 27D(1)(b)(iii)(DA) applies) exceeds the undeducted purchase price of the old pension (as reduced in the same way).

Part 2—Amendment of the Terminations Payments Tax (Assessment and Collection) Act 1997

44 Subsection 7(2)

After "invalidity component", insert "or CGT exempt component".

Part 3—Application

45 Application

The amendments made by this Schedule apply to disposals of assets on or after 1 July 1997.

Schedule 2—Sale of mining rights

Income Tax Assessment Act 1936

1 Paragraph 23(pa)

Omit all the words from and including "where" (first occurring) to "except that—", substitute:

where:

(i) those rights to mine were acquired by the person before 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996; and

(ia) the income was derived before 20 August 2001; and

(ib) the person, on or before 20 August 1996 was a bona fide prospector, that is to say:

(A) a person (other than a company) who has personally carried out the whole or the major part of the field work of prospecting for gold or for the prescribed metal or prescribed mineral, as the case may be, in that area, or has contributed to the expenditure incurred in the work of prospecting and development in that area; or

(B) a company which has itself carried out the whole or the major part of such field work;

except that:

(ii) where the income was derived under a contract for the sale, transfer or assignment of the rights to mine entered into after 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996, this paragraph only applies to so much of the income derived as would have been derived if those rights had been sold for their market value at that time; and

Income Tax Assessment Act 1997

2 Subsection 330-60(1)

Omit "If you are a *genuine prospector, your *ordinary income (for the 1997-98 income year or a later income year)", substitute "Your *ordinary income".

3 Subsection 330-60(1)

After "income tax", insert:

if:

(d) you acquired those rights before 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996; and

(e) you *derive the *ordinary income before 20 August 2001; and

(f) you were a *genuine prospector on or before 20 August 1996, and you are one when you derive the ordinary income.

4 After subsection 330-60(1)

Insert:

(1A) If you *derived the *ordinary income under a contract for the sale, transfer or assignment of the rights entered into after 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996, the exemption applies only to:

(a) so much of the ordinary income as you would have derived if those rights had been sold for their market value at that time;

reduced by:

(b) any amounts you incurred before that time that you have deducted or can deduct for an earlier income year under Division 10 of Part III of the *Income Tax Assessment Act 1936* in respect of expenditure on exploration or prospecting (within the meaning of section 122J or 122JF of that Act) in that area.

5 Subsection 330-60(2)

Omit "The exemption", substitute "If subsection (1A) does not apply, the exemption".

6 Paragraph 330-60(2)(b)

Omit "section 122J", substitute "Division 10 of Part III".

7 Paragraph 330-60(2)(b)

Omit “that section”, substitute “section 122J or 122JF of that Act”.

Schedule 3—Family tax initiative

Income Tax Assessment Act 1936

1 Subsection 23AF(17A) (at the end of the definition of notional gross tax)

Add:

and (c) Division 5 of Part II of the *Income Tax Rates Act 1986* did not apply in relation to the taxpayer.

2 After subsection 23AF(17C)

Insert:

Family tax initiative adjustment

(17D) If:

(a) the income of a taxpayer of a year of income consists of an amount that is exempt from tax under this section; and

(b) apart from this subsection, section 20C, 20D or 20E of the *Income Tax Rates Act 1986* would apply in relation to the taxpayer;

then:

(c) those sections of the *Income Tax Rates 1986* do not apply to the taxpayer in relation to the year; and

(d) the amount of tax payable by the person is reduced by the amount worked out using the formula:

$$\text{Tax free threshold increase} \times \text{Lowest marginal rate}$$

(17E) In subsection (17D):

lowest marginal rate means the lowest rate set out in column 2 of the table in clause 1 of Part I of Schedule 7 to the *Income Tax Rates Act 1986*.

tax free threshold increase means the sum of the amounts by which, subject to Division 5 of Part II of the *Income Tax Rates Act 1986*, the amount of $5,400 set out in column 1 of the table in clause 1 of Part I of Schedule 7 to that Act would be taken to be

increased in relation to the taxpayer in respect of the year of income under sections 20C and 20D of that Act if those sections applied to the taxpayer.

3 Subsection 23AG(3) (at the end of the definition of notional gross tax)

Add:

and (c) Division 5 of Part II of the *Income Tax Rates Act 1986* did not apply in relation to the taxpayer.

4 After subsection 23AG(5)

Insert:

Family tax initiative adjustment

(5A) If:

(a) the income of a taxpayer of a year of income consists of an amount that is exempt from tax under this section; and

(b) apart from this subsection, section 20C, 20D or 20E of the *Income Tax Rates Act 1986* would apply in relation to the taxpayer;

then:

(c) those sections of the *Income Tax Rates Act 1986* do not apply to the taxpayer in relation to the year; and

(d) the amount of tax payable by the person is reduced by the amount worked out using the formula:

$$\text{Tax free threshold increase} \times \text{Lowest marginal rate}$$

(5B) In subsection (5A):

lowest marginal rate means the lowest rate set out in column 2 of the table in clause 1 of Part I of Schedule 7 to the *Income Tax Rates Act 1986*.

tax free threshold increase means the sum of the amounts by which, subject to Division 5 of Part II of the *Income Tax Rates Act 1986*, the amount of $5,400 set out in column 1 of the table in clause 1 of Part I of Schedule 7 to that Act would be taken to be increased in relation to the taxpayer in respect of the year of

income under sections 20C and 20D of that Act if those sections applied to the taxpayer.

5 Application

The amendments made by this Schedule apply in relation to the 1996-97 year of income and to all later years of income.

Schedule 4—Dividend imputation and tax exempt entities

Part 1—Amendment of the Income Tax Assessment Act 1936

1 After section 160AQCN

Insert:

Subdivision D—Disposal of subsidiary by exempt company

160AQCO Cancellation of franking surplus, credit or debit

(1) This section applies if:

(a) at a particular time (the ***transition time***), all of the income of a company (the ***exempt company***) is wholly exempt from income tax; and

(b) at the transition time, another company (the ***former subsidiary***) ceases to be a subsidiary (as defined in section 57-125 of Schedule 2D) of the exempt company; and

(c) immediately before the transition time, the former subsidiary was not itself wholly exempt from income tax; and

(d) immediately before the transition time, all of the income of every company that beneficially owned shares in the former subsidiary was wholly exempt from income tax.

Note: If the exempt company itself ceases to be wholly exempt from income tax, it and its subsidiaries will be covered by similar rules under Schedule 2D (treatment of tax exempt entities that become taxable).

Cancellation of surplus

(2) Subject to subsection (4), if, immediately before the transition time, the former subsidiary has a class A franking surplus, a class B franking surplus or a class C franking surplus, then the surplus is reduced to nil at the transition time.

Cancellation of credit/debit

(3) Subject to subsection (4), if:

(a) at any time after the transition time, there arises a franking credit or a franking debit of the former subsidiary; and

(b) the franking credit or franking debit is to any extent attributable to the period, or to an event taking place, before the transition time;

the franking credit or franking debit is to that extent taken not to have arisen.

Cases where subsections (2) and (3) do not apply

(4) If:

(a) one or more class A franking debits, class B franking debits or class C franking debits of the former subsidiary arise after the transition time; and

(b) any of the debits is to an extent (the amount of which is the ***pre-transition time component*** of the debit) attributable to the period, or to an event taking place, before the transition time; and

(c) immediately before the transition time:

(i) there was a class A franking surplus, class B franking surplus or class C franking surplus of the former subsidiary that was less than the total of the pre-transition time components of all of the debits of that class; or

(ii) there was no class A franking surplus, there was no class B franking surplus or there was no class C franking surplus of the former subsidiary;

then:

(d) in a case covered by subparagraph (c)(i)—subsection (2) does not apply to the surplus or surpluses concerned; and

(e) in any case—subsection (3) does not apply to the debits of the class or classes concerned.

States and Territories

(5) The reference in paragraph (1)(a) to a company all of whose income is wholly exempt from income tax includes a reference to a State or Territory.

2 At the end of Schedule 2D

Add:

Subdivision 57-M□Imputation

57-120 Cancellation of franking surplus, credit or debit

Cancellation of surplus

(1) Subject to subsections (3) and (4), if, immediately before the transition time, the transition taxpayer or a subsidiary (see section 57-125) of the transition taxpayer has a class A franking surplus, a class B franking surplus or a class C franking surplus, then the surplus is reduced to nil at the transition time.

Cancellation of credit/debit

(2) Subject to subsections (3) and (4), if:

(a) at any time after the transition time, there arises a franking credit or a franking debit of the transition taxpayer or of a subsidiary of the transition taxpayer; and

(b) the franking credit or franking debit is to any extent attributable to a period, or to an event taking place, before the transition time;

the franking credit or franking debit is to that extent taken not to have arisen.

Cases where subsections (1) and (2) do not apply to the transition taxpayer

(3) If:

(a) one or more class A franking debits, class B franking debits or class C franking debits of the transition taxpayer arise after the transition time; and

(b) any of the debits is to an extent (the amount of which is the ***pre-transition time component*** of the debit) attributable to the period, or to an event taking place, before the transition time; and

(c) immediately before the transition time:

(i) there was a class A franking surplus, class B franking surplus or class C franking surplus of the transition

taxpayer that was less than the total of the pre-transition time components of all of the debits of that class; or

(ii) there was no class A franking surplus, there was no class B franking surplus or there was no class C franking surplus of the transition taxpayer;

then:

(d) in a case covered by subparagraph (c)(i)—subsection (1) does not apply to the surplus or surpluses concerned; and

(e) in any case—subsection (2) does not apply to the debits of the class or classes concerned.

Cases where subsections (1) and (2) do not apply to a subsidiary

(4) If:

(a) one or more class A franking debits, class B franking debits or class C franking debits of a subsidiary of the transition taxpayer arise after the transition time; and

(b) any of the debits is to an extent (the amount of which is the ***pre-transition time component*** of the debit) attributable to the period, or to an event taking place, before the transition time; and

(c) immediately before the transition time:

(i) there was a class A franking surplus, class B franking surplus or class C franking surplus of the subsidiary that was less than the total of the pre-transition time components of all of the debits of that class; or

(ii) there was no class A franking surplus, there was no class B franking surplus or there was no class C franking surplus of the subsidiary;

then:

(d) in a case covered by subparagraph (c)(i)—subsection (1) does not apply to the surplus or surpluses concerned; and

(e) in any case—subsection (2) does not apply to the debits of the class or classes concerned.

Definitions

(5) In this section, the following expressions have the same meaning as in Part IIIAA:

class A franking debit

class A franking surplus

class B franking debit

class B franking surplus

class C franking debit

class C franking surplus

franking credit

franking debit.

57-125 Subsidiary

(1) A company (the ***subsidiary company***) is a ***subsidiary*** of another company (the ***holding company***) if all the shares in the subsidiary company are beneficially owned by:

(a) the holding company; or

(b) one or more subsidiaries of the holding company; or

(c) the holding company and one or more subsidiaries of the holding company.

(2) A company (other than the subsidiary company) is a ***subsidiary*** of the holding company if, and only if:

(a) it is a subsidiary of the holding company; or

(b) it is a subsidiary of a subsidiary of the holding company;

because of any other application or applications of this section.

Part 2—Application

3 Application

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

Schedule 5—Principal residence exemption from CGT

Part 1—Amendment of the Income Tax Assessment Act 1936

Division 1—Dwellings acquired from deceased persons: extension of 12 month rule to 2 years

1 Paragraph 160ZZQ(14)(b), subparagraph 160ZZQ(15)(b)(i) and paragraphs 160ZZQ(18)(b) and (20)(b)

Omit "12 months", substitute "2 years".

Division 2—Dwellings acquired from deceased persons: partial exemptions from CGT

2 Subsection 160ZZQ(17)

Omit "subsection (21)", substitute "subsections (20A) and (21)".

3 Paragraph 160ZZQ(17)(a)

Omit all the words after "is disposed of".

4 After paragraph 160ZZQ(17)(a)

Insert:

(aa) the disposal is not covered by subsection (13), (13A) or (14);

5 Subparagraph 160ZZQ(17)(b)(i)

Omit "portion only", substitute "the whole or a portion".

6 Subparagraphs 160ZZQ(17)(b)(ii) and (iii)

Omit "part only", substitute "the whole or part".

7 Subsection 160ZZQ(17) (formula, definition of B)

Repeal the definition, substitute:

B is the sum of the following:

(d) the number of days (if any) in the relevant period during which the taxpayer owned the dwelling (disregarding section 160X), but the dwelling was not the taxpayer's sole or principal residence;

(e) if the deceased person acquired the dwelling on or after 20 September 1985—the number of days (if any) in the period during which the deceased person owned the dwelling, but the dwelling was not the deceased person's sole or principal residence;

(f) the number of days (if any) in the period mentioned in paragraph (13)(d) during which the dwelling was not the sole or principal residence of any of the persons mentioned in subparagraphs (13)(d)(i) and (ii).

8 After paragraph 160ZZQ(17A)(a)

Insert:

(aa) the disposal is not covered by subsection (13), (13A) or (14);

9 Subparagraphs 160ZZQ(17A)(b)(i) and (ii)

Omit "part only", substitute "the whole or part".

10 Subsection 160ZZQ(17A) (formula, definition of B)

Repeal the definition, substitute:

B is the sum of the following:

(d) the number of days (if any) in the period from the deceased person's death to the disposal of the dwelling during which the dwelling was not the taxpayer's sole or principal residence;

(e) if the deceased person acquired the dwelling on or after 20 September 1985—the number of days (if any) in the period during which the deceased person owned the dwelling, but the dwelling was not the deceased person's sole or principal residence.

11 After paragraph 160ZZQ(19)(a)

Insert:

(aa) the disposal is not covered by subsection (15);

12 Subparagraphs 160ZZQ(19)(b)(i) and (ii)

Omit "part only", substitute "the whole or part".

13 Subsection 160ZZQ(19) (formula, definition of B)

Repeal the definition, substitute:

B is the sum of the following:

(d) the number of days (if any) in the period mentioned in subparagraph (15)(b)(ii) during which the dwelling was not the sole or principal residence of any of the persons mentioned in sub-subparagraphs (15)(b)(ii)(A) and (B);

(e) if the deceased person acquired the dwelling on or after 20 September 1985—the number of days (if any) in the period during which the deceased person owned the dwelling, but the dwelling was not the deceased person's sole or principal residence.

14 Subsection 160ZZQ(20A)

After "Where", insert "both subsections (17) and (18),".

Division 3—Dwellings acquired from deceased persons: status of residence at time of death

15 Paragraph 160X(5)(a)

Omit "if the asset was acquired by the deceased person before 20 September 1985—the asset", substitute:

if:

(i) the deceased person acquired the asset before 20 September 1985; or

(ii) the asset is a dwelling that was, immediately before the person's death, the person's sole or principal residence for the purposes of section 160ZZQ and was not, for the purposes of that section, then being used for the purpose of gaining or producing assessable income;

the asset.

16 At the end of paragraph 160X(5)(a)

Add:

Note: In certain cases, a dwelling may be taken to have been a person's sole or principal residence, and any use for the purpose of gaining or producing assessable income may be disregarded, for the purposes of section 160ZZQ: see subsection 160ZZQ(11).

17 Paragraph 160X(5)(b)

Omit "if the asset was acquired by the deceased person on or after 20 September 1985,", substitute "in any other case—".

18 Paragraphs 160ZZQ(13)(c), (13A)(c), (14)(c) and (15)(c)

Omit "throughout the period during which the dwelling was owned by", substitute "immediately before the death of".

19 Subparagraph 160ZZQ(17)(b)(ii)

Omit "referred to in that paragraph" (last occurring), substitute "during which the deceased person owned the dwelling".

20 At the end of subsection 160ZZQ(17)

Add:

Note: The number of days worked out under paragraphs (e) and (j) is modified in some cases: see subsection (20AA).

21 Subparagraph 160ZZQ(17A)(b)(ii)

Omit "referred to in that paragraph" (last occurring), substitute "during which the deceased person owned the dwelling".

22 At the end of subsection 160ZZQ(17A)

Add:

Note: The number of days worked out under paragraphs (e) and (h) is modified in some cases: see subsection (20AA).

23 Subsection 160ZZQ(18)

Omit "referred to in paragraph (14)(c)" (wherever occurring), substitute "during which the deceased person owned the dwelling".

24 Subparagraph 160ZZQ(19)(b)(ii)

Omit "referred to in that paragraph", substitute "during which the deceased person owned the dwelling".

25 At the end of subsection 160ZZQ(19)

Add:

Note: The number of days worked out under paragraphs (e) and (h) is modified in some cases: see subsection (20AA).

26 Subsection 160ZZQ(20)

Omit "referred to in paragraph (15)(c)" (wherever occurring), substitute "during which the deceased person owned the dwelling".

27 After subsection 160ZZQ(20A)

Insert:

(20AA) For the purposes of subsections (17), (17A) and (19), if, immediately before the death of the deceased person concerned, the dwelling concerned:

(a) was the deceased person's sole or principal residence; and

(b) was not being used for the purpose of gaining or producing assessable income;

then:

(c) the number of days mentioned in paragraphs (17)(e), (17A)(e) or (19)(e) (as appropriate) is taken to be nil; and

(d) the number of days mentioned in paragraphs (17)(j), (17A)(h) or (19)(h) (as appropriate) is worked out from and including the date of the death, instead of the date on which the deceased person acquired the dwelling.

28 After paragraph 160ZZQ(20B)(b)

Insert:

and (ba) subparagraph 160X(5)(a)(ii) does not apply to the taxpayer's acquisition of the dwelling;

29 At the end of subsection 160ZZQ(21)

Add:

; and (f) if subsection (13), (13A), (14) or (15) would have applied in respect of the disposal—the extent to which, and the period for which, the dwelling was used for the purpose of gaining or producing assessable income in the period during which both:

(i) the deceased person mentioned in whichever of those subsections would have applied owned the dwelling; and

(ii) the dwelling was the deceased person's sole or principal residence.

Note: This paragraph means that, in determining the amount of the capital gain or capital loss, the Commissioner must have regard to certain use of the dwelling for the purpose of gaining or producing assessable income before the death. However, this rule is subject to subsection (22).

30 At the end of section 160ZZQ

Add:

(22) If:

(a) apart from subsection (21), subsection (13), (13A), (14), (15), (17), (17A), (18), (19), (20) or (20C) would apply in respect of the disposal of a dwelling; and

(b) during all or part of the period (the ***exemption period***) mentioned in paragraph (21)(b), the dwelling was the sole or principal residence of the deceased person mentioned in whichever of those subsections would have applied; and

(c) immediately before the deceased person's death, the dwelling:

(i) was the deceased person's sole or principal residence; and

(ii) was not being used for the purpose of gaining or producing assessable income;

then:

(d) in having regard to the matter mentioned in paragraph (21)(e), the Commissioner must disregard so much of the exemption period as occurred before the death; and

(e) paragraph (21)(f) does not apply in respect of the disposal.

Note: This means that, in determining the amount of the capital gain or capital loss under subsection (21), the Commissioner must disregard any use of the dwelling before the death for the purpose of gaining or producing assessable income.

(23) To avoid doubt, for the purposes of subsection (21), a period may consist of a particular instant in time.

Division 4—Status of dwelling when first used for producing assessable income

31 Paragraph 160ZZQ(11)(a)

After "the taxpayer", insert "(disregarding subsection (20D))".

32 Subsection 160ZZQ(11)

Omit "(other than this subsection)", substitute "(other than this subsection and subsection (20D))".

33 After subsection 160ZZQ(20C)

Insert:

(20D) Despite subparagraphs (20C)(a)(ii) and (iii) and subsection 160X(5), if:

(a) a taxpayer acquires a dwelling on or after 20 September 1985; and

(b) for the first time (the ***first income time***) since the acquisition, the dwelling begins to be used for the purpose of gaining or producing assessable income; and

(c) assuming that the taxpayer had disposed of the dwelling immediately before the first income time, the disposal would have been covered by any of the following provisions:

(i) subsection (12) or (13A);

(ii) subsection (13);

(iii) if subparagraph (15)(b)(ii) would then have applied to the dwelling—subsection (15);

(iv) subparagraph (20C)(b)(i); and

(d) the taxpayer later disposes of the dwelling; and

(e) that later disposal is not covered by:

(i) subsection (14); or

(ii) if subparagraph (15)(b)(i) applies to the disposal—subsection (15);

then:

(f) for the purposes of this Part, the taxpayer is taken to have acquired the dwelling at the first income time for a consideration equal to its market value at that time; and

(g) for the purposes of this section, the taxpayer is taken not to have acquired the dwelling as a beneficiary in, or a trustee of, the estate of a deceased person; and

(h) if subparagraph (c)(ii) or (iii) of this subsection applies—throughout the period mentioned in paragraph (13)(d) or subparagraph (15)(b)(ii) (as appropriate) during which the dwelling was the sole or principal residence of any one or more of the following:

(i) the person who was, immediately before the deceased person's death, the deceased person's spouse;

(ii) a person who, under the deceased person's will, had a right to occupy the dwelling;

the dwelling is taken, for the purposes of this section, to have been the taxpayer's sole or principal residence.

Note: This means that, in applying this Part to the disposal, the period before the first income time (including any time when a deceased person owned the dwelling) is to be disregarded. Subsection (12) or (16) might apply to the disposal (subject to subsection (21), which deals with use of the dwelling for the purpose of gaining or producing assessable income).

Part 2—Application

34 Application

(1) The amendments made by Divisions 1 and 2 of Part 1 apply to disposals of dwellings after 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996.

(2) The amendments made by Division 3 of Part 1 apply to assets that pass to the legal personal representative of a deceased person, to a beneficiary in the estate of a deceased person or to a trustee of the estate of a deceased person, after 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996.

(3) The amendments made by Division 4 of Part 1 apply to a dwelling owned by a taxpayer if:

(a) for the first time since the taxpayer acquired the dwelling, it is used for the purpose of gaining or producing assessable income; and

(b) that time is after 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996.

Schedule 6—Treatment of payments made under firearms surrender arrangements

Part 1—Amendment of the Income Tax Assessment Act 1936

1 Subsection 6(1)

Insert:

firearms surrender arrangements means:

(a) Commonwealth, State or Territory legislation; or

(b) administrative arrangements of a State or a Territory;

implementing the agreement arising from the meeting of the Police Ministers held on 10 May 1996 concerning the surrender of prohibited firearms.

2 After paragraph 23(jc)

Insert:

(jd) the income derived by way of compensation under firearms surrender arrangements for any loss of business;

Note: ***Firearms surrender arrangements*** has the meaning given by subsection 6(1).

3 After subsection 51(2A)

Insert:

(2B) Where a taxpayer derives assessable income as a result of the surrender of an item of trading stock under firearms surrender arrangements, the excess, if any, of the amount of that income over the acquisition cost is an allowable deduction in the year of income in which that income is derived.

Note: ***Firearms surrender arrangements*** has the meaning given by subsection 6(1).

4 After subsection 53I(2)

Insert:

(3) Also, the provisions mentioned in subsection (1) continue to apply for the operation of subsection 59(2AAA) for the 1997-98 year of income and for later years of income in which proceeds are derived as a result of firearms surrender arrangements.

Note: ***Firearms surrender arrangements*** has the meaning given by subsection 6(1).

5 After subsection 59(2)

Insert:

(2AAA) For the purposes of the application of subsection (2), the taxpayer's assessable income does not include any amount by which consideration receivable under firearms surrender arrangements exceeds the depreciated value of a surrendered item of property.

Note: ***Firearms surrender arrangements*** has the meaning given by subsection 6(1).

6 Subsection 79E(12) (definition of exempt income)

After "to which", insert "paragraph 23(jd),".

7 Subsection 79E(12) (definition of exempt income)

After "23AK", insert ", subsection 59(2AAA)".

8 After subsection 160Z(6)

Insert:

(6A) Nothing in this Part operates to deem a capital gain to have accrued to a taxpayer during the year of income where the relevant disposal related to an asset for which the taxpayer received consideration under firearms surrender arrangements.

Note: ***Firearms surrender arrangements*** has the meaning given by subsection 6(1).

9 Application

The amendments made by this Part apply in respect of years of income in which proceeds are derived as a result of firearms surrender arrangements.

Note: ***Firearms surrender arrangements*** has the meaning given by subsection 6(1) of the Income Tax Assessment Act 1936.

Part 2— Amendment of the Income Tax Assessment Act 1997

10 Section 12-5 (after table item headed "financial arrangements")

Insert:

firearms surrender payments	
.....	**51(2B)**

11 Before paragraph 36-20(3)(a)

Insert:

(aa) paragraph 23(jd) (Income derived by way of compensation under firearms surrender arrangements).

12 After paragraph 36-20(3)(e)

Insert:

(ea) subsection 59(2AAA) (Excess of consideration over depreciated value of property surrendered under firearms surrender arrangements);

13 Application

The amendments made by this Part apply in respect of years of income in which proceeds are derived as a result of firearms surrender arrangements.

Note: ***Firearms surrender arrangements*** has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

Schedule 7—Remote area housing

Fringe Benefits Tax Assessment Act 1986

1 At the end of Division 13 of Part III

Add:

58ZA Exempt benefits—remote area housing used in primary production

A benefit that would, apart from this section, be a remote area housing fringe benefit is an exempt benefit if:

(a) the benefit is provided by an employer who is, for the purposes of the *Income Tax Assessment Act 1936*, carrying on a business of primary production; and

(b) the benefit is provided to an employee of the employer; and

(c) the employee is employed in that business of primary production; and

(d) the benefit is provided in respect of that employment.

2 Subsection 59(1)

After "remote area housing fringe benefit", insert ", or a benefit that apart from section 58ZA would be a remote area housing fringe benefit,".

3 Application

The amendments made by this Schedule apply to assessments for the FBT year beginning on 1 April 1997 and for all later FBT years.

Schedule 8—Depreciation of lessor's fixtures

Income Tax Assessment Act 1936

1 At the end of subsection 54AA(1)

Add:

; and (f) section 54AB does not apply.

2 After section 54AA

Insert:

54AB Leased property affixed to land—lessor taken to be owner for depreciation purposes

(1) This section applies if:

(a) a taxpayer (the ***lessor***) enters into a lease with another person (the ***lessee***) under which a right to use a unit of property that is plant or articles within the meaning of section 54 is granted to the lessee; and

(b) the property is a fixture on the land of a person other than the lessor and therefore the lessor is not the owner of the property; and

(c) if the property were not a fixture, the lessor would be the owner of the property; and

(d) under sections 54AC and 54AD, the lessor is an eligible lessor in relation to the property.

(2) If this section applies, the provisions of this Act relating to depreciation apply as if the lessor were the owner of the property instead of any other person.

(3) Also, section 51AD and Division 16D apply in relation to property to which this section applies as if the lessor were the owner of the property instead of any other person.

(4) For the purposes of this section and sections 54AC and 54AD:

hire purchase agreement means a contract for the hire of goods under which the hirer has a right or obligation to purchase the goods where the charge that is or may be made for hiring the

goods, together with any other amount payable under the contract (including an amount to purchase the goods or to exercise an option to do so) exceeds the price of the goods.

lease means:

(a) any arrangement to let a unit of property (other than realty) on hire under which a right to use the property is granted by the owner to another person for a monetary or other consideration; or

(b) a renewal of such an arrangement;

but does not include a hire purchase agreement.

54AC Eligible lessor—right of removal of property

Right of removal

(1) Where a unit of property is a fixture on land owned by the lessee of the property, then, for the purposes of subsection 54AB(1), the lessor is an eligible lessor in relation to that property if:

(a) the lessor has a right, in addition to any other right, to sever and remove the property from the land in the event of default under, or termination of, the lease (a ***right to remove***); and

(b) the property can be removed without causing substantial damage to the property or to the land.

Effective right of removal

(2) Where the property is a fixture on land owned by a person other than the lessee, then, for the purposes of subsection 54AB(1), the lessor is an eligible lessor in relation to the property if:

(a) the lessee has a right to sever and remove the property from the land; and

(b) the property can be removed without causing substantial damage to the property or to the land; and

(c) under the lease, the lessor has a right against the lessee to recover the property (an ***effective right to remove***).

Lessor not an eligible lessor if right to remove, or effective right to remove, is lost

(3) The lessor is not an eligible lessor in relation to the property if:

(a) although the lessor has a right to remove, or an effective right to remove, the property, the lease expires or is otherwise terminated without the lessor exercising that right; or

(b) there is an event of default under the lease and the lessor ceases to have a right to remove, or an effective right to remove, the property; or

(c) the lessor disposes of his or her interest in the lease, including the residual interest in the property; or

(d) the lessee discharges his or her obligations under the lease and the property is not returned to the lessor; or

(e) the property is lost or destroyed.

54AD Lessor not an eligible lessor if property previously owned by the lessee

(1) Subject to subsection (2), a lessor is not an eligible lessor in relation to a unit of property for the purposes of subsection 54AB(1) if, at any time before the lease was entered into, the lessee or an associate of the lessee owned the property and used it or held it for use.

(2) Subsection (1) does not apply if:

(a) the property was first owned and used or held for use by the lessee or an associate of the lessee no more than 6 months before the lessor acquired the property; and

(b) the lessor acquired the property from the lessee or an associate of the lessee; and

(c) the property was not a fixture at the time that it was first owned and used or held for use by the lessee or an associate of the lessee; and

(d) at the time the property was first owned and used or held for use by the lessee or an associate of the lessee, there was an arrangement in existence providing for the property to be sold to the lessor and then leased to the lessee.

(3) For the purposes of subsections (1) and (2), a person (the ***seller***) is taken to have sold property and another person (the ***purchaser***) is taken to have acquired property where the seller purports to sell

the property to the purchaser but does not because the property is a fixture on land.

(4) If the conditions in subsection (2) are satisfied, the cost of the property to the lessor, for the purposes of working out the property's depreciated value under section 62, is taken to be the lesser of:

(a) the sum of:

(i) the amount that would have been the depreciated value of the property of the lessee or an associate of the lessee at the time the lessor acquired it; and

(ii) any amount included in the assessable income of the lessee or associate under section 59 as a result of the sale; or

(b) the consideration paid by the lessor for the property.

(5) For the purposes of this section:

associate has the same meaning as in section 318.

54AE Lessor taken to have disposed of property in certain cases

(1) A lessor who is not an eligible lessor in relation to a unit of property under section 54AB because one or more of the conditions in subsection 54AC(3) is satisfied, is taken to have disposed of the property for the purposes of section 59 or 59AA for the amount of consideration set out in this section.

(2) If:

(a) the lease expires or is otherwise terminated without the lessor exercising his or her right to remove, or effective right to remove, the property; or

(b) there is an event of default under the lease and the lessor ceases to have a right to remove, or an effective right to remove, the property; or

(c) the lessee discharges his or her obligations under the lease and the property is not returned to the lessor;

the lessor is taken to have disposed of the property for a consideration equal to:

(d) if the parties to the lease are dealing at arm's length and there is any termination or residual amount received or

receivable under the lease in respect of the property—that termination or residual amount; or

(e) if the parties to the lease are dealing at arm's length and there is no termination or residual amount received or receivable under the lease in respect of the property—any amount received or receivable by way of compensation in lieu of recovery of the property; or

(f) if the parties to the lease are not dealing at arm's length—the market value of the property immediately before the time of disposal referred to in paragraph (a), (b) or (c) worked out as if it were removed from the land.

(3) If the lessor disposes of his or her interest in the lease including the residual interest in the property, the lessor is taken to have disposed of the property for a consideration equal to:

(a) if the parties to the disposal are dealing at arm's length—the part of the disposal price that is reasonably attributable to the property; or

(b) if the parties to the disposal are not dealing at arm's length—the market value immediately before the time of disposal worked out as if the property were removed from the land.

(4) If the property is lost or destroyed, the lessor is taken to have disposed of the property for the sum of any amounts received or receivable in relation to its loss or destruction.

3 Application

The amendments made by this Schedule 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 9—Increase in age limit for superannuation contributions

Part 1—Amendment of the Superannuation Guarantee (Administration) Act 1992

1 Paragraph 27(1)(a)

Omit "65", substitute "70".

2 Application

The amendment made by this Part applies in relation to the 1997-98 year and all later years.

Part 2—Amendment of the Small Superannuation Accounts Act 1995

3 Section 30

Omit "65", substitute "70".

4 Application

The amendment made by this Part applies to deposits made for a period of employment where:

(a) the deposit is made on or after 1 July 1997; and

(b) the period of employment to which the deposit relates starts on or after 1 July 1997.

Schedule 10—Rebate for superannuation contributions made on behalf of a low-income or non-working spouse

Income Tax Assessment Act 1936

1 After Subdivision AAC of Division 17 of Part III

Insert:

Subdivision AACA—Rebate for superannuation contributions made on behalf of a low income or non-working spouse

159T Rebate for superannuation contributions made in relation to a spouse

(1) This section applies if the following conditions are satisfied in relation to a taxpayer and in relation to a year of income of the taxpayer:

(a) the taxpayer has a spouse in relation to whom he or she makes one or more eligible spouse contributions; and

(b) the taxpayer and his or her spouse are residents at the time that the taxpayer makes the eligible spouse contribution; and

(c) the spouse's assessable income is less than $13,800.

Note: For the meaning of ***eligible spouse contribution***, see section 159TC.

(2) The taxpayer is entitled to a rebate of tax in the taxpayer's assessment for the year of income equal to 18% of the lesser of:

(a) $3,000 reduced by $1 for every $1 of the amount (if any) by which the spouse's assessable income of that year exceeds $10,800; or

(b) the total of the eligible spouse contributions made in relation to the spouse by the taxpayer in that year.

159TA Taxpayers may qualify for rebate in relation to more than one spouse

If, in relation to a year of income, a taxpayer qualifies for the rebate under section 159T in respect of more than one spouse, the total of rebates under that section for which the taxpayer qualifies is equal to the lesser of:

(a) the sum of the rebate amounts for which the taxpayer qualifies in relation to each spouse; or

(b) $540.

159TB Quotation of tax file number

A taxpayer who qualifies for a rebate under section 159T in respect of an eligible spouse may quote the tax file number of the spouse. The taxpayer must obtain the consent of the spouse to the quotation.

159TC Definitions

For the purposes of this Subdivision:

complying superannuation fund has the same meaning as in Part IX.

dependant has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

eligible spouse contributions, in relation to a taxpayer, means contributions made by the taxpayer where:

(a) the contributions are made in relation to a person who is the taxpayer's spouse at the time those contributions are made; and

(b) the contributions are made to a fund that is a complying superannuation fund in relation to the year of income of the fund in which the contributions are made; and

(c) the contributions are made to obtain superannuation benefits for the spouse or, in the event of the death of the spouse, for dependants of the spouse; and

(d) the taxpayer is not entitled to a deduction under section 82AAC in relation to the contributions.

spouse, in relation to a taxpayer:

(a) includes another person who, although not legally married to the taxpayer, lives with the taxpayer on a bona fide domestic basis as the husband or wife of the taxpayer;

but:

(b) does not include a person who lives separately and apart from the taxpayer on a permanent basis.

2 Section 159TC (definition of eligible spouse contributions)

Repeal the definition, substitute:

eligible spouse contributions, in relation to a taxpayer, means contributions made by a taxpayer in relation to a person who is the taxpayer's spouse at the time those contributions are made and the taxpayer is not entitled to a deduction under section 82AAC (including a deduction under that section due to the operation of section 82AADA) in relation to the contributions and:

(a) the contributions are made to a fund where:

(i) the fund is a complying superannuation fund in relation to the year of income of the fund in which the contributions are made; and

(ii) the contributions are made to obtain superannuation benefits for the spouse or, in the event of the death of the spouse, for dependants of the spouse; or

(b) the contributions are made to an RSA to obtain superannuation benefits for the spouse or, in the event of the death of the spouse, for dependants of the spouse.

3 Paragraph 221YCAA(2)(m)

After "159N", insert ", 159T".

4 Subparagraph 274(1)(a)(i)

Repeal the subparagraph, substitute:

(i) contributions made for the purpose of making provision for superannuation benefits for another person, other than:

(A) contributions made by a person that is, when the contributions are made, a trustee of an

exempt life assurance fund (within the meaning of Division 6C of Part III); or

(B) contributions made by a person that is, when the contributions are made, a trustee of a complying superannuation fund, a complying ADF or a PST; or

(C) eligible spouse contributions within the meaning of section 159T;

5 Subparagraph 274(1)(ba)(i)

After "contributions", insert "other than eligible spouse contibutions within the meaning of section 159T,".

6 Application

(1) The amendments made by items 1, 2, 4 and 5 of this Schedule apply to contributions made on or after 1 July 1997.

(2) The amendment made by item 3 of this Schedule applies to provisional tax (including instalments) payable in respect of income of the 1997-98 year of income and all later years of income.

Schedule 11—Research and development

Income Tax Assessment Act 1936

1 Subsection 73B(1) (definition of residual feedstock expenditure)

After "income" (first occurring), insert "in relation to related research and development activities".

2 Subsection 73B(1) (paragraph (a) of the definition of residual feedstock expenditure)

After "income", insert "in relation to those activities".

3 Subsection 73B(1) (paragraph (b) of the definition of residual feedstock expenditure)

After "income", insert "in relation to those activities".

4 Subsection 73B(4H) (table)

Omit "**Annual deduction percentage**", substitute "**Percentage**".

5 Subsection 73B(12B) (formula)

Omit "past".

6 Subsection 73B(12B) (definition of undeducted past expenditure)

Repeal the definition, substitute:

> ***undeducted expenditure*** means so much of the core technology expenditure incurred by the company during the current year or previous years of income in relation to the relevant core technology under contracts entered into at or after the time referred to in subsection (12) as has not been allowed as a deduction from the company's assessable income of any of those previous years of income.

7 Subsection 73B(12B) (paragraph (b) of the definition of current year core technology adjustment amount)

Omit "73B(27)(c)", substitute "73B(27C)(c)".

8 Subsection 73B(14B)

After "income" (first occurring), insert "in relation to related research and development activities".

9 After subsection 73B(24A)

Insert:

(24B) Where:

(a) a deduction has been allowed or is allowable to an eligible company under subsection (15AA) in respect of expenditure incurred in the acquisition or construction of a unit of post-23 July 1996 pilot plant; and

(b) during a year of income, the unit of post-23 July 1996 pilot plant is disposed of, lost or destroyed; and

(c) the company had used the unit of post-23 July 1996 pilot plant before it was disposed of, lost or destroyed exclusively for the purpose of the carrying on by or on behalf of the company of research and development activities; and

(d) no deduction has been allowed or is allowable to the company under section 54 in respect of the unit of post-23 July 1996 pilot plant;

then:

(e) in a case where the consideration receivable in respect of the disposal, loss or destruction is less than the written-down value of the unit of post-23 July 1996 pilot plant:

(i) if the aggregate research and development amount in relation to the company in relation to the year of income is greater than $20,000—the amount ascertained by multiplying the amount by which that written-down value exceeds that consideration receivable by 1.25; or

(ii) if the aggregate research and development amount in relation to the company in relation to the year of income is less than or equal to $20,000—the amount by which that written-down value exceeds that consideration receivable;

is allowable as a deduction from the assessable income of the company of the year of income; or

(f) in a case where the consideration receivable in respect of the disposal, loss or destruction is greater than the written-down

value of the unit of post-23 July 1996 pilot plant—so much of the excess as does not exceed the difference between the cost of the unit of post-23 July 1996 pilot plant and the written-down value of the unit of post-23 July 1996 pilot plant shall be included in the assessable income of the company of the year of income.

10 After subsection 73B(33B)

Insert:

(33BA) Subject to subsections (33BB) and (33C), if the Board gives the Commissioner a certificate in relation to a company or companies under subsection 39PB(6) of the *Industry Research and Development Act 1986*, a deduction is not allowable under this section in respect of expenditure in relation to research and development activities referred to in the certificate that is incurred by that company or any of those companies after the day stated in the certificate.

(33BB) Subsection (33BA) does not apply to expenditure in relation to research and development activities in respect of which a company is registered under section 39J of the *Industry Research and Development Act 1986*.

11 Subsection 73B(33C)

Omit "or (33B)", substitute ", (33B) or (33BA)".

12 Application

The amendments made by items 1 to 11 are taken to have come into effect at 5 pm, by legal time in the Australian Capital Territory, on 23 July 1996.

Taxation Laws Amendment Act (No. 3) 1996

13 Item 38 of Schedule 4

Repeal the item, substitute:

38 Application

The amendments made by this Division do not apply to core technology expenditure incurred:

(a) by a partnership under a contract entered into before 8.30 pm, by legal time in the Australian Capital Territory, on 13 December 1996; or

(b) by eligible companies jointly registered under section 39P of the *Industry Research and Development Act 1986* where the expenditure is incurred under a contract entered into at or after 8.30 pm, by legal time in the Australian Capital Territory, on 13 December 1996.

Schedule 12—Sales tax

Sales Tax (Exemptions and Classifications) Act 1992

1 At the end of Item 43 of Schedule 1

Add:

(4) This Item does not cover goods of a kind ordinarily used in the provision of telecommunications or audio visual services.

2 Application

The amendment made by this Schedule applies to dealings with goods after 7.00 pm, by legal time in the Australian Capital Territory, on 7 November 1996.

Schedule 13—Subsidiary company liquidations and capital gains tax

Part 1—Amendment of the Income Tax Assessment Act 1936

1 After section 160ZZOA:

Insert:

160ZZOB Effect of section 160ZZO on certain liquidations

Summary of section

(1) This section will in certain circumstances reduce a capital gain or capital loss to a company from the cancellation of shares in a wholly-owned subsidiary in the course of liquidation of the subsidiary. The main requirement is that roll-over relief must have been available to the subsidiary under section 160ZZO for the disposal by the subsidiary of an asset to the company in the course of the liquidation.

Conditions for section applying

(2) The consequences set out in subsection (3) occur if:

(a) either:

(i) one or more elections are made under section 160ZZO that that section apply to disposals of one or more assets (each of which is a ***160ZZO CGT asset***) acquired on or after 20 September 1985; or

(ii) subsection 160ZZO(1AA) applies to one or more disposals of assets (each of which is also a ***160ZZO CGT asset***) acquired on or after that date;

or both; and

(b) the disposals of the 160ZZO CGT assets are distributions in the course of the liquidation of the transferee mentioned in section 160ZZO, but they are not distributions to which subsection 160ZL(1) applies; and

(c) the market value of the distributed 160ZZO CGT assets constitutes the whole or part of the consideration for the cancellation, in the course of the liquidation, of all of the shares (the ***transferee's total shares***) beneficially owned in the transferor mentioned in section 160ZZO by the transferee; and

(d) throughout the period from the first or only disposal of a 160ZZO CGT asset until the cancellation of the shares, the transferee beneficially owned all of the shares in the transferor; and

(e) one or more shares (the ***transferee's CGT shares***) that were cancelled were acquired by the transferee on or after 20 September 1985; and

(f) either:

(i) there is an overall notional gain on distributions to the transferee of the 160ZZO CGT assets in the course of the liquidation and an overall actual gain on the cancellation of the transferee's CGT shares in the course of the liquidation; or

(ii) there is an overall notional loss on distributions to the transferee of the 160ZZO CGT assets in the course of the liquidation and an overall actual loss on the cancellation of the transferee's CGT shares in the course of the liquidation.

Note: Various expressions used in paragraph (f) are defined in section 160ZZOC.

Where overall notional gain on distribution and overall actual gain on cancellation

(3) If subparagraph (2)(f)(i) applies:

(a) except as mentioned in paragraph (b) of this subsection, no capital gain accrues to the transferee, and the transferee incurs no capital loss, on the disposal of any of the transferee's CGT shares constituted by the cancellation; and

(b) a capital gain accrues to the transferee, in respect of the disposal of each of the transferee's CGT shares constituted by the cancellation, of an amount worked out using the formula:

$$\frac{\text{Overall actual gain} - \left(\text{Adjustment factor} \times \text{Overall notional gain}\right)}{\text{Number of transferee's CGT shares}}$$

Note: The components in the formula are defined in section 160ZZOC.

Where overall notional loss on distribution and overall actual loss on cancellation

(4) If subparagraph (2)(f)(ii) applies:

(a) except as mentioned in paragraph (b) of this subsection, no capital gain accrues to the transferee, and the transferee incurs no capital loss, on the disposal of any of the transferee's CGT shares constituted by the cancellation; and

(b) a capital loss accrues to the transferee, in respect of the disposal of each of the transferee's CGT shares constituted by the cancellation, of an amount worked out using the formula:

$$\frac{\text{Overall actual loss} - \left(\text{Adjustment factor} \times \text{Overall notional loss}\right)}{\text{Number of transferee's CGT shares}}$$

Note: The components in the formula are defined in section 160ZZOC.

160ZZOC Definitions used in section 160ZZOB

(1) This section contains definitions of various expressions used in section 160ZZOB.

Overall notional gain on distributions

(2) There is an ***overall notional gain*** on distributions to the transferee of the 160ZZO CGT assets in the course of the liquidation if:

(a) the sum of the notional gains (see subsection (3)) in respect of all of the distributions of 160ZZO CGT assets by the transferor to the transferee in the course of the liquidation;

exceeds:

(b) the sum of the notional losses (see subsection (4)) in respect of all such distributions.

The amount of the overall notional gain equals the excess.

Notional gain on distribution

(3) There is a ***notional gain*** in respect of the distribution of a 160ZZO CGT asset if, disregarding section 160ZZO, a capital gain would have accrued to the transferor in respect of the distribution assuming it had received consideration for the distribution equal to the asset's market value at the time of the distribution.

Notional loss on distribution

(4) There is a ***notional loss*** in respect of the distribution of a 160ZZO CGT asset if, disregarding section 160ZZO, a capital loss would have been incurred by the transferor in respect of the distribution assuming it had received consideration for the distribution equal to the asset's market value at the time of the distribution.

Overall notional loss on distributions

(5) There is an ***overall notional loss*** on distributions to the transferee of the 160ZZO CGT assets in the course of the liquidation if:

(a) the sum of the notional losses in respect of all the distributions of 160ZZO CGT assets by the transferor to the transferee in the course of the liquidation;

exceeds:

(b) the sum of the notional gains in respect of all such distributions.

The amount of the overall notional loss equals the excess.

Overall actual gain on cancellations

(6) An ***overall actual gain*** accrues to the transferor on the cancellation of the transferee's CGT shares if:

(a) the sum of the capital gains that accrue to it in respect of the cancellation, in the course of the liquidation, of all of the transferee's CGT shares;

exceeds:

(b) the sum of the capital losses that it incurs in respect of all such cancellations.

The amount of the overall actual gain equals the excess.

Overall actual loss on cancellation

(7) An ***overall actual loss*** accrues to the transferor on the cancellation of the transferee's CGT shares if:

(a) the sum of the capital losses that accrue to it in respect of the cancellation, in the course of the liquidation, of all of the transferee's CGT shares;

exceeds:

(b) the sum of the capital gains that accrue to it in respect of all such cancellations.

The amount of the overall actual loss equals the excess.

Adjustment factor

(8) The ***adjustment factor*** is the fraction worked out by dividing the number of the transferee's CGT shares by the number of the transferee's total shares.

Part 2—Application

2 Application

The amendments made by this Schedule apply if the cancellation of the transferee's total shares took place after 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996.

Schedule 14—Gains and losses

Part 1—Income Tax Assessment Act 1936 (revenue losses)

1 Subsection 50B(1) (at the end of the definition of full-year amount)

Add "but does not include any part of a capital gain that forms part of a net capital gain".

2 Subparagraph 50B(4)(a)(i)

After "excepted amounts", insert "and any net capital gain".

3 After paragraph 50C(2)(b)

Insert:

; and (ba) any net capital gain that accrued to the company in respect of the year of income;

4 After subsection 50E(1)

Insert:

(1A) For the purposes of this Subdivision, so much of any amount included in a company's assessable income of a year of income under section 97 or 98A as is a capital gain that forms part of a net capital gain is not a divisible amount in relation to the company in relation to the year of income.

5 Paragraph 50H(1)(e)

After "by the company", insert ", or a capital gain accrued to the company that would not have accrued to the company,".

6 After subsection 50H(3)

Insert:

(3A) Paragraph (1)(e) applies even though the capital gain referred to in that paragraph accrued to the company in the course of ordinary family or commercial dealing, but:

(a) that paragraph does not apply if the natural person or natural persons who had a shareholding interest or shareholding interests in the company immediately before, and immediately after, the time when the capital gain accrued will benefit from the accrual of the capital gain to an extent that the Commissioner considers to be fair and reasonable; and

(b) in determining whether the extent to which that person or those persons will benefit is fair and reasonable, the Commissioner is to have regard to voting, dividend or capital rights attached to the shares in respect of which that person or those persons had a shareholding interest or shareholding interests in the company immediately after the time when the capital gain accrued.

7 Subsection 50H(5)

After "derived" (last occurring), insert ", or a capital gain that has not accrued to the person would have accrued to the person,".

8 Subsection 50H(10)

Repeal the subsection, substitute:

(10) In subsection (9):

(a) a reference to the non-derivation, or to the derivation, of income includes a reference to the non-accrual, or to the accrual, as the case may be, of a capital gain; and

(b) a reference to the doing of an act includes a reference to the happening of an event or the existence of a matter or circumstance.

9 Paragraph 80DA(1)(a)

After "derived" (last occurring), insert ", or a capital gain accrued to the company that would not have accrued to the company,".

10 Subsection 80DA(2)

After "derived by the company", insert ", or the capital gain accrued to the company,".

11 Subsection 80DA(2)

After "derivation of the income", insert ", or the accrual of the capital gain,".

12 Subsection 80DA(3)

After "would have derived", insert ", or a capital gain did not accrue to the person that would have accrued,".

13 Paragraph 80DA(8)(a)

After "by", insert ", or a capital gain would not have accrued to,".

14 Paragraph 80DA(8)(b)

After "by", insert ", or a capital gain would have accrued to,".

15 Subsection 80DA(8)

Omit "where the income would not have been derived by the company, the income would have been derived by the person", substitute "if the income would not have been derived by, or the capital gain would not have accrued to, the company, the income would have been derived by, or the capital gain would have accrued to, the person".

16 Subsections 80G(17) and (18)

Repeal the subsections, substitute:

(17) If the loss company is a shareholder in the income company and receives any consideration from the income company for the transfer of the right to an allowable deduction to the income company under subsection (6):

(a) so much of the consideration as, in the opinion of the Commissioner, is given for the transfer of the right is not taken to be income derived by the loss company; and

(b) a capital gain does not accrue to the loss company because of the receipt of the consideration.

(18) If the income company gives any consideration to the loss company for the transfer of the right to an allowable deduction to the income company under subsection (6):

(a) the consideration is not an allowable deduction to the income company; and

(b) the income company does not incur a capital loss because of the giving of the consideration.

17 Application

(1) The amendments made by this Part apply to the 1996-97 year of income.

(2) However, the amendments made by items 5 to 15 have effect only in respect of acts, omissions or events happening after 26 March 1997.

Part 2—Income Tax Assessment Act 1936 (capital gains and capital losses)

18 Paragraph 63B(1)(a)

After "derived" (last occurring), insert ", or a capital gain accrued to the company that would not have accrued to the company,".

19 Subsection 63B(2)

After "derived by the company", insert ", or the capital gain accrued to the company,".

20 Subsection 63B(2)

After "derivation of the income", insert ", or the accrual of the capital gain,".

21 Subsection 63B(3)

After "would have derived", insert ", or a capital gain did not accrue to the person that would have accrued to the person,".

22 Paragraph 63B(8)(a)

After "by", insert ", or a capital gain would not have accrued to,".

23 Paragraph 63B(8)(b)

After "by", insert ", or a capital gain would have accrued to,".

24 Subsection 63B(8)

Omit "where the income would not have been derived by the company, the income would have been derived by the person", substitute "if the income would not have been derived by, or the capital gain would not have accrued to, the company, the income would have been derived by, or the capital gain would have accrued to, the person".

25 After section 160J

Insert:

160JA Interpretative provisions for Divisions 3A, 3B, 3C, 3CA, 3CB, 3CC, 3CD and 3D

In Divisions 3A, 3B, 3C, 3CA, 3CB, 3CC, 3CD and 3D, unless the contrary intention appears:

100% subsidiary has the meaning given by section 975-505 of the *Income Tax Assessment Act 1997*.

abnormal trading has the meaning given by Subdivision 960-H of the *Income Tax Assessment Act 1997*.

approved deposit fund has the meaning given by section 10 of the *Superannuation Industry (Supervision) Act 1993*.

arrangement has the same meaning as in the *Income Tax Assessment Act 1997*.

capital shareholding of less than 1% has the meaning given by section 160ZNSQ.

complying approved deposit fund means a complying approved deposit fund within the meaning of section 47 of the *Superannuation Industry (Supervision) Act 1993*.

complying superannuation fund means a complying superannuation fund within the meaning of section 45 of the *Superannuation Industry (Supervision) Act 1993*.

constitution of a company has the same meaning as in the *Income Tax Assessment Act 1997*.

dividend has the meaning given by subsections 6(1), (4) and (5) and section 94L.

dividend shareholding of less than 1% has the meaning given by section 160ZNSQ.

entity has the meaning given by section 960-100 of the *Income Tax Assessment Act 1997*.

head company has the meaning given by section 160ZNSM.

indirectly has the same meaning as in the *Income Tax Assessment Act 1997*.

interposed company has the meaning given by section 160ZNSN.

listed public company has the same meaning as in the *Income Tax Assessment Act 1997*.

member of a company includes a shareholder or stockholder.

more than a 50% stake has the meaning given by section 160ZNC.

more than 50% of the company's capital distributions has the meaning given by section 160ZNJ.

more than 50% of the company's dividends has the meaning given by section 160ZNI.

more than 50% of the listed public company's capital distributions has the meaning given by section 160ZNSJ.

more than 50% of the listed public company's dividends has the meaning given by section 160ZNSI.

more than 50% of the voting power has the meaning given by section 160ZNH.

more than 50% of the voting power in the listed public company has the meaning given by section 160ZNSH.

notional net capital gain has the meaning given by subsection 160ZNF(1).

notional net capital loss has the meaning given by subsection 160ZNF(2).

notional shareholder has the meaning given by section 160ZNSO.

ownership test period has the meaning given by section 160ZNC.

ownership test time has the meaning given by section 160ZNSG.

part of a substantial shareholding has the meaning given by section 166-245 of the *Income Tax Assessment Act 1997*.

public company means a company that is a public company as defined by section 103A for the year of income.

redeemable shares has the same meaning as in the *Income Tax Assessment Act 1997*.

same business test has the meaning given by Division 3C.

same business test period has the meaning given by sections 160ZNB, 160ZND and 160ZNE and subsection 160ZNSB(5).

shareholding interest has the meaning given by section 175-65 of the *Income Tax Assessment Act 1997*.

special company has the same meaning as in the *Income Tax Assessment Act 1997*.

substantial continuity of ownership has the meaning given by section 160ZNSG.

substantial shareholding: see ***part of a substantial shareholding***.

superannuation fund has the meaning given by section 10 of the *Superannuation Industry (Supervision) Act 1993*.

test period has the meaning given by section 160ZNSB.

test time has the meaning given by sections 160ZNB, 160ZND, 160ZNE and 160ZNSB.

voting share in a company means:

(a) if the company is a body corporate—a voting share as defined by section 9 of the Corporations Law; and

(b) otherwise—a share that would be a voting share as defined by that section if the company were a body corporate.

voting shareholding of less than 1% has the meaning given by section 160ZNSQ.

26 Paragraph 160Z(1)(a)

After "income", insert "and to have so accrued at the time of the disposal".

27 At the end of paragraph 160Z(1)(b)

Add "and to have been so incurred at the time of the disposal".

28 At the end of paragraph 160Z(9)(a)

Add "or".

29 Paragraph 160Z(9)(b)

Repeal the paragraph.

30 Subsection 160Z(9A)

Repeal the subsection.

31 At the beginning of section 160ZC

Insert:

(1A) This section has effect subject to Divisions 3A to 3C.

32 After Division 3 of Part IIIA

Insert:

Division 3A—Net capital gain or net capital loss of company in respect of year of income in which ownership or control of the company changed

Guide to Division 3A

160ZNA What this Division is about

A company that has not had the same ownership and control during the year of income, and has not satisfied the same business test, works out its net capital gain or net capital loss in respect of the year of income under this Division.

The tests for finding out whether a company has maintained the same owners, and the same business test, are set out in Divisions 3B, 3C, 3CB, 3CC and 3CD.

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When a company must work out its net capital gain or net capital loss under this Division

160ZNB On a change of ownership, unless the company carries on the same business

160ZNC Who has more than a 50% stake in the company during a period

160ZND On a change of control of voting power in the company, unless the company carries on the same business

Working out the company's net capital gain or net capital loss

160ZNE First, divide the year of income into periods

160ZNF Next, calculate the notional net capital gain or notional net capital loss for each period

160ZNG How to calculate the company's net capital gain or net capital loss for the year of income

When a company must work out its net capital gain or net capital loss under this Division

160ZNB On a change of ownership, unless the company carries on the same business

(1) A company must calculate its net capital gain or net capital loss under this Division unless:

(a) there are persons who had more than a 50% stake in the company during the whole of the year of income; or

(b) there is only *part* of the year of income (a part that started at the start of the year of income) during which the same persons had more than a 50% stake in the company, but the company satisfies the same business test for the *rest* of the year of income (the ***same business test period***).

(2) For the purposes of paragraph (1)(b), apply the same business test to the business that the company carried on immediately before the time (the ***test time***) when that part ended.

Note: For the same business test: see Division 3C.

160ZNC Who has more than a 50% stake in the company during a period

(1) If:

(a) there are persons who had more than 50% of the voting power in the company during the whole of a period (the ***ownership test period***) consisting of the year of income or a part of it; and

(b) there are persons who had rights to more than 50% of the company's dividends during the whole of the ownership test period; and

(c) there are persons who had rights to more than 50% of the company's capital distributions during the whole of the ownership test period;

those persons had more than a 50% stake in the company during the ownership test period.

(2) To work out whether a condition in subsection (1) was satisfied during the ownership test period, apply the primary test for that condition unless subsection (3) requires the alternative test to be applied.

Note: For the primary tests: see subsections 160ZNH(1), 160ZNI(1) and 160ZNJ(1).

(3) Apply the alternative test for that condition if one or more other companies beneficially owned shares, or interests in shares, in the company at any time during the ownership test period.

Note: For the alternative tests: see subsections 160ZNH(2), 160ZNI(2) and 160ZNJ(2).

160ZND On a change of control of voting power in the company, unless the company carries on the same business

(1) A company must calculate its net capital gain or net capital loss under this Division if, during the year of income, a person begins to control, or becomes able to control, the voting power in the company (whether directly, or indirectly through one or more interposed entities) for the purpose, or for the purposes including the purpose, of:

(a) getting some benefit or advantage in relation to how this Act applies; or

(b) getting such a benefit or advantage for someone else.

(2) However, the person's control of the voting power, or ability to control it, does not require the company to calculate its net capital gain or net capital loss under this Division if the company satisfies the same business test for the *rest* of the year of income (the ***same business test period***).

(3) Apply the same business test to the business that the company carried on immediately before the time (the ***test time***) when the person began to control that voting power, or became able to control it.

Note: For the same business test: see Division 3C.

Working out the company's net capital gain or net capital loss

160ZNE First, divide the year of income into periods

(1) Divide the year of income into periods and treat each period as a year of income as follows.

(2) The first period starts at the start of the year of income. Each later period starts immediately after the end of the previous period.

(3) The last period ends at the end of the year of income. Each period (except the last) ends at the *earlier* of:

(a) the *latest* time that would result in persons having more than a 50% stake in the company during the whole of the period; or

(b) the *earliest* time when a person begins to control, or becomes able to control, the voting power in the company (whether directly, or indirectly through one or more interposed entities) for the purpose, or for purposes including the purpose, of:

(i) getting some benefit or advantage to do with how this Act applies; or

(ii) getting such a benefit or advantage for someone else.

(4) However, what would otherwise be 2 or more successive periods are treated as a single period if the company satisfies the same business test for all of them, considered as a single period (the

same business test period). Apply the same business test to the business the company carried on immediately before the end of the first of the periods (the ***test time***).

Note: For the same business test: see Division 3C.

(5) Treat each period as if it were a year of income and work out the notional net capital gain or notional net capital loss in respect of that period.

160ZNF Next, calculate the notional net capital gain or notional net capital loss in respect of each period

(1) The company has a ***notional net capital gain*** in respect of a period if the sum of the capital gains that accrued to the company in the period exceeds the sum of the capital losses that were incurred by the company in the period.

(2) On the other hand, if the sum of those capital losses exceeds the sum of those capital gains, the company has a ***notional net capital loss*** in respect of the period.

(3) If the company has a notional net capital loss in respect of *none* of the periods in the year of income, this Division has no further application, and the company's net capital gain in respect of the year of income is calculated in the usual way.

Note: The usual way of working out a net capital gain is set out in section 160ZC.

(4) For the purposes of this section, so much of an amount included in the company's assessable income of the year of income under section 97 or 98A as is a capital gain that forms part of a net capital gain is taken to have accrued to the company in a period so far as the amount is reasonably related to the period.

160ZNG How to calculate the company's net capital gain or net capital loss in respect of the year of income

(1) If the sum of:

(a) the company's notional net capital gains in respect of any of the periods in the year of income; and

(b) so much of any amounts included in the company's assessable income of the year of income under section 97 or 98A as are capital gains that form part of a net capital gain, so far as the amounts are not reasonably related to a period;

exceeds the sum of any net capital losses incurred by the company in respect of earlier years of income that may be applied in respect of the year of income under section 160ZC, the excess is taken to be a ***net capital gain*** that accrued to the company in respect of the year of income.

(2) The sum of the company's notional net capital losses in respect of any of the periods in the year of income is taken to be a ***net capital loss*** that was incurred by the company in respect of the year of income.

Division 3B—Tests for finding out whether the company has maintained the same owners

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The primary and alternative tests

160ZNH Who has more than 50% of the voting power in the company during a period

160ZNI Who has rights to more than 50% of the company's dividends during a period

160ZNJ Who has rights to more than 50% of the company's capital distributions during a period

160ZNK Rules about the primary test for a condition

160ZNL Tests can be satisfied by a single person

Rules affecting the operation of the tests

160ZNM Arrangements affecting beneficial ownership of shares

160ZNN Shares treated as never having carried rights

160ZNO Shares treated as always having carried rights

160ZNP Disregard redeemable shares

160ZNQ Rules do not affect totals of shares or rights

160ZNR Death of beneficial owner

The primary and alternative tests

160ZNH Who has more than 50% of the voting power in the company during a period

The primary test

(1) Applying the primary test: if there are persons who, at all times during the ownership test period, beneficially own (between them) shares that carry (between them) the right to exercise more than 50% of the voting power in the company, those persons have ***more than 50% of the voting power*** in the company during that period.

The alternative test

(2) Applying the alternative test: if it is the case, or it is reasonable to assume, that there are persons (none of them companies) who between them control, or are able to control, the voting power in the company at all times during the ownership test period (whether directly, or indirectly through one or more interposed entities), those persons have ***more than 50% of the voting power*** in the company during that period.

160ZNI Who has rights to more than 50% of the company's dividends during a period

The primary test

(1) Applying the primary test: if there are persons who, at all times during the ownership test period, beneficially own (between them) shares that carry (between them) the right to receive more than 50% of any dividends that the company may pay, those persons have rights to ***more than 50% of the company's dividends*** during that period.

The alternative test

(2) Applying the alternative test: if it is the case, or it is reasonable to assume, that there are persons (none of them companies) who, at all times during the ownership test period, have between them the right to receive for their own benefit (whether directly, or

indirectly through one or more interposed entities), more than 50% of any dividends that the company may pay, those persons have rights to ***more than 50% of the company's dividends*** during that period.

160ZNJ Who has rights to more than 50% of the company's capital distributions during a period

The primary test

(1) Applying the primary test: if there are persons who, at all times during the ownership test period, beneficially own (between them) shares that carry (between them) the right to receive more than 50% of any distribution of capital of the company, those persons have rights to ***more than 50% of the company's capital distributions*** during that period.

The alternative test

(2) Applying the alternative test: if it is the case, or it is reasonable to assume, that there are persons (none of them companies) who, at all times during the ownership test period, have between them the right to receive for their own benefit (whether directly, or indirectly through one or more interposed entities), more than 50% of any distribution of capital of the company, those persons have rights to ***more than 50% of the company's capital distributions*** during that period.

160ZNK Rules about the primary test for a condition

(1) A person need not beneficially own exactly the same shares at all times during the ownership test period for the primary test for a condition to be satisfied.

(2) A private company must satisfy the primary test for a condition in order for the test to be satisfied. A public company is taken to satisfy the primary test if it is reasonable to assume that the test is satisfied.

160ZNL Tests can be satisfied by a single person

To avoid doubt, a test for a condition can be satisfied by one person.

Rules affecting the operation of the tests

160ZNM Arrangements affecting beneficial ownership of shares

(1) For the purposes of a test, the Commissioner may treat a person as not having beneficially owned particular shares at a particular time during the ownership test period if the conditions in subsections (2) and (3) are met.

(2) Before or during the year of income an arrangement must have been entered into that in any way (directly or indirectly) related to, affected, or depended for its operation on:

(a) the beneficial interest in the shares, or the value of that beneficial interest; or

(b) a right carried by, or relating to, the shares; or

(c) the exercise of such a right.

(3) The arrangement must also have been entered into for the purpose, or for purposes including the purpose, of eliminating or reducing a liability of an entity to pay income tax for a year of income.

160ZNN Shares treated as never having carried rights

For the purposes of a test, shares are taken *never* to have carried particular rights during the year of income if the Commissioner is satisfied that:

(a) the shares *stopped* carrying those rights after the year of income; or

(b) the shares will or may *stop* carrying those rights after the year of income;

because of:

(c) the company's constitution as in force at some time *during* the year of income; or

(d) an arrangement entered into before or during the year of income.

160ZNO Shares treated as always having carried rights

For the purposes of a test, shares are taken to have carried particular rights *at all times* during the year of income if the Commissioner is satisfied that:

(a) the shares *started* to carry those rights after the year of income; or

(b) the shares will or may *start* to carry those rights after the year of income;

because of:

(c) the company's constitution as in force at some time *during* the year of income; or

(d) an arrangement entered into before or during the year of income.

160ZNP Disregard redeemable shares

For the purposes of a test, a person who beneficially owns redeemable shares at a time during the year of income, is taken not to own the shares beneficially at that time.

160ZNQ Rules do not affect totals of shares or rights

Sections 160ZNM, 160ZNN, 160ZNO and 160ZNP do not affect how shares, and rights carried by shares, are counted for the purposes of determining:

(a) the total voting power in the company; or

(b) the total dividends that the company may pay; or

(c) the total distributions of capital of the company.

160ZNR Death of beneficial owner

For the purposes of a test, after a person dies, shares that the person owned beneficially at the time of death are taken to continue to be owned beneficially by the person so long as:

(a) they are owned by the trustee of the person's estate; or

(b) they are owned beneficially by someone who received them as a beneficiary of the estate.

Division 3C—The same business test

160ZNS The test

(1) The company satisfies the ***same business test*** if throughout the same business test period it carries on the same business as it carried on immediately before the test time.

(2) However, the company does *not* satisfy the same business test if, at any time during the same business test period, it derives assessable income from:

(a) a business of a kind that it did not carry on before the test time; or

(b) a transaction of a kind that it had not entered into in the course of its business operations before the test time.

(3) The company also does *not* satisfy the same business test if, before the test time, it:

(a) started to carry on a business it had not previously carried on; or

(b) in the course of its business operations, entered into a transaction of a kind that it had not previously entered into;

and did so for the purpose, or for purposes including the purpose, of being taken to have carried on throughout the same business test period the same business as it carried on immediately before the test time.

(4) The company also does *not* satisfy the test if, at any time during the same business test period, it incurs expenditure:

(a) in carrying on a business of a kind that it did not carry on before the test time; or

(b) as a result of a transaction of a kind that it had not entered into in the course of its business operations before the test time.

Division 3CA—Net capital gain or net capital loss of listed public company or its 100% subsidiary for year of income in which ownership or control of the company changed

Guide to Division 3CA

160ZNSA What this Division is about

This Division modifies the way in which the rules in Division 3A apply to a listed public company (and also its 100% subsidiaries). It makes it easier for the company to comply with those rules.

If the company has maintained the same owners as between certain points of time, it does not need to prove it has maintained the same owners throughout the periods in between.

The tests for finding out whether the company has maintained the same owners are set out in Divisions 3CB, 3CC and 3CD.

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160ZNSB How Division 3A applies to a listed public company
160ZNSC How to work out the net capital gain or net capital loss
160ZNSD How Division 3A applies to 100% subsidiary of a listed public company
160ZNSE Companies can choose that this Division is not to apply to them

160ZNSB How Division 3A applies to a listed public company

(1) This Division modifies the way Division 3A applies to a company that is a listed public company at all times during the year of income (the ***test period***).

Note 1: Division 3A is about when a company must calculate its net capital gain or net capital loss for the year of income in a special way.

Note 2: This Division also modifies how Division 3A applies to a 100% subsidiary of a listed public company: see section 160ZNSD.

Note 3: A company can choose that this Division is not to apply to it: see section 160ZNSE.

No abnormal trading

(2) If there is *no* abnormal trading in shares in the listed public company during the test period, it is taken to have met the condition in paragraph 160ZNB(1)(a) (which is about there being persons having more than a 50% stake in it during the whole of the year of income).

Abnormal trading, but substantial continuity of ownership

(3) If there *is* abnormal trading, but there is substantial continuity of ownership of the company as between the start of the test period and the time of each abnormal trading, the company is also taken to have met the condition in paragraph 160ZNB(1)(a).

Note: See section 160ZNSG to work out whether there is substantial continuity of ownership.

Abnormal trading without substantial continuity of ownership

(4) If there *is* abnormal trading, and there is *no* substantial continuity of ownership of the company as between the start of the test period and the time of the abnormal trading, the company is taken to have *failed* to meet the condition in paragraph 160ZNB(1)(a).

Satisfies the same business test

(5) However, if the company satisfies the same business test for the rest of the year of income (the ***same business test period***) after the first abnormal trading covered by subsection (4), it is taken to have satisfied the condition in paragraph 160ZNB(1)(b) (which is about the company carrying on the same business).

Note: For the same business test: see Division 3C.

(6) Apply the same business test to the business that the company carried on immediately before the time of the first abnormal trading (the ***test time***) covered by subsection (4).

160ZNSC How to work out the net capital gain or net capital loss

(1) If the listed public company must calculate its net capital gain or net capital loss for the year of income under Division 3A, then, in

dividing the year of income into periods, apply subsection (2) instead of subsection 160ZNE(3).

(2) The last period ends at the end of the year of income. Each period (except the last) ends at the *earlier* of:

(a) the *earliest* time when there is an abnormal trading in shares in the listed public company (except one covered by subsection (3)); or

(b) the *earliest* time when a person begins to control, or becomes able to control, the voting power in the listed public company (whether directly, or indirectly through one or more interposed entities) for the purpose, or for purposes including the purpose, of:

(i) getting some benefit or advantage to do with how this Act applies; or

(ii) getting such a benefit or advantage for someone else.

(3) In working out when a period ends, disregard an abnormal trading if there is substantial continuity of ownership of the company as between the start of the period and the time of the abnormal trading.

Note: See section 160ZNSG to work out whether there is substantial continuity of ownership.

160ZNSD How Division 3A applies to 100% subsidiary of a listed public company

(1) This Division also modifies the way Division 3A applies to a company that is *not* a listed public company, but only if the conditions in subsections (2) and (3) are met.

Note: Division 3A is about when a company must calculate its net capital gain or net capital loss for the year of income in a special way.

(2) The company (the ***subsidiary***) must be a 100% subsidiary of another company (the ***holding company***) at all times during the subsidiary's year of income.

(3) Also, the holding company must be a listed public company at all times during that year of income.

(4) If the conditions are met, then, for the purposes of applying Division 3A to the subsidiary, this Division applies to the subsidiary as if:

(a) the subsidiary were itself a listed public company at all times during the year of income; and

(b) an abnormal trading in shares in the holding company during the year of income were an abnormal trading in shares in the subsidiary.

(Divisions 3CB, 3CC and 3CD apply to the subsidiary in the same way and for the same purpose).

160ZNSE Companies can choose that this Division is not to apply to them

(1) The listed public company or subsidiary can choose that Division 3A is to apply to it for the year of income *without* the modifications made by this Division.

(2) The company must choose on or before the day it lodges its return under section 161, 162 or 163 for the year of income, or before a later day if the Commissioner allows.

Division 3CB—Tests for finding out whether the listed public company has maintained the same owners

Guide to Division 3CB

160ZNSF What this Division is about

This Division has the tests to work out whether a listed public company has maintained the same owners as between different times.

Divisions 3CC and 3CD have rules that make it easier for the company to satisfy these ownership tests.

Note: The rules in this Division also apply to a company that is a 100% subsidiary of a listed public company: see section 160ZNSD.

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Substantial continuity of ownership

160ZNSG Substantial continuity of ownership

The ownership tests

160ZNSH Who has more than 50% of the voting power in the listed public company at a particular time

160ZNSI Who has rights to more than 50% of the listed public company's dividends at a particular time

160ZNSJ Who has rights to more than 50% of the listed public company's capital distributions at a particular time

Rules affecting the operation of the ownership tests

160ZNSK Rules in Division 3B apply

Substantial continuity of ownership

160ZNSG Substantial continuity of ownership

(1) There is ***substantial continuity of ownership*** of the listed public company as between the start of the test period and another time in the test period if (and only if) the conditions in this section are met.

Voting power

(2) There must be persons (none of them companies) who had more than 50% of the voting power in the listed public company at the start of the test period. Also, those persons must have had more than 50% of the voting power in the listed public company immediately after the other time in the test period.

Note: To work out who had more than 50% of the voting power: see section 160ZNSH.

Rights to dividends

(3) There must be persons (none of them companies) who had rights to more than 50% of the listed public company's dividends at the start of the test period. Also, those persons must have had rights to more than 50% of the listed public company's dividends immediately after the other time in the test period.

Note: To work out who had rights to more than 50% of the listed public company's dividends: see section 160ZNSI.

Rights to capital distributions

(4) There must be persons (none of them companies) who had rights to more than 50% of the listed public company's capital distributions at the start of the test period. Also, those persons must have had rights to more than 50% of the listed public company's capital distributions immediately after the other time in the test period.

Note: To work out who had rights to more than 50% of the listed public company's capital distributions: see section 160ZNSJ.

When to apply the test

(5) To work out whether a condition in this section was satisfied at a time (the ***ownership test time***), apply the ownership test for that condition.

The ownership tests

160ZNSH Who has more than 50% of the voting power in the listed public company at a particular time

If it is the case, or it is reasonable to assume, that there are persons (none of them companies) who, at the ownership test time, between them control, or are able to control, the voting power in the listed public company (whether directly, or indirectly through one or more interposed entities), those persons have ***more than 50% of the voting power in the listed public company*** at that time.

160ZNSI Who has rights to more than 50% of the listed public company's dividends at a particular time

If it is the case, or it is reasonable to assume, that there are persons (none of them companies) who, at the ownership test time, have between them the right to receive for their own benefit (whether directly, or indirectly through one or more interposed entities), more than 50% of any dividends that the listed public company may pay, those persons have rights to ***more than 50% of the listed public company's dividends*** at that time.

160ZNSJ Who has rights to more than 50% of the listed public company's capital distributions at a particular time

If it is the case, or it is reasonable to assume, that there are persons (none of them companies) who, at the ownership test time, have between them the right to receive for their own benefit (whether directly, or indirectly through one or more interposed entities), more than 50% of any distribution of capital of the listed public company, those persons have rights to ***more than 50% of the listed public company's capital distributions*** at that time.

Rules affecting the operation of the ownership tests

160ZNSK Rules in Division 3B apply

(1) The rules in these sections also apply for the purposes of an ownership test in this Division:

(a) 160ZNL (which is about how an ownership test can be satisfied by a single person);

(b) 160ZNN (which treats some shares as never having carried rights);

(c) 160ZNO (which treats some shares as always having carried rights);

(d) 160ZNP (which disregards redeemable shares);

(e) 160ZNQ (which is about how other rules do not affect how shares or rights are counted);

(f) 160ZNR (which deals with deaths of beneficial owners).

(2) The rule in section 160ZNM (which is about arrangements affecting beneficial ownership of shares) also applies for the purposes of an ownership test in this Division as if the reference to a particular time during the ownership test period were a reference to the ownership test time.

Division 3CC—How to treat shareholdings of less than 1%

Guide to Division 3CC

160ZNSL What this Division is about

This Division has rules that make it easier for the listed public company to satisfy the ownership tests in Division 3CB.

All shareholdings of less than 1% in the company are treated as if they were held by a single notional entity. This means that the company does not have to trace through to the persons who beneficially own those shares.

A similar rule applies if another listed public company is interposed between the company and those persons. All shareholdings of less than 1% in the *interposed* company are treated as if they were held by a different single notional entity. This means that the company does not have to trace through the interposed company to the persons who beneficially own those shares in the interposed company.

Note 1: The rules in this Division also apply to a company that is a 100% subsidiary of a listed public company: see section 160ZNSD.

Note 2: The rules in this Division do not apply if they would hide a failure by the company to maintain the same owners: see sections 160ZNSR and 160ZNSS.

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160ZNSN Shareholdings of less than 1% in an interposed listed public company

160ZNSO Notional shareholder

160ZNSP Notional shareholder taken to have minimum voting control, dividend rights and capital rights

160ZNSQ Voting, dividend and capital shareholding of less than 1%

When the rules in this Division do not apply

160ZNSR Limit on listed public company splitting its shares into different classes

160ZNSS If listed public company would not have otherwise passed the ownership tests

Special tracing rules for listed public companies

160ZNSM Shareholdings of less than 1% in the listed public company

This Division modifies how the ownership tests are applied to the listed public company (the ***head company***) if the company has:

(a) voting shareholdings of less than 1%; or

(b) dividend shareholdings of less than 1%; or

(c) capital shareholdings of less than 1%.

Note: For the ownership tests: see sections 160ZNSH, 160ZNSI and 160ZNSJ.

160ZNSN Shareholdings of less than 1% in an interposed listed public company

(1) This Division also modifies how the ownership tests are applied to the head company if another listed public company (the ***interposed company***) meets the conditions in subsections (2) and (3).

Note: For the ownership tests: see sections 160ZNSH, 160ZNSI and 160ZNSJ.

(2) The interposed company must be interposed between the head company and persons (none of them companies) who:

(a) control (or are able to control) voting power in the head company indirectly through the interposed company; or

(b) have the right to receive, for their own benefit and indirectly through the interposed company, any dividends the head company may pay; or

(c) have the right to receive, for their own benefit and indirectly through the interposed company, any distributions of capital of the head company.

(3) The interposed company must have:

(a) voting shareholdings of less than 1%; or

(b) dividend shareholdings of less than 1%; or

(c) capital shareholdings of less than 1%.

160ZNSO Notional shareholder

Notional shareholder of the head company

(1) The ownership tests in sections 160ZNSH, 160ZNSI and 160ZNSJ are applied to the head company as if, at the ownership test time, a single notional entity (the ***notional shareholder***):

(a) directly controlled the voting power in the head company that is carried by each voting shareholding of less than 1% in the company at that time; and

(b) had the right to receive, for its own benefit and directly:

(i) any dividends the head company may pay in respect of each dividend shareholding of less than 1% in the company at that time; and

(ii) any distributions of capital of the head company in respect of each capital shareholding of less than 1% in the company at that time; and

(c) were a person (other than a company).

Notional shareholder of the interposed company

(2) The tests are also applied to the head company as if, at the ownership test time, for each interposed company, a different single notional entity (the ***notional shareholder***):

(a) directly controlled the voting power in the interposed company that is carried by each voting shareholding of less than 1% in the interposed company at that time; and

(b) had the right to receive, for its own benefit and directly:

(i) any dividends the interposed company may pay in respect of each dividend shareholding of less than 1% in the interposed company at that time; and

(ii) any distributions of capital of the interposed company in respect of each capital shareholding of less than 1% in the interposed company at that time; and

(c) were a person (other than a company).

Persons who actually control or have rights are taken not to

(3) The tests are also applied to the head company as if, at the ownership test time:

(a) the persons (other than companies) who control (or are able to control) the voting power in the head company or interposed company (whether directly, or indirectly through one or more interposed entities) that is carried by each voting shareholding of less than 1% in the company had *not* had that control; and

(b) the persons (other than companies) who have the right to receive for their own benefit (whether directly, or indirectly through one or more interposed entities):

(i) any dividends that the head company or interposed company may pay in respect of each dividend shareholding of less than 1% in the company; and

(ii) any distributions of capital of the head company or interposed company in respect of each capital shareholding of less than 1% in the company;

had *not* had that right.

160ZNSP Notional shareholder taken to have minimum voting control, dividend rights and capital rights

Minimum control of voting power

(1) If the ownership test time is *after* the start of the test period and:

(a) the voting power in the head company or interposed company that the notional shareholder controls at that time;

is greater than:

(b) the voting power in the company that the notional shareholder controlled at the start of that period;

the notional shareholder is taken to control voting power in the company at that time only to the extent that it controlled it at the start of that period.

Minimum percentage of rights to dividends and capital

(2) If the ownership test time is *after* the start of the test period and:

(a) the percentage of the dividends or distributions of capital of the head company or interposed company that the notional shareholder has the right to receive at that time;

is greater than:

(b) the percentage (the ***lower percentage***) of the dividends or distributions of capital of the company that the notional shareholder had the right to receive at the start of that period;

the notional shareholder is taken to have the right to receive the lower percentage of the dividends or distributions of capital at that time.

160ZNSQ Voting, dividend and capital shareholding of less than 1%

Meaning of ***voting shareholding of less than 1%***

(1) If all the shares in the head company or interposed company of which an entity is the registered holder at the ownership test time carry (between them) less than 1% of the voting power in the company, those shares (except shares that are part of a substantial shareholding) constitute a ***voting shareholding of less than 1%*** in the company at that time.

Meaning of ***dividend shareholding of less than 1%***

(2) If all the shares in the head company or interposed company of which an entity is the registered holder at the ownership test time carry (between them) the right to receive less than 1% of any dividends that the company may pay, those shares (except shares that are part of a substantial shareholding) constitute a ***dividend shareholding of less than 1%*** in the company at that time.

Meaning of ***capital shareholding of less than 1%***

(3) If all the shares in the head company or interposed company of which an entity is the registered holder at the ownership test time carry (between them) the right to receive less than 1% of any distribution of capital of the company, those shares (except shares that are part of a substantial shareholding) constitute a ***capital shareholding of less than 1%*** in the company at that time.

When the rules in this Division do not apply

160ZNSR Limit on listed public company splitting its shares into different classes

This Division does not apply unless, at the ownership test time, all the voting shares in the head company carry (between them):

(a) the right to receive more than 75% of any dividends the head company may pay; and

(b) the right to receive more than 75% of any distributions of capital of the head company.

160ZNSS If listed public company would not have otherwise passed the ownership tests

This Division does not apply for the purposes of section 160ZNSB if the Commissioner considers it reasonable to assume that the head company would not meet the conditions in that section if it were not for the rules in this Division.

Note: The conditions in section 160ZNSB require the listed public company to maintain the same owners at each ownership test time during the test period.

Division 3CD—How to treat interposed superannuation funds, approved deposit funds and special companies

Guide to Division 3CD

160ZNST What this Division is about

This Division has rules that make it easier for the listed public company to satisfy the ownership tests in Division 3CB.

The company does not have to trace through any complying superannuation funds, complying approved deposit funds or special companies that are interposed between the company and

persons who control any of the voting power in the company or have rights to its dividends or capital.

Note: The rules in this Division also apply to a company that is a 100% subsidiary of a listed public company: see section 160ZNSD.

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160ZNSV When fund or special company is taken to have rights to dividends and capital

Special tracing rules for listed public companies

160ZNSU When fund or special company is taken to control voting power

Modification of application of ownership test about voting power

(1) This section modifies how the ownership test in section 160ZNSH (about control of voting) is applied to the listed public company if:

(a) a superannuation fund, approved deposit fund or special company is interposed, at the ownership test time, between persons (none of them companies) and the listed public company; and

(b) at the ownership test time, those persons control (or are able to control) any of the voting power in the listed public company indirectly through the fund or special company (or through entities including it); and

(c) the fund or special company is a complying superannuation fund, complying approved deposit fund or special company at all times during the year of income of the listed public company in which the ownership test time occurs.

If fund or special company has more than 50 members

(2) If the fund or special company has more than 50 members, the test is applied as if, at the ownership test time, the fund or special company were a person (other than a company) who controlled the

voting power in the listed public company that those persons control (or are able to control).

If fund or special company has 50 members or less

(3) However, if the fund or special company has 50 members or less, the test is applied as if, at the ownership test time, each member were a person (other than a company) who controlled an equal proportion of the voting power in the listed public company that those persons control (or are able to control).

Persons who actually control are taken not to control

(4) The test is applied as if, at the ownership test time, the voting power in the listed public company that those persons control (or are able to control) were *not* controlled by them (except as provided by subsection (3)).

160ZNSV When fund or special company is taken to have rights to dividends and capital

Modification of application of ownership test about dividend rights and capital rights

(1) This section modifies how the ownership test in section 160ZNSI (about dividend rights) or 160ZNSJ (about capital rights) is applied to the listed public company if:

(a) a superannuation fund, approved deposit fund or special company is interposed, at the ownership test time, between persons (none of them companies) and the listed public company; and

(b) at the ownership test time, those persons have the right to receive for their own benefit, and indirectly through the fund or special company (or through entities including it):

(i) a percentage of any dividends that the listed public company may pay; or

(ii) a percentage of any distributions of capital of the listed public company; and

(c) the fund or special company is a complying superannuation fund, complying approved deposit fund or special company

at all times during the year of income of the listed public company in which the ownership test time occurs.

If fund or special company has more than 50 members

(2) If the fund or special company has more than 50 members, the test is applied as if, at the ownership test time, the fund or special company were a person (other than a company) who had the right to receive, for the person's own benefit, that percentage of those dividends or distributions of capital of the listed public company.

If fund or special company has 50 members or less

(3) However, if the fund or special company has 50 members or less, the test is applied as if, at the ownership test time, each member were a person (other than a company) who had the right to receive, for the person's own benefit, an equal proportion of those dividends or distributions of capital.

Persons who actually control are taken not to have it

(4) The test is applied as if, at the ownership test time, the persons (other than companies) who have the right to receive that percentage of those dividends or distributions of capital did *not* have that right (except as provided by subsection (3)).

Division 3D—Anti-avoidance measures for capital losses of companies

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160ZNT Capital gain accruing to company because of available capital losses
160ZNU Deduction or capital loss injected into company because of available capital gain
160ZNV Someone else obtains a tax benefit because of a capital loss or capital gain available to company
160ZNW Loss resulting from disallowed deductions
160ZNX Net capital loss resulting from disallowed capital losses

160ZNT Capital gain accruing to company because of available capital losses

(1) The Commissioner may disallow capital losses of a company (or parts of them) for a year of income if:

(a) a capital gain accrued to the company and some or all of the capital gain (the ***injected capital gain***) would not have accrued if the company had not incurred those capital losses; and

(b) the capital gain accrued in that year of income.

The disallowed capital losses and parts of capital losses may exceed the amount of the injected capital gain.

Note: The disallowance may result in a net capital loss for the year of income (see section 160ZNX).

(2) The Commissioner cannot disallow the capital losses or parts of the capital losses if the continuing shareholders will benefit from the accrual of the injected capital gain to an extent that the Commissioner thinks fair and reasonable having regard to their respective shareholding interests in the company.

(3) A reference to ***disallowing a capital loss or a part of a capital loss*** for a year of income is a reference to determining that a capital loss or a part of a capital loss, as the case may be, is not to be applied in determining whether a net capital gain has accrued, or a net capital loss is incurred, in respect of the year of income.

(4) The ***continuing shareholders*** are the individuals who have shareholding interests in the company both immediately before the injected capital gain accrued, and immediately afterwards.

160ZNU Deduction or capital loss injected into company because of available capital gain

(1) The Commissioner may:

(a) disallow a deduction of a company for a year of income to the extent that the company would not have incurred the loss, outgoing or expenditure that the deduction is for; or

(b) disallow a capital loss of a company for a year of income to the extent that the company would not have incurred the capital loss;

if some or all of a capital gain that accrued to it in the year of income had not accrued.

Note: The disallowance may result in a loss or a net capital loss for the year of income (see sections 160ZNW and 160ZNX).

(2) The Commissioner cannot disallow any of the deduction or capital loss if:

(a) the continuing shareholders will benefit from any profit or advantage that has arisen or might arise directly or indirectly from the incurring of the loss, outgoing or expenditure or of the capital loss, as the case may be; and

(b) the Commissioner thinks that the extent to which they will benefit is fair and reasonable having regard to their respective shareholding interests in the company.

(3) A reference to ***disallowing a capital loss or a part of a capital loss*** for a year of income is a reference to determining that a capital loss or a part of a capital loss, as the case may be, is not to be applied in determining whether a net capital gain has accrued, or a net capital loss is incurred, in respect of the year of income.

(4) The ***continuing shareholders*** are the individuals who had shareholding interests in the company both immediately before the loss, outgoing or expenditure, or the capital loss, as the case may be, was incurred, and immediately afterwards.

160ZNV Someone else obtains a tax benefit because of a capital loss or capital gain available to company

(1) The Commissioner may disallow a deduction or a capital loss of a company if:

(a) a person (other than the company) has obtained or will obtain a tax benefit in connection with a scheme; and

(b) the scheme would not have been entered into or carried out if the company had not incurred some or all (the ***available expense***) of:

(i) the loss, outgoing or expenditure that the deduction is for; or

(ii) the capital loss;

as the case may be.

However, the deduction or capital loss may be disallowed only to the extent of the available expense.

(2) The Commissioner may disallow deductions or capital losses of a company (or parts of them) if:

(a) a person has obtained or will obtain a tax benefit in connection with a scheme; and

(b) the scheme would not have been entered into or carried out if some or all (the ***available capital gains***) of the capital gains that accrued to the company had not accrued:

(i) before it incurred the losses, outgoings or expenditure that the deductions were for, or the capital losses, as the case may be; and

(ii) in the same year of income as it incurred them.

The disallowed deductions or capital losses and parts of deductions or capital losses may exceed the amount of the available capital gains.

Note: The disallowance may result in a loss or a net capital loss for the year of income (see sections 160ZNW and 160ZNX).

(3) The Commissioner cannot disallow under this section if:

(a) the person who has obtained or will obtain the tax benefit had a shareholding interest in the company at some time during the year of income; and

(b) the Commissioner considers the tax benefit to be fair and reasonable having regard to that shareholding interest.

(4) A reference to ***disallowing a capital loss or a part of a capital loss*** for a year of income is a reference to determining that a capital loss or a part of a capital loss, as the case may be, is not to be applied in determining whether a net capital gain has accrued, or a net capital loss is incurred, in respect of the year of income.

(5) An expression means the same in this section as in Part IVA.

160ZNW Loss resulting from disallowed deductions

(1) If a company has a taxable income for a year of income because the Commissioner disallows under this Division deductions of the company for the year of income (or parts of them), the company may also have a loss for the year of income.

(2) The company's ***loss*** for the income year is calculated as follows.

(3) Total what the Commissioner has disallowed under this Division.

(4) If the company has exempt income for the year of income, subtract its net exempt income.

(5) Any amount remaining is the company's ***loss*** for the year of income.

Note: For the allowance of the loss as a deduction in later years of income see subsection 50C(2).

160ZNX Net capital loss resulting from disallowed capital losses

(1) If a company has a net capital gain for a year of income because the Commissioner disallows under this Division capital losses of the company for the year of income (or parts of them), the company may also have a net capital loss in respect of the year of income.

(2) The company's net capital loss in respect of the year of income is the total of the amounts of the capital losses that the Commissioner has disallowed under this Division.

Note: To find out how the net capital loss is applied in determining whether the company has a net capital gain in a later year of income, see section 160ZC.

33 Subparagraph 160ZP(7AAA)(b)(i)

Repeal the subparagraph, substitute:

(i) if the gain year is the same year of income as the loss year, the gain company is not required to calculate a net capital gain or net capital loss under Division 3A in respect of the gain year and the gain company is not required to calculate a net capital loss under Division

3D in respect of the gain year—a capital loss incurred by the gain company during the gain year; or

34 After subsection 160ZP(7AAA)

Insert:

(7AAB) In determining for the purposes of subparagraph (7AAA)(b)(i) whether a company is required to calculate a net capital gain or a net capital loss under Division 3A in respect of the gain year, disregard subsection 160ZNF(3).

(7AAC) In determining for the purposes of subparagraph (7AAA)(b)(i) whether Division 3D would require the gain company to calculate a net capital loss in respect of the gain year, assume the gain company incurred a capital loss equal to the transferred amount during the gain year.

35 After subsection 160ZP(8D)

Insert:

(8E) The Commissioner may, at any time, amend an assessment of the gain company to give effect to subsection (8B) where the net capital loss or part of the net capital loss was not taken to have been incurred by the loss company. The Commissioner may do so despite section 170 (amendment of assessments).

36 Subsections 160ZP(9) and (9A)

Repeal the subsections, substitute:

(9) If the loss company is required to calculate a net capital loss in respect of the loss year under Division 3A or Division 3D, no part of a net capital loss incurred by that company in respect of that year is capable of being specified in an agreement under paragraph (7)(c).

37 Subsections 160ZP(11) and (12)

Repeal the subsections, substitute:

(11) If the loss company is a shareholder in the gain company and receives any consideration from the gain company for the whole or

a part of a net capital loss incurred by the loss company being treated under subsection (7AAA) as a capital loss or a net capital loss incurred by the gain company:

(a) a capital gain does not accrue to the loss company because of the receipt of the consideration; and

(b) the consideration is not taken to be income derived by the loss company.

(12) If the gain company gives any consideration to the loss company for the whole or a part of a net capital loss incurred by the loss company being treated under subsection (7AAA) as a capital loss or a net capital loss incurred by the gain company:

(a) the gain company does not incur a capital loss because of the giving of the consideration; and

(b) the consideration is not an allowable deduction to the gain company.

38 Subsection 160ZP(13)

Omit "any payments covered by subsection (12)", substitute "any consideration referred to in subsection (12)".

39 Subsection 160ZP(14)

Omit "any payments covered by subsection (12)", substitute "any consideration referred to in subsection (12)".

40 Subsection 170(13)

Omit "or section 105AAA", substitute ", section 105AAA, section 160ZND, sections 160ZNM to 160ZNR (inclusive) or Division 3D of Part IIIA".

41 Application

(1) Subject to this item, the amendments made by the items in this Part apply to the 1996-97 year of income and to any later years of income to which the provisions respectively amended by those items apply.

(2) The amendments made by items 18 to 24 apply to the 1996-97 year of income and to any later years of income to which the provisions respectively amended by those items apply, but have effect only in respect of acts, omissions or events happening after 26 March 1997.

(3) The references in subsection 160ZNS(3) of the *Income Tax Assessment Act 1936* to a company starting to carry on a business or entering into a transaction are references to the company starting to carry on a business or entering into a transaction after 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996.

(4) The reference in subsection 160ZNS(4) of the *Income Tax Assessment Act 1936* to a company incurring expenditure is a reference to the company incurring expenditure after 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996.

(5) The amendment made by item 35 does not permit the Commissioner to amend an assessment made before 26 March 1997 unless the Commissioner could have made the amendment on that date.

Part 3—Income Tax Assessment Act 1936 (capital gains tax definitions)

42 Subsection 6(1)

Insert:

capital gain has the meaning given by Part IIIA.

capital loss has the meaning given by Part IIIA.

net capital gain has the meaning given by Part IIIA.

net capital loss has the meaning given by Part IIIA.

Part 4—Income Tax Assessment Act 1997 (revenue losses)

43 After subsection 165-60(2)

Insert:

(2A) So much of any amount included in the company's assessable income under section 97 or 98A as is a capital gain that forms part of a net capital gain is not attributed to a period.

44 After subsection 165-60(6)

Insert:

(6A) A net capital gain is not attributed to a period.

45 Subsection 165-60(7)

Repeal the subsection, substitute:

(7) ***Full year amounts*** are amounts referred to in paragraphs (2)(a) and (b), so far as they are *not* reasonably attributable to a period, but do not include any part of a capital gain that forms part of a net capital gain. Full year amounts are brought in at a later stage of the process of calculating the company's taxable income for the income year.

46 At the end of subsection 165-65(3)

Add "and any net capital gain that accrued to the company in respect of the income year".

47 At the end of subsection 165-70(3)

Add:

; and (f) any net capital gain that accrued to the company in respect of the income year.

48 Section 170-25

Repeal the section, substitute:

170-25 Tax treatment of consideration for transferred tax loss

(1) If the *loss company receives any consideration from the *income company for the amount of the *tax loss:

(a) so much of the consideration as is given for the amount of the *tax loss is neither assessable income nor exempt income of the *loss company; and

(b) a capital gain does not accrue to the *loss company because of the receipt of the consideration.

(2) If the *income company gives any consideration to the *loss company for the amount of the *tax loss:

(a) the *income company cannot deduct the amount or value of the consideration; and

(b) the *income company does not incur a capital loss because of the giving of the consideration.

49 Section 175-10 (heading)

Repeal the heading, substitute:

175-10 First case: income or capital gain injected into company because of available tax loss

50 Subsection 175-10(1)

Omit "some or all of which (the ***injected income***) it would not have derived", substitute ", or a capital gain accrued to the company, some or all of which (the ***injected amount***) would not have been derived, or would not have accrued,".

51 Subsection 175-10(2)

Omit "derivation of the *injected income", substitute "derivation or accrual of the *injected amount".

52 Section 175-20 (heading)

Repeal the heading, substitute:

175-20 Income or capital gain injected into company because of available deductions

53 Subsection 175-20(1)

Repeal the subsection (other than the note), substitute:

(1) The Commissioner may disallow deductions of a company (or parts of them) for an income year if:

(a) the company has *derived assessable income, or a capital gain accrued to the company, some or all of which (the ***injected amount***) would not have been derived, or would not have accrued, if the company did not have those deductions; and

(b) the income was derived, or the capital gain accrued, in that income year.

The disallowed deductions and parts of deductions may exceed the *injected amount.

54 Subsection 175-20(2)

Omit "*injected income", substitute "*injected amount".

55 Subsection 175-20(3)

Omit "*injected income", substitute "*injected amount".

56 Section 175-30 (heading)

Repeal the heading, substitute:

175-30 Someone else obtains a tax benefit because of a deduction, income or capital gain available to company

57 Paragraph 175-30(2)(b)

Repeal the paragraph, substitute:

(b) the scheme would not have been entered into or carried out if some or all (the ***available amount***) of the assessable income that the company derived or of a capital gain that accrued to the company:

(i) before it incurred the losses, outgoings or expenditure that the deductions were for; and

(ii) in the same income year as it incurred them;

had not been derived or had not accrued, as the case may be.

58 Subsection 175-30(2)

Omit "the amount of the available income", substitute "the available amount".

59 Subsection 995-1(1) (after the definition of in existence)

Insert:

injected amount has the meaning given by sections 175-10 and 175-20.

60 Subsection 995-1(1) (definition of injected income)

Repeal the definition.

Part 5—Income Tax (Consequential Amendments) Act 1997

61 Schedule 1 (items 236 and 237)

Repeal the items.

62 Schedule 1 (items 241 and 242)

Repeal the items.

63 Schedule 1 (item 248)

Repeal the item, substitute:

248 Subsection 170(13)

Repeal the subsection, substitute:

(13) The Commissioner may amend an assessment within 6 years after the day when the tax became due and payable under it, if the amendment is to give effect to any of these provisions:

(a) sections 165-180 to 165-205 and Division 175 of the *Income Tax Assessment Act 1997*;

(b) sections 63B, 105AAA, 160ZND and 160ZNM to 160ZNR (inclusive), and Division 3D of Part IIIA, of this Act;

(including any of those provisions as applied by any other provision of that Act or this Act).

64 Application

The items in Schedule 1 to the *Income Tax (Consequential Amendments) Act 1997* that are repealed by items 61 and 62 of this Schedule are taken never to have had any effect.

Schedule 15—Deductions for gifts

Part 1—Amendment of the Income Tax Assessment Act 1936

1 Subsection 78(3) (before the index entry relating to Academies—professional)

Insert:

AAP Mawson's Huts Foundation Limited	(4)-Table 6, item 6.2.23

2 Subsection 78(3) (after the index entry relating to Art galleries)

Insert:

Australia Foundation for Culture and the Humanities Ltd.	(4)-Table 12, item 12.2.2

3 Subsection 78(3) (after the index entry relating to Australian Ireland Fund)

Insert:

Australian National Korean War Memorial Trust Fund	(4)-Table 5, item 5.2.10

4 Subsection 78(4) (at the end of Table 5)

Add:

5.2.10	Australian National Korean War Memorial Trust Fund	the gift must be made after 1 September 1996 and before 2 September 1998

5 Subsection 78(4) (at the end of Table 6)

Add:

6.2.23	AAP Mawson's Huts Foundation Limited	the gift must be made after 17 March 1997

6 Subsection 78(4) (at the end of Table 12)

Add:

12.2.2	Australia Foundation for Culture and the Humanities Ltd.	the gift must be made after 8 November 1996

Part 2—Amendment of the Income Tax Assessment Act 1997

7 Subsection 30-50(2) (at the end of the table)

Add:

5.2.6	Australian National Korean War Memorial Trust Fund	the gift must be made before 2 September 1998

8 Subsection 30-55(2) (at the end of the table)

Add:

6.2.23	AAP Mawson's Huts Foundation Limited	the gift must be made after 17 March 1997

9 Subsection 30-100(2) (at the end of the table)

Add:

12.2.2	Australia Foundation for Culture and the Humanities Ltd.	the gift must be made after 8 November 1996

10 Subsection 30-315(2) (before table item 1)

Add:

1A	AAP Mawson's Huts Foundation Limited	item 6.2.23

11 Subsection 30-315(2) (after table item 9)

Insert:

9A	Australia Foundation for Culture and the Humanities Ltd.	item 12.2.2

12 Subsection 30-315(2) (after table item 23)

Insert:

23A	Australian National Korean War Memorial Trust Fund	item 5.2.6

13 Application

The amendments made by this Part apply to assessments for the 1997/98 income year and later income years.

Schedule 16—Technical amendments

Taxation Laws Amendment Act 1993

1 Section 44

Omit "'excluded property'", substitute "'excluded unit of property'".

Taxation Laws Amendment Act (No. 3) 1994

2 Part 1 of the Schedule (table item 4)

Omit "222AFA(4)".

3 Part 1 of the Schedule (after table item 4)

Insert:

4A.	Subsection	222AFA(4)	After "Division" (second occurring) insert "1AA,".

Taxation Laws Amendment Act (No. 4) 1995

4 Item 1 of Schedule 2 (heading)

Omit "**46L(3)(b)**", substitute "**46M(3)(b)**".

Note: This item corrects a misdescription of the section to be amended by item 1 of Schedule 2 to the *Taxation Laws Amendment Act (No. 4) 1995*.

5 Item 134 of Schedule 2

After "potential" (second occurring), insert "rebate".

6 Item 136 of Schedule 2

After "potential" (second occurring), insert "rebate".

Taxation Laws Amendment Act (No. 3) 1996

7 Item 74 of Schedule 4

Repeal the item, substitute:

74 At the end of paragraphs 46(2)(a) and (b)

Add "and".

Taxation Laws Amendment Act (No. 2) 1997

8 Schedule 1 (item 9)

Repeal the item, substitute:

9 Subsection 160ZP(7)

Omit "where" (first occurring), substitute "subsection (7AAA) applies if".

Taxation Laws Amendment (Private Health Insurance Incentives) Act 1997

9 Schedule 3 (before item 1)

Insert:

Income Tax Assessment Act 1936

Schedule 17—Employee share schemes

Income Tax Assessment Act 1936

1 Subsection 139CD(5)

Omit "the employees", substitute "the permanent employees".

2 Paragraph 139GF(4)(b)

Omit "2/3", substitute "75%".

3 Application

(1) Part 4 of Schedule 2 to the *Taxation Laws Amendment Act (No. 2) 1995* applies in the same way to the amendment made by item 1 of this Schedule as it applied to the amendments made by Schedule 2 to that Act.

(2) The amendment made by item 2 of this Schedule applies to shares or rights acquired on or after 1 July 1996.

[*Minister's second reading speech made in—*
House of Representatives on 26 March 1997
Senate on 23 June 1997]

(50/97)