Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998

Act No. 17 of 1998 as amended

An Act to amend the law relating to taxation

1 Short title

This Act may be cited as the *Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Trust losses and other deductions

Part 1—Income Tax Assessment Act 1936

Division 1—Insertion of Schedule 2F

1 Before Schedule 3

Insert:

Schedule 2F—Trust losses and other deductions

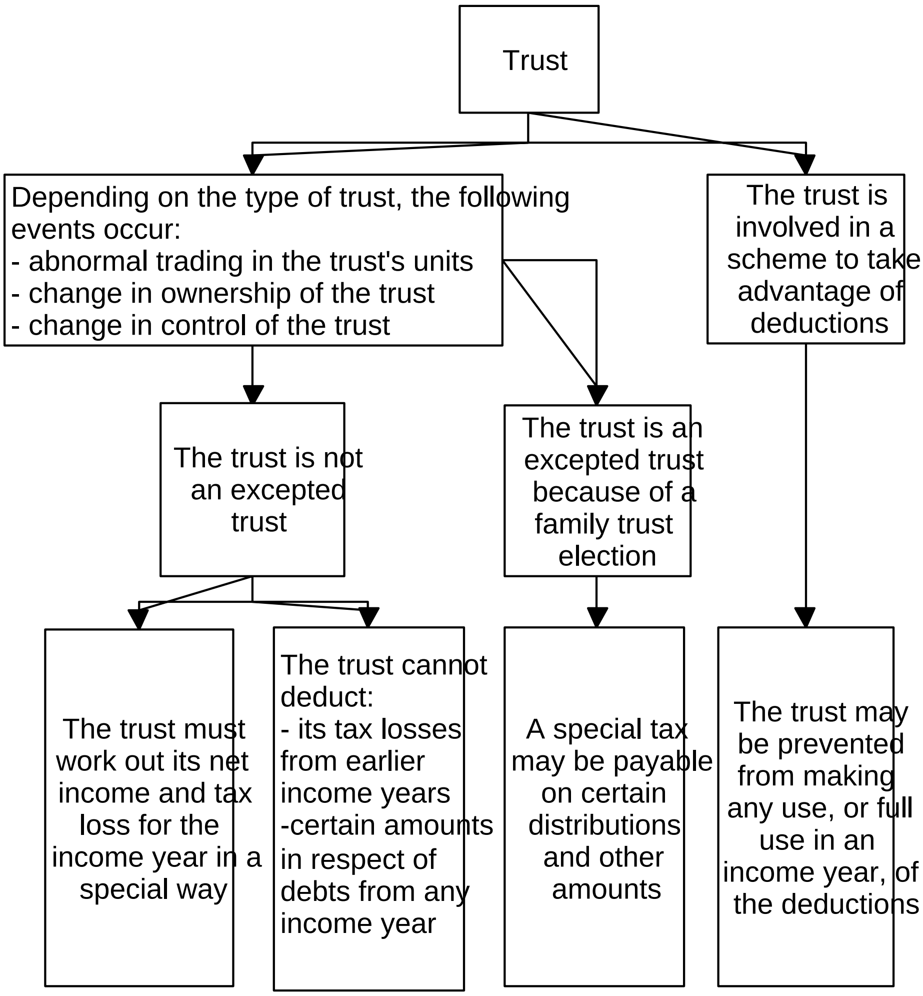
Division 265—Overview of Schedule

265-5 What this Schedule is about

> If there is a change in ownership or control of a trust or an abnormal trading in its units, it:
>
> - may be prevented from deducting its tax losses of earlier income years; and
> - may have to work out in a special way its net income and tax loss for the income year; and
> - may be prevented from deducting certain amounts in respect of debts incurred in the income year or earlier income years.
>
> This will not be the case if the trust is an excepted trust. However, if it became one by making a family trust election, a special tax may be payable on certain distributions and other amounts.

If a trust is involved in a scheme to take advantage of deductions, it may be prevented from making full use of them.

265-10 Diagram giving overview of Schedule



Division 266—Income tax consequences for fixed trusts of abnormal trading or change in ownership

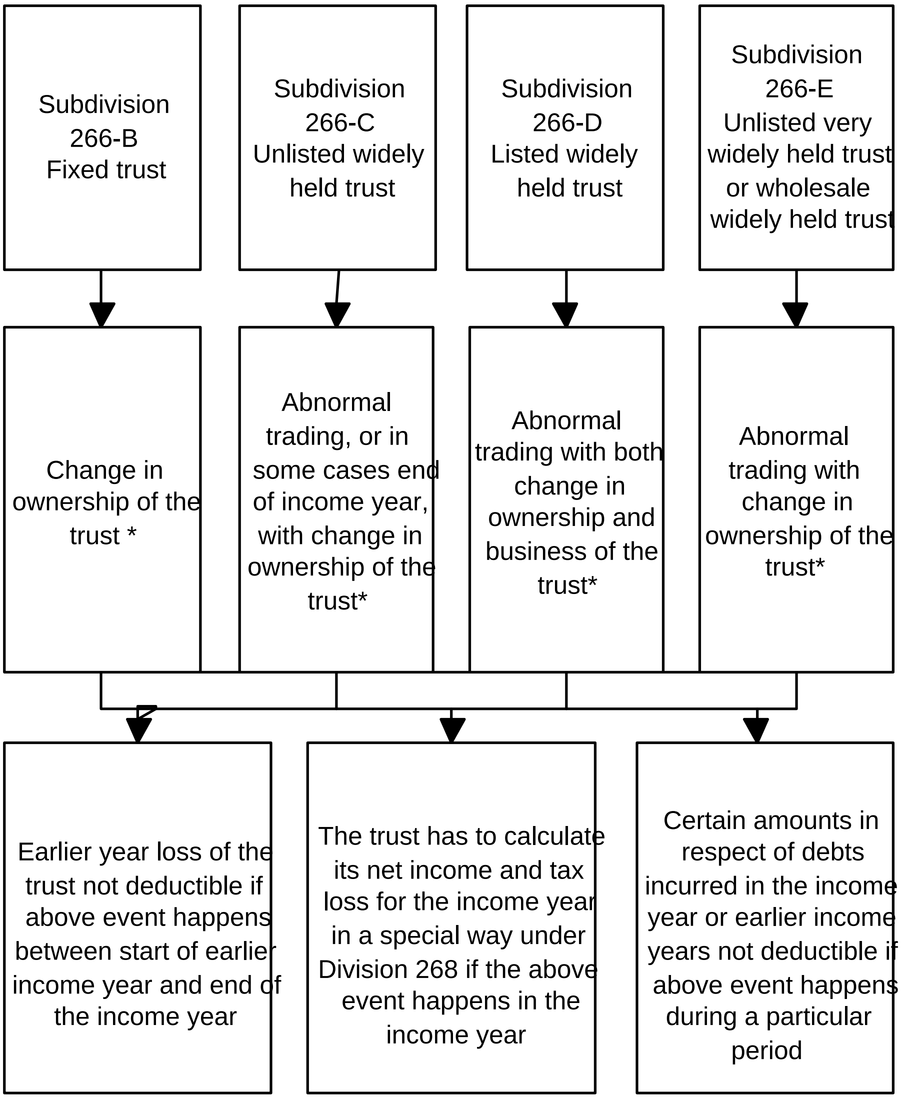
Subdivision 266-A—Overview of this Division

266-5 What this Division is about

This Division is about the income tax consequences, for various kinds of fixed trusts, of certain events:

- for an ordinary fixed trust, the event is a change in ownership (subject to a non-fixed trust exception);
- for an unlisted widely held trust, the event is an abnormal trading in its units, or the end of an income year, together with a change in ownership;
- for a listed widely held trust, the event is an abnormal trading in its units, together with a change in ownership and business;
- for an unlisted very widely held trust or a wholesale widely held trust, the event is an abnormal trading in its units, together with a change in ownership.

266-10 Diagram giving overview of this Division



* Under Subdivision 266-F, if certain information is not provided by the trust, the event is deemed to have happened.

Subdivision 266-B—Effect of change in ownership of fixed trust

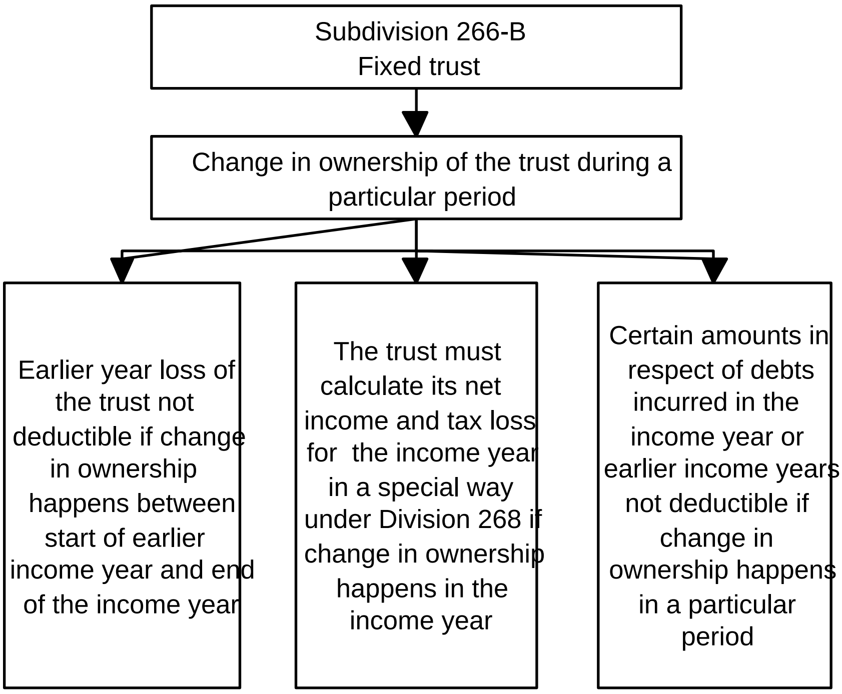
266-15 What this Subdivision is about

An ordinary fixed trust:

- cannot deduct a tax loss from an earlier income year; or
- has to work out its net income and tax loss for the income year in a special way; or
- cannot deduct certain amounts in respect of debts incurred in the income year or an earlier income year;

unless there has been continuity of ownership throughout a particular period or an exception relating to holdings by non-fixed trusts applies.

266-20 Diagram giving overview of this Subdivision



266-25 Fixed trust may be denied tax loss deduction

Type of trust to which this section applies

(1) This section applies to a trust that:

(a) can deduct in the income year a tax loss from a loss year; and

(b) was a fixed trust at all times in the period (the ***test period***) from the beginning of the loss year until the end of the income year; and

(c) was not a widely held unit trust at all times in the test period; and

(d) was not an excepted trust at all times in the test period.

To find out the meaning of ***fixed trust***: see section 272-65.

To find out the meaning of ***widely held unit trust***: see section 272-105.

To find out the meaning of ***excepted trust***: see section 272-100.

Condition for deducting tax loss

(2) The trust cannot deduct the tax loss unless it meets either:

- the condition in section 266-40; or
- the conditions in section 266-45.

266-30 Fixed trust may be required to work out its net income and tax loss in a special way

A trust that:

(a) was a fixed trust at all times in the income year (the ***test period***); and

(b) was not a widely held unit trust at all times in the test period; and

(c) was not an excepted trust at all times in the test period;

must work out its net income and tax loss for the income year under Division 268 (How to work out a trust's net income and tax loss for the income year), unless it meets either:

- the condition in section 266-40; or
- the conditions in section 266-45.

266-35 Fixed trust may be denied debt deduction

Type of trust to which this section applies

(1) This section applies to a trust that:

(a) can deduct in the income year an amount:

(i) under section 51 or 63, or under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*, in respect of the writing off of the whole or part of a debt as bad; or

(ii) under subsection 63E(3) or (4) in respect of a debt/equity swap relating to the whole or part of a debt; and

(b) was a fixed trust at all times in the period (the ***test period***):

(i) if the debt was incurred in an earlier income year—beginning on the day the debt was incurred and ending at the end of the income year; or

(ii) if the debt was incurred in the income year—consisting of the income year; and

(c) was not a widely held unit trust at all times in the test period; and

(d) was not an excepted trust at all times in the test period.

Condition for deducting amount

(2) The trust cannot deduct the amount unless it meets either:

- the condition in section 266-40; or
- the conditions in section 266-45.

266-40 The trust must pass 50% stake test

The fixed trust must pass the 50% stake test for the test period.

To find out whether the trust passes the 50% stake test for the period: see Subdivision 269-C.

266-45 The trust must meet non-fixed trust stake test

(1) If the condition in section 266-40 is not met, the trust must satisfy the conditions in this section.

First condition

(2) At all times during the test period:

(a) non-fixed trusts (other than family trusts) must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the trust; or

(b) both:

(i) a fixed trust or a company (which trust or company is the ***holding entity***) must have held, directly or indirectly, all of the fixed entitlements to income and capital of the trust; and

(ii) non-fixed trusts (other than family trusts) must have held fixed entitlements to a 50% or greater share of the income or a 50% or greater share of the capital of the holding entity.

Second condition

(3) The persons holding fixed entitlements to shares of the income, and the persons holding fixed entitlements to shares of the capital, of:

(a) in a paragraph (2)(a) case—the trust; or

(b) in a paragraph (2)(b) case—the holding entity;

at the beginning of the test period must have held those entitlements to those shares at all times during the test period.

Third condition

(4) At the beginning of the test period:

(a) individuals must not have had more than a 50% stake in the income of the trust; or

(b) individuals must not have had more than a 50% stake in the capital of the trust.

Fourth condition

(5) It must be the case that, for each non-fixed trust (other than an excepted trust) that, at any time in the test period, held directly or indirectly a fixed entitlement to a share of the income or capital of the trust:

(a) if this section is being applied for the purposes of section 266-25—section 267-20 would not have prevented the non-fixed trust from deducting the tax loss concerned if it, rather than the fixed trust, had incurred the loss; or

(b) if this section is being applied for the purposes of section 266-30—section 267-60 does not require the non-fixed trust to work out its net income and tax loss for the income year under Division 268; or

(c) if this section is being applied for the purposes of section 266-35—section 267-25, or section 267-65, as the case requires, would not have prevented the non-fixed trust from deducting the amount concerned if it, rather than the fixed trust, would otherwise be entitled to deduct the amount.

266-50 Deducting part of a tax loss

(1) If section 266-25 prevents the fixed trust from deducting a tax loss, it can deduct the part of the tax loss that is attributable to a part of the loss year.

(2) However, the trust can do this only if, assuming that that part of the loss year had been treated as the whole of the loss year for the purposes of sections 266-40 and 266-45, the trust would have been entitled to deduct the tax loss.

266-55 Information about non-fixed trusts with interests in fixed trust

Notice about non-resident non-fixed trust

(1) The Commissioner may give the trustee of a fixed trust a notice in accordance with section 266-60 if the requirements of subsections (2) to (5) of this section are met.

First requirement

(2) In its return of income for an income year, the fixed trust:

(a) must have deducted a tax loss from an earlier income year; or

(b) must not have worked out its net income and tax loss for the income year under Division 268; or

(c) must have deducted an amount in relation to a debt;

where it would not be allowed to deduct the tax loss or amount in respect of the debt, or would be required to work out its net income and tax loss under that Division, unless it met the conditions in section 266-45.

Second requirement

(3) In order to determine whether it meets the conditions in section 266-45, the Commissioner must need information about a non-fixed trust mentioned in subsection 266-45(5).

Third requirement

(4) When the Commissioner gives the notice:

(a) a trustee of the non-fixed trust must be a non-resident; or

(b) the central management and control of the non-fixed trust must be outside Australia.

Fourth requirement

(5) The Commissioner must give the notice before the later of:

(a) 5 years after the end of the income year mentioned in subsection (2); and

(b) the end of the period during which the trustee of the fixed trust is required by section 262A to retain records in relation to that income year.

266-60 Notices where requirements of section 266-55 are met

Information required

(1) The notice that the Commissioner may give if the requirements of subsections 266-55(2) to (5) are met must require the trustee to give the Commissioner specified information that is relevant to determining whether the requirements of subsection 266-45(5) are satisfied in relation to the non-fixed trust mentioned in subsections 266-55(3) and (4).

Trustee knowledge

(2) The information need not be within the knowledge of the trustee at the time the notice is given.

Period for giving information

(3) The notice must specify a period within which the trustee is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

Consequence of not giving the information

(4) If the trustee does not give the information within the period or within such further period as the Commissioner allows, the fixed

trust is taken not to meet, and never to have met, the conditions in section 266-45.

Application of Division 268

(5) If, because of subsection (4), the fixed trust is required to work out under Division 268 its net income and tax loss for the income year mentioned in subsection 266-55(2), that Division is to be applied as if Subdivision 268-B required the income year to be divided into such periods as would result in the highest possible net income for the income year.

No offences or penalties

(6) To avoid doubt, subsections (4) and (5) do not cause the trustee of the fixed trust to commit any offence or be liable to any penalty under Part VII for deducting the amount concerned, or for not working out the trust's net income and tax loss under Division 268, in its return.

Subdivision 266-C—Effect of change in ownership of unlisted widely held trust

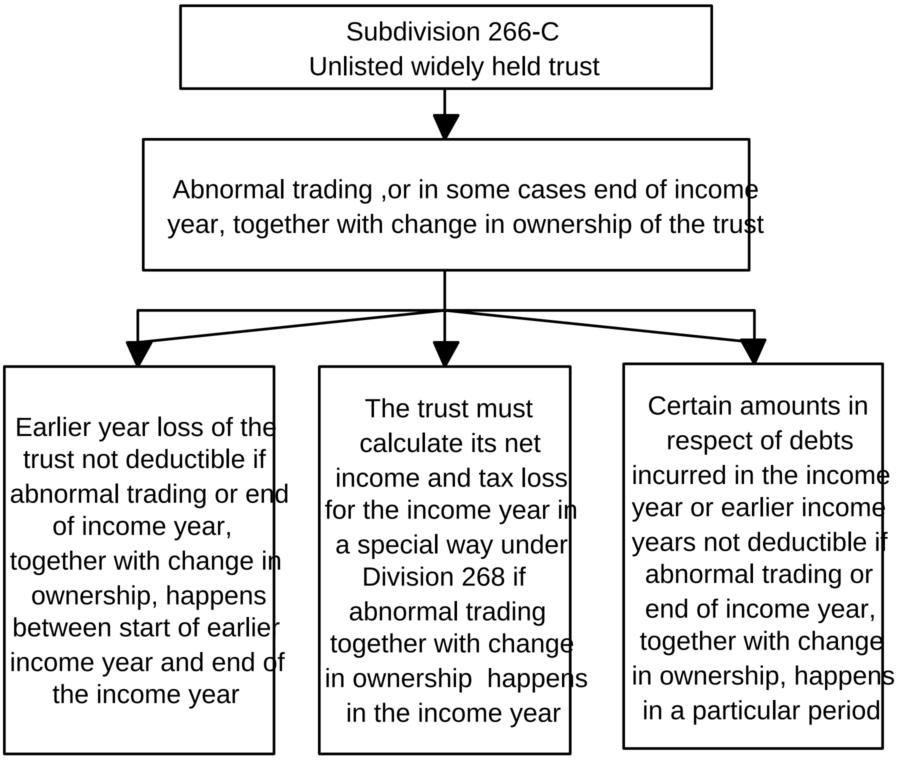
266-65 What this Subdivision is about

An unlisted widely held trust:

- cannot deduct a tax loss from an earlier income year; or
- has to work out its net income and tax loss for the income year in a special way; or
- cannot deduct certain amounts in respect of debts;

unless its ownership has been the same after any abnormal trading in its units and at the end of income years, during a certain period.

266-70 Diagram giving overview of this Subdivision



266-75 Unlisted widely held trust may be denied tax loss deduction

Type of trust to which this section applies—case 1

(1) This section applies to a trust that:

(a) can in the income year deduct a tax loss from a loss year; and

(b) was an unlisted widely held trust at all times in the period (the ***test period***) from the beginning of the loss year until the end of the income year; and

(c) was not a wholesale widely held trust at all times in the test period; and

(d) was not an unlisted very widely held trust at all times in the test period; and

(e) was not an excepted trust at all times in the test period.

To find out the meaning of ***unlisted widely held trust***: see section 272-110.

To find out the meaning of ***wholesale widely held trust***: see section 272-125.

To find out the meaning of ***unlisted very widely held trust***: see section 272-120.

To find out the meaning of ***excepted trust***: see section 272-100.

Type of trust to which this section applies—case 2

(2) This section also applies to a trust that:

(a) can in the income year deduct a tax loss from a loss year; and

(b) was an unlisted widely held trust, other than an unlisted very widely held trust or a wholesale widely held trust, at some time in the period (the ***test period***) from the beginning of the loss year until the end of the income year; and

(c) was a listed widely held trust at all other times in the test period; and

(d) was not an excepted trust at all times in the test period.

To find out the meaning of ***listed widely held trust***: see section 272-115.

Condition for deducting tax loss

(3) The trust cannot deduct the tax loss unless it meets the condition in section 266-90.

266-80 Unlisted widely held trust may be required to work out its net income and tax loss in a special way

Type of trust to which this section applies—case 1

(1) A trust that:

(a) was an unlisted widely held trust at all times in the income year (the ***test period***); and

(b) was not a wholesale widely held trust at all times in the test period; and

(c) was not an unlisted very widely held trust at all times in the test period; and

(d) was not an excepted trust at all times in the test period;

must work out its net income and tax loss for the income year under Division 268 (How to work out a trust's net income and tax loss for the income year), unless it meets the condition in section 266-90.

Type of trust to which this section applies—case 2

(2) A trust that:

(a) was an unlisted widely held trust, other than an unlisted very widely held trust or a wholesale widely held trust, at some time in the income year (the ***test period***); and

(b) was a listed widely held trust at all other times in the test period; and

(c) was not an excepted trust at all times in the test period;

must work out its net income and tax loss for the income year under Division 268 (How to work out a trust's net income and tax loss for the income year), unless it meets the condition in section 266-90.

266-85 Unlisted widely held trust may be denied debt deduction

Type of trust to which this section applies—case 1

(1) This section applies to a trust that:

(a) can deduct in the income year an amount:

(i) under section 51 or 63, or under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*, in respect of the writing off of the whole or part of a debt as bad; or

(ii) under subsection 63E(3) or (4) in respect of a debt/equity swap relating to the whole or part of a debt; and

(b) was an unlisted widely held trust at all times in the period (the ***test period***):

(i) if the debt was incurred in an earlier income year—beginning on the day the debt was incurred and ending at the end of the income year; or

(ii) if the debt was incurred in the income year—consisting of the income year; and

(c) was not a wholesale widely held trust at all times in the test period; and

(d) was not an unlisted very widely held unit trust at all times in the test period; and

(e) was not an excepted trust at all times in the test period.

Type of trust to which this section applies—case 2

(2) This section also applies to a trust that:

(a) can deduct in the income year an amount:

(i) under section 51 or 63, or under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*, in respect of the writing off of the whole or part of a debt as bad; or

(ii) under subsection 63E(3) or (4) in respect of a debt/equity swap relating to the whole or part of a debt; and

(b) was an unlisted widely held trust, other than an unlisted very widely held trust or a wholesale widely held trust, at some time in the period (the ***test period***):

(i) if the debt was incurred in an earlier income year—beginning on the day the debt was incurred and ending at the end of the income year; or

(ii) if the debt was incurred in the income year—consisting of the income year; and

(c) was a listed widely held trust at all other times in the test period; and

(d) was not an excepted trust at all times in the test period.

Condition for deducting amount

(3) The trust cannot deduct the amount unless it meets the condition in section 266-90.

266-90 If abnormal trading or end of income year, trust must pass the 50% stake test

(1) If this section is being applied for the purposes of section 266-75 or 266-85, on each occasion when either of the following events occurs:

(a) an abnormal trading in the trust's units occurs during the test period;

(b) an income year of the trust ends during the test period (including at the end of the test period);

the trust must pass the 50% stake test in respect of the following times:

(c) the beginning of the test period;

(d) immediately after the event occurs.

To find out whether the trust passes the 50% stake test: see Subdivision 269-C.

(2) If this section is being applied for the purposes of section 266-80, on each occasion when an abnormal trading in the trust's units occurs during the test period, the trust must pass the 50% stake test in respect of the following times:

(a) the beginning of the test period; and

(b) immediately after the abnormal trading occurs.

266-95 Deducting part of a tax loss

(1) If section 266-75 prevents the trust from deducting a tax loss, it can deduct the part of the tax loss that is attributable to a part of the loss year.

(2) However, the trust can do this only if, assuming that that part of the loss year had been treated as the whole of the loss year for the purposes of section 266-90, the trust would have been entitled to deduct the tax loss.

Subdivision 266-D—Effect of abnormal trading on listed widely held trust

266-100 What this Subdivision is about

A listed widely held trust:

- cannot deduct a tax loss from an earlier income year; or
- has to work out its net income and tax loss for the income year in a special way; or

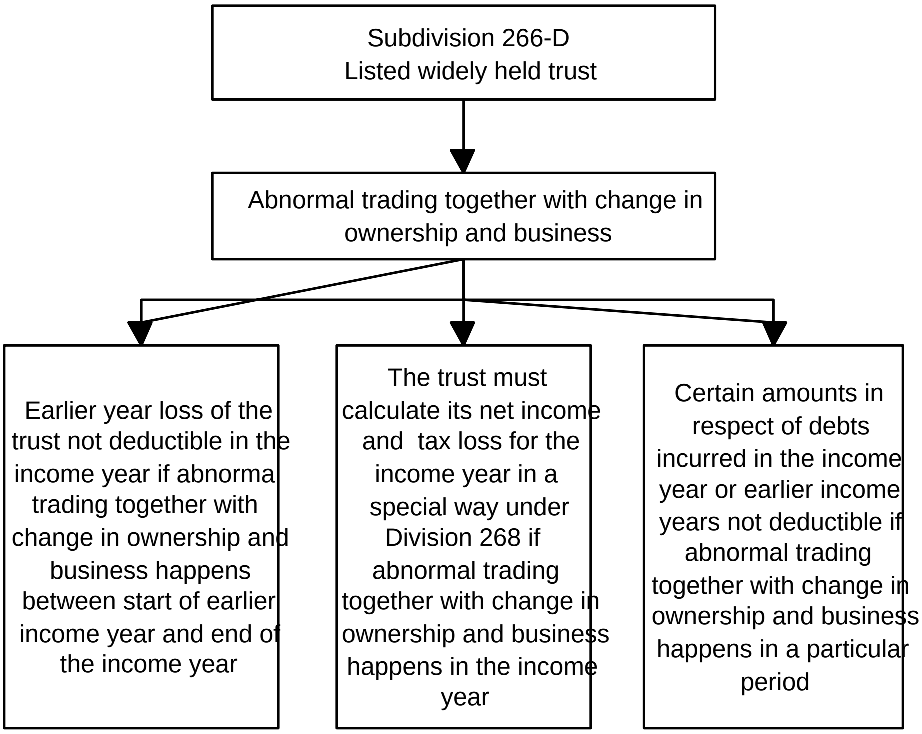
- cannot deduct certain amounts in respect of debts incurred in the same year or earlier income years;

unless either:

- there was no abnormal trading; or
- there was abnormal trading, but the trust's ownership and business did not change.

Also, it may still be prevented from deducting the tax loss to the extent that it is attributable to certain debt deductions.

266-105 Diagram giving overview of this Subdivision



266-110 Listed widely held trust may be denied tax loss deduction

Type of trust to which this section applies

(1) This section applies to a trust that:

(a) can in the income year deduct a tax loss from a loss year; and

(b) was a listed widely held trust at all times in the period (the ***test period***) from the beginning of the loss year until the end of the income year; and

(c) was not an excepted trust at all times in the test period.

To find out the meaning of ***listed widely held trust***: see section 272-115.

To find out the meaning of ***excepted trust***: see section 272-100.

Condition for deducting tax loss

(2) The trust cannot deduct the tax loss unless it meets either:

- the condition in subsection 266-125(1); or
- the condition in subsection 266-125(2).

Additional restriction on deducting tax loss

(3) Even if it meets either of the conditions, it still cannot deduct the tax loss, or part of the tax loss, if section 266-135 (which deals with certain debt deductions) prevents it from doing so.

266-115 Listed widely held trust may be required to work out its net income and tax loss in a special way

A trust that:

(a) was a listed widely held trust at all times in the income year (the ***test period***); and

(b) was not an excepted trust at all times in the test period;

must work out its net income and tax loss for the income year under Division 268 (How to work out a trust's net income and tax loss for the income year), unless it meets either:

- the condition in subsection 266-125(1); or

- the condition in subsection 266-125(2).

266-120 Listed widely held trust may be denied debt deduction

Type of trust to which this section applies

(1) This section applies to a trust that:

(a) can deduct in the income year an amount:

(i) under section 51 or 63, or under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*, in respect of the writing off of the whole or part of a debt as bad; or

(ii) under subsection 63E(3) or (4) in respect of a debt/equity swap relating to the whole or part of a debt; and

(b) was a listed widely held trust at all times in the period (the ***test period***):

(i) if the debt was incurred in an earlier income year—beginning on the day the debt was incurred and ending at the end of the income year; or

(ii) if the debt was incurred in the income year—consisting of the income year; and

(c) was not an excepted trust at all times in the test period.

Condition for deducting amount

(2) The trust cannot deduct the amount unless it meets either:

- the condition in subsection 266-125(1); or

- the condition in subsection 266-125(2).

266-125 There must be no abnormal trading (subject to 50% stake or same business exceptions)

(1) There must be no abnormal trading in the trust's units during the test period.

To find out the meaning of ***abnormal trading***: see Subdivision 269-B.

(2) If there is abnormal trading on one or more occasions, then either:

(a) for each abnormal trading, the trust must pass the 50% stake test in respect of the following times:
   (i) the beginning of the test period;
   (ii) immediately after the abnormal trading; or

(b) if it does not, at all times after the first or only abnormal trading in respect of which the requirement in paragraph (a) is not satisfied and before the end of the test period, the trust must pass the same business test in relation to the time immediately before that abnormal trading.

To find out whether the trust passes the 50% stake test: see Subdivision 269-C.

To find out whether the trust passes the same business test: see Subdivision 269-F.

266-130 Deducting part of a tax loss

(1) If section 266-110 prevents the trust from deducting a tax loss, it can deduct the part of the tax loss that is attributable to a part of the loss year.

(2) However, the trust can do this only if, assuming that that part of the loss year had been treated as the whole of the loss year for the purposes of section 266-125, the trust would have been entitled to deduct the tax loss.

(3) Also, the trust cannot deduct the part of the tax loss, or some of it, if section 266-135 (which deals with certain debt deductions) prevents it from doing so.

266-135 Listed widely held unit trust may be denied tax loss deduction otherwise allowable

Section applies after sections 266-110 and 266-130

(1) This section applies if, after applying sections 266-110 and 266-130, a trust can deduct in the income year the whole or part (the ***otherwise-deductible loss***) of a tax loss from a loss year.

Trust must satisfy condition if debt deduction etc.

(2) If:

(a) there would have been no otherwise-deductible loss, or its amount would have been smaller, if the trust had not (after applying section 266-120) been able to deduct in the loss year an amount:

(i) under section 51 or 63, or under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*, in respect of the writing off of the whole or part of a debt as bad; or

(ii) under subsection 63E(3) or (4) in respect of a debt/equity swap relating to the whole or part of a debt; and

(b) the trust could only deduct the amount in respect of the debt because it passed the same business test as mentioned in paragraph 266-125(2)(b); and

(c) the Commissioner considers that the trust passed the same business test as mentioned in that paragraph for the purpose, or for purposes including the purpose, of being able to deduct the amount because of that paragraph;

the trust cannot deduct the otherwise-deductible loss, or can only deduct the smaller amount mentioned in paragraph (a) of this section, unless it meets the condition in subsection (3).

Condition

(3) The condition is that, at all times after the abnormal trading mentioned in paragraph 266-125(2)(b) and before the end of the income year, the trust must pass the same business test in relation to the time immediately before the abnormal trading.

Subdivision 266-E—Effect of abnormal trading on unlisted very widely held trust or wholesale widely held trust

266-140 What this Subdivision is about

An unlisted very widely held trust or a wholesale widely held trust:

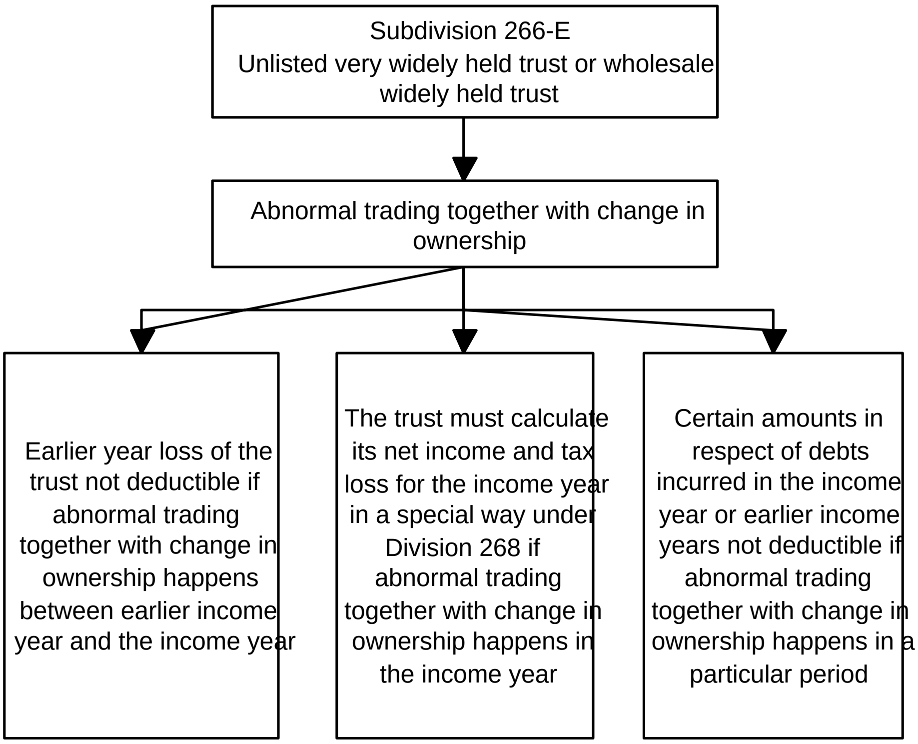
- cannot deduct a tax loss from an earlier income year; or
- has to work out its net income and tax loss for the income year in a special way; or

- cannot deduct certain amounts in respect of debts incurred in the income year or earlier income years;

unless either:

- there was no abnormal trading; or
- there was abnormal trading, but the trust's ownership did not change.

266-145 Diagram giving overview of this Subdivision



266-150 Unlisted very widely held trust or wholesale widely held trust may be denied tax loss deduction

(1) If a trust is covered by subsection (2), it cannot deduct in the income year a tax loss from a loss year unless it meets either:

- the condition in subsection 266-165(1); or
- the condition in subsection 266-165(2).

(2) A trust is covered by this subsection if:

(a) in the period (the ***test period***) from the later of:

(i) the beginning of the loss year; and

(ii) the end of any start-up period (within the meaning of subsection 272-120(3));

until the end of the income year, the trust:

(iii) was at all times an unlisted very widely held trust; or

(iv) was at all times a wholesale widely held trust; or

(v) was at some time an unlisted very widely held trust and, at any time when it was not, was a wholesale widely held trust or a listed widely held trust; or

(vi) was at some time a wholesale widely held trust and, at any time when it was not, was an unlisted very widely held trust or a listed widely held trust; and

(b) in the test period, the trust was not at all times an excepted trust.

To find out the meaning of ***unlisted very widely held trust***: see section 272-120.

To find out the meaning of ***wholesale widely held trust***: see section 272-125.

To find out the meaning of ***excepted trust***: see section 272-100.

To find out the meaning of ***listed widely held trust***: see section 272-115.

266-155 Unlisted very widely held trust or wholesale widely held trust may be required to work out its net income and tax loss in a special way

(1) If a trust is covered by subsection (2), it must work out its net income and tax loss for the income year under Division 268 (How

to work out a trust's net income and tax loss for the income year), unless it meets either:

- the condition in subsection 266-165(1); or
- the condition in subsection 266-165(2).

(2) A trust is covered by this subsection if:

(a) in the period (the ***test period***) consisting of so much of the income year as occurs after the end of any start-up period (within the meaning of subsection 272-120(3)), the trust:

(i) was at all times an unlisted very widely held trust; or

(ii) was at all times a wholesale widely held trust; or

(iii) was at some time an unlisted very widely held trust and, at any time when it was not, was a wholesale widely held trust or a listed widely held trust; or

(iv) was at some time a wholesale widely held trust and, at any time when it was not, was an unlisted very widely held trust or a listed widely held trust; and

(b) in the test period, the trust was not at all times an excepted trust.

266-160 Unlisted very widely held trust or wholesale widely held trust may be denied debt deduction

(1) If a trust is covered by subsection (2), it cannot deduct in the income year an amount:

(a) under section 51 or 63, or under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*, in respect of the writing off of the whole or part of a debt as bad; or

(b) under subsection 63E(3) or (4) in respect of a debt/equity swap relating to the whole or part of a debt;

unless it meets either:

- the condition in subsection 266-165(1); or
- the condition in subsection 266-165(2).

(2) A trust is covered by this subsection if:

(a) in the period (the ***test period***) from the later of the end of any start-up period (within the meaning of subsection 272-120(3)) and the beginning of:

(i) if the debt was incurred in an earlier income year—the day on which the debt was incurred; or

(ii) if the debt was incurred in the income year—the income year;

until the end of the income year, the trust:

(iii) was at all times an unlisted very widely held trust; or

(iv) was at all times a wholesale widely held trust; or

(v) was at some time an unlisted very widely held trust and, at any time when it was not, was a wholesale widely held trust or a listed widely held trust; or

(vi) was at some time a wholesale widely held trust and, at any time when it was not, was an unlisted very widely held trust or a listed widely held trust; and

(b) in the test period, the trust was not at all times an excepted trust.

266-165 There must be no abnormal trading (subject to 50% stake exception)

(1) There must be no abnormal trading in the units of the trust during the test period.

To find out the meaning of ***abnormal trading***: see Subdivision 269-B.

(2) If there is abnormal trading on one or more occasions, then for each abnormal trading the trust must pass the 50% stake test in respect of the following times:

(a) the beginning of the test period;

(b) immediately after the abnormal trading.

To find out whether the trust passes the 50% stake test: see Subdivision 269-C.

266-170 Deducting part of a tax loss

(1) If section 266-150 prevents the trust from deducting a tax loss, it can deduct the part of the tax loss that is attributable to a part of the loss year.

(2) However, the trust can do this only if, assuming that that part of the loss year had been treated as the whole of the loss year for the purposes of section 266-165, the trust would have been entitled to deduct the tax loss.

Subdivision 266-F—Information about family trusts with interests in other trusts

266-175 What this Subdivision is about

If a trust would only avoid the tax consequences of this Division because of interests held by a non-resident family trust, the Commissioner may require the trust to give certain information about the non-resident family trust. If it is not given, the trust does not avoid the tax consequences of this Division.

266-180 Information about family trusts with interests in other trusts

Notice about family trust

(1) The Commissioner may give the trustee of a trust (the ***primary trust***) a notice in accordance with section 266-185 if the requirements of subsections (2) to (5) of this section are met.

First requirement

(2) In its return of income for an income year, the primary trust:

(a) must have deducted a tax loss from an earlier income year; or

(b) must not have worked out its net income and tax loss for the income year under Division 268; or

(c) must have deducted an amount in relation to a debt;

where it would not be allowed to deduct the tax loss or amount in respect of the debt, or would be required to work out its net income and tax loss under that Division, if it did not meet a condition or conditions as mentioned in section 266-40, 266-45, 266-90, 266-125 or 266-165 (the ***conditions provision***).

Second requirement

(3) The Commissioner must be satisfied that the primary trust would not meet the condition or conditions if one or more trusts were not family trusts.

Third requirement

(4) When the Commissioner gives the notice, for at least one of the family trusts:
  (a) a trustee of the trust must be a non-resident; or
  (b) the central management and control of the trust must be outside Australia.

Fourth requirement

(5) The Commissioner must give the notice before the later of:
  (a) 5 years after the end of the income year to which the return relates; and
  (b) the end of the period during which the trustee of the primary trust is required by section 262A to retain records in relation to that income year.

266-185 Notices where requirements of section 266-180 are met

Information required

(1) The notice that the Commissioner may give if the requirements of subsections 266-180(2) to (5) are met must require the trustee of the primary trust to give the Commissioner specified information about conferrals of present entitlements to, and distributions of, income and capital, since the start of the test period mentioned in the conditions provision, by all of the family trusts meeting the requirements of paragraph 266-180(4)(a) or (b).

Trustee knowledge

(2) The information need not be within the knowledge of the trustee at the time the notice is given.

Period for giving information

(3) The notice must specify a period within which the trustee is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

Consequence of not giving the information

(4) If the trustee does not give the information within the period or within such further period as the Commissioner allows, the primary trust is taken not to meet, and never to have met, the condition or conditions in the conditions provision.

(5) If, because of subsection (4), the fixed trust is required to work out under Division 268 its net income and tax loss for the income year mentioned in subsection 266-180(2), that Division is to be applied as if Subdivision 268-B required the income year to be divided into such periods as would result in the highest possible net income for the income year.

No offences or penalties

(6) To avoid doubt, subsections (4) and (5) do not cause the trustee of the primary trust to commit any offence or be liable to any penalty under Part VII for deducting the amount concerned, or for not working out the trust's net income and tax loss under Division 268, in the trust's return.

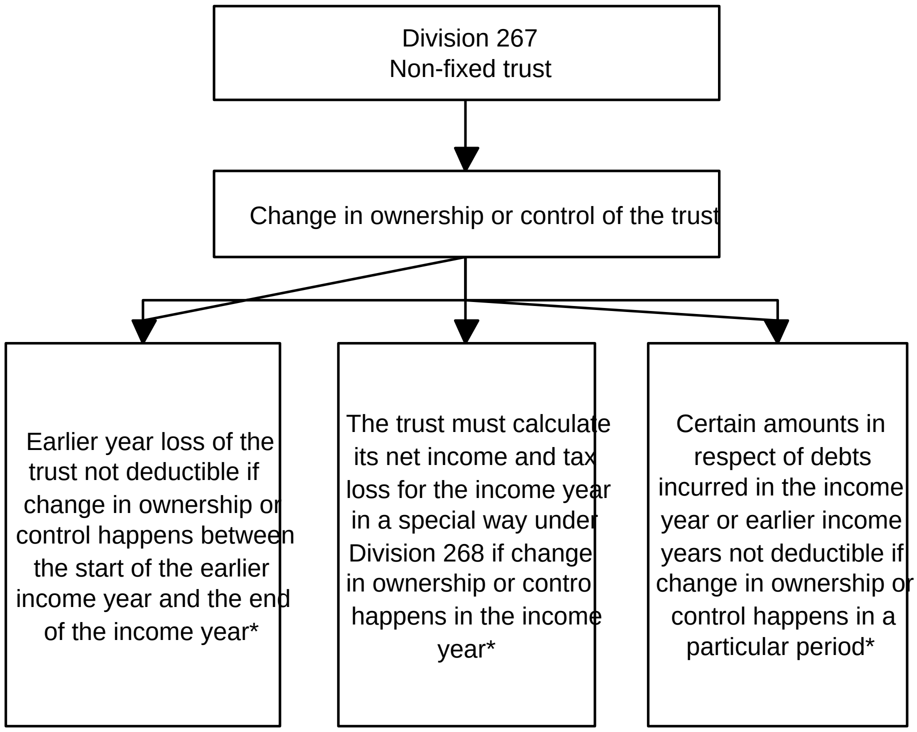
Division 267—Income tax consequences for non-fixed trusts of change in ownership or control

Subdivision 267-A—Overview of this Division

267-5 What this Division is about

This Division is about the income tax consequences for a non-fixed trust if its ownership or control changes.

267-10 Diagram giving overview of this Division



* Under Subdivision 267-D, if certain information is not provided by the trust, the change in ownership or control is deemed to have happened.

Subdivision 267-B—Deducting tax losses, and certain amounts in respect of debts, from earlier years

267-15 What this Subdivision is about

A non-fixed trust cannot deduct:

- a tax loss from a loss year; or
- certain amounts in respect of debts incurred in earlier income years;

unless:

- if applicable, it meets an ownership test based on income and capital distributions; and
- it did not fail that test in a previous year; and
- if applicable, it meets an ownership test based on fixed entitlements to income and capital; and
- its control has stayed the same.

267-20 Non-fixed trust may be denied tax loss deduction

Type of trust to which this Subdivision applies

(1) This section applies to a trust that:

(a) can deduct in the income year a tax loss from a loss year; and

(b) was a non-fixed trust at any time in the period (the ***test period***) from the beginning of the loss year until the end of the income year; and

(c) was not an excepted trust at all times in the test period.

To find out the meaning of ***non-fixed trust***: see section 272-70.

To find out the meaning of ***excepted trust***: see section 272-100.

Conditions for deducting tax loss

(2) The trust cannot deduct the tax loss unless it meets:

- the condition in subsection 267-30(2) (if applicable); and
- the condition in section 267-35; and
- the condition in subsection 267-40(2) (if applicable); and
- the condition in section 267-45.

267-25 Non-fixed trust may be denied debt deduction

Type of trust to which this section applies

(1) This section applies to a trust that:

(a) can deduct in the income year an amount:

(i) under section 51 or 63, or under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*, in respect of the writing off of the whole or part of a debt, incurred in an earlier income year, as bad; or

(ii) under subsection 63E(3) or (4) in respect of a debt/equity swap relating to the whole or part of a debt incurred in an earlier income year; and

(b) was a non-fixed trust at any time in the period (the ***test period***) beginning on the day the debt was incurred and ending at the end of the income year; and

(c) was not an excepted trust at all times in the test period.

Condition for deducting amount

(2) The trust cannot deduct the amount unless it meets:

- the condition in subsection 267-30(2) (if applicable); and
- the condition in section 267-35; and
- the condition in subsection 267-40(2) (if applicable); and

- the condition in section 267-45.

267-30 If certain distributions are made, the trust must pass the pattern of distributions test

When trust must meet the condition

(1) If either or both of the following happened, the trust must meet the condition in subsection (2):

(a) the trust distributed income:

(i) in the income year or within 2 months after its end; and

(ii) in at least one of the 6 earlier income years; or

(b) the trust distributed capital:

(i) in the income year or within 2 months after its end; and

(ii) in at least one of the 6 earlier income years.

The condition

(2) The condition is that the trust must pass the pattern of distributions test for the income year.

To find out whether the trust passes the pattern of distributions test for the income year: see Subdivision 269-D.

267-35 The trust must not have previously failed to meet the condition in subsection 267-30(2)

The trust must not have been prevented from deducting the tax loss in an earlier income year because of a failure to meet the condition in subsection 267-30(2) or conditions that included that condition.

267-40 If there are individuals with more than a 50% stake in income or capital, more than a 50% stake in income or capital must be maintained

When trust must meet condition

(1) If at any time (the ***test time***) in the test period, individuals (the ***threshold group***) have more than a 50% stake in the income or

capital of the trust, the trust must meet the condition in subsection (2).

To find out whether individuals have more than a 50% stake in the income or capital of the trust: see Subdivision 269-C.

Condition

(2) The condition is that, during the period beginning at the test time and finishing at the end of the test period, the same individuals (who must be some or all of the threshold group) must have had more than a 50% stake in the income or the capital, respectively, of the trust.

Commissioner discretion

(3) If:

(a) after the test time, some or all of the threshold group cease to have a 50% stake in the income or capital of the trust at a particular time; and

(b) having regard to the likely manner of exercise of any discretion of the trustee to distribute income or capital of the trust after the particular time and to any other relevant matter, the Commissioner considers it fair and reasonable that the individuals should be taken to have the stake at the particular time and at all later times in the test period;

the individuals are taken to have that stake at the particular time and at all later times in the test period.

267-45 Group must not begin to control the trust

A group must not, during the test period, begin to control the trust directly or indirectly.

To find out what it means for a group to control the trust: see Subdivision 269-E.

267-50 Deducting part of a tax loss

(1) If section 267-20 prevents a trust from deducting a tax loss because the trust does not meet the condition in section 267-40 or 267-45 or both conditions, it can deduct the part of the tax loss that is attributable to a part of the loss year.

(2) However, the trust can do this only if, assuming that that part of the loss year had been treated as the whole of the loss year for the purposes of sections 267-40 and 267-45, the trust would have been entitled to deduct the tax loss.

Subdivision 267-C—Current year net income and tax loss, and certain debts incurred in current year

267-55 What this Subdivision is about

A non-fixed trust:

- must work out its net income and tax loss for the income year in a special way; or
- cannot deduct certain amounts in respect of debts incurred in the income year;

unless:

- if applicable, it meets an ownership test relating to fixed entitlements to shares of income and capital; and
- its control has stayed the same.

267-60 Trust may be required to work out its net income and tax loss in a special way

Type of trust to which this Subdivision applies

A trust that:

(a) was a non-fixed trust at any time in the income year (the ***test period***); and

(b) was not an excepted trust at all times in the test period;

must work out its net income and tax loss for the income year under Division 268 (How to work out a trust’s net income and tax loss for the income year), unless it meets:

- the condition in subsection 267-70(2) (if applicable); and
- the condition in section 267-75.

To find out the meaning of ***excepted trust***: see section 272-100.

267-65 Non-fixed trust may be denied debt deduction

Type of trust to which this section applies

(1) This section applies to a trust that:

(a) can deduct in the income year (the ***test period***) an amount:

(i) under section 51 or 63 in respect of the writing off of the whole or part of a debt, incurred in the income year, as bad; or

(ii) under subsection 63E(3) or (4) in respect of a debt/equity swap relating to the whole or part of a debt incurred in the income year; and

(b) was a non-fixed trust at any time in the test period; and

(c) was not an excepted trust at all times in the test period.

Condition for deducting amount

(2) The trust cannot deduct the amount unless it meets

- the condition in subsection 267-70(2) (if applicable); and
- the condition in section 267-75.

267-70 If there are individuals with more than a 50% stake in income or capital, more than a 50% stake in income or capital must be maintained

When trust must meet condition

(1) If at any time (the ***test time***) in the test period, individuals (the ***threshold group***) have more than a 50% stake in the income or capital of the trust, the trust must meet the condition in subsection (2).

To find out whether individuals have more than a 50% stake in the income or capital of the trust: see Subdivision 268-C.

Condition

(2) The condition is that, during the period beginning at the test time and finishing at the end of the test period, the same individuals (who must be some or all of the threshold group) must have more than a 50% stake in the income or the capital, respectively, of the trust.

Commissioner discretion

(3) If:

(a) after the test time, some or all of the threshold group cease to have a 50% stake in the income or capital of the trust at a particular time; and

(b) having regard to the likely manner of exercise of any discretion of the trustee to distribute income or capital of the trust after the particular time and to any other relevant matter, the Commissioner considers it fair and reasonable that the individuals should be taken to have the stake at the particular time and at all later times in the test period;

the individuals are taken to have that stake at the particular time and at all later times in the test period.

267-75 Group must not begin to control trust

A group must not, during the test period, begin to control the trust directly or indirectly.

To find out what it means for a group to control the trust: see Subdivision 269-E.

Subdivision 267-D—Information about family trusts with interests in other trusts

267-80 What this Subdivision is about

If a trust would only avoid the tax consequences of this Division because of interests held by a non-resident family trust, the Commissioner may require the trust to give certain information about the non-resident family trust. If it is not given, the trust does not avoid the tax consequences of this Division.

267-85 Information about family trusts with interests in other trusts

Notice about family trust

(1) The Commissioner may give the trustee of a trust (the ***primary trust***) a notice in accordance with section 267-90 if the requirements of subsections (2) to (5) of this section are met.

First requirement

(2) In its return of income for an income year, the primary trust:

(a) must have deducted a tax loss from an earlier income year; or

(b) must not have worked out its net income and tax loss for the income year under Division 268; or

(c) must have deducted an amount in relation to a debt;

where it would not be allowed to deduct the tax loss or amount in respect of the debt, or would be required to work out its net income and loss under that Division, if it did not meet a condition or conditions as mentioned in section 267-40 or 267-70 (the ***conditions provision***).

Second requirement

(3) The Commissioner must be satisfied that the primary trust would not meet the condition or conditions if one or more trusts were not family trusts.

Third requirement

(4) When the Commissioner gives the notice, for at least one of the family trusts:

(a) a trustee of the trust must be a non-resident; or

(b) the central management and control of the trust must be outside Australia.

Fourth requirement

(5) The Commissioner must give the notice before the later of:

(a) 5 years after the end of the income year to which the return relates; and

(b) the end of the period during which the trustee of the primary trust is required by section 262A to retain records in relation to that income year.

267-90 Notices where requirements of section 267-85 are met

Information required

(1) The notice that the Commissioner may give if the requirements of subsections 267-85(2) to (5) are met must require the trustee to give the Commissioner specified information about conferrals of present entitlements to, and distributions of, income and capital, since the start of the test period mentioned in the conditions provision, by all of the family trusts meeting the requirements of paragraph 267-85(4)(a) or (b).

Trustee knowledge

(2) The information need not be within the knowledge of the trustee at the time the notice is given.

Period for giving information

(3) The notice must specify a period within which the trustee is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

Consequence of not giving the information

(4) If the trustee does not give the information within the period or within such further period as the Commissioner allows, the primary trust is taken not to meet, and never to have met, the condition or conditions in the conditions provision.

Application of Division 268

(5) If, because of subsection (4), the fixed trust is required to work out under Division 268 its net income and tax loss for the income year mentioned in subsection 267-85(2), that Division is to be applied as if Subdivision 268-B required the income year to be divided into

such periods as would result in the highest possible net income for the income year.

No offences or penalties

(6) To avoid doubt, subsections (4) and (5) do not cause the trustee of the primary trust to commit any offence or be liable to any penalty under Part VII for deducting the amount concerned, or for not working out the trust's net income and tax loss under Division 268, in the trust's return.

Division 268—How to work out a trust's net income and tax loss for the income year

Subdivision 268-A—Overview of Division

268-5 What this Division is about

This Division requires a trust's net income and tax loss to be worked out in a special way. The income year is divided into periods as the basis for the calculation.

Subdivision 268-B—Dividing the income year into periods

268-10 Income year of fixed trust to be divided into periods—first case

(1) If:

(a) a trust's net income and tax loss for the income year are required by section 266-30 to be worked out under this Division; and

(b) the trust did not meet the requirements of subsections 266-45(2) and (4);

the income year is divided into periods as follows.

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

(3) The last period ends at the end of the income year. Each period (except the last) ends at the latest time that would result in the trust passing the 50% stake test for the whole of the period.

268-15 Income year of fixed trust to be divided into periods—second case

(1) If:

(a) a trust's net income and tax loss for the income year are required by section 266-30 to be worked out under this Division; and

(b) the trust met the requirements of subsections 266-45(2) and (4);

the income year is divided into periods as follows.

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

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

(a) the latest time that would result in the persons holding fixed entitlements to shares of the income or shares of the capital of:

(i) if the trust met the requirements of paragraph 266-45(2)(a)—the trust; or

(ii) if the trust met the requirements of paragraph 266-45(2)(b)—the holding entity mentioned in that paragraph;

and the percentages of the shares that they hold, remaining the same during the whole of the period; and

(b) the times that, for all of the non-fixed trusts (other than excepted trusts) holding directly or indirectly a fixed entitlement to a share of the income or capital of the trust at any time during the income year, are the latest times that would result in individuals having more than a 50% stake in their income or capital; and

(c) the earliest time in the period when a group begins to control a non-fixed trust (other than an excepted trust) that holds directly or indirectly a fixed entitlement to a share of the income or capital of the trust at any time during the income year.

To find out when a group begins to control a trust: see Subdivision 269-E.

268-20 Income year of widely held unit trust to be divided into periods

(1) If a trust's net income and tax loss for the income year are required by section 266-80, 266-115 or 266-155 to be worked out under this Division, the income year is divided into periods as follows.

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

(3) The last period ends at the end of the income year. Each period (except the last) ends at the earliest time at which there is an abnormal trading in the trust's units, where the trust does not pass the 50% stake test in respect of the following times:

(a) the beginning of the period;

(b) immediately after the abnormal trading.

(4) However, if the trust is a listed widely held trust, what would otherwise be 2 or more successive periods are treated as a single period if during all of them the trust passed the same business test in relation to the time immediately before the end of the first of the successive periods.

268-25 Income year of non-fixed trust to be divided into periods

(1) If a trust's net income and tax loss for the income year are required by section 267-60 to be worked out under this Division, the income year is divided into periods as follows.

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

(3) The last period ends at the end of the income year.

(4) If the condition in subsection 267-70(2) applies but the trust does not meet the condition, each period (except the last) ends at the earlier of:

(a) the latest time, after the test time mentioned in that section, that would result in the same individuals having more than a 50% stake in the income or the capital, as the case requires, of the trust during the whole of the period; or

(b) the earliest time when a group begins to control the trust directly or indirectly.

(5) If the condition in subsection 267-70(2) does not apply, or does apply and the trust meets the condition, each period (except the last) ends at the earliest time when a group begins to control the trust directly or indirectly.

Subdivision 268-C—Other steps in working out the net income and tax loss

268-30 Calculate the notional loss or net income for each period

(1) A notional loss or notional net income of the trust must be worked out for each period into which the income year has been divided in accordance with Subdivision 268-B.

(2) The trust has a notional loss for a period if the deductions attributed to the period under section 268-35 exceed the assessable income attributed to the period under section 268-40. The ***notional loss*** is the amount of the excess.

For a period during which the trust was in partnership, the notional loss is worked out under Subdivision 268-D.

(3) On the other hand, if that assessable income exceeds those deductions, the trust has a ***notional net income*** for the period, equal to the excess.

For a period during which the trust was in partnership, the notional net income is worked out under Subdivision 268-D.

(4) If the trust has a notional loss for *none* of the periods in the income year, this Subdivision has no further application, and the trust's net income for the income year is calculated in the usual way.

The usual way of working out net income is set out in section 95.

268-35 How to attribute deductions to periods

(1) The trust's deductions for the income year are attributed to periods in the income year as follows.

(2) The following deductions are attributed to each period in proportion to the length of the period:

(a) deductions for depreciation;

See section 54, and Division 42 of the *Income Tax Assessment Act 1997*.

(b) deductions for exploration or prospecting expenditure, or allowable capital expenditure, in connection with mining or quarrying, if the trust has elected that the deductions not be limited by the available assessable income;

See Divisions 10, 10AAA and 10AB of Part III, and Division 330 of the *Income Tax Assessment Act 1997*.

(c) deductions for expenditure, deductions for which are spread over 2 or more years, but not:

(i) deductions for exploration or prospecting expenditure, or capital expenditure, in connection with mining or quarrying; or

See Divisions 10, 10AAA and 10AB of Part III, and Division 330 of the *Income Tax Assessment Act 1997*.

(ii) full year deductions (see subsection (5));

(d) deductions for expenditure of capital monies in connection with an Australian film.

See section 124ZAFA.

(3) All other deductions (except full year deductions) are attributed to periods as if each period were an income year.

(4) Full year deductions are not attributed to any of the periods. They are brought in at a later stage of the process of calculating the trust's net income for the income year.

(5) These are ***full year deductions***:

(a) deductions for bad debts under section 51 (Losses and outgoings), or under section 8-1 (about general deductions) of the *Income Tax Assessment Act 1997*;

(b) deductions for bad debts under section 63 (Bad debts), or under section 25-35 (about bad debts) of the *Income Tax*

Assessment Act 1997, or for losses on debt/equity swaps under section 63E;

(c) deductions, so far as they are allowable under section 51, or under Division 8 (which is about deductions) of the *Income Tax Assessment Act 1997*, because Subdivision H (Period of deductibility of certain advance expenditure) of Division 3 of Part III applies to the trust in relation to the income year;

(d) deductions allowable under section 78 (Gifts, pensions etc.) or 78B (Promoters recoupment tax) or under Division 30 of the *Income Tax Assessment Act 1997*;

(e) deductions for payments of pensions, gratuities or retiring allowances under section 25-50 of the *Income Tax Assessment Act 1997*;

(f) deductions for tax losses of earlier income years;

See sections 79E, 79F, 80, 80AAA and 80AA, and Division 36 of the *Income Tax Assessment Act 1997*.

(g) deductions for allowable capital expenditure in connection with mining or quarrying, except so far as the trustee has elected that the deductions not be limited by the available assessable income;

See Divisions 10, 10AAA and 10AB of Part III, and Division 330 of the *Income Tax Assessment Act 1997*.

(h) deductions for exploration or prospecting expenditure in connection with mining or quarrying, except so far as the trustee has elected that the deductions not be limited by the available assessable income;

See Divisions 10, 10AAA and 10AB of Part III, and Division 330 of the *Income Tax Assessment Act 1997*

(i) deductions for Income Equalization Deposits.

See Division 16C of Part III.

(6) However, a deduction for the balance of capital expenditure is *not* a full year deduction if the deduction results from the disposal, loss, lapse, termination of use or destruction of the property.

See section 59, and subsection 330-485(2) of the *Income Tax Assessment Act 1997*.

268-40 How to attribute assessable income to periods

(1) The trust's assessable income for the income year is attributed to periods in the income year as follows.

(2) The following amounts are attributed to periods so far as they are reasonably attributable to those periods:

(a) amounts included in the trust's assessable income under section 97 (Beneficiary of a trust estate not under a legal disability); or

(b) amounts included in the trust's assessable income under section 98A (Non-resident beneficiaries assessable in respect of certain income).

(3) The following items of assessable income are attributed to each period in proportion to the length of the period:

(a) insurance recoveries for loss of livestock or trees;

See section 26B, and section 385-130 of the *Income Tax Assessment Act 1997*.

(b) amounts included in assessable income as a result of elections relating to the forced disposal of livestock;

See sections 36, 36AAA and 36AA, and Subdivision 385-E and section 385-160 of the *Income Tax Assessment Act 1997*.

(c) recoupment of mains electricity connection expenditure.

See section 70A, and item 1.16 in section 20-30, which lists deductions for which recoupments are assessable under Subdivision 20-A, of the *Income Tax Assessment Act 1997*.

(4) An amount included in the trust's assessable income under section 26BA (Double wool clips), or under section 385-185 (Election to defer including profit on second wool clip) of the *Income Tax Assessment Act 1997*, is attributed to the period when the wool would ordinarily have been shorn.

(5) An amount included in the trust's assessable income that is a dividend under:

(a) section 65 (Payments to associated persons); or

(b) section 108 (Loans to shareholders and associates); or

(c) section 109 (Excessive payments to shareholders and associates);

is attributed to the period when the amount was paid or credited, whichever occurred first.

(6) All other items of assessable income (except full year amounts) are attributed to periods as if each period were an income year.

(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. They are brought in at a later stage of the process of calculating the trust's net income for the income year.

268-45 How to calculate the trust's net income for the income year

(1) The trust's ***net income*** for the income year is worked out as follows.

(2) Add up the notional net incomes (if any) worked out under section 268-30 or 268-70.

Note: A notional ***loss*** for a period is *not* taken into account, but counts towards the trust's tax loss for the income year.

(3) Add the full year amounts referred to in subsection 268-40(7) (if any).

(4) Subtract the trust's full-year deductions of these kinds:

- (a) deductions for bad debts under section 51 (Losses and outgoings), or under section 8-1 (about general deductions) of the *Income Tax Assessment Act 1997*;
- (b) deductions for bad debts under section 63 (Bad debts), or under section 25-35 (about bad debts) of the *Income Tax Assessment Act 1997*;
- (c) deductions, so far as they are allowable under section 51, or under Division 8 (which is about deductions) of the *Income Tax Assessment Act 1997*, because Subdivision H (Period of deductibility of certain advance expenditure) of Division 3 of Part III applies to the trust in relation to the income year;

unless they exceed the total of the notional net incomes and the full year amounts. (If they equal or exceed that total, the trust does not have a net income for the income year.)

(5) If an amount remains, subtract from it the trust's other full year deductions, in the order shown in subsection 268-35(5), unless they

exceed the amount remaining. (If they equal or exceed that amount, the trust does not have a net income for the income year.)

(6) The amount (if any) remaining is the trust's ***net income*** for the income year.

268-50 How to calculate the trust's section 79E loss for the income year

(1) For the purposes of section 79E (General domestic losses of post-1989 years of income), instead of working out the trust's loss for the year under subsection (1) of that section, it is worked out as follows.

(2) Total the notional losses worked out under section 268-30 or 268-70.

(3) Add to the total in subsection (2) the amount (if any) by which the trust's full year deductions of these kinds:

(a) deductions for bad debts under section 51 (Losses and outgoings);

(b) deductions for bad debts under section 63 (Bad debts);

(c) deductions, so far as they are allowable under section 51 of this Act because Subdivision H (Period of deductibility of certain advance expenditure) of Division 3 of Part III applies to the trust in relation to the income year;

exceed the total of:

(d) the notional net incomes (if any); and

To work out the notional net income: see sections 268-30 and 268-70.

(e) the full year amounts referred to in section 268-40 (if any).

(4) If the trust derived exempt income, subtract its net exempt income as defined in subsection 79E(12).

(5) Any amount remaining is the trust's loss for the income year.

To find out *how much* of the loss can be deducted in later income years, see Division 266 or 267.

To find out *how* to deduct it, see section 79E.

268-55 How to work out the trust's film loss for the income year

(1) For the purposes of section 79F (Film losses of post-1989 years of income), instead of working out the trust's film loss for the year under subsection (1) of that section, it is worked out as follows.

(2) Apply subsections 268-50(2) and (3), making the following changes:

(a) take into account assessable film income (as defined in subsection 79F(12)), but not any other assessable income;

(b) take into account film deductions (as defined in subsection 79F(12)), but not any other allowable deductions.

(3) If the trust derived exempt film income (as defined in subsection 79E(12)), subtract from the amount worked out under subsection (2) of this section the trust's net exempt film income (as defined in subsection 79E(12)).

(4) Apply section 268-50.

(5) The trust's film loss for the income year is the amount worked out under subsection (3), to the extent that it is not greater than the amount worked out under subsection (4).

268-60 How to work out the trust's section 36-10 tax loss for the income year

(1) For the purposes of Division 36 (Tax losses of earlier income years) of the *Income Tax Assessment Act 1997*, instead of working out the trust's tax loss for the year under section 36-10 of that Act, it is worked out as follows.

(2) Total the notional losses.

(3) Add the amount (if any) by which the trust's full year deductions of these kinds:

(a) deductions for bad debts under section 8-1 (about general deductions) of the *Income Tax Assessment Act 1997*;

(b) deductions for bad debts under section 25-35 (about bad debts) of the *Income Tax Assessment Act 1997*;

(c) deductions, so far as they are allowable under Division 8 (which is about deductions) of the *Income Tax Assessment Act 1997* because Subdivision H (Period of deductibility of certain advance expenditure) of Division 3 of Part III applies to the trust in relation to the income year;

exceed the total of:

(d) the notional net incomes (if any); and

To work out the notional net income: see sections 268-30 and 268-70.

(e) the full year amounts referred to in section 268-40 (if any).

(4) If the trust derived exempt income, subtract its net exempt income as defined in section 36-20 of the *Income Tax Assessment Act 1997*.

(5) Any amount remaining is the trust's tax loss for the income year.

To find out *how much* of the tax loss can be deducted in later income years, see Division 266 or 267.

To find out *how* to deduct it, see section 36-15 of the *Income Tax Assessment Act 1997*.

268-65 How to work out the section 375-805 film component of the trust's tax loss for the income year

(1) For the purposes of Subdivision 375-G (Film losses) of the *Income Tax Assessment Act 1997*, instead of working out the film component of a tax loss of the trust for the income year under section 375-805 of that Act, it is worked out as follows.

(2) Apply subsections 268-60(2) and (3), making the following changes:

(a) take into account assessable film income (as defined in subsection 375-805(3) of the *Income Tax Assessment Act 1997*), but not any other assessable income;

(b) take into account film deductions (as defined in subsection 375-805(2) of that Act), but not any other allowable deductions.

(3) If the trust derived exempt film income (as defined in subsection 375-805(5) of that Act), subtract from the amount worked out under subsection (2) of this section the trust's net exempt film income (as defined in subsection 375-805(4) of that Act).

(4) Apply section 268-60.

(5) The film component of the tax loss of the trust for the income year is the amount worked out under subsection (3), to the extent that it is not greater than the amount worked out under subsection (4).

Subdivision 268-D—Rules that supplement Subdivision 268-C if the trust is in partnership

268-70 How to calculate the trust's notional loss or net income for a period when the trust was a partner

(1) This section applies if at any time during a period the trust was a partner in one or more partnerships.

(2) The trust has a notional loss for the period if the total (the ***loss total***) of:

(a) the deductions attributed to the period under section 268-35; and

(b) the trust's share of each notional loss (if any) of a partnership for the period;

exceeds the total (the ***income total***) of:

(c) the assessable income attributed to the period under section 268-40; and

(d) the trust's share of each notional net income (if any) of a partnership for the period.

The ***notional loss*** is the amount of the excess.

Note: A notional loss is taken into account in working out the trust's tax loss under section 268-50 or 268-60.

(3) On the other hand, if the income total exceeds the loss total, the trust has a ***notional net income*** for the period, equal to the excess.

Note: A notional net income is taken into account in working out the trust's net income under section 268-45.

(4) If the trust has a notional net income for *all* periods in the income year, this Subdivision has no further application, and the trust's net income for the income year is worked out in the usual way.

The usual way of working out net income is set out in section 95.

268-75 How to calculate the trust's share of a partnership's notional loss or notional net income for a period if both entities have the same income year

(1) This section applies if at any time during a period the trust is a partner in a partnership that has an income year that starts and ends when the trust's income year starts and ends.

(2) The partnership's notional loss or notional net income for the period is worked out in the same way as the notional loss or notional net income of a trust.

(3) The trust's share is calculated by dividing:

(a) the trust's interest in the partnership's net income or partnership loss of the income year;

by:

(b) the amount of that net income or partnership loss;

and expressing the result as a percentage.

(4) However, if the partnership had neither a net income nor a partnership loss, the trust's share is a percentage that is fair and reasonable having regard to the extent of the trust's interest in the partnership.

268-80 How to calculate the trust's share of a partnership's notional loss or notional net income for a period if the entities have different income years

(1) This section applies if at any time during a period the trust is a partner in a partnership that has an income year that starts and ends at a different time from when the trust's income year starts and ends.

(2) So much of the partnership's net income or partnership loss of an income year as was derived during the period is a notional net income or notional loss of the partnership for the period. (For the purposes of this subsection, the partnership's net income or partnership loss is calculated without taking account of the partnership's full year deductions for that income year.)

Note: The partnership's full year deductions are dealt with in section 268-85.

(3) The trust's share is calculated by dividing:

(a) the trust's interest in the partnership's net income or partnership loss of the income year;

by:

(b) the amount of that net income or partnership loss;

and expressing the result as a percentage.

268-85 Trust's full year deductions include a share of partnership's full year deductions

(1) This section applies if at any time during the income year the trust is a partner in a partnership that has one or more full year deductions for the income year of the partnership that corresponds to the income year of the trust.

(2) The partnership's full year deductions are treated as full year deductions of the trust, but only to the extent of the trust's share.

(3) If the partnership's income year is the same as the trust's, the trust's share is calculated by dividing:

(a) the trust's interest in the partnership's net income or partnership loss of the income year;

by:

(b) the amount of that net income or partnership loss;

and expressing the result as a percentage.

(4) However, if the partnership had neither a net income nor a partnership loss, the trust's share is a percentage that is fair and reasonable having regard to the extent of the trust's interest in the partnership.

(5) If the partnership's income year does not start and end at the same time as the trust's income year, the trust's share is a percentage that is fair and reasonable having regard to all relevant circumstances.

Division 269—Concepts and tests applied in Divisions 266 and 267

Subdivision 269-A—Overview of Division

269-5 What this Division is about

This Division explains the following concepts or tests that are used in preceding Divisions of this Schedule:

- abnormal trading;
- 50% stake test etc.;
- pattern of distributions test;
- control;
- same business test.

Subdivision 269-B—Abnormal trading

269-10 Trading

A ***trading*** in units in a unit trust occurs if there is an issue, redemption or transfer of, or other dealing in, the units.

269-15 Abnormal trading—general

(1) There is an ***abnormal trading*** in units in a unit trust if there is a trading in the units that is abnormal having regard to all relevant factors, including:

(a) the timing of the trading, when compared to the normal timing for trading in its units; and

(b) the number of units traded, when compared to the normal number of units traded; and

(c) any connection between the trading and any other trading in units in the trust; and

(d) any connection between the trading and a tax loss or other deduction of the trust.

(2) There may also be an ***abnormal trading*** under any of the following provisions.

269-20 Abnormal trading—suspected acquisition or merger

There is an ***abnormal trading*** in units in a unit trust if a trading occurs in its units that the trustee knows or reasonably suspects is part of an acquisition of the trust or merger of the trust with another trust.

269-25 Abnormal trading—5% of units in a single transaction

There is an ***abnormal trading*** in units in a unit trust (other than a wholesale widely held trust) if 5% or more of the units are traded in one transaction.

269-30 Abnormal trading—suspected 5% of units in a series of transactions

(1) There is an ***abnormal trading*** in units in a unit trust (other than a wholesale widely held trust) if the trustee knows or reasonably suspects that a person, or a person and one or more associates of the person, have acquired or redeemed 5% or more of the units in 2 or more transactions and would not have done so if the trust did not have a tax loss or other deduction.

(2) For the purposes of other provisions of this Schedule, the abnormal trading occurs at the time of the particular transaction that causes the 5% figure to be exceeded.

269-35 Abnormal trading—20% of units traded, issued or redeemed over 60 day period

(1) There is an ***abnormal trading*** in units in a unit trust (other than a wholesale widely held trust) if more than 20% of the units on issue at the end of any 60 day period were traded during the period.

(2) For the purposes of other provisions of this Schedule, the abnormal trading occurs at the end of the 60 day period.

269-40 Abnormal trading—50% stake not maintained

(1) There is an ***abnormal trading*** in units in a wholesale widely held trust during a period if the trustee knows or reasonably suspects that the same persons did not hold more than 50% of its units at the beginning and end of the period.

(2) For the purposes of other provisions of this Schedule, the abnormal trading occurs immediately before the end of the period.

269-45 Time at which trustee to have knowledge or suspicion

For the purposes of section 269-20, 269-30 or 269-40, the trustee must have the knowledge or reasonable suspicion mentioned in that section:

(a) if the section is being applied in determining for the purposes of section 268-20 whether an abnormal trading occurred—at some time during the income year mentioned in that section; or

(b) if it is being applied in determining for the purposes of any other provision whether an abnormal trading occurred during a period—at some time during the period.

269-47 Abnormal trading where holding trust

Holding trust and subsidiary trust

(1) If a unit trust has fixed entitlements directly or indirectly to all of the income and capital of another unit trust:

(a) the first trust is a ***holding trust*** of the second; and

(b) the second is a ***subsidiary trust*** of the first.

Abnormal trading causing or ending holding-subsidiary relationship

(2) The transaction that causes a trust to become, or to cease to be, a holding trust of a subsidiary trust (the ***bottom subsidiary trust)*** is an ***abnormal trading*** in units in the bottom subsidiary trust unless:

(a) the holding trust is itself a subsidiary trust of one or more holding trusts (each of which is a ***higher holding trust***); and

(b) immediately before and after the transaction, the bottom subsidiary trust is a subsidiary trust of one or more of the higher holding trusts.

Abnormal trading while holding-subsidiary relationship exists

(3) While one or more trusts are holding trusts of the same subsidiary trust, there is an ***abnormal trading*** in units in the subsidiary trust if and only if, and at the time at which, there is an abnormal trading in units in the holding trust that is not itself a subsidiary trust of another holding trust.

269-49 No abnormal trading where proportionate issue of units

If the issue of units in a unit trust to existing unit holders does not cause each unit holder's proportion of the total fixed entitlements to shares of the income and capital of the trust to change, then, except for the purposes of section 269-20, the issue is disregarded in determining whether there has been an abnormal trading in units in the unit trust.

Subdivision 269-C—Passing the 50% stake test etc.

269-50 More than a 50% stake in income or capital

More than a 50% stake in income

(1) If there are individuals who have (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the income of a trust, those individuals have ***more than a 50% stake*** in the income of the trust.

More than a 50% stake in capital

(2) If there are individuals who have (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the capital of the trust, those individuals have ***more than a 50% stake*** in the capital of the trust.

269-55 Passing the 50% stake test

(1) If, at all times during a period, or at 2 times:

(a) the same individuals have more than a 50% stake in the income of a trust; and

(b) the same individuals (who may be different from those in paragraph (a)) have more than a 50% stake in the capital of the trust;

the trust ***passes the 50% stake test*** for the period or in respect of the 2 times.

(2) If a trust is a widely held unit trust it is taken to ***pass the 50% stake test*** for a period or in respect of 2 times if it is reasonable to assume that the requirements of paragraphs (1)(a) and (b) are satisfied in respect of the period or the 2 times.

Subdivision 269-D—Pattern of distributions test

269-60 Pattern of distributions test

A trust ***passes the pattern of distributions test*** for an income year if, before the end of 2 months after the end of the income year:

(a) the trust distributed directly or indirectly to the same individuals, for their own benefit, a greater than 50% share of all test year distributions of income (see subsection 269-65(1)); and

(b) the trust distributed directly or indirectly to the same individuals (who may be different from those in paragraph (a)), for their own benefit, a greater than 50% share of all test year distributions of capital (see subsection 269-65(3)).

269-65 Test year distribution of income or capital

Test year distribution of income

(1) A ***test year distribution of income*** is the total of all distributions of income made by the trust in any of the following periods, provided the period does not start more than 6 years before the start of the income year:

(a) the period from the start of the income year until 2 months after its end;

(b) if the trust distributed income before the trigger year (see subsection (2))—the income year, before the trigger year, that is closest to the trigger year;

(c) if paragraph (b) does not apply and the trust distributed income in the trigger year—the trigger year;

(d) if neither paragraph (b) nor paragraph (c) applies—the income year, closest to the trigger year, in which the trust distributed income;

(e) each intervening income year (if any) between the one in paragraph (a) and the one in paragraph (b), (c) or (d).

Trigger year

(2) If this Subdivision is being applied for the purposes of section 267-20, the ***trigger year*** is the loss year mentioned in that section. If it is being applied for the purposes of section 267-25, the ***trigger year*** is the year in which the debt mentioned in that section was incurred.

Test year distribution of capital

(3) Subsection (1) applies in the same way to distributions of capital made by the trust, to determine what is a ***test year distribution of capital***.

269-70 When individual receives different percentages

For the purposes of section 269-60, if the trust does not distribute to an individual the same percentage of income or capital for every test year distribution, the trust is taken to have distributed to the individual, for every test year distribution, the smallest percentage that it distributed to the individual for any of the test year distributions.

269-75 Incomplete distributions

For the purposes of section 269-60, if, before the end of 2 months after the end of the income year:

(a) the trust has distributed directly or indirectly the whole or part of a test year distribution of income or test year distribution of capital to a company, partnership or trust (the ***entity***); and

(b) an amount (the ***undistributed amount***) consisting of the whole or part of the income or capital so distributed to the entity satisfies the following requirements:

  (i) the amount has not been distributed by the entity; and

  (ii) an individual, directly or indirectly, and for his or her own benefit, has a fixed entitlement to a share of the amount;

the entity is taken to have distributed the share of the undistributed amount to the individual immediately before the end of 2 months after the end of the income year.

269-80 Where individual's death or marriage breakdown

(1) For the purposes of section 269-60, if:

(a) the trust distributes, directly or indirectly to an individual as mentioned in that section, income or capital that is included in a test year distribution; and

(b) a later distribution of income or capital is made that is included in the same or a different test year distribution; and

(c) either the individual dies before the later distribution is made or:

  (i) before it is made, there is a breakdown in the marriage (see section 272-140) of the individual; and

  (ii) after the breakdown, no distribution of income or capital of the trust, that is included in a test year distribution, is made directly or indirectly to the individual; and

(iii) it is reasonable to assume that the breakdown in the marriage is the reason for no such distribution being made;

then subsections (2) and (3) apply.

(2) No income or capital distributed to the individual by the trust, directly or indirectly as mentioned in section 269-60, is to be included in any test year distribution.

(3) If:

(a) the requirements of subsection (1) are met because the individual has died; and

(b) immediately before his or her death, the individual had directly or indirectly, and for his or her own benefit, a fixed entitlement to a share of the income or capital of the trust; and

(c) after the individual's death, the fixed entitlement is held by a person as trustee of the individual's estate or by a person who received it as a beneficiary of the estate;

no income or capital distributed to the person as such a trustee or beneficiary, directly or indirectly as mentioned in section 269-60, is to be included in any test year distribution.

269-85 Arrangements to pass pattern of distributions test

(1) The trust is taken for the purposes of section 269-60 not to have distributed, directly or indirectly to an individual, and for the individual's own benefit, a share of a test year distribution of income or capital of the trust if the condition in subsection (2) is met.

(2) The condition is that an arrangement was entered into where:

(a) the arrangement in some way (directly or indirectly) related to, affected or depended for its operation on the share or its value; and

(b) the purpose, or one of the purposes, of the arrangement was to ensure that the trust would meet the condition in subsection 267-30(2).

Subdivision 269-E—Control a non-fixed trust

269-95 Control a non-fixed trust

Basic meaning

(1) Subject to this section, a group (see subsection (5)) ***controls a non-fixed trust*** if:

(a) the group has the power, by means of the exercise of a power of appointment or revocation or otherwise, to obtain beneficial enjoyment (directly or indirectly) of the capital or income of the trust; or

(b) the group is able (directly or indirectly) to control the application of the capital or income of the trust; or

(c) the group is capable, under a scheme, of gaining the beneficial enjoyment in paragraph (a) or the control in paragraph (b); or

(d) the trustee is accustomed, under an obligation or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the group; or

(e) the group is able to remove or appoint the trustee; or

(f) the group acquires more than a 50% stake in the income or capital of the trust.

Replacement group after death etc.

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

(a) a group (the ***original group***) ceases to control a non-fixed trust only because of the death, incapacitation or breakdown in the marriage of the individual comprising, or an individual included in, the group; and

(b) another group (the ***replacement group***) begins to control the trust within the following period (whether or not any other group controlled the trust in the interim):

(i) one year after the death, incapacitation or breakdown in the marriage; or

(ii) such longer period as the Commissioner determines in relation to the death, incapacitation or breakdown in the marriage; and

(c) the replacement group consists of:

(i) if the individual who died or became incapacitated or whose marriage broke down comprised the original group—one or more individuals who are members of the individual's family (see section 272-95); or

(ii) in any other case—one or more such individuals together with all of the persons who were members of the original group, other than any individual who has died or become incapacitated or whose marriage has broken down; and

(d) the replacement group began to control the trust only because of the death, incapacitation or breakdown in the marriage of the individual; and

(e) disregarding any individual who died or became incapacitated or whose marriage broke down and the one or more individuals covered by paragraph (c)—the beneficiaries of the trust immediately before the original group ceased to control the trust are the beneficiaries of the trust immediately after the replacement group begins to control the trust.

Consequences of subsection (2)

(3) For the purposes of subsection (2), the consequences are that:

(a) the replacement group is taken to have controlled the trust from the time when the original group began to control it until the time when the replacement group actually began to control it; and

(b) the original group is taken *not* to have controlled the trust; and

(c) if:

(i) a person or persons (other than a replacement group) began to control the trust at some time during the period from the time the original group ceased to control the trust until the replacement group began to do so; and

(ii) the person or persons began to control the trust only because of the death, incapacitation or breakdown in the marriage of the individual; and

(iii) the control did not continue after the replacement group began to control the trust;

the person or persons are taken *not* to have controlled the trust.

Deemed absence of control

(4) If:

(a) at a particular time, a group controls a non-fixed trust; and

(b) the Commissioner, having regard to:

(i) the identity of the beneficiaries of the trust at any time before and at any time after the group began to control the trust; and

(ii) all other relevant circumstances;

considers that it is reasonable that the group be taken not to control the trust at the particular time;

the group is taken *not* to control the trust at the particular time.

Group

(5) A ***group*** is:

(a) a person; or

(b) a person and one or more associates; or

(c) 2 or more associates of a person.

Subdivision 269-F—Same business test

269-100 Passing the same business test

Basic meaning

(1) A listed widely held trust ***passes the same business test*** during a period (the ***same business test period***) in relation to a time (the ***test time***) if throughout the same business test period it carries on the same business as it carried on immediately before the test time.

Relevance of being a trust

(2) The mere fact of being a trust does not mean that the trust cannot carry on a business.

First exception

(3) However, the trust does *not* pass 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.

Second exception

(4) The trust also does *not* pass 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.

Third exception

(5) So far as the test is applied for the purpose of section 266-115 (Listed widely held trust may be required to work out its net income and tax loss in a special way) and section 268-20 (Widely held unit trust's income year to be divided into periods), the trust also does *not* pass 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 270—Schemes to take advantage of deductions

270-5 What this Division is about

A trust may be prevented from making any use of deductions, or full use of deductions in an income year, if a scheme to take advantage of the deductions exists.

270-10 Schemes to take advantage of deductions

Basic case

(1) The consequences set out in section 270-15 result if:

(a) a deduction is allowable to a trust for the income year; and

(b) under a scheme, the following happen (in any order):

(i) the trust derives an amount of assessable income (the ***scheme assessable income***) in the income year; and

(ii) an outsider to the trust (see section 270-25) directly or indirectly provides a benefit (see section 270-20) to the trustee, to a beneficiary in the trust or to an associate of the trustee or of a beneficiary; and

Note: The benefit may constitute all or any of the scheme assessable income.

(iii) the trustee, a beneficiary in the trust or an associate of the trustee or of a beneficiary, directly or indirectly provides a benefit to the outsider to the trust or to an associate of the outsider (other than an associate covered by any of paragraphs 270-25(1)(a) to (f)); and

Note: The benefit may constitute all or any of the deduction.

(c) it is reasonable to conclude that:

(i) the trust derived the scheme assessable income; or

(ii) the outsider provided the benefit as mentioned in subparagraph (b)(ii); or

(iii) the trustee, beneficiary or associate provided the benefit as mentioned in subparagraph (b)(iii);

wholly or partly, but not merely incidentally, because the deduction would be allowable; and

(d) the trust is not an excepted trust under paragraph 272-100(b), (c) or (d).

Special case

(2) If:

(a) under a scheme, a person who, before the scheme was entered into, was an outsider to a trust becomes:

(i) the trustee of the trust; or

(ii) a person with a fixed entitlement to a share of the income or capital of the trust; and

(b) if the person had not ceased to be an outsider to the trust, the requirements of subsection (1) would have been satisfied in relation to the scheme;

the requirements of subsection (1) are taken to have been satisfied in relation to the scheme.

270-15 Tax consequences of schemes

If the requirements of subsection 270-10(1) are satisfied, the consequences are that:

(a) to the extent (if any) that the deduction mentioned in paragraph 270-10(1)(a) relates exclusively, or may appropriately be related, to the scheme assessable income, the deduction is not allowable; and

(b) if the net income of the trust is less than the scheme assessable income or there is no net income—the trust has a net income equal to, or the net income is increased so that it equals, the scheme assessable income; and

(c) paragraph (b) and the scheme assessable income are disregarded in working out any tax loss incurred by the trust in the income year; and

(d) if paragraph (b) applies and the deduction mentioned in paragraph 270-10(1)(a) is for a tax loss—paragraph (b) and the scheme assessable income are disregarded in working out any deduction in respect of the tax loss allowable after the income year.

270-20 Benefit

A ***benefit*** is:

(a) money, a dividend or property (whether tangible or intangible); or

(b) a right or entitlement (whether or not property); or

(c) services; or

(d) the extinguishment, forgiveness, release or waiver of a debt or other liability; or

(e) the doing of anything that results in the derivation of assessable income; or

(f) anything that, disregarding the preceding paragraphs, is a benefit or advantage.

270-25 Outsider to trust

Outsider to family trust

(1) If the trust mentioned in paragraph 270-10(1)(a) is a family trust, an ***outsider to the trust*** is a person other than:

(a) the trustee of the trust; or

(b) a person with a fixed entitlement to a share of the income or capital of the trust; or

(c) the individual specified in the trust's family trust election; or

(d) a member of the individual's family; or

(e) a company, partnership or trust that made an interposed entity election to be included in the individual's family group, where the election was in force (including before it was made) when the scheme mentioned in paragraph 270-10(1)(b) commenced; or

(f) a fixed trust, company or partnership (an ***entity***) where, at all times while the scheme mentioned in paragraph 270-10(1)(b) was being carried out:

(i) the individual specified in the trust's family trust election; or

(ii) one or more members of the individual's family; or

(iii) the trustees of one or more family trusts, provided the individual is specified in the family trust election of each of those family trusts;

or any combination of the above, had fixed entitlements, directly or indirectly, and for their own benefit, to all of the income and capital of the entity.

Outsider to non-family trust

(2) If the trust mentioned in paragraph 270-10(1)(a) is not a family trust, an ***outsider to the trust*** is a person other than:

(a) the trustee of the trust; or

(b) a person with a fixed entitlement to a share of the income or capital of the trust.

Division 271—Family trust distribution tax

271-5 What this Division is about

Basically, if:

- the trustee of a trust makes a family trust election; or
- a company, the partners in a partnership or the trustee of a trust makes an election to be included in a family group in relation to a family trust;

and the company, partnership or trust concerned confers a present entitlement to, or distributes, income or capital other than upon or to a specified individual or members of his or her family group, a special tax is payable on the conferral or distribution.

If certain persons do not provide information about conferrals of present entitlements or distributions by non-residents connected with them, the persons may become liable to the special tax on their own conferrals or distributions.

If certain non-residents do not pay the special tax by the due date, other persons connected with them may also become liable to pay a special tax equal to the unpaid amount.

271-10 Family trust distribution tax

This Division provides for tax to be payable in specified circumstances. The tax is called ***family trust distribution tax***.

271-15 Tax liability where family trust makes distribution etc. outside family group

(1) This section applies if:

(a) a trustee makes a family trust election in relation to a trust; and

(b) at any time while the election is in force (including a time before it was made), the trust confers a present entitlement to, or distributes, income or capital of the trust:

(i) upon or to a person who is neither the individual specified in the family trust election nor a member of the individual's family group in relation to the conferral or distribution; or

(ii) upon or to the individual specified in the election or a member of the individual's family group, where the individual or member is the trustee of a trust, or the member is a trust, that is not included in the individual's family group in relation to the conferral or distribution.

(2) If this section applies:

(a) if the trustee is an individual—the trustee is liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital to which the entitlement relates, or that is distributed; or

(b) if the trustee is a company—the trustee, together with each person who was a director of the company at the time of the conferral or distribution, is jointly and severally liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital to which the entitlement relates, or that is distributed.

271-20 Tax liability where interposed trust makes distribution etc. outside family group

(1) This section applies if:

(a) the trustee of a trust makes an interposed entity election for the trust to be included in the family group of the individual specified in a family trust election; and

(b) at any time while the election is in force (including a time before it was made), the trust confers a present entitlement to, or distributes, income or capital of the trust:

(i) upon or to a person who is neither the individual specified in the family trust election nor a member of the individual's family group in relation to the conferral or distribution; or

(ii) upon or to the individual specified in the election or a member of the individual's family group, where the individual or member is the trustee of a trust, or the member is a trust, that is not included in the individual's family group in relation to the conferral or distribution.

(2) If this section applies:

(a) if the trustee is an individual—the trustee is liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital to which the entitlement relates, or that is distributed; or

(b) if the trustee is a company—the trustee, together with each person who was a director of the company at the time of the conferral or distribution, is jointly and severally liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital to which the entitlement relates, or that is distributed.

271-25 Tax liability where interposed partnership makes distribution etc. outside family group

(1) This section applies if:

(a) the partners in a partnership make an interposed entity election for the partnership to be included in the family group of the individual specified in a family trust election; and

(b) at any time while the interposed entity election is in force (including a time before it was made), the partnership confers a present entitlement to, or distributes, income or capital:

(i) upon or to a person who is neither the individual specified in the family trust election nor a member of the individual's family group in relation to the conferral or distribution; or

(ii) upon or to the individual specified in the election or a member of the individual's family group, where the individual or member is the trustee of a trust, or the member is a trust, that is not included in the individual's family group in relation to the conferral or distribution.

(2) If this section applies, the partners, together with each person who at the time of the conferral or distribution was a director of any partner that was a company, are jointly and severally liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital to which the entitlement relates, or that is distributed.

271-30 Tax liability where interposed company makes distribution outside family group

(1) This section applies if:

(a) a company makes an interposed entity election for the company to be included in the family group of the individual specified in a family trust election; and

(b) at any time while the interposed entity election is in force (including a time before it was made), the company confers a present entitlement to, or distributes, income or capital of the company:

(i) upon or to a person who is neither the individual specified in the family trust election nor a member of the individual's family group in relation to the conferral or distribution; or

(ii) upon or to the individual specified in the election or a member of the individual's family group, where the individual or member is the trustee of a trust, or the member is a trust, that is not included in the individual's family group in relation to the conferral or distribution.

(2) If this section applies, the company, together with each person who was a director of the company at the time of the conferral or distribution, is jointly and severally liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital to which the entitlement relates, or that is distributed.

271-35 Avoidance of double-counting

If, after conferring a present entitlement to income or capital as mentioned in paragraph 271-15(1)(b), 271-20(1)(b), 271-25(1)(b) or 271-30(1)(b), the trust, partnership or company concerned distributes the income or capital in satisfaction of the entitlement, the distribution is disregarded for the purposes of that paragraph.

271-40 Exclusion of directors from liability to pay tax

(1) This section applies to a director of a company who is included among persons who are jointly and severally liable to pay family trust distribution tax under section 271-15, 271-20, 271-25 or 271-30.

Director not taking part in distribution decision

(2) If:

(a) the director did not take part in any decision to confer the entitlement or make the distribution concerned; and

(b) if the director was aware of the proposal to make the decision or of the fact that it was made—the director took reasonable steps to prevent the making, or the implementation, of the decision;

the director is not included among the persons jointly and severally liable.

Director taking part in distribution decision

(3) If:

(a) the director took part in any decision to confer the entitlement or make the distribution; and

(b) the director voted against, or otherwise disagreed with the decision; and

(c) the director took reasonable steps to prevent the implementation of the decision;

the director is not included among the persons jointly and severally liable.

271-45 Requirements for section 271-55 notice to family trust

Notice about non-resident distributions

(1) The Commissioner may give a notice in accordance with section 271-55 (which deals with information about distributions etc. by certain non-residents) to the trustee of a trust (the ***primary entity***) who has made a family trust election, provided the requirements of subsections (2) to (4) of this section are met.

First requirement

(2) At a time (the ***test time***) while the election is in force (including a time before it was made), the primary entity must have conferred a present entitlement to, or distributed, income or capital upon or to a company, partnership or trust (the ***secondary entity***) that at the time was, because of an interposed entity election, a member of the family group of the individual (the ***primary individual***) specified in the family trust election.

Second requirement

(3) When the Commissioner gives the notice:

(a) if the secondary entity is a partnership—a partner must be a non-resident; and

(b) if the secondary entity is a company—the company must be a non-resident; and

(c) if the secondary entity is a trust—either:

(i) a trustee must be a non-resident; or

(ii) the central management and control of the trust must be outside Australia.

Third requirement

(4) The Commissioner must give the notice before the later of:

(a) 5 years after the conferral or distribution mentioned in subsection (2); and

(b) the end of the period during which the primary entity is required by section 262A to retain records in relation to the income year in which the conferral or distribution took place.

271-50 Requirements for section 271-55 notice to interposed entity

Notice about non-resident distributions

(1) If:

(a) a company, the trustee of a trust or the partners in a partnership (which company, trust or partnership is the ***primary entity***) makes an interposed entity election to be included in the family group of an individual specified in a family trust election; and

(b) the requirements of subsections (2) to (4) are met;

the Commissioner may give the company, trustee or partners a notice in accordance with section 271-55 (which deals with information about distributions etc. by certain non-residents).

First requirement

(2) At a time (the ***test time***) while the election was in force (including a time before it was made), the primary entity must have conferred a present entitlement to, or distributed, income or capital upon or to a company, partnership or trust (a ***secondary entity***), where the secondary entity:

(a) was the family trust whose trustee made the family trust election; or

(b) was, because of an interposed entity election that was in force at the time, included in the family group of the individual (the ***primary individual***) specified in the family trust election.

Second requirement

(3) When the Commissioner gives the notice:

(a) if the secondary entity is a partnership—a partner must be a non-resident; and

(b) if the secondary entity is a company—the company must be a non-resident; and

(c) if the secondary entity is a trust—either:

(i) a trustee must be a non-resident; or

(ii) the central management and control of the trust must be outside Australia.

Third requirement

(4) The Commissioner must give the notice before the later of:

(a) 5 years after the conferral or distribution mentioned in subsection (2); and

(b) the end of the period during which the primary entity is required by section 262A to retain records in relation to the income year in which the conferral or distribution took place.

271-55 Notice requiring information about non-resident distributions etc.

Information required

(1) The notice that the Commissioner may give the company, partnership or trustee if the requirements of subsections 271-45(2) to (4) or 271-50(2) to (4) are met must require the company, partners or trustee to give the Commissioner specified information about conferrals of present entitlements to, or distributions of, income or capital since the test time by any company, partnership or trust covered by subsection (2) of this section.

Entities covered

(2) The following are covered by this subsection:
  (a) the secondary entity; and
  (b) any company in respect of which an interposed entity election had been made to be included in the family group of the primary individual, where the company was a non-resident, and the election was in force, when the conferral or distribution took place; and
  (c) any partnership in respect of which an interposed entity election had been made to be included in the family group of the primary individual, where any of the partners was a non-resident, and the election was in force, when the conferral or distribution took place; and
  (d) any trust in respect of which a family trust election specifying the primary individual had been made or in respect of which an interposed entity election had been made to be included in the family group of the primary individual, where, when the conferral or distribution took place, either a trustee was a non-resident or the trust's central management and control were outside Australia.

Information not within knowledge

(3) The information need not be within the knowledge of the company, partners or trustee at the time the notice is given.

Period for giving information

(4) The notice must specify a period within which the company, partners or trustee is to give the information. The period must not end earlier than 21 days after the day on which the Commissioner gives the notice.

Company's liability

(5) If the company does not give the information within the period or within such further period as the Commissioner allows, it, together with each person who was a director of the company at the test time, is jointly and severally liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the

amount or value of the income or capital mentioned in subsection 271-50(2).

Partners' liability

(6) If the partners do not give the information within the period or within such further period as the Commissioner allows, they, together with each person who at the test time was a director of any partner that was a company, are jointly and severally liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital mentioned in subsection 271-50(2).

Trustee's liability

(7) If the trustee does not give the information within the period or within such further period as the Commissioner allows:
- (a) if the trustee is an individual—the trustee is liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital mentioned in subsection 271-45(2) or 271-50(2); or
- (b) if the trustee is a company—the trustee, together with each person who was a director of the company at the test time, is jointly and severally liable to pay tax, as imposed by the *Family Trust Distribution Tax (Primary Liability) Act 1998*, on the amount or value of the income or capital mentioned in subsection 271-45(2) or 271-50(2).

271-60 Tax liability where non-resident family trust's tax unpaid

Conditions for tax liability

(1) If:
- (a) tax under section 271-15 on the amount or value of income or capital of a family trust becomes due and payable; and
- (b) the Commissioner determines, in writing, at or after the time when the tax became due and payable, that it is unlikely that the whole or part (the ***unpaid amount***) of the tax will be paid; and
- (c) when the Commissioner makes the determination:

(i) a trustee of the family trust is a non-resident; or

(ii) the central management and control of the family trust is outside Australia.

then the consequences set out in subsection (2) result.

Tax liability

(2) The consequences are:

(a) if there is only one person covered by subsection (3)—that person is liable to pay tax, as imposed by the *Family Trust Distribution Tax (Secondary Liability) Act 1998*, on the unpaid amount; and

(b) if there are 2 or more persons covered by subsection (3)—those persons are jointly and severally liable to pay tax, as imposed by the *Family Trust Distribution Tax (Secondary Liability) Act 1998*, on the unpaid amount.

Persons liable under paragraph (2)(b)

(3) The persons covered by this subsection are:

(a) the trustee of any trust to which subsection (4) applies; and

(b) if the trustee of any such trust is a company—any person who is a director of the company when the determination is made.

Trust mentioned in paragraph (3)(a)

(4) This subsection applies to a trust if the trust would be:

(a) prevented by Division 266 or 267 from deducting a tax loss or amount in respect of a debt; or

(b) required by Division 266 or 267 to work out its net income and tax loss under Division 268;

in the income year in which the determination is made, or an earlier income year, if the family trust had not held an interest in relation to the trust as mentioned in subsection 272-30(2).

271-65 Tax liability where non-resident interposed entity's tax unpaid

When section applies

(1) This section applies if:

(a) a company, the partners in a partnership or the trustee of a trust makes an interposed entity election to be included in the family group of an individual (the ***primary individual***); and

(b) while the interposed entity election is in force, the company, partnership or trust (the ***primary interposed entity***) confers a present entitlement to, or distributes, income or capital; and

(c) family trust distribution tax becomes due and payable on the amount or value of the income or capital.

Determination about unpaid tax

(2) If:

(a) the Commissioner determines, in writing, at or after the time when the tax became due and payable, that it is unlikely that the whole or part (the ***unpaid amount***) of the tax will be paid; and

(b) at the time:

(i) if the primary interposed entity is a company—the company is a non-resident; and

(ii) if the primary interposed entity is a partnership—a partner is a non-resident; and

(iii) if the primary interposed entity is a trust—either a trustee is a non-resident or the central management and control of the trust is outside Australia;

then the consequences in subsection (3) result.

Consequences

(3) The consequences are:

(a) if there is only one person covered by subsection (4)—that person is liable to pay tax, as imposed by the *Family Trust Distribution Tax (Secondary Liability) Act 1998*, on the unpaid amount; and

(b) if there are 2 or more persons covered by subsection (4)—those persons are jointly and severally liable to pay tax, as imposed by the *Family Trust Distribution Tax (Secondary Liability) Act 1998*, on the unpaid amount.

Persons covered

(4) The persons covered by this subsection are:

(a) any company to which subsection (5) applies; and

(b) any person who is a director of such a company when the determination is made; and

(c) any partner in a partnership to which subsection (5) applies; and

(d) if any partner in any such partnership is a company—any person who is a director of the company when the determination is made; and

(e) the trustee of any trust to which subsection (5) applies; and

(f) if the trustee of any such trust is a company—any person who is a director of the company when the determination is made.

Entities making election and distribution etc.

(5) This subsection applies to any company, partnership or trust (an ***entity***), other than the primary interposed entity, meeting the following conditions:

(a) the company, the partners in the partnership or the trustee of the trust made:

(i) an interposed entity election to be included in the family group of the primary individual; or

(ii) a family trust election specifying the primary individual; and

(b) while that election and the interposed entity election made in respect of the primary interposed entity were in force, and before the Commissioner made the determination mentioned in paragraph (2)(a), the entity conferred a present entitlement to, or distributed, income or capital upon or to an eligible entity (see subsection (6)).

Eligible entities

(6) Each of the following is an ***eligible entity***:

(a) the primary interposed entity;

(b) a company in respect of which an interposed entity election had been made to be included in the family group of the primary individual, where the company was a non-resident, and the election was in force, when the conferral or distribution took place;

(c) a partnership in respect of which an interposed entity election had been made to be included in the family group of the primary individual, where any of the partners was a non-resident, and the election was in force, when the conferral or distribution took place;

(d) a trust:

(i) in respect of which an interposed entity election had been made to be included in the family group of the primary individual; or

(ii) in respect of which a family trust election had been made specifying the primary individual;

where, when the conferral or distribution took place, the election was in force and either a trustee was a non-resident or the trust's central management and control were outside Australia.

271-70 Reduction of liability where tax paid

If family trust distribution tax (the ***secondary tax***) becomes payable under section 271-60 or 271-65 on an amount of family trust distribution tax (the ***primary tax***) that the Commissioner determined was unlikely to be paid:

(a) if any of the primary tax is later paid—any liability to the secondary tax existing at the time of the payment is reduced by the amount of the payment; and

(b) if any of the secondary tax is later paid—any liability to the primary tax existing at the time of the payment is reduced by the amount of the payment.

271-75 Payment of family trust distribution tax

Tax under sections 271-15 to 271-30

(1) Family trust distribution tax under any of sections 271-15 to 271-30 is due and payable:

(a) in a case where the conferral or distribution on whose amount or value the tax is payable was made before the day on which the election was made—at the end of 21 days after the day on which the election was made; or

(b) in any other case—at the end of 21 days after the day on which the conferral or distribution, on whose amount or value the tax is payable, was made;

or by the end of such later day as the Commissioner, in special circumstances, allows.

Tax under section 271-55

(2) Family trust distribution tax under section 271-55 is due and payable at the end of 21 days after the end of the period or further period mentioned in subsection (5), (6) or (7), as the case requires, of that section.

Tax under section 271-60 or 271-65

(3) Family trust distribution tax under section 271-60 or 271-65 is due and payable at the end of 21 days after the day, or the last day, on which the notice mentioned in subsection 271-90(2) is given.

Debt due

(4) Family trust distribution tax, when it becomes due and payable, is a debt due to the Commonwealth and payable to the Commissioner.

271-80 Additional tax for late payment

(1) Subject to subsection (2), if any family trust distribution tax remains unpaid at the end of 60 days after the day when it became due and payable, additional tax, by way of penalty, is due and payable at the rate of 16% per annum on the amount unpaid, calculated from the end of that period.

Remission of additional tax

(2) Where additional tax is due and payable by a person or persons under subsection (1) in relation to an amount of family trust distribution tax, the Commissioner may remit the additional tax or a part of it if he or she is satisfied as mentioned in subsection (3), (4) or (5).

Remission criteria

(3) The Commissioner may remit the tax or part if satisfied that:

(a) the circumstances that contributed to the delay in payment of the family trust distribution tax were *not* due to, or caused directly or indirectly by, an act or omission of the person or persons; and

(b) the person or persons have taken reasonable action to mitigate, or mitigate the effects of, those circumstances.

Remission criteria

(4) The Commissioner may remit the tax or part if satisfied that:

(a) the circumstances that contributed to the delay in payment of the family trust distribution tax were due to, or caused directly or indirectly by, an act or omission of the person or persons; and

(b) the person or persons have taken reasonable action to mitigate, or mitigate the effects of, those circumstances; and

(c) having regard to the nature of those circumstances, it would be fair and reasonable to remit the additional tax or the part of the additional tax.

Remission criteria

(5) The Commissioner may remit the tax or part if satisfied that there are special circumstances by reason of which it would be fair and reasonable to do so.

Effect of court judgment

(6) Where judgment is given by, or entered in, a court for the payment of:

(a) an amount of family trust distribution tax; or

(b) an amount that includes an amount of family trust distribution tax;

then:

(c) the family trust distribution tax is *not* taken, for the purposes of subsection (1), to have ceased to be due and payable by reason only of the giving or entering of the judgment; and

(d) if the judgment debt carries interest, the additional tax that would, but for this paragraph, be payable under this section in relation to the family trust distribution tax is reduced by:

(i) in a case to which paragraph (a) applies—the amount of the interest; or

(ii) in a case to which paragraph (b) applies—the percentage of the interest worked out using the formula:

$$\frac{\text{Family trust distribution tax}}{\text{Judgment debt}} \times 100\%$$

271-85 Recovery of tax

Any unpaid family trust distribution tax, and any unpaid additional tax payable under section 271-80, may be sued for and recovered in a court of competent jurisdiction by the Commissioner suing in his or her official name.

271-90 Notice of liability

Notice for purposes of section 271-15 etc.

(1) The Commissioner may give a person or persons, by post or otherwise, a notice specifying:

(a) the amount of any family trust distribution tax that the Commissioner has ascertained is payable under any of sections 271-15 to 271-30 and 271-55 by the person or persons; and

(b) the day on which that tax became or will become due and payable.

Notice for purposes of section 271-60 or 271-65

(2) The Commissioner must give persons, by post or otherwise, a notice specifying the amount of any family trust distribution tax that the Commissioner has ascertained is payable under section 271-60 or 271-65 by the persons.

Effect of notice on liability etc.

(3) The liability of a person or persons to family trust distribution tax on the amount or value of a distribution, and (except in the case of a notice under subsection (2)) the due date for payment of the tax, are not dependent on, or in any way affected by, the giving of a notice in respect of the amount.

Amendment of notice

(4) The Commissioner may at any time amend a notice. An amended notice is a notice for the purposes of this section.

Inconsistency between notices

(5) If there is an inconsistency between notices that relate to the same subject matter, the later notice prevails to the extent of the inconsistency.

Objections

(6) A person who is or persons who are dissatisfied with a notice made in relation to the person or persons may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

271-95 Request for notice of liability

(1) A person or persons may make a written request to the Commissioner to be given a notice under subsection 271-90(1) or (2) in respect of specified circumstances in which family trust distribution tax may be payable.

Compliance with request for subsection 271-90(1) notice

(2) In the case of a notice under subsection 271-90(1), the Commissioner must, subject to subsection (4) of this section, comply with the request if it is lodged with the Commissioner before the end of the 21 days mentioned in subsection 271-75(1) or (2), or before the end of such later day as the Commissioner allows.

Compliance with request for subsection 271-90(2) notice

(3) In the case of a notice under subsection 271-90(2), the Commissioner must, subject to subsection (4) of this section, comply with the request regardless of when it is lodged.

Further information

(4) If the Commissioner considers that the notice cannot be given unless the person making the request gives the Commissioner further information about the circumstances in which the family trust distribution tax may be payable, the Commissioner must request the person to give the Commissioner the information.

Failure to give information

(5) If the person does not give the information, the Commissioner is not required to comply with the request to give the notice.

271-100 Evidentiary effect of notice of liability

(1) The production of:

(a) a notice given under section 271-90; or

(b) a document that is signed by the Commissioner and appears to be a copy of such a notice;

is conclusive evidence that:

(c) the notice was duly given; and

(d) in the case of a notice under subsection 271-90(1)—the amount of family trust distribution tax specified in the notice became due and payable by the person or persons to whom it was given on the day specified; and

(e) in the case of a notice under subsection 271-90(2)—the amount of family trust distribution tax specified in the notice became payable by the persons to whom it was given.

(2) Subsection (1) does not apply in proceedings under Part IVC of the *Taxation Administration Act 1953* on a review or appeal relating to the review.

271-105 Income tax exemption for amounts subject to family trust distribution tax

(1) If:

(a) family trust distribution tax (the ***tax payable***) becomes payable under any of sections 271-15 to 271-30 and 271-55 on the amount or value of income or capital of a company, partnership or trust; and

(b) a payment (the ***tax payment amount***) of the whole or part of the tax payable is made, or a reduction (also the ***tax payment amount***) in the whole or part of the tax payable takes place under paragraph 271-70(b); and

(c) taking into account any previous application of this subsection, the whole or part of the amount or value of the income or capital is included in the assessable income of the company, partnership or trust or of any other person;

the amount included in the assessable income is reduced by the amount worked out using the formula in subsection (2).

(2) The formula is:

$$\frac{\text{Tax payment amount}}{\text{Tax payable}} \times \text{Original assessable amount}$$

The ***original assessable amount*** is so much of the amount or value of the income or capital as, disregarding any previous reductions under this section, is included in the assessable income of the company, partnership or trust or of any other person.

Division 272—Interpretation

Subdivision 272-A—Fixed entitlement to share of income or capital

272-5 Fixed entitlement to share of income or capital of a trust

(1) If, under a trust instrument, a beneficiary has a vested and indefeasible interest in a share of income of the trust that the trust derives from time to time, or of the capital of the trust, the beneficiary has a ***fixed entitlement*** to that share of the income or capital.

Case where interest not defeasible

(2) If:

(a) a person holds units in a unit trust; and

(b) the units are redeemable or further units are able to be issued; and

(c) if units in the unit trust are listed for quotation in the official list of an approved stock exchange—the units held by the person will be redeemed, or any further units will be issued, for the price at which other units of the same kind in the unit trust are offered for sale on the approved stock exchange at the time of the redemption or issue; and

(d) if the units are not listed as mentioned in paragraph (c)—the units held by the person will be redeemed, or any further units will be issued, for a price determined on the basis of the net asset value, according to Australian accounting principles, of the unit trust at the time of the redemption or issue;

then the mere fact that the units are redeemable, or that the further units are able to be issued, does not mean that the person's interest, as a unit holder, in the income or capital of the unit trust is defeasible.

Deemed fixed entitlement

(3) If:

(a) a beneficiary with an interest in a share of income that the trust derives from time to time, or of the capital of a trust, does not have a fixed entitlement to the share; and

(b) the Commissioner considers that the beneficiary should be treated as having the fixed entitlement, having regard to:

(i) the circumstances in which the entitlement is capable of not vesting or the defeasance can happen; and

(ii) the likelihood of the entitlement not vesting or the defeasance happening; and

(iii) the nature of the trust;

the beneficiary has the fixed entitlement.

272-10 Fixed entitlement to share of income or capital of a company

(1) If a shareholder in a company holds shares carrying the right to receive some or all of the dividends that may be paid by the company, the shareholder has a ***fixed entitlement*** to a share of the income of the company equal to the percentage of the total dividends represented by the dividends that the shareholder has a right to receive.

(2) If a shareholder in a company holds shares carrying the right to receive the whole or part of any distribution of paid-up capital of the company in the event of any return of capital to shareholders, the shareholder has a ***fixed entitlement*** to a share of the capital of the company equal to the percentage of the total distribution represented by the amount that the shareholder has a right to receive.

272-15 Fixed entitlement to share of income or capital of a partnership

(1) If, under a partnership agreement:

(a) a partner is entitled to a share of income that the partnership derives from time to time, or of the capital of the partnership; and

(b) the share is not able to be varied;

the partner has a ***fixed entitlement*** to that share of the income or capital.

Deemed fixed entitlement

(2) If:

(a) a partner does not have a fixed entitlement to a share of income that the partnership derives from time to time, or of the capital of a partnership, only because the partner's share of the income or capital is able to be varied; and

(b) the Commissioner considers that the partner should be treated as having the fixed entitlement, having regard to:

(i) the circumstances in which the share is able to be varied; and

(ii) the likelihood of the variation happening; and

(iii) the nature of the partnership;

the partner has the fixed entitlement.

272-20 Fixed entitlement to share of income or capital held indirectly

A person holds a fixed entitlement to a share of the income or capital of a company, partnership or trust ***indirectly*** if the person holds the entitlement indirectly through fixed entitlements to shares of the income or capital, respectively, of interposed companies, partnerships or trusts.

272-25 Special cases of fixed entitlements held directly or indirectly

Coverage of section

(1) This section affects references in this Schedule (other than in subparagraph 269-75(b)(ii) and section 272-30) to a person or individual having, ***directly or indirectly***, a fixed entitlement to a share of the income or capital of a company, partnership or trust (the ***main entity***) at a particular time (the ***test time***).

Note: This section will not affect a reference to a person or individual having a fixed entitlement where the phrase "directly or indirectly" is not used.

Certain interposed government bodies and special companies

(2) If at the test time a government body or a special company has, directly or indirectly, a fixed entitlement to a share of the income or capital of the main entity, subsection (4) or (5) applies.

To find out the meaning of ***government body*** and ***special company***: see section 272-140.

Certain interposed funds

(3) If:

(a) a fund is:

(i) a complying superannuation fund or complying approved deposit fund in relation to the income year in which the test time occurs; or

(ii) a foreign superannuation fund at the test time; and

(b) at the test time the fund has, directly or indirectly, a fixed entitlement to a share of the income or capital of the main entity;

subsection (4) or (5) applies.

To find out the meaning of ***complying superannuation fund*** and ***complying approved deposit fund***: see section 272-140.

To find out the meaning of ***foreign superannuation fund***: see subsection 6(1).

Government bodies, and funds or companies with more than 50 members

(4) In the case of a government body, or a fund or company that has more than 50 members:

(a) except where paragraph (b) applies—the body, fund or company is treated as if it had the fixed entitlement as an individual and for the individual's own benefit; and

(b) if the reference is in subsection 272-105(2)—the fixed entitlement is treated as if it were held instead by more than 20 individuals and for their own benefit.

Funds or companies with 50 members or fewer

(5) In the case of a fund or company that has 50 members or fewer, the fund or company is treated as if it did not have the entitlement, but

the members are treated as if they had the entitlement in equal proportions.

Mixed application of subsections (4) and (5) in certain provisions

(6) If, apart from this subsection:

(a) the following apply:

(i) for the purposes of section 266-40 or subsection 267-40(2), 267-70(2), 268-10(3), 268-15(3) or 268-25(4), it is necessary to determine whether individuals had fixed entitlements during a period; and

(ii) the consequences in subsection (4) would apply to a fund or company for part of the period and the consequences in subsection (5) would apply for the remainder of the period; or

(b) the following apply:

(i) for the purposes of subsection 266-90(1) or (2), 266-125(2), 266-165(2) or 268-20(3), it is necessary to determine whether individuals had fixed entitlements at 2 times; and

(ii) the consequences in subsection (4) would apply to a fund or company at one of the times and the consequences in subsection (5) would apply at the other time;

the consequences in subsection (5) instead apply to the fund or company for the whole of the period, or at both of the times, as the case may be.

Entities ceasing to be special companies

(7) If:

(a) subsection (4) or (5) applies in relation to a special company during a period (the ***special company period***); and

(b) the special company period ends when the special company ceases to be a special company without ceasing to exist; and

(c) having regard to the matters set out in subsection (8),

the Commissioner considers it fair and reasonable to treat one or more of the persons who were members of the special company immediately after it ceased to be a special company as having held the fixed entitlement mentioned in subsection (2) during the whole or part of the special company period;

then:

(d) subsection (4) or (5) does not apply in relation to the special company during the whole or the part of the special company period; and

(e) the one or more persons are, as mentioned in paragraph (c), treated as having the fixed entitlement instead of the company.

Matters for the purposes of paragraph (7)(c)

(8) For the purposes of paragraph (7)(c), the matters are:

(a) the identity of its members before and after the special company ceases to be a special company; and

(b) the circumstances in which it ceases to be a special company; and

(c) the nature of the rights in the special company held by its members before and after it ceases to be a special company; and

(d) any other matter that the Commissioner considers relevant.

272-30 Additional special cases of fixed entitlements held directly or indirectly

Coverage of section

(1) This section also affects references in this Schedule (other than in subparagraph 269-75(b)(ii) and section 272-25) to a person or individual having, ***directly or indirectly***, a fixed entitlement to a share of the income or capital of a company, partnership or trust (the ***main entity***) at a particular time (the ***test time***).

Note: This section will not affect a reference to a person or individual having a fixed entitlement where the phrase “directly or indirectly” is not used.

Interposed family trusts

(2) If at the test time a family trust has, directly or indirectly, a fixed entitlement to a share of the income or capital of the main entity, it

is treated as if it had the fixed entitlement as an individual and for the individual's own benefit.

Interposed listed public companies and widely held unit trusts

(3) If:

(a) at the test time a listed public company or widely held unit trust has, directly or indirectly, a fixed entitlement to a share of the income or capital of the main entity; and

To find out the meaning of ***listed public company***: see section 272-135.

(b) having regard to the matters set out in subsection (4), the Commissioner considers it fair and reasonable to treat the company or trust as holding, at the test time, the whole or part of its fixed entitlement as an individual and for the individual's own benefit;

the company or trust is treated as so holding the whole or the part of its fixed entitlement.

Matters for the purposes of paragraph (3)(b)

(4) For the purposes of paragraph (3)(b), the matters are:

(a) the practicability of identifying any individuals who at the test time have fixed entitlements to a share of the income or capital of the main entity indirectly through the company or trust and for their own benefit; and

(b) any change before or after the test time in the individuals who can be identified as having fixed entitlements of the kind mentioned in paragraph (a); and

(c) any other matter that the Commissioner considers relevant.

272-35 Arrangements to pass fixed entitlement tests

(1) If the operation of a provision of this Schedule depends on or is in any way affected by an individual having a fixed entitlement directly or indirectly, and for the individual's own benefit, to a share of the income or capital of a company, partnership or trust, an individual who would otherwise have that fixed entitlement is taken *not* to have it for the purposes of the operation of the provision if the condition in subsection (2) is met.

(2) The condition is that an arrangement was entered into where:

(a) the arrangement in some way (directly or indirectly) related to, affected or depended for its operation on the fixed entitlement or its value; and

(b) the purpose, or one of the purposes, of the arrangement was to ensure that, for the purposes of the operation of the provision, the individual would have the fixed entitlement.

272-40 Continued holding of fixed entitlement where death occurs

If, immediately before an individual dies, he or she has a fixed entitlement to a share of the income or capital of a trust, partnership or company directly or indirectly, and for his or her own benefit, the individual is taken to continue to have the entitlement for so long as:

(a) it is held by someone as trustee of the individual's estate; or

(b) it is held by someone who received it as a beneficiary of the estate.

Subdivision 272-B—Distribution of income or capital

272-45 Trust distribution to beneficiary

A trust ***distributes*** income or capital of the trust to a person if it:

(a) pays or credits the income or capital in the form of money to the person; or

(b) transfers the income or capital in the form of property to the person; or

(c) reinvests or otherwise deals with the income or capital on behalf of the person or in accordance with the directions of the person; or

(d) applies the income or capital for the benefit of the person;

in the person's capacity as a beneficiary of the trust.

272-50 Company distribution to shareholder

Distribution of income

(1) A company ***distributes*** income of the company to a person if the company pays a dividend to the person.

Distribution of capital

(2) A company ***distributes*** capital of the company to a person if:

(a) it pays or credits money, or transfers property, of the company to the person where:

(i) it does so by way of repayment of money paid up on a share; or

(ii) the amount paid or credited, or the amount or value of the property, is debited against an amount standing to the credit of a share premium account of the company; and

(b) the payment, crediting or transfer is not the payment of a dividend.

272-55 Partnership distribution to partner

A partnership ***distributes*** income or capital of the partnership to a person if it:

(a) pays or credits the income or capital in the form of money to the person; or

(b) transfers the income or capital in the form of property to the person; or

(c) reinvests or otherwise deals with the income or capital on behalf of the person or in accordance with the directions of the person; or

(d) applies the income or capital for the benefit of the person;

in the person's capacity as a partner in the partnership.

272-60 Other distributions of income and capital

(1) A company, partnership or trust (an ***entity***) also ***distributes*** income or capital to a person in circumstances not covered by section 272-45, 272-50 or 272-55 if it:

(a) pays (including by way of a loan) or credits money of the entity to the person, or reinvests such money for the person; or

(b) transfers property of the entity to, or allows use of property of the entity by, the person; or

(c) deals with money or property of the entity for or on behalf of the person or as the person directs; or

(d) applies money or property of the entity for the benefit of the person; or

(e) extinguishes, forgives, releases or waives a debt or other liability owed by the person to the entity.

Limit on distributions

(2) However, subsection (1) only applies if, and to the extent that:

(a) the amount paid, credited, reinvested or applied, the value of the property transferred, or the value of the other thing done;

exceeds:

(b) the amount or value of any consideration given in return.

Character of distributions

(3) Each thing that is a distribution because of subsection (1) is a distribution of income unless it is clear that the money or property concerned was capital, or that the debt or liability was attributable to capital, of the entity.

272-63 Distribute indirectly

A trust distributes income or capital ***indirectly*** to an individual if it distributes the income or capital to a company, partnership or trust (the ***first interposed entity***) interposed between the trust and the individual and:

(a) the first interposed entity distributes to the individual an amount or property attributable to the income or capital; or

(b) another company, partnership or trust (the ***final interposed entity***) distributes to the individual an amount or property that is attributable to the income or capital as a result of:

(i) the distribution of an amount or property attributable to the income or capital to the final interposed entity by the first interposed entity; or

(ii) successive distributions of amounts or property attributable to the income or capital to and by any companies, partnerships or trusts interposed between the first interposed entity and the final interposed entity.

Subdivision 272-C—Fixed trusts and non-fixed trusts

272-65 Fixed trust

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

272-70 Non-fixed trust

A trust is a ***non-fixed trust*** if it is not a fixed trust.

Subdivision 272-D—Family trust etc.

272-75 Family trust

A trust is a ***family trust*** at any time when a family trust election (see subsection 272-80(1)) in respect of the trust is in force.

272-80 Family trust election

Nature of election

(1) Subject to this section, the trustee of the trust may make an election (the ***family trust election***) in accordance with this section that the trust is a family trust for the purposes of this Schedule at all times after the beginning of a specified income year.

How election made

(2) The election must be made in the trust’s return of income for the specified income year. If the trustee is not required to furnish a return for the income year, the election must:

(a) be in writing in a form approved by the Commissioner; and

(b) be given to the Commissioner before the end of:

(i) 2 months after the end of the income year specified; or

(ii) such later day as the Commissioner allows.

Election to specify individual and certain information

(3) The election must also specify an individual as the individual whose family group is to be taken into account in relation to the election, and must contain such other information as the Commissioner requires.

Trust must pass family control test

(4) If the trust does not pass the family control test (see section 272-87) at the end of the specified income year, the trustee must not make the election.

Election generally irrevocable

(5) Subject to subsection (6), the election is irrevocable.

Revocation case

(6) The trustee of a fixed trust may revoke the election if:

(a) at the beginning of the specified income year:

(i) the individual specified in the election; or

(ii) one or more members of the individual’s family; or

(iii) the trustee of another trust that is a family trust, provided the individual is specified in that trust’s family trust election;

or any combination of the above, had the fixed entitlements, directly or indirectly, and for their own benefit, to all of the income and capital of the trust; and

(b) at a later time (whether before or after the return is furnished, but while the trust is still a fixed trust), an individual, other than one of a kind mentioned in subparagraph (a)(i), (ii) or (iii), holds a fixed entitlement, directly or indirectly, and for his or her own benefit, to any of the income or capital of the trust.

How revocation takes place

(7) The revocation must be made in the trust's return of income for the income year in which the later time occurs. If the trustee is not required to furnish a return for the income year, the revocation must:

(a) be in writing in a form approved by the Commissioner; and

(b) be given to the Commissioner before the end of:

(i) 2 months after the end of the income year in which the later time occurs; or

(ii) such later day as the Commissioner allows.

Revocation to specify time

(8) The revocation must specify the later time.

When election in force

(9) The election is in force:

(a) if it is not revoked—at all times after the election commencement time (see subsection (10); or

(b) if it is revoked—at all times from the election commencement time until the later time specified in the revocation.

Election commencement time

(10) The ***election commencement time*** is:

(a) if the trust does not pass the family control test (see section 272-87) at all times in the income year specified—the earliest time from which the trust does pass the family control test for the remainder of that income year; or

(b) in any other case—the beginning of the income year specified.

Only one election

(11) The trustee must not make more than one election under this section in relation to the trust.

272-85 Interposed entity election

Nature of election

(1) Subject to this section, if the trustee makes a family trust election, a company, the partners in any partnership or the trustee of any other trust may make an election (an ***interposed entity election***) in accordance with this section that the company, partnership or trust is to be included, at all times after a specified day in a specified income year, in the family group of the individual specified in the family trust election in accordance with subsection 272-80(3).

How election made

(2) The election must be made in the return of income of the company, partnership or trust for the specified income year. If the company, partners or trustee is not required to furnish a return for that income year, the election must:

(a) be in writing in a form approved by the Commissioner; and

(b) be given to the Commissioner before the end of:

(i) 2 months after the end of the income year specified; or

(ii) such later day as the Commissioner allows.

Election to contain information

(3) The election must contain such information as the Commissioner requires.

Family control test must be passed

(4) The company, partnership or trust must pass the family control test (see section 272-87) at the end of the income year.

Election irrevocable

(5) The election is irrevocable.

When election in force

(6) The election is in force at all times after:

(a) if the company, partnership or trust does not pass the family control test at all times in the specified income year—the later of:

(i) the beginning of the specified day; and

(ii) the earliest time from which the company, partnership or trust does pass the family control test for the remainder of the specified income year; or

(b) in any other case—the beginning of the specified day.

Restriction on multiple elections

(7) The company, partners or trustee must not make an election under this section that the company, partnership or trust is to be included in the family group of the individual specified in the family trust election in respect of more than one trust, unless the individual specified in each of the family trust elections is the same.

272-87 Passing the family control test

Trusts

(1) A trust in respect of which a family trust election or an interposed entity election is proposed to be made ***passes the family control test*** if:

(a) the requirement in any of the paragraphs of subsection (2) is satisfied in relation to a group consisting of:

(i) the individual (the ***primary individual***) who is to be specified in the family trust election or, in the case of an interposed entity election, who is specified in the family trust election to which the interposed entity election will relate; or

(ii) one or more members of the primary individual's family (see section 272-95); or

(iii) the primary individual and one or more members of the primary individual's family; or

(b) the requirement in any of paragraphs (a) to (e) of subsection (2) is satisfied in relation to a group consisting of a person or persons covered by subparagraph (a)(i), (ii) or (iii) of this subsection and one or more legal or financial advisers to the primary individual or to a member of the primary individual's family; or

(c) the requirement in paragraph (f) of subsection (2) is satisfied in relation to a group consisting of:

(i) the trustees of one or more family trusts, provided the primary individual is specified in the family trust election of each of those family trusts; or

(ii) such trustees and a person or persons covered by subparagraph (a)(i), (ii) or (iii).

Requirement for purposes of subsection (1)

(2) The requirement for the purposes of subsection (1) is that:

(a) the group has the power, by means of the exercise of a power of appointment or revocation or otherwise, to obtain beneficial enjoyment (directly or indirectly) of the capital or income of the trust; or

(b) the group is able (directly or indirectly) to control the application of the capital or income of the trust; or

(c) the group is capable, under a scheme, of gaining the beneficial enjoyment in paragraph (a) or the control in paragraph (b); or

(d) the trustee of the trust is accustomed, under an obligation or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the group; or

(e) the group is able to remove or appoint the trustee of the trust; or

(f) the group has more than a 50% stake in the income or capital of the trust.

Companies and partnerships

(3) A company or partnership in respect of which an interposed entity election is proposed to be made passes the family control test if a group consisting of:

(a) the individual who is specified in the family trust election mentioned in subsection 272-85(1) in relation to the interposed entity election; or

(b) one or more members of the individual's family (see section 272-95); or

(c) the trustees of one or more family trusts, provided the individual is specified in the family trust election of each of those family trusts; or

(d) any persons covered by any combination of the above paragraphs;

have (between them), directly or indirectly, and for their own benefit, fixed entitlements to a greater than 50% share of the income or a greater then 50% share of the capital of the company or partnership.

272-90 Family group

(1) This section states whether a person is a member of the ***family group*** of the individual (the ***primary individual***) specified in the family trust election in relation to a conferral of a present entitlement to, or a distribution of, income or capital of a company, partnership or trust, upon or to the person.

Family member

(2) A member of the primary individual's family (see section 272-95) is a member of the primary individual's family group in relation to the conferral or distribution.

Trust covered by family trust election

(3) The trust in respect of which the family trust election was made is a member of the primary individual's family group in relation to the conferral or distribution.

Entity covered by interposed entity election

(4) A company, partnership or trust is a member of the primary individual's family group in relation to the conferral or distribution if:

(a) the company, partners or trustee has made an interposed entity election to that effect; and

(b) the election is in force when the conferral takes place or the distribution is made.

Entity owned by family

(5) A company, partnership or trust is a member of the primary individual's family group in relation to the conferral or distribution if, when the conferral takes place or the distribution is made:

(a) the primary individual; or

(b) one or more members of the primary individual's family; or

(c) the trustees of one or more family trusts, provided the primary individual is specified in the family trust election of each of those family trusts;

or any combination of the above, have fixed entitlements directly or indirectly, and for their own benefit, to all of the income and capital of the company, partnership or trust.

Funds

(6) A fund, authority or institution in Australia that is:

(a) mentioned in any of the tables in subsection 78(4) or covered by paragraph 78(5)(a); or

(b) mentioned in item 1 or 2 of the table in section 30-15 of the *Income Tax Assessment Act 1997*;

is a member of the primary individual's family group in relation to the conferral or distribution if, assuming that a deduction were allowable under section 78, or Division 30 of the *Income Tax Assessment Act 1997*, in respect of the conferral or distribution, section 78A would not prevent any of the deduction being allowable.

Certain tax exempt bodies

(7) An institution, hospital, trustee, society, association, club, or fund, all of whose income is exempt under:

(a) paragraph 23(e), (ea), (ec), (g) or (j); or

(b) section 50-5, 50-10 or 50-20, item 6.1 or 6.2 of the table in section 50-30, or item 9.1 or 9.2 of the table in section 50-45, of the *Income Tax Assessment Act 1997*;

is a member of the primary individual's family group in relation to the conferral or distribution if, assuming that a deduction were allowable under section 78, or Division 30 of the *Income Tax Assessment Act 1997*, in respect of the conferral or distribution, section 78A would not prevent any of the deduction being allowable.

Institutions etc. where no living beneficiaries

(8) Either:

(a) an institution all of whose income is exempt under paragraph 23(e), or under item 1.1, 1.2, 1.3 or 1.4 of the table in section 50-5 of the *Income Tax Assessment Act 1997*; or

(b) a fund, authority or institution in Australia that is mentioned in any of the tables in subsection 78(4), covered by paragraph 78(5)(a) or mentioned in item 1 or 2 of the table in section 30-15 of the *Income Tax Assessment Act 1997*;

is a member of the primary individual's family group in relation to the conferral or distribution if, when the conferral takes place or the distribution is made, all of the beneficiaries of the trust, in respect of which the family trust election was made, who were individuals have died.

Estate of deceased family

(9) If the primary individual and all of the members of his or her family are dead when the conferral takes place or the distribution is made, the estates of the individual and of the members are members of the primary individual's family group in relation to the conferral or distribution.

Interests in SMEs

(10) A person is a member of the primary individual's family group in relation to the conferral or distribution if:

(a) a company that is an SME (within the meaning of section 128TK) confers the entitlement or makes the distribution; and

(b) the SME had made an interposed entity election to be included in the family group of the primary individual and the election is in force when the conferral takes place or the distribution is made; and

(c) the person:

(i) had acquired a threshold interest (within the meaning of section 128TJ) in the SME on or after 1 July 1996; and

(ii) is an Australian financial institution (within the meaning of section 317) or a subsidiary (within the meaning of section 128TL) of another company that is an Australian financial institution; and

(iii) is not an associate of the SME; and

(d) the distribution to which the conferral of the entitlement relates or that is made consists of a dividend paid, or a return of paid-up capital of the SME, on ordinary shares in the SME that were issued:

(i) on or after 1 July 1996; and

(ii) before or as part of the threshold share issue mentioned in paragraph 128TJ(c).

272-95 Family

The ***family*** of an individual (the ***test individual***) consists of all of the following (if applicable):

(a) any parent, grandparent, brother, sister, nephew, niece, child, or child of a child, of:

(i) the test individual; or

(ii) the test individual's spouse;

(b) the spouse of the test individual or of anyone who is a member of the test individual's family because of paragraph (a).

Child and spouse are defined in subsection 6(1).

Subdivision 272-E—Excepted trust

272-100 Excepted trust

A trust is an ***excepted trust*** at a particular time if:

(a) it is a family trust at the particular time; or

(b) it is a complying superannuation fund, a complying approved deposit fund or a pooled superannuation trust in relation to the income year in which the particular time occurs; or

(c) it is the trust of a deceased estate, where the particular time occurs during the period from the death of the individual until the end of the year of income in which the 5th anniversary of the death occurs; or

(d) at the particular time it is a fixed trust that is a unit trust, and persons all of whose income is exempt from tax under section 23, or under Division 50 of the *Income Tax Assessment Act 1997*, have fixed entitlements, directly or indirectly, and for their own benefit, to all of the income and capital of the trust.

Subdivision 272-F—Widely held unit trust

272-105 Widely held unit trust

Basic meaning

(1) A trust is a ***widely held unit trust*** if:

(a) it is a fixed trust that is a unit trust; and

(b) it is not closely held (see subsection (2)).

Closely held—income test

(2) A trust is ***closely held*** if:

(a) an individual has, or up to 20 individuals have between them; or

(b) no individual has, or no individuals have between them;

directly or indirectly and for their own benefit, fixed entitlements to a 75% or greater share of the income of the trust.

Closely held—capital test

(2A) A trust is also ***closely held*** if:

(a) an individual has, or up to 20 individuals have between them; or

(b) no individual has, or no individuals have between them;

directly or indirectly and for their own benefit, fixed entitlements to a 75% or greater share of the capital of the trust.

Single individual

(3) For the purposes of subsection (2) or (2A), all of the following are taken to be a single individual:

(a) an individual, whether or not the individual holds units in the unit trust; and

(b) the individual's relatives; and

(c) in relation to any units in respect of which other individuals are nominees of the individual or of the individual's relatives—those other individuals.

Exception

(4) A unit trust is *not* a ***widely held unit trust*** if, because of:

(a) any provision in the trust instrument, or in any contract, agreement or instrument:

(i) authorising the variation or abrogation of rights attaching to any of the units; or

(ii) relating to the conversion, cancellation, extinguishment or redemption of any of the units; or

(b) any contract, agreement, arrangement, option or instrument under which a person has power to acquire any of the units; or

(c) any power, authority or discretion in a person in relation to the rights attaching to any of the units;

it is reasonable to conclude that the rights attaching to any of the units are capable of being varied or abrogated in such a way (even if they are not in fact varied or abrogated in that way) that directly or indirectly the requirement in paragraph (1)(b) would not be satisfied.

Subdivision 272-G—Unlisted widely held trust and listed widely held trust

272-110 Unlisted widely held trust

Subject to Subdivision 272-J, a unit trust is an ***unlisted widely held trust*** if it is a widely held unit trust whose units are *not* listed for quotation in the official list of an approved stock exchange.

272-115 Listed widely held trust

A unit trust is a ***listed widely held trust*** if it is a widely held unit trust whose units are listed for quotation in the official list of an approved stock exchange.

Subdivision 272-H—Unlisted very widely held trust

272-120 Unlisted very widely held trust

(1) Subject to Subdivision 272-J, a unit trust is an ***unlisted very widely held trust*** if:

(a) it is an unlisted widely held trust; and

(b) it has at least 1,000 unit holders; and

(c) all of its units carry the same rights; and

(d) if its units are redeemable, they are redeemable for a price determined on the basis of its net asset value, according to Australian accounting principles; and

(e) it engages only in qualifying activities (see subsection (2)).

Qualifying activity

(2) A ***qualifying activity*** is an activity that:

(a) is an investment or business activity; and

(b) is conducted in accordance with the trust instrument or deed, and any prospectus, of the trust; and

(c) is conducted at arm's length.

Extended status

(3) If:

(a) at a particular time (the ***first qualifying time***), a trust for the first time becomes an unlisted very widely held trust; and

(b) at a time (the ***first unit issue time***) that is not more than 2 years earlier, units in the trust were first issued; and

(c) at no time during the period (the ***start-up period***) between the first unit issue time and the first qualifying time was there any abnormal trading, of a kind covered by subsection 269-15(1) or section 269-20, in the trust's units; and

(d) at all times in the part (if any) of the start-up period that occurred more than 90 days after it began, the trust was a widely held unit trust;

the trust is taken to have been an unlisted very widely held trust at all times from the formation of the trust until the end of the start-up period.

Subdivision 272-I—Wholesale widely held trust

272-125 Wholesale widely held trust

(1) Subject to Subdivision 272-J, a unit trust is a ***wholesale widely held trust*** at a particular time (the ***test time***) if:

(a) it is an unlisted widely held trust at the test time; and

(b) it is not an unlisted very widely held trust at the test time; and

(c) at least 75% of its units are held at the test time by one or more qualifying holders (see subsection (2)); and

(d) at the test time, all of its units carry the same rights; and

(e) if at the test time its units are redeemable, they are redeemable for a price determined on the basis of its net asset value, according to Australian accounting principles; and

(f) the amount subscribed for units in the trust by each person to whom units have been issued was at least $500,000; and

(g) at the test time, the unit trust engages only in qualifying activities (see subsection (3)).

Qualifying holder

(2) Each of the following is a ***qualifying holder***:

(a) a listed widely held trust;

(b) an unlisted very widely held trust;

(c) a life assurance company (within the meaning of section 110);

(d) a registered organisation (within the meaning of section 116E);

(e) a fund that is a complying approved deposit fund in relation to the year of income in which the test time occurs;

(f) a fund that is a complying superannuation fund in relation to the year of income in which the test time occurs;

(g) a trust that is a pooled superannuation trust in relation to the year of income in which the test time occurs.

Qualifying activity

(3) A ***qualifying activity*** is an activity that:

(a) is an investment or business activity; and

(b) is conducted in accordance with the trust instrument or deed, and any prospectus, of the trust; and

(c) is conducted at arm's length.

Subdivision 272-J—Kind of trust can be affected by ownership by higher level trust

272-127 Kind of trust can be affected by ownership by higher level trust

(1) If:

(a) apart from this Subdivision, a trust is an unlisted widely held trust, an unlisted very widely held trust or a wholesale widely held trust; and

(b) each of one or more trusts of a higher level (see subsection (3)) has, directly or indirectly, fixed entitlements to all of the income and capital of the trust;

the trust is instead a trust of the same kind (see subsection (2)) as the trust of the highest level.

(2) For the purposes of this Subdivision, trusts are of the following kinds:

(a) unlisted widely held trust;

(b) unlisted very widely held trust;

(c) wholesale widely held trust;

(d) listed widely held trust.

(3) The kinds of trust are allocated levels in the following order (from lowest to highest): unlisted widely held trust, unlisted very widely held trust, wholesale widely held trust and listed widely held trust.

Subdivision 272-K—Trusts beginning or ceasing to exist

272-130 Trusts beginning or ceasing to exist

If:

(a) under any provision of this Schedule, a trust is required to meet a condition at one or more times or at all times during a period; and

(b) the trust does not exist during a part of the period;

the period does not include that part.

Subdivision 272-L—Listed public company

272-135 Listed public company

Basic meaning

(1) A ***listed public company*** is a company whose shares (except those that carry a right to a fixed rate of dividend) are listed for quotation in the official list of an approved stock exchange.

Exceptions

(2) However, a company is *not* a ***listed public company*** if:

(a) a person (who is not a company) controls, or is able to control, or up to 20 persons (none of them companies) between them control, or are able to control, 75% or more of the voting power in the company (whether directly, or indirectly through one or more interposed companies, partnerships or trusts); or

(b) a person (who is not a company) has, or up to 20 persons (none of them companies) have between them, the right to receive for their own benefit (whether directly, or indirectly through one or more interposed companies, partnerships or trusts) 75% or more of any dividends that the company may pay; or

(c) a person (who is not a company) has, or up to 20 persons (none of them companies) have between them, the right to receive for their own benefit (whether directly, or indirectly through one or more interposed companies, partnerships or trusts) 75% or more of any distribution of capital of the company.

Meaning of right to receive dividends or distribution of capital indirectly

(3) For the purposes of subsection (2), persons have the right to receive dividends or a distribution of capital of a company indirectly for their own benefit if they would receive the dividends or capital for their own benefit if:

(a) the company were to pay the dividends or distribute the capital; and

(b) the dividends or capital were then successively paid or distributed by each company, partnership or trust interposed between the company and those persons.

Meaning of distribute

(4) Section 272-50 is disregarded in determining the meaning of ***distribute*** in paragraphs (3)(a) and (b).

Subdivision 272-M—Various definitions

272-140 Definitions

In this Schedule:

abnormal trading has the meaning given by Subdivision 269-B.

approved stock exchange has the same meaning as in section 470.

arrangement means any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings.

associate has the same meaning as in section 318.

benefit , in Division 270, has the meaning given by section 270-20.

breakdown in the marriage of an individual: this occurs if the individual is living with another individual on a genuine domestic basis as husband or wife (whether legally married or not) and ceases to do so.

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*.

control a non-fixed trust has the meaning given by Subdivision 269-E.

directly or indirectly has a meaning affected by sections 272-25 and 272-30.

distribute income or capital has a meaning affected by sections 272-45, 272-50, 272-55 and 272-60.

excepted trust has the meaning given by section 272-100.

family has the meaning given by section 272-95.

family group has the meaning given by section 272-90.

family trust has the meaning given by section 272-75.

family trust distribution tax has the meaning given by section 271-10.

family trust election has the meaning given by section 272-80.

fixed entitlement has the meaning given by Subdivision 272-A.

fixed trust has the meaning given by section 272-65.

government body means:
- (a) the Commonwealth, a State or a Territory; or
- (b) a municipal corporation or other local governing body; or
- (c) a foreign state.

group has the meaning given by subsection 269-95(5).

income year includes a year of income.

indirectly has a meaning affected by sections 272-20 and 272-63.

interposed entity election has the meaning given by section 272-85.

listed public company has the meaning given by section 272-135.

listed widely held trust has the meaning given by section 272-115.

loss year means the income year in which a tax loss was incurred.

member of a company includes a shareholder, stockholder or holder of a life insurance policy of the company.

more than a 50% stake has the meaning given by section 269-50.

mutual affiliate company has the meaning given by section 121AC.

mutual insurance company has the meaning given by section 121AB.

non-fixed trust has the meaning given by section 272-70.

pass the 50% stake test has the meaning given by section 269-55.

pass the family control test has the meaning given by section 272-87.

pass the pattern of distributions test has the meaning given by section 269-60.

pass the same business test has the meaning given by section 269-100.

pooled superannuation trust means a pooled superannuation trust within the meaning of section 48 of the *Superannuation Industry (Supervision) Act 1993*.

scheme has the same meaning as in subsection 177A(1).

special company means:

(a) a mutual affiliate company; or

(b) a mutual insurance company; or

(c) a company whose constituent document prevents it from distributing both income and capital (within the meaning of section 272-50) to any member of the company; or

(d) a credit union, within the meaning of section 3 of the Financial Institutions Codes (as defined in section 111AZC of the Corporations Law), whose constituent documents prevent it from paying dividends to its members; or

(e) a company that is prescribed by the regulations.

tax loss means:

(a) a loss within the meaning of section 79E, 80 or 80AA; or

(b) a film loss within the meaning of section 79F or 80AAA; or

(c) a tax loss worked out under section 36-10 of the *Income Tax Assessment Act 1997*.

Note: For the purposes of section 36-10 of the *Income Tax Assessment Act 1997* a film loss is a special type of tax loss: see section 375-810 of that Act.

trading in units in a unit trust has the meaning given by section 269-10.

unlisted very widely held trust has the meaning given by section 272-120.

unlisted widely held trust has the meaning given by section 272-110.

wholesale widely held trust has the meaning given by section 272-125.

widely held unit trust has the meaning given by section 272-105.

Division 2—Related amendments

2 After section 63F

Insert:

63G Bad debts etc. of trust not allowable in certain circumstances

If:

(a) a deduction is allowable from a trust's assessable income of any year of income:

(i) under section 51 or 63 in respect of the writing off of the whole or part of a debt as bad; or

(ii) under subsection 63E(3) or (4) in respect of the extinguishment of the whole or part of a debt; and

(b) the debt was incurred as well as written off or extinguished on the last day of the year of income;

the deduction is not allowable.

Schedule 2F may also prevent a taxpayer deducting an amount in respect of a debt in other circumstances.

3 After subsection 79E(2)

Insert:

(2A) In spite of subsection (1), if Schedule 2F applies in relation to a taxpayer for a post-1989 year of income, then, for the purposes of this section, the loss incurred by the taxpayer in the year of income is worked out under section 268-50 of that Schedule.

4 After subsection 79F(5)

Insert:

(5A) In spite of subsection (1), if Schedule 2F applies in relation to a taxpayer for a post-1989 year of income, then, for the purposes of this section the film loss incurred by the taxpayer in the year of income is worked out under section 268-55 of that Schedule.

5 Subsection 95(1) (at the end of the definition of net income)

Add:

A trust may be required to work out its net income in a special way by Division 266 or 267 of Schedule 2F.

6 Subsection 102D(1) (at the end of the definition of net income)

Add:

A corporate unit trust may be required to work out its net income in a special way by Division 266 or 267 of Schedule 2F.

7 Section 102M (at the end of the definition of net income)

Add:

A public trading trust may be required to work out its net income in a special way by Division 266 or 267 of Schedule 2F.

8 At the end of subsection 128B(3)

Add:

; or (k) income that is not included in assessable income because of subsection 271-105(1).

9 After subsection 160AFD(6)

Insert:

(6A) If:

(a) apart from this subsection, an overall foreign loss in respect of a class of assessable foreign income incurred by a taxpayer in respect of a year of income would be taken into account for the purpose of applying subsection (1) or (2) in relation to the particular year of income referred to in that subsection; and

(b) if that loss were a tax loss incurred by the taxpayer within the meaning of section 272-140 of Schedule 2F, it would not, because of Division 266 or 267 of that Schedule, be allowable as a deduction from the assessable income of the particular year of income;

then the overall foreign loss is not to be taken into account for the purpose of applying subsection (1) or (2) of this section in relation to the particular year of income.

(6B) If:

(a) apart from this subsection, an overall foreign loss in respect of a class of assessable foreign income incurred by a taxpayer in respect of a year of income would be taken into account for the purpose of applying subsection (1) or (2) in relation to the particular year of income referred to in that subsection; and

(b) assuming subsection 270-10(1) of Schedule 2F referred:

(i) to the loss being taken into account in relation to the particular year of income as mentioned in paragraph (a) of this subsection, instead of to a deduction being allowable for an income year; and

(ii) to the trust deriving an amount of assessable income of the class to which the loss related instead of to the trust deriving an amount of assessable income;

the requirements of that subsection (including after any application of subsection 270-10(2) of that Schedule) would be met in relation to the loss;

then the overall foreign loss is not to be taken into account for the purpose of applying subsection (1) or (2) of this section in relation to the particular year of income.

10 Subsection 170(10)

Omit "or Schedule 2A or 2B", substitute ", Schedule 2A or 2B or section 271-105 of Schedule 2F".

11 After paragraph 170(13)(b)

Insert:

(c) Division 270 of Schedule 2F to this Act;

12 After subsection 262A(4AK)

Insert:

(4AL) A person who makes an election in accordance with subitem 22(3) or 23(3) of the *Taxation Laws Amendment (Trust Loss and Other Deductions) Act 1998* must retain the election until the end of 5 years after the election was made.

Division 3—Application and transitional provisions

13 Definitions

In this Division:

current year loss provisions means sections 266-30, 266-80, 266-115, 266-155 and 267-60 of the trust loss etc. Schedule.

debt deduction provisions means sections 266-35, 266-85, 266-120, 266-160, 267-25 and 267-65 of the trust loss etc. Schedule.

earlier year loss provisions means sections 266-25, 266-75, 266-110, 266-150 and 267-20 of the trust loss etc. Schedule.

foreign deduction scheme provision means subsection 160AFD(6B) of the *Income Tax Assessment Act 1936* as amended by this Schedule.

foreign loss provision means subsection 160AFD(6A) of the *Income Tax Assessment Act 1936* as amended by this Schedule.

loss provisions means the earlier year loss provisions and the current year loss provisions.

trust loss etc. Schedule means Schedule 2F to the *Income Tax Assessment Act 1936* as amended by this Schedule.

1995 Budget time means 7.30 pm, by legal time in the Australian Capital Territory, on 9 May 1995.

1996 Budget time means 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996.

1997 Budget time means 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997.

14 Application of loss provisions from 1994-95 year of income

(1) Subject to this item, the loss provisions, together with any other provisions of the trust loss etc. Schedule in so far as they relate to the loss provisions, apply where the income year mentioned in the loss provisions is the 1994-95 year of income or any later year of income.

Modified application of earlier year loss provisions: test period

(2) If the test period mentioned in any of the earlier year loss provisions would begin before 1995 Budget time, it is taken instead to begin at 1995 Budget time.

Modified application of earlier year loss provisions: non-fixed trust distribution

(3) For the purposes of section 267-20:

(a) if the income year mentioned in that section is the 1994-95 year of income—the condition in subsection 267-30(2) is to be disregarded; and

(b) if the income year mentioned in that section is the 1995-96 year of income—the condition in subsection 267-30(2) applies as if there were an additional requirement in section 269-60 for at least part of one of the test year distributions of income or capital, as the case requires, mentioned in that section to have taken place after 28 September 1995.

Modified application of earlier year loss provisions: non-fixed trust distribution

(4) For the purposes of section 267-20, if:

(a) the whole or part of a test year distribution of income or capital of a trust that took place before 1995 Budget time is required to be taken into account in determining whether the trust meets the condition in subsection 267-30(2); and

(b) apart from this subitem, the trust would not meet the condition; and

(c) before the end of:

(i) if subitem (5) applies—the income year; or

(ii) in any other case—2 months after the end of the income year;

mentioned in subsection 267-30(2), the whole or part of any of the test year distributions of income or capital (whether taking place before or after 1995 Budget time), required to be taken into account in determining whether the trust meets the condition in subsection 267-30(2), was made directly or indirectly to an individual, for his or her own benefit; and

(d) the trust would meet the condition in subsection 267-30(2) if all test year distributions of income or capital (whether taking place before or after 1995 Budget time), required to be taken into account in determining whether the trust meets the condition in subsection 267-30(2), that were made directly or indirectly, and for his or her own benefit, to any member of the family (within the meaning of section 272-95) of the individual mentioned in paragraph (c) of this subitem, had instead been made to the individual (in addition to any such distribution actually made to the individual);

the trust meets the condition.

Modified application of earlier year loss provisions: non-fixed trust distribution

(5) For the purposes of section 267-20, if:

(a) the income year mentioned in that section is the 1995-96 year of income; or

(b) the income year mentioned in that section is the 1996-97 year of income and it ends on or before 1 October 1997;

the following modifications of other provisions apply:

(c) section 267-30 has effect as if “or within 2 months after its end” were omitted from subparagraphs (1)(a)(i) and (b)(i) of that section; and

(d) sections 269-60 and 269-75 have effect as if “2 months after the end of” were omitted (wherever occurring); and

(e) section 269-65 has effect as if “until 2 months after” were omitted from paragraph (1)(a) of that section.

Case where current year loss provisions do not apply

(6) If:

(a) the income year mentioned in the current year loss provisions is the 1994-95 year of income; and

(b) the income year ends before 1995 Budget time:

the current year loss provisions do not apply to the income year.

Modified application of current year loss provisions

(7) If the current year loss provisions apply where the income year mentioned in those provisions is the 1994-95 year of income, they apply as if:

(a) no abnormal trading in a trust’s units had occurred, in the 1994-95 year of income, before 1995 Budget time; and

(b) fixed entitlements of individuals directly or indirectly to receive income or capital of the trust that existed immediately before the 1995 Budget time had existed at all times, in the 1994-95 year of income, before 1995 Budget time; and

(c) control of the trust that existed at 1995 Budget time had existed at all times, in the 1994-95 year of income, before 1995 Budget time; and

(d) at all times in the 1994-95 year of income, before 1995 Budget time, the trust were the same kind of trust as it was at 1995 Budget time.

15 Application of debt deduction provisions from 1996-97 year of income

(1) Subject to this item, the debt deduction provisions, together with any other provisions of the trust loss etc. Schedule in so far as they relate to the debt deduction provisions, apply where the income year mentioned in the debt deduction provisions is the 1996-97 year of income or any later year of income.

Modified application: test period

(2) If the test period mentioned in any of the debt deduction provisions would begin before 1996 Budget time, it is taken instead to begin at 1996 Budget time.

Modified application: non-fixed trust distribution

(3) For the purposes of section 267-25, if the income year mentioned in that section is the 1996-97 year of income, the condition in subsection 267-30(2) applies as if there were an additional requirement in section 269-60 for at least part of one of the test year distributions of income or capital, as the case requires, mentioned in that section to have taken place after 1996 Budget time.

Modified application: non-fixed trust distribution

(4) For the purpose of section 267-25, if:

(a) the whole or part of a test year distribution of income or capital of a trust that took place before 1996 Budget time is required to be taken into account in determining whether the trust meets the condition in subsection 267-30(2); and

(b) apart from this subitem, the trust would not meet the condition; and

(c) before the end of:

(i) if subitem (5) applies—the income year; or

(ii) in any other case—2 months after the end of the income year;

mentioned in subsection 267-30(2), the whole or part of any of the test year distributions of income or capital (whether taking place before or after 1996 Budget time), required to be taken into account in determining whether the trust meets the condition in subsection 267-30(2), was made, directly or indirectly to an individual, for his or her own benefit; and

(d) the trust would meet the condition in subsection 267-30(2) if all test year distributions of income or capital (whether taking place before or after 1996 Budget time), required to be taken into account in determining whether the trust meets the condition in subsection 267-30(2), that were made directly or indirectly, and for his or her own benefit, to any member of the family (within the meaning of section 272-95) of the individual mentioned in paragraph (c) of this subitem, had instead been made to the individual (in addition to any such distribution actually made to the individual);

the trust meets the condition.

Modified application: non-fixed trust distribution

(5) For the purposes of section 267-25, if the income year mentioned in that section is the 1996-97 year of income and it ends on or before 1 October 1997, the following modifications of other provisions apply:

(a) section 267-30 has effect as if “or within 2 months after its end” were omitted from subparagraphs (1)(a)(i) and (b)(i) of that section; and

(b) sections 269-60 and 269-75 have effect as if “2 months after the end of” were omitted (wherever occurring); and

(c) section 269-65 has effect as if “until 2 months after” were omitted from paragraph (1)(a) of that section.

16 Application of scheme provisions from 1994-95 year of income

Division 270 of the trust loss etc. Schedule applies where the income year mentioned in that Division is the 1994-95 year of income or any later year of income, but only if:

(a) the assessable income mentioned in subparagraph 270-10(1)(b)(i) was derived after 1995 Budget time; and

(b) the benefit mentioned in subparagraph 270-10(1)(b)(ii) was provided after 1995 Budget time.

17 Application of expanded definition of distribution

Section 272-60 of the trust loss etc. Schedule applies to things done after 1 October 1997.

18 Application of new section 63G

The amendment made by item 2 applies to assessments for the 1996-97 year of income and all later years of income.

19 Application of foreign loss provision from 1996-97 year of income

(1) Subject to this item, the foreign loss provision applies where the particular year of income mentioned in that provision is the 1996-97 year of income or any later year of income.

Modified application: test period

(2) If, for the purposes of the foreign loss provision, the test period mentioned in any of the earlier year loss provisions would begin on or before 1 October 1997, it is taken for that purpose to begin on 2 October 1997

Modified application: non-fixed trust distribution

(3) If, for the purposes of the foreign loss provision, the income year mentioned in subsection 267-30(2) is the 1996-97 year of income, the condition in that subsection applies as if there were an additional requirement in section 269-60 for at least part of one of the test year distributions of income or capital, as the case requires, mentioned in that section to have taken place after 1 October 1997.

Modified application: non-fixed trust distribution

(4) If, for the purposes of the foreign loss provision:

(a) the whole or part of a test year distribution of income or capital of a trust that took place on or before 1 October 1997 is required to be taken into account in determining whether the trust meets the condition in subsection 267-30(2); and

(b) apart from this subitem, the trust would not meet the condition; and

(c) before the end of:

(i) if subitem (5) applies—the income year; or

(ii) in any other case—2 months after the end of the income year;

mentioned in subsection 267-30(2), the whole or part of any of the test year distributions of income or capital (whether taking place before, on or after 1 October 1997), required to be taken into account in determining whether the trust meets the condition in subsection 267-30(2), was made directly or indirectly to an individual, for his or her own benefit; and

(d) the trust would meet the condition in subsection 267-30(2) if all test year distributions of income or capital (whether taking place before, on or after 1 October 1997), required to be taken into account in determining whether the trust meets the condition in subsection 267-30(2), that were made directly or indirectly, and for his or her own benefit, to any member of the family (within the meaning of section 272-95) of the individual mentioned in paragraph (c) of this subitem, had instead been made to the individual (in addition to any such distribution actually made to the individual);

the trust meets the condition.

Modified application: non-fixed trust distribution

(5) For the purposes of the foreign loss provision, if the income year mentioned in that section is the 1996-97 year of income and it ends on or before 1 October 1997, the following modifications of other provisions apply:

(c) section 267-30 has effect as if "or within 2 months after its end" were omitted from subparagraphs (1)(a)(i) and (b)(i) of that section; and

(d) sections 269-60 and 269-75 have effect as if "2 months after the end of" were omitted (wherever occurring); and

(e) section 269-65 has effect as if "until 2 months after" were omitted from paragraph (1)(a) of that section.

20 Application of foreign deduction scheme provision from 1996-97 year of income

The foreign deduction scheme provision applies where the particular year of income mentioned in that provision is the 1996-97 year of income or any later year of income, but only if:

(a) the assessable income mentioned in subparagraph 270-10(1)(b)(i) was derived after 1 October 1997; and

(b) the benefit mentioned in subparagraph 270-10(1)(b)(ii) was provided after 1 October 1997.

21 Application of amendments of subsections 170(10) and 170(13)

The amendments made by items 10 and 11 apply to assessments made either before or after the commencement of those items.

22 Transitional—family trust elections

(1) Subject to this item and item 22A, a family trust election that is proposed to be made cannot specify a year of income under subsection 272-80(1) of the trust loss etc. Schedule that is before the 1997-98 year of income.

(2) If:

(a) a family trust election can be made in accordance with subsection 272-80(2) of the trust loss etc. Schedule specifying the 1998-99 year of income; and

(b) assuming that the family trust election could instead specify the 1996-97 year of income or the 1997-98 year of income (the ***qualifying year of income***):

(i) a company that would otherwise be prevented, by section 63B or 63C of the *Income Tax Assessment Act 1936* from deducting in the qualifying year of income an amount in respect of a debt would not be so prevented; or

(ii) a company that would otherwise be prevented by subsection 160ZC(5) of the *Income Tax Assessment Act 1936* from applying a net capital loss in the qualifying year of income would not be so prevented; or

(iii) a company that would otherwise be prevented by Subdivision 165-A, 175-A or 175-B of the *Income Tax Assessment Act 1997* from deducting an amount in the qualifying year of income would not be so prevented; or

(iv) a company that would otherwise be required to calculate its taxable income for the qualifying year of income in accordance with section 50C of the *Income Tax Assessment Act 1936* would not be so required; or

(v) a company that would otherwise not be entitled, in calculating its taxable income for the qualifying year of income in accordance with section 50C of the *Income Tax Assessment Act 1936*, to take into account an amount, by reason of subsection 50D(2), in ascertaining the eligible notional loss of the company under section 50D, would be so entitled; or

(vi) a company that would otherwise be required to calculate its taxable income and tax loss for the qualifying year of income under Subdivision 165-B of the *Income Tax Assessment Act 1997* would not be so required; and

(c) the trust concerned passes the family control test (see section 272-87 of the trust loss etc. Schedule):

(i) if the qualifying year of income is the 1996-97 year of income—at all times from the beginning of that year of income until the end of the 1997-98 year of income; or

(ii) if the qualifying year of income is the 1997-98 year of income—at the end of the 1997-98 year of income; and

(d) the *Taxation Laws Amendment Act (No. 2) 2000* receives the Royal Assent:

(i) if the trustee is required to furnish a return for the 1998-99 year of income—before the time when the trustee furnishes the return; or

(ii) if the trustee is not required to furnish a return for the 1998-99 year of income—before the end of 2 months after the end of that year of income;

the election can instead specify the qualifying year of income.

(2A) If:

(a) a family trust election can be made in accordance with subsection 272-80(2) of the trust loss etc. Schedule in relation to a non-fixed trust (within the meaning of section 272-70 of the trust loss etc. Schedule) specifying the 1998-99 year of income; and

(b) a franked dividend or a franked distribution (both within the meaning of section 177EA of the *Income Tax Assessment Act 1936*) was included in the assessable income of the trust of the 1997-98 year of income (the ***qualifying year of income***); and

(c) the trust passes the family control test at the end of the 1997-98 year of income; and

(d) the *Taxation Laws Amendment Act (No. 2) 1999* and the *Taxation Laws Amendment Act (No. 2) 2000* receive the Royal Assent:

(i) if the trustee is required to furnish a return for the 1998-99 year of income—before the time when the trustee furnishes the return; or

(ii) if the trustee is not required to furnish a return for the 1998-99 year of income—before the end of 2 months after the end of that year of income;

the election can instead specify the qualifying year of income.

(3) A family trust election specifying the qualifying year of income in accordance with subitem (2) or (2A) must:

(a) be in writing in a form and manner approved by the Commissioner; and

(b) be made:

(i) if the trustee is required to furnish a return for the 1998-99 year of income—by the time when the trustee furnishes the return; or

(ii) if the trustee is not required to furnish a return for the 1998-99 year of income—before the end of 2 months after the end of that year of income or before the end of such later day as the Commissioner allows.

(4) If a family trust election is made in accordance with subitem (3) specifying the qualifying year of income:

(a) if the trustee is required to furnish a return for the 1998-99 year of income—such information about the election as is required by the return must be included in the return; and

(b) if the trustee is not required to furnish a return for that year of income—the trustee must, before the end of 2 months after the end of the 1998-99 year of income or before the end of such later day as the Commissioner allows, give the Commissioner such information about the election as the Commissioner, by notice in the *Gazette*, requires.

(5) If:

(a) a family trust election does specify the qualifying year of income in accordance with this item; and

(b) the trust concerned is not prevented by the trust loss etc. Schedule from deducting a tax loss, or an amount in respect of a debt, and is not required to work out its net income and tax loss under Division 268 of that Schedule in:

(i) if the qualifying year is the 1996-97 year of income—that year of income, the 1997-98 year of income or both (the ***excluded period***); or

(ii) if the qualifying year mentioned in that subitem is the 1997-98 year of income—that year of income (also the ***excluded period***);

no liability to pay family trust distribution tax arises under Division 271 of the trust loss etc. Schedule in respect of a conferral of a present entitlement to, or a distribution of, income or capital that took place in the excluded period.

(6) If the revocation of a family trust election is proposed to specify a time under subsection 272-80(8) that is before the beginning of the 1998-99 year of income, then:

(a) subsection 272-80(7) of the trust loss etc. Schedule does not apply to the revocation; and

(b) if the trustee is required to furnish a return for the 1998-99 year of income—the revocation must be made in the trust's return of income for that year of income; and

(c) if the trustee is not required to furnish a return for that year of income—the revocation must:

(i) be in writing in a form approved by the Commissioner; and

(ii) be given to the Commissioner by the end of 2 months after the end of that year of income or before the end of such later day as the Commissioner allows.

22A Transitional—family trust elections

(1) If:

(a) a family trust election can be made in accordance with subsection 272-80(2) of the trust loss etc. Schedule specifying the 1999-2000 year of income; and

(b) assuming that a family trust election could specify the 1996-97 year of income, the 1997-98 year of income or the 1998-1999 year of income (the ***qualifying year of income***):

(i) a company that would otherwise be prevented, by section 63B or 63C of the *Income Tax Assessment Act 1936* or by Subdivision 165-C or 175-C of the *Income Tax Assessment Act 1997*, from deducting in the qualifying year of income an amount in respect of a debt would not be so prevented; or

(ii) a company that would otherwise be prevented by Subdivision 165-A, 175-A or 175-B of the *Income Tax Assessment Act 1997* from deducting an amount in the qualifying year of income would not be so prevented; or

(iii) a company that would otherwise be required to calculate its taxable income for the qualifying year of income in accordance with section 50C of the *Income Tax Assessment Act 1936* would not be so required; or

(iv) a company that would otherwise not be entitled, in calculating its taxable income for the qualifying year of income in accordance with section 50C of the *Income Tax Assessment Act 1936*, to take into account an amount, by reason of subsection 50D(2), in ascertaining the eligible notional loss of the company under section 50D, would be so entitled; or

(v) a company that would otherwise be required to calculate its taxable income and tax loss for the qualifying year of income under Subdivision 165-B of the *Income Tax Assessment Act 1997* would not be so required; or

(vi) a company that would otherwise be prevented by Subdivision 165-CA or 175-CA of the *Income Tax*

Assessment Act 1997 from applying in the qualifying year a net capital loss from an earlier year of income would not be so prevented; or

(vii) a company that would otherwise be required to calculate its net capital gain and net capital loss for the qualifying year under Subdivision 165-CB or 175-CB of the *Income Tax Assessment Act 1997* would not be so required; and

(c) the trust concerned passes the family control test (see section 272-87 of the trust loss etc. Schedule):

(i) if the qualifying year of income is the 1996-97 year of income or the 1997-98 year of income—at all times from the beginning of that year of income until the end of the 1998-99 year of income; or

(ii) if the qualifying year of income is the 1998-99 year of income—at the end of the 1998-99 year of income; and

(d) the *Taxation Laws Amendment Act (No. 2) 2000* receives the Royal Assent:

(i) if the trustee is required to furnish a return for the 1998-99 year of income—after the time when the trustee furnishes the return; or

(ii) if the trustee is not required to furnish a return for the 1998-99 year of income—after the end of 2 months after the end of that year of income;

the election can instead specify the qualifying year of income.

(2) If:

(a) a family trust election can be made in accordance with subsection 272-80(2) of the trust loss etc. Schedule in relation to a non-fixed trust (within the meaning of section 272-70 of the trust loss etc. Schedule) specifying the 1999-2000 year of income; and

(b) a franked dividend or a franked distribution (both within the meaning of section 177EA of the *Income Tax Assessment Act 1936*) was included in the assessable income of the trust of the 1997-98 year of income or the 1998-99 year of income (the ***qualifying year of income***); and

(c) the trust concerned passes the family control test (see section 272-87 of the trust loss etc. Schedule):

(i) if the qualifying year of income is the 1997-98 year of income—at all times from the beginning of that year of income until the end of the 1998-99 year of income; or

(ii) if the qualifying year of income is the 1998-99 year of income—at the end of the 1998-99 year of income; and

(d) either the *Taxation Laws Amendment Act (No. 2) 1999* or the *Taxation Laws Amendment Act (No. 2) 2000*, or both, receive the Royal Assent:

(i) if the trustee is required to furnish a return for the 1998-99 year of income—after the time when the trustee furnishes the return; or

(ii) if the trustee is not required to furnish a return for the 1998-99 year of income—after the end of 2 months after the end of that year of income;

the election can instead specify the qualifying year of income.

(3) The election must:

(a) be in a form and manner approved by the Commissioner; and

(b) be made:

(i) if the trustee is required to furnish a return for the 1999-2000 year of income—by the time when the trustee furnishes the return; or

(ii) if the trustee is not required to furnish a return for the 1999-2000 year of income—before the end of 2 months after the end of that year of income or before the end of such later day as the Commissioner allows.

(4) If a family trust election is made in accordance with subitem (3) specifying the qualifying year:

(a) if the trustee is required to furnish a return for the 1999-2000 year of income—such information about the election as is required by the return must be included in the return; and

(b) if the trustee is not required to furnish a return for that year of income—the trustee must, before the end of 2 months after the end of the 1999-2000 year of income or before the end of such later day as the Commissioner allows, give the Commissioner such information about the election as the Commissioner, by notice in the *Gazette*, requires.

(5) If:

(a) a family trust election does specify the qualifying year of income in accordance with this item; and

(b) the trust is not prevented by the trust loss etc. Schedule from deducting a tax loss, or an amount in respect of a debt, and is not required to work out its net income and tax loss under Division 268 of that Schedule in the qualifying year or any later year of income that occurs before the 1999-2000 year of income;

no liability to pay family trust distribution tax arises under Division 271 of the trust loss etc. Schedule in respect of a conferral of a present entitlement to, or a distribution of, income or capital that took place during the qualifying year or the later year of income.

23 Transitional—interposed entity elections

(1) Subject to this item and item 23A, an interposed entity election cannot specify a year of income under subsection 272-85(1) of the trust loss etc. Schedule that is before the 1997-98 year of income.

(2) If:

(a) a trustee makes a family trust election under subitem 22(3) (as inserted by the *Taxation Laws Amendment Act (No. 2) 2000*); and

(b) an interposed entity election can be made in accordance with subsection 272-85(2) of the trust loss etc. Schedule in relation to the family trust election specifying a day in the 1998-99 year of income; and

(c) the company, partnership or trust concerned passes the family control test (see section 272-87 of the trust loss etc. Schedule):

(i) if the qualifying year of income specified in the family trust election as mentioned in subitem 22(3) is the 1996-97 year of income—at all times from a day in that year of income until the end of the 1997-98 year of income; or

(ii) if the qualifying year of income specified in the family trust election as mentioned in subitem 22(3) is the 1997-98 year of income—at the end of the 1997-98 year of income;

the interposed entity election can instead specify:

(d) if subparagraph (c)(i) of this subitem applies—the day mentioned in that subparagraph or a later day in the qualifying year of income; or

(e) if subparagraph (c)(ii) applies—a day in the qualifying year of income;

provided the day specified is not before the day on which the family trust election came into force.

(3) The election must:

(a) be in writing in a form and manner approved by the Commissioner; and

(b) be made:

(i) if the trustee is required to furnish a return for the 1998-99 year of income—by the time when the trustee furnishes the return; or

(ii) if the trustee is not required to furnish a return for the 1998-99 year of income—before the end of 2 months after the end of that year of income or before the end of such later day as the Commissioner allows.

(4) If an interposed entity election is made in accordance with subitem (3) specifying a day in the qualifying year of income:

(a) if the company, the partners or the trustee is required to furnish a return for the 1998-99 year of income—such information about the election as is required by the return must be included in the return; and

(b) if the company, the partners or the trustee is not required to furnish a return for that year of income—the company, the partners or the trustee must, before the end of 2 months after the end of the 1998-99 year of income or before the end of such later day as the Commissioner allows, give the Commissioner such information about the election as the Commissioner, by notice in the *Gazette*, requires.

23A Transitional—interposed entity elections

(1) If:

(a) a trustee makes a family trust election under subitem 22A(3); and

(b) an interposed entity election can be made in accordance with subsection 272-85(2) of the trust loss etc. Schedule in relation to the family trust election specifying a day in the 1999-2000 year of income; and

(c) the company, partnership or trust concerned passes the family control test (see section 272-87 of the trust loss etc. Schedule):

(i) if the qualifying year of income specified in the family trust election as mentioned in subitem 22(3) is the 1996-97 year of income or the 1997-98 year of income—at all times from a day in that year of income until the end of the 1998-99 year of income; or

(ii) if the qualifying year of income specified in the family trust election as mentioned in subitem 22(3) is the 1998-99 year of income—at the end of the 1998-99 year of income;

the interposed entity election can instead specify:

(d) if subparagraph (c)(i) of this subitem applies and the qualifying year of income is the 1996-1997 year of income—the day mentioned in that subparagraph, a later day in the 1996-97 year of income or a day in the 1997-1998 year of income; or

(e) if subparagraph (c)(i) of this subitem applies and the qualifying year of income is the 1997-1998 year of income—the day mentioned in that subparagraph or a later day in the 1997-98 year of income; or

(f) if subparagraph (c)(ii) applies—a day in the 1998-99 year of income;

provided the day specified is not before the day on which the family trust election came into force.

(2) The election must:

(a) be in a form and manner approved by the Commissioner; and

(b) be made:

(i) if the company, partners or the trustee is required to furnish a return for the 1999-2000 year of income—by the time when the company, partners or trustee furnishes the return; or

(ii) if not—before the end of 2 months after the end of that year of income or before the end of such later day as the Commissioner allows.

(3) If an interposed entity election is made in accordance with subitem (2) specifying the qualifying year:

(a) if the company, partners or the trustee is required to furnish a return for the 1999-2000 year of income—such information about the election as is required by the return must be included in the return; and

(b) if the company, partners or the trustee is not required to furnish a return for that year of income—the company, the partners or the trustee must, before the end of 2 months after the end of the 1999-2000 year of income or before the end of such later day as the Commissioner allows, give the Commissioner such information about the election as the Commissioner, by notice in the *Gazette*, requires.

24 Transitional—jointly held trusts

(1) This item applies if, apart from the item, the condition in section 266-40 of the trust loss etc. Schedule would not be met by a trust.

(2) If:

(a) the test period mentioned in section 266-40 is:

(i) if that section is being applied for the purposes of section 266-25—the test period resulting from the application of subitem 14(2) or the test period starting at the beginning of the 1995-96 or 1996-97 year of income; or

(ii) if that section is being applied for the purposes of section 266-30—the test period starting at the beginning of the 1994-95, 1995-96 or 1996-97 year of income; or

(iii) if that section is being applied for the purposes of section 266-35—the test period resulting from the application of subitem 15(2); and

(b) either:

(i) 2 individuals each had, directly or indirectly, and for their own benefit, a 50% share of the income and a 50% share of the capital of the trust; or

(ii) an individual had, directly or indirectly, and for his or her own benefit, a 50% share of the income and a 50% share of the capital of the trust and a non-fixed trust (other than a family trust) also had, directly or indirectly, a 50% share of the income and a 50% share of the capital of the trust;

at the start of the following period (the ***qualifying period***):

(iii) if section 266-40 is being applied for the purposes of section 266-30 and the test period mentioned in section 266-40 started at the beginning of the 1994-95 year of income—the part of the test period that begins at 1995 Budget time and ends at the end of the test period; or

(iv) in any other case—the test period; and

(c) at all later times during the qualifying period, the same individual (being one of the 2 individuals mentioned in subparagraph (b)(i) or the individual mentioned in subparagraph (b)(ii)) had, directly or indirectly, and for the individual's own benefit, fixed entitlements to at least a 50% share of the income and a 50% share of the capital of the trust;

the condition in section 266-40 is met.

(3) If:

(a) the test period mentioned in section 266-40 began after 1996 Budget time; and

(b) at all times during the period from immediately before 1996 Budget time until the start of the test period:

(i) 2 individuals each had, directly or indirectly, and for their own benefit, a 50% share of the income and a 50% share of the capital of the trust; or

(ii) an individual had, directly or indirectly, and for his or her own benefit, a 50% share of the income and a 50% share of the capital of the trust and a non-fixed trust (other than a family trust) also had, directly or indirectly, a 50% share of the income and a 50% share of the capital of the trust; and

(c) at all times during the test period, the same individual (being one of the 2 individuals mentioned in subparagraph (b)(i) or the individual mentioned in subparagraph (b)(ii)) had, directly or indirectly, and for the individual's own benefit, fixed entitlements to at least a 50% share of the income and a 50% share of the capital of the trust;

the condition in section 266-40 is met.

25 Transitional—schemes to take advantage of deductions

(1) This item modifies the effect of Division 270 of the trust loss etc. Schedule where the trust mentioned in paragraph 270-10(1)(a) of that Schedule is a family trust.

(2) If:

(a) a person was at any time before 1995 Budget time an outsider to a family trust; and

(b) the person ceased to be an outsider to the trust at 1995 Budget time because the person has made an interposed entity election;

the person is taken for the purposes of Division 270 not to have been an outsider to the trust at any time before 1995 Budget time.

26 Transitional—definition of family

The trust loss etc. Schedule and subitems 14(4), 15(4) and 19(4) have effect in relation to things done before 1997 Budget time as if the definition of ***family*** in section 272-95 of that Schedule were replaced by the following definition:

The ***family*** of an individual (the ***test individual***) consists of all of the following (if applicable):

(a) the test individual's spouse or former spouse;

(b) a parent, brother, sister, child, nephew or niece of:

(i) the test individual; or

(ii) the test individual's spouse; or

(iii) a former spouse of the test individual;

(c) a child of any individual covered by paragraph (a) or (b) who, under the trust, is capable of benefiting on the death of the test individual;

(d) a grandparent, great-grandparent, aunt or uncle of the test individual;

(e) a child of a child of the test individual;

(f) the spouse or a former spouse of any individual covered by any of paragraphs (a) to (e).

Part 2—Income Tax Assessment Act 1997

27 Subsection 25-35(5) (at the end of the table)

Add:

4	Certain trusts cannot deduct a bad debt if there has been a change in ownership or control or an abnormal trading in their units	**Divisions 266 and 267 of Schedule 2F**

28 At the end of section 36-25

Add:

Tax losses of trusts

Item	**For the special rules about this subsection...**	**See:**
1.	A trust has had a change of ownership or control or there has been an abnormal trading in its units: • if this happens in the income year, it works out its net income and tax loss in a special way; or • if this happens at any time from the start of a loss year until the end of the income year, it cannot deduct a tax loss from the loss year. This will not be the case if the trust is an excepted trust. However, if it became one by making a family trust election, a special tax may be payable on certain distributions and other amounts.	Divisions 266, 267 and 268 of Schedule 2F to the *Income Tax Assessment Act 1936*
2.	A trust is involved in a scheme to take advantage of deductions. The trust may be prevented from making full use of them.	Division 270 of Schedule 2F to the *Income Tax Assessment Act 1936*

29 Subsection 995-1(1) (after paragraph (a) of the definition of film component of a tax loss)

Insert:

Note: The meaning of ***film component of a tax loss*** given by section 375-805 of this Act is affected by section 268-65 of Schedule 2F to the *Income Tax Assessment Act 1936*.

30 Subsection 995-1(1) (after paragraph (a) of the definition of tax loss)

Insert:

Note: The meaning of ***tax loss*** in section 36-10 is affected by section 268-60 of Schedule 2F to the *Income Tax Assessment Act 1936*.

Part 3—Fringe Benefits Tax Assessment Act 1986

31 Section 136 (at the end of the definition of fringe benefit)

Add:

; or (q) a benefit constituted by the conferral of a present entitlement to, or a distribution of, income or capital to the extent that subsection 271-105(1) of Schedule 2F to the *Income Tax Assessment Act 1936* would prevent the inclusion of the amount or value of the income or capital in assessable income, assuming that it would otherwise be so included.

32 Application

The amendment made by this Part applies to benefits conferred either before or after the commencement of this Part.

Part 4—Superannuation Contributions Tax (Assessment and Collection) Act 1997

33 Section 43 (after paragraph (a) of the definition of adjusted taxable income)

Insert:

(aa) the amount (if any) by which the amount worked out under paragraph (a) would be increased if it were instead worked out ignoring subsection 271-105(1) of Schedule 2F to the Income Tax Assessment Act; and

34 Application

The amendment made by this Part applies to the calculation of adjusted taxable income for the financial year that began on 1 July 1996 or a later financial year.