Taxation Laws Amendment Act (No. 2) 1999

Act No. 93 of 1999 as amended

This compilation was prepared on 6 August 2002

[This Act was amended by Act No. 57 of 2002]

Amendment from Act No. 57 of 2002

[Schedule 12 (item 53) amended Item 36 of Schedule 1
Schedule 12 (item 53) commenced on 16 July 1999]

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An Act to amend the law relating to taxation

[*Assented to 16 July 1999*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Taxation Laws Amendment Act (No. 2) 1999*.

2 Commencement

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

Schedule 4

(2) Item 24 of Schedule 4 is taken to have commenced on 16 April 1998.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1—Australia as a regional financial centre

Part 1—OBUs, withholding tax and thin capitalisation

Income Tax Assessment Act 1936

1 Paragraph 121B(3)(c)

After "activities", insert "(unless a foreign tax credit under Division 18 is obtained)".

2 Paragraph 121B(3)(d)

After "sourced", insert "unless it is taken to have a foreign source because it has been subject to foreign tax".

3 At the end of subsection 121B(3)

Add:

; (g) income derived by overseas charitable institutions from OBUs is exempt from tax;

(h) certain adjustments are made to the capital gains and losses that flow from disposals of certain interests in trusts of which an OBU is the trustee.

4 Section 121C

Insert:

overseas charitable institution means a non-resident institution the income of which:

(a) would be exempt from tax under item 1.1 of section 50-5 of the *Income Tax Assessment Act 1997* (and not under any other item of that section) if the institution had a physical presence in Australia and incurred its expenditure and pursued its objectives principally in Australia; and

(b) is exempt in the country in which it is resident.

5 Paragraph 121D(1)(e)

Omit "or (6A)", substitute ", (6A) or (6B)".

6 Subparagraph 121D(4)(a)(i)

Omit ", where the securities are denominated other than in Australian currency".

7 Subparagraph 121D(4)(a)(ii)

Omit "other than in Australian currency".

8 Subparagraph 121D(4)(b)(i)

Omit ", where the shares are denominated other than in Australian currency".

9 Subparagraph 121D(4)(b)(ii)

Omit ", where the units are denominated other than in Australian currency".

10 After paragraph 121D(4)(e)

Insert:

(ea) trading in currency, or options or rights in respect of currency, with an offshore person; or

11 Paragraph 121D(4)(f)

Repeal the paragraph, substitute:

(f) trading in gold bullion, or in options or rights in respect of such bullion:

(i) with an offshore person where the money or moneys payable or receivable is or are in any currency; or

(ii) a person other than an offshore person where the money or moneys payable or receivable is or are in a currency other than Australian currency; or

(g) trading with an offshore person in silver, platinum or palladium bullion, or in options or rights in respect of such bullion; or

(h) trading with an offshore person in base metals.

12 Subsection 121D(5)

Omit "under which any money payable is not Australian currency".

13 Paragraph 121D(6A)(a)

Omit "or agent", insert ", agent or custodian".

14 Paragraph 121D(6A)(b)

After "OBU", insert "or the non-resident".

15 After subsection 121D(6A)

Insert:

Investment activity—portfolio investment for overseas charitable institutions

(6B) For the purposes of paragraph (1)(e), an ***investment activity*** is also the managing by an OBU of a portfolio investment (see subsection 121DA(1)) for the whole or part (the ***investment management period***) of a year of income, where:

(a) the portfolio investment is managed as broker, agent or custodian for, or trustee for the benefit of, an overseas charitable institution; and

(b) the portfolio investment was made by the OBU or the overseas charitable institution.

16 Subsection 121D(8)

Omit all of the words after paragraph (b).

17 Subsection 121DA(1)

Omit "or agent", substitute "an agent or custodian".

18 Subsection 121DA(2)

After "121D(6A)", insert "or (6B)".

19 Subsection 121EE(3A)

After "121D(6A)", insert "or (6B)".

20 At the end of section 121EJ

Add:

(2) However, for the purposes of Division 18, if income has been subject to foreign tax it is taken to have a foreign source.

21 At the end of section 121EL

Add:

(2) If:

(a) an OBU is a trustee, or is the central manager and controller, of a trust estate; and

(b) the only person who benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust is an overseas charitable institution; and

(c) the terms of the trust are to the effect that income, profits or capital gains of the trust estate may only come from investment activities covered by subsection 121D(6B);

then:

(d) any income of the trust estate derived from an investment activity covered by subsection 121D(6B) is exempt from income tax; and

(e) any capital gain or capital loss made by the trust estate from a CGT event happening in relation to a CGT asset of the trust estate in the course of, or in connection with, an investment activity covered by subsection 121D(6B) is disregarded.

22 After section 121EL

Insert:

121ELA Exemption of income etc. of overseas charitable institutions

Investment with OBU

(1) Income, derived by an overseas charitable institution, is exempt to the extent that it is:

(a) a payment or outgoing from an OBU as part of the OB activities of the OBU; or

(b) a distribution of income that is exempt under subsection 121EL(2).

Capital gains and losses

(2) If:

(a) an OBU is a trustee, or is the central manager and controller, of a unit trust estate; and

(b) the only person who benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust is an overseas charitable institution; and

(c) the terms of the trust are to the effect that income, profits or capital gains of the trust estate may only come from investment activities covered by subsection 121D(6B); and

(d) the overseas charitable institution disposes of its interest in the trust;

then the overseas charitable institution makes no capital gain or capital loss from a CGT event happening in relation to the disposal.

121ELB Adjustment of capital gains and losses from disposal of units in OBU offshore investment trusts

Trust with subsection 121D(6) investment activities

(1) If:

(a) an OBU is a trustee, or is the central manager and controller, of a unit trust estate; and

(b) the only persons who benefit, or are capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust are non-residents; and

(c) all units in the trust are held by non-residents; and

(d) the terms of the trust are to the effect that income, profits or capital gains of the trust estate may only come from investment activities covered by subsection 121D(6); and

(e) a non-resident disposes of a unit in the trust;

then the non-resident makes no capital gain or capital loss from a CGT event happening in relation to the disposal.

Trust with subsection 121D(6A) investment activities

(2) If:

(a) an OBU is a trustee, or is the central manager and controller, of a unit trust estate; and

(b) the only persons who benefit, or are capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust are non-residents; and

(c) all units in the trust are held by non-residents; and

(d) the terms of the trust are to the effect that income, profits or capital gains of the trust estate may only come from investment activities covered by subsection 121D(6A); and

(e) a non-resident disposes of a unit in the trust; and

(f) the average Australian asset percentage for the portfolio investment concerned was 10% or less;

then if, apart from this section, the non-resident would make a capital gain or capital loss from a CGT event happening in relation to the disposal, the non-resident makes only the average Australian asset percentage of the gain or loss.

(3) In working out the average Australian asset percentage for the purposes of subsection (2), the investment management period is taken to be the period during the 12 months before the disposal during which the non-resident held the unit.

23 Paragraph 126(1)(c)

After "128F", insert "(to the extent it applies to non-residents who are not engaged in carrying on a business in Australia at or through a permanent establishment in Australia)".

24 After paragraph 128AE(2)(c)

Insert:

; or (d) a life insurance company registered under the *Life Insurance Act 1995*; or

(e) a company incorporated under the Corporations Law that provides funds management services on a commercial basis (other than solely to related persons):

(i) that is a registered company included in the category for money market corporations under the *Financial Corporations Act 1974*; or

(ii) all of the shares which are beneficially owned by a company covered by subparagraph (i); or

(iii) that holds a dealer's licence, or an investment adviser's licence, granted under Part 7.3 of the Corporations Law; or

(f) a company that the Treasurer determines, in writing, to be an OBU under subsection (2AA);

25 After subsection 128AE(2)

Insert:

(2AA) The Treasurer may, on written application by a company, make a written determination that the company is an OBU.

(2AB) The determination must:

(a) specify the day when the company commences to be an OBU; and

(b) contain any other information the Treasurer considers appropriate.

(2AC) A determination of the Treasurer under subsection (2AA) must be made in accordance with guidelines determined by the Treasurer under subsection (2AD).

(2AD) The Treasurer must determine written guidelines for the making of determinations under subsection (2AA). The guidelines may require the Treasurer to take into account:

(a) specified criteria; or

(b) recommendations of particular bodies; or

(c) any other factors.

(2AE) Determinations made under subsection (2AD) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

26 After paragraph 128B(3)(a)

Insert:

(aa) income derived by a non-resident that is an overseas charitable institution (within the meaning of section 121C) where the income is exempt under subsection 121ELA(1); and

27 Paragraphs 128F(1)(c) and (d)

Repeal the paragraphs.

Note: The heading to section 128F is altered by omitting "**debentures issued on overseas capital markets**" and substituting "**publicly offered debentures**".

28 Paragraph 128F(3)(c)

Omit "outside Australia".

29 Subsection 128F(5)

Repeal the subsection, substitute:

Issues that always fail the public offer test

(5) The issue of a debenture by a company does not ***satisfy the public offer test*** if, at the time of the issue, the company knew, or had reasonable grounds to suspect that the debenture, or an interest in the debenture, was being, or would later be, acquired either directly or indirectly by an associate of the company other than in the capacity of a dealer, manager or underwriter in relation to the placement of the debenture.

No exemption for central borrowing authorities

(5A) This section does not apply in relation to a debenture issued in Australia by a company that is covered by subsection (7) or is a central borrowing authority of a State or Territory. A central borrowing authority is a body established for the purpose of raising finance for the State or Territory. The following are examples of central borrowing authorities:

(a) the Tasmanian Public Finance Corporation;

(b) the Queensland Treasury Corporation;

(c) the South Australian Government Financing Authority;

(d) the Western Australian Treasury Corporation;
(e) the New South Wales Treasury Corporation;
(f) the Treasury Corporation of Victoria;
(g) the Northern Territory Treasury Corporation.

30 Paragraph 128F(8)(d)

Omit "and".

31 Subsection 128F(8)

Omit all of the words and paragraphs after paragraph (d), substitute:

then this section has effect as if the parent company had raised the finance and issued the debenture.

32 Subsection 128F(9)

Insert:

company includes a company in the capacity of trustee of a resident trust estate if:

(a) the trust is not established by a will, or instrument of trust, for public charitable purposes; and
(b) the only person who is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust is a company other than a company in the capacity of trustee.

33 Subsections 128GB(3) and (4)

Repeal the subsections.

34 After sub-subparagraph 159GZG(1)(d)(i)(B)

Insert:

(C) if all of the shares in the financial institution are beneficially owned, directly or indirectly, by a foreign bank that carries on a banking business through an Australian branch—proceeds of debentures issued by the financial institution that are covered by section 128F that are made available by the financial institution to the

Australian branch for use in its Australian business;

35 After subsection 262A(1A)

Insert:

(1AA) Subsection (1A) does not require an OBU to maintain a separate nostro account or vostro account for its OBU activities. Nostro accounts and vostro accounts are accounts held or maintained by the OBU for the sole purpose of settling international transactions.

Income Tax Assessment Act 1997

36 Section 11-15 (table item headed "foreign aspects of income taxation")

Before:

overseas employment income, resident, income of	**23AG**

insert:

OBU investment trusts for overseas charitable institutions	**121EL(2)**
overseas charitable institutions, income from OBUs	**121ELA(1)**

37 Section 118-1 (note)

Omit "section 121EL", substitute "sections 121EL, 121ELA and 121ELB".

Income Tax (Offshore Banking Units) (Withholding Tax Recoupment) Act 1988

38 Section 7

Omit "300%", substitute "75%".

39 Application

(1) Subject to this item, the amendments made by this Schedule apply in relation to transactions entered into after 2 July 1998.

(2) The amendment made by item 20 applies to foreign tax paid after 2 July 1998.

(3) Subsection 121ELA(2) and section 121ELB of the *Income Tax Assessment Act 1936* apply to disposals after 2 July 1998.

(4) The amendments made by items 24 and 25 apply to declarations made by the Treasurer after 2 July 1998.

(5) The amendments made by items 27 to 32 apply to debentures issued after 2 July 1998.

(6) The amendment made by item 33 applies to interest paid by an OBU after 2 July 1998.

(7) The amendment made by item 33 applies in relation to amounts lent to the Australian branch after 2 July 1998.

(8) The amendment made by item 35 applies to the year of income before the year of income in which 2 July 1998 occurs and to all later years of income.

(9) The amendment made by item 38 applies to penalties imposed after 2 July 1998.

Part 2—Foreign Investment Funds

Income Tax Assessment Act 1936

40 Paragraph 96A(1)(c)

After "applies", insert ", or but for Division 8 of Part XI would have applied,".

41 Subsection 96A(1A)

Omit "The amount", substitute "An amount, other than an amount relating to an interest in a FIF to which Division 8 of Part XI applies,".

42 After Division 7 of Part XI

Insert:

Division 8—Exemption for interests in certain US entities

512 Object of Division

The object of this Division is to exempt a taxpayer from taxation under this Part in respect of foreign investment fund income that would otherwise be taken to accrue from interests in certain entities that are subject to tax in the United States of America.

512A Division does not apply to interests in CFTs

This Division does not apply in relation to an interest in a CFT.

513 Exemptions

(1) The operative provision does not apply to a taxpayer in respect of an interest in:

(a) an entity that is treated as a corporation, and is subject to tax on its worldwide income, under the Internal Revenue Code of 1986 of the United States of America; or

(b) a company or trust that is treated as a regulated investment company, or a real estate investment trust, for the purposes of

the Internal Revenue Code of 1986 of the United States of America.

(2) The operative provision does not apply to a taxpayer in respect of an interest in one of the following entities if the conditions in subsection (3) or (4) are satisfied:

(a) an entity that is a limited partnership, or a limited liability company under a law of the United States of America or a law of a State of the United States of America;

(b) an entity that is treated as a common trust fund for the purposes of the Internal Revenue Code of 1986 of the United States of America.

(3) The condition in this subsection is that the taxpayer satisfies the Commissioner that:

(a) the interest that the taxpayer holds at the end of the entity's notional accounting period is held for the sole purpose of investing directly, or indirectly through one or more interposed entities, in:

(i) a business conducted in the United States of America; or

(ii) real property located in the United States of America; and

(b) the entity does not directly, or indirectly through one or more interposed entities (other than through an entity covered by paragraph (1)(a) or (b)):

(i) have an interest in income or gains derived from sources outside of the United States of America; or

(ii) hold an interest in a FIF that is not resident in the United States of America; or

(iii) hold real property that is not located in the United States of America.

(4) The condition in this subsection is that the taxpayer satisfies the Commissioner that:

(a) the interest that the taxpayer holds at the end of the entity's notional accounting period is held for the sole purpose of investing directly, or indirectly through one or more interposed entities, in:

(i) a business conducted in the United States of America; or

(ii) real property located in the United States of America; and

(b) throughout the entity's notional accounting period, the total value of:

(i) any interests that the entity has in income or gains derived from sources outside the United States of America; and

(ii) any interests that the entity has in FIFs that are not resident in the United States of America; and

(iii) any real property held by the entity that is not located in the United States of America;

being interests or real property that the entity has or holds directly, or indirectly through one or more interposed entities (other than through an entity covered by paragraph (1)(a) or (b)), does not exceed 5% of the total value of all interests held by the entity in other entities; and

(c) throughout the entity's notional accounting period, the value of assets held by the entity that:

(i) produce income from sources outside the United States of America; or

(ii) if disposed of would give rise to a gain from a source outside the United States of America;

do not exceed 5% of the total value of assets held by the entity.

(5) For the purposes of subsection (4), the value of FIF interests and the value of assets is to be determined using the accounting records of the entity.

43 Section 564

After "another FIF", insert "unless the FIF's interest in the other FIF is covered by Division 8".

44 At the end of section 564

Add:

(2) If the FIF's interest in the other FIF is covered by Division 8, the notional income of the FIF in respect of the relevant period does not include any dividend or distribution paid to the FIF by the other FIF to the extent of the grossed-up amount of a FIF attribution debit that arises in relation to the taxpayer as a result of the dividend or distribution.

45 Paragraph 575(2)(c)

Omit "2 to 15", substitute "2 to 7 and 9 to 15".

46 Application

(1) The amendment made by item 42 of this Schedule applies to notional accounting periods of FIFs ending on or after 2 July 1998.

(2) The other amendments made by this Part of this Schedule apply in relation to assessments for years of income ending on or after 2 July 1998.

Part 3—Controlled foreign companies

Income Tax Assessment Act 1936

47 After subsection 356(4)

Insert:

(4A) Shares in a company that is treated as a real estate investment trust for the purposes of the Internal Revenue Code 1986 of the United States of America are to be ignored for the purposes of the application of subsection (1) to the company (except in so far as that subsection has effect for the purposes of section 459) if the conditions in subsection (4B) or (4C) are satisfied.

(4B) The condition in this subsection is that the taxpayer who holds the shares satisfies the Commissioner that:

(a) the shares that the taxpayer holds at the end of the entity's statutory accounting period are held for the sole purpose of investing directly, or indirectly through one or more interposed entities, in:

(i) a business conducted in the United States of America; or

(ii) real property located in the United States of America; and

(b) the company does not directly, or indirectly through one or more interposed entities:

(i) have an interest in income or gains derived from sources outside the United States of America; or

(ii) hold an interest in a FIF that is not resident in the United States of America; or

(iii) hold real property that is not located in the United States of America.

(4C) The condition in this subsection is that the taxpayer who holds the shares satisfies the Commissioner that:

(a) the shares that the taxpayer holds at the end of the entity's statutory accounting period are held for the sole purpose of

investing directly, or indirectly through one or more interposed entities, in:

(i) a business conducted in the United States of America; or

(ii) real property located in the United States of America; and

(b) throughout the entity's statutory accounting period, the total value of:

(i) any interests that the company has in income or gains derived from sources outside the United States of America; and

(ii) any interests that the company has in FIFs that are not resident in the United States of America; and

(iii) any real property held by the company that is not located in the United States of America;

does not exceed 5% of the total value of all interests held by the company in other entities; and

(c) throughout the entity's statutory accounting period, the total value of assets held by the company that:

(i) produce income from sources outside the United States of America; or

(ii) if disposed of would give rise to a gain from a source outside the United States of America;

does not exceed 5% of the total value of all the assets held by the company.

(4D) For the purposes of subsection (4C), the value of interests and the value of assets is to be determined using the accounting records of the company.

48 Application

The amendment made by item 47 applies to statutory accounting periods of CFCs ending on or after 2 July 1998.

Schedule 2—Commercial debt forgiveness

Income Tax Assessment Act 1936

1 Subsection 160ZC(4E)

Omit "the immediately preceding year of income", substitute "an earlier year of income".

2 Subsection 245-105(6) in Schedule 2C

Omit "the year of income immediately preceding the forgiveness year of income", substitute "years of income before the forgiveness year of income".

3 Application of amendments

The amendments made by this Schedule apply in relation to debts forgiven after the day on which the Bill that became the *Taxation Laws Amendment Act (No. 2) 1999* was introduced into the House of Representatives.

Schedule 3—Depreciation of plant previously owned by an exempt entity

Part 1—Income Tax Assessment Act 1997

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

Add:

15	in relation to which Division 58 applies	the amount applicable under section 58-40, 58-95, 58-160 or 58-220, as the case may be

2 Paragraph 42-175(d)

Repeal the paragraph, substitute:

(d) if Common rule 1 applied to your acquisition of the plant and you acquired the plant from a *transition entity to which Subdivision 58-B applies—the sum of the amounts that are to be deducted under paragraphs 58-80(a), (b) and (c) in calculating the *notional written down value of the plant in relation to the transition entity or are to be deducted under paragraphs 58-145(5)(a) and (b) in calculating the *undeducted cost of the plant in relation to the transition entity, as the case may be; and

(e) if Common rule 1 applied to your acquisition of the plant—the sum of the amounts that would apply under paragraphs (a), (b), (c) and (d) to the transferor and earlier successive transferors.

(2) This section has effect subject to Subdivision 58-B in relation to *plant to which that Subdivision applies.

3 At the end of section 42-190

Add:

(4) The operation of subsection (2) is affected, in relation to certain *plant to which Division 58 applies, by subsections 58-85(7) and (8), 58-145(7) and (8), 58-215(2) and (3) and 58-270(2) and (3).

(5) If a *transition entity or a *tax exempt vendor had at any previous time been the owner or a *quasi-owner of the *plant and either of the following paragraphs applies:

(a) the transferor was the transition entity or the purchaser from the tax exempt vendor and Common rule 1 applied to your acquisition of the plant;

(b) the transferor was not the transition entity or the purchaser from the tax exempt vendor and Common rule 1 applied to:

(i) your acquisition of the plant; and

(ii) all earlier successive acquisitions of the plant by entities that acquired it from, or became the owners or quasi-owners of it after it was acquired from, the transition entity or the purchaser from the tax exempt vendor;

subsection (2) has effect in relation to the plant as if paragraph (a) of that subsection were omitted and replaced by whichever of the paragraphs mentioned in subsections 58-85(7) and (8), 58-145(7) and (8), 58-215(2) and (3) and 58-270(2) and (3) would have applied to the transition entity or the purchaser from the tax exempt vendor, as the case may be.

4 At the end of section 42-195

Add:

(4) The operation of subsection (3) is affected, in relation to certain *plant to which Division 58 applies, by subsections 58-85(5) and 58-145(4).

5 At the end of section 42-200

Add:

(2) The operation of subsection (1) is affected, in relation to certain *plant to which Division 58 applies, by subsection 58-85(6).

(3) If a *transition entity had at any previous time been the owner or *quasi-owner of the *plant and had made a choice under paragraph 58-20(1)(a) in relation to the plant and either of the following paragraphs applies:

(a) the transferor was the transition entity and Common rule 1 applied to your acquisition of the plant;

(b) the transferor was not the transition entity and Common rule 1 applied to your acquisition of the plant and all earlier successive acquisitions of the plant by entities that acquired it from, or became the owners or quasi-owners of it after it was acquired from, the transition entity;

the cost of the plant is taken to be its *notional written down value at the transition time plus the amounts of any capital expenditure on improving it incurred after that time.

6 Section 55-10 (link note)

Repeal the link note, substitute:

[The next Division is Division 58.]

7 At the end of Part 2-15

Add:

Division 58—Depreciation of plant previously owned by an exempt entity

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58-B	Plant of exempt entities that become taxable
58-C	Plant acquired from exempt entities in connection with the acquisition of a business

Guide to Division 58

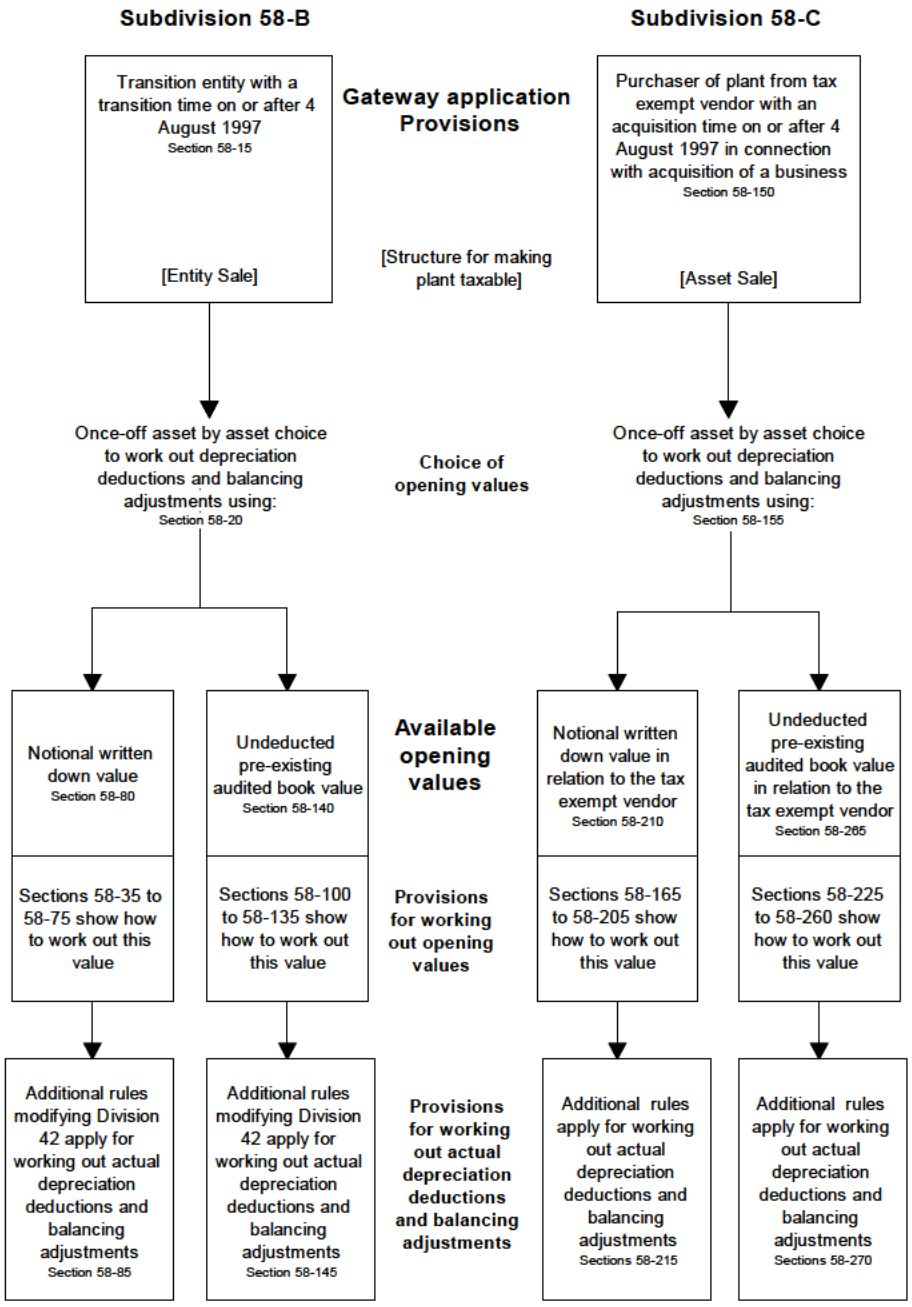
58-1 What this Division is about

This Division sets out special rules that apply in calculating depreciation deductions and balancing adjustments in respect of plant previously owned by an exempt entity if the plant:

- continues to be owned by that entity after the entity becomes taxable; or
- is acquired from that entity, in connection with the acquisition of a business, by a purchaser that is a taxable entity.

58-2 Diagram showing the operation of this Division

The following diagram shows the operation of this Division.


Subdivision 58-B
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Once-off asset by asset choice to work out depreciation deductions and balancing adjustments using:
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Sections 58-35 to 58-75 show how to work out this value
Sections 58-100 to 58-135 show how to work out this value
Provisions for working out opening values
Sections 58-165 to 58-205 show how to work out this value
Sections 58-225 to 58-260 show how to work out this value
Additional rules modifying Division 42 apply for working out actual depreciation deductions and balancing adjustments
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Additional rules modifying Division 42 apply for working out actual depreciation deductions and balancing adjustments
Section 58-145
Provisions for working out actual depreciation deductions and balancing adjustments
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Additional rules apply for working out actual depreciation deductions and balancing adjustments
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Subdivision 58-A—Application and interpretation

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58-5 Application of Division to quasi-owners of plant

This Division applies in relation to a unit of *plant of which an entity has been or is, or becomes, a *quasi-owner in the same way as it applies in relation to a unit of plant that has been or is owned by, or is acquired by, an entity.

58-10 Pre-existing audited book value of unit of plant

(1) If:

(a) a balance sheet, as at the end of an annual accounting period (the ***balance date***), that was prepared as part of an *exempt entity's final accounts for that period showed a unit of *plant (the ***unit***) as an asset of the exempt entity and specified a value for the unit; and

(b) a qualified independent auditor who was engaged, or was required by law, to undertake an audit of those accounts had prepared and signed, before 4 August 1997, a final audit report on those accounts; and

(c) the report did not state that the auditor was not satisfied that the specified value fairly represented the value of the unit;

the unit is taken to have had a ***pre-existing audited book value*** at the balance date of an amount equal to the specified value.

(2) If a balance sheet did not specify a value for the unit but specified a total value for 2 or more units of plant including the unit, the balance sheet is taken to have specified as the value of the unit so much of that total value as is reasonably attributable to the unit.

(3) The latest time at which a unit of *plant is taken to have had a *pre-existing audited book value is the ***test time*** in relation to the unit.

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58-15 Transition entities etc.

If:

(a) at a particular time on or after 4 August 1997, an entity is an *exempt entity; and

(b) immediately after that time, the entity's *ordinary income or *statutory income becomes to any extent assessable income;

then:

(c) the entity is a ***transition entity***; and

(d) the time when the entity's ordinary income or statutory income becomes to that extent assessable is the ***transition time***; and

(e) the income year in which the *transition time occurs is the ***transition year*** for the entity.

58-20 Choice by entity

(1) A *transition entity must, in relation to every unit of *plant (the ***unit***) that was owned by it at the *transition time, do either of the following:

(a) choose that depreciation deductions and balancing adjustments for periods after the transition time are to be calculated by reference to the *notional written down value of the unit;

(b) choose that depreciation deductions and balancing adjustments for periods after the transition time are to be calculated by reference to the *undeducted pre-existing audited book value (if any) of the unit.

(2) A choice under subsection (1) must be made:

(a) by the day on which the *transition entity lodges its *income tax return for the *transition year; or

(b) within a further period allowed by the Commissioner.

(3) A choice, once made, applies to *the transition year and all later income years.

(4) If the *transition entity makes a choice under paragraph (1)(a), sections 58-25 to 58-85 have effect in relation to the unit.

(5) If the *transition entity makes a choice under paragraph (1)(b), sections 58-90 to 58-145 have effect in relation to the unit.

Provisions applying where depreciation of the unit is calculated by reference to notional written down value

58-25 Exclusion of certain provisions

The following provisions do not apply in respect of the unit in relation to the *transition entity:

(a) Subdivision 57-I of the *Income Tax Assessment Act 1936*;

(b) Subdivision 57-K of that Act in so far as that Subdivision deals with depreciation balancing adjustments.

58-30 Undeducted cost of unit

(1) Section 42-175 has effect in relation to the unit as if that section provided that the *undeducted cost of the unit were the *notional written down value of the unit.

(2) Sections 58-35 to 58-75 have effect for the purpose of the calculation of that value under section 58-80.

58-35 Ownership of unit

(1) If the *transition entity was an *exempt Australian government agency immediately before the *transition time and had acquired the unit from another exempt Australian government agency:

(a) assume that the transition entity acquired it at the time when it was acquired or constructed by the other exempt Australian government agency; or

(b) if it had, before its acquisition by the transition entity, been successively owned by 2 or more exempt Australian government agencies—assume that the transition entity acquired it at the time when it was acquired or constructed by the first of those exempt Australian government agencies that owned it.

(2) To avoid doubt, if subsection (1) does not apply, the *transition entity is taken to have acquired the unit at the time when the transition entity acquired or constructed it.

58-40 Cost of unit to transition entity

(1) To avoid doubt, Subdivision 42-B applies for the purpose of determining the cost of the unit to the *transition entity.

(2) However, if the *transition entity was an *exempt Australian government agency immediately before the *transition time and had acquired the unit from another exempt Australian government agency:

(a) assume that its cost to the transition entity is the amount that was its cost to the other exempt Australian government agency; or

(b) if it had, before its acquisition by the transition entity, been successively owned by 2 or more exempt Australian government agencies, assume that its cost to the transition entity is the amount that was its cost to the first of those exempt Australian government agencies that owned it.

58-45 Effective life of unit

Assume that the *effective life of the unit is the period that would have been calculated to be its effective life:

(a) if subsection 58-35(1) applies—at the time when it is assumed under that subsection to have been acquired by the *transition entity; or

(b) if subsection 58-35(2) applies—at the time when it was acquired or constructed by the transition entity.

58-50 Choice or election to calculate assumed effective life

For the purpose of calculating the assumed *effective life of the unit under section 58-45:

(a) if the *transition entity would have been required to make a choice under subsection 42-100(1) at a particular time during the period for which the transition entity owned, or is

assumed to have owned, it—assume that the transition entity made a choice at that time under paragraph 42-100(1)(b) to adopt the effective life specified by the Commissioner; or

(b) if the transition entity could have made an election under subsection 54A(1) of the *Income Tax Assessment Act 1936* at a particular time during the period for which the transition entity owned, or is assumed to have owned, it—assume that the transition entity made the election at that time.

58-55 Use of unit for producing assessable income

Assume that the unit had, at all times during the period beginning when it was acquired or constructed, or is assumed to have been acquired, by the *transition entity and ending immediately before the *transition time, been used wholly for the purpose of producing assessable income by the transition entity, and assume that deductions for depreciation in respect of it had been allowed to the transition entity during that period.

58-60 Method of depreciation

Assume that the *method of depreciation selected by the *transition entity in relation to the unit for:

(a) the *transition year; or

(b) if the transition entity does not claim depreciation for the transition year—the first income year after the transition year in which the transition entity claims depreciation;

was also used by the transition entity in each income year before the transition year.

58-65 Application of certain provisions in calculating depreciation rates

In calculating the rate of depreciation in relation to the unit in each income year before the *transition year:

(a) if section 57AG of the *Income Tax Assessment Act 1936* as in force at any time before its repeal had applied in respect of that income year—that section is to be taken into account; and

(b) if subsection 55(6) of the *Income Tax Assessment Act 1936* as in force immediately before the commencement of section 7 of the *Taxation Laws Amendment Act (No. 2) 1992* had applied in respect of that income year—that subsection is to be taken into account; and

(c) if section 57AL of the *Income Tax Assessment Act 1936* as in force at any time before its repeal had applied in respect of that income year—that section is to be disregarded.

58-70 Choice of rate

(1) If the *transition entity could have made a choice under subsection 42-120(1) at a particular time (the ***relevant time***) during the period for which the transition entity owned, or is assumed to have owned, the unit, the transition entity may make the choice and, if the choice is made, it is taken to have been made at the relevant time.

(2) A *diminishing value rate chosen must not be less than the percentage worked out by using the formula:

$$\frac{1.5}{\text{Number of years in effective life}} \times 100$$

where:

number of years in effective life means the number of years in the assumed *effective life of the unit under section 58-45.

(3) A *prime cost rate chosen must not be less than two-thirds of the percentage that would be worked out under subsection (2) if a *diminishing value rate had been chosen.

58-75 Nomination or election of depreciation percentage

(1) If the *transition entity could have made a nomination or election under subsection 55(8) of the *Income Tax Assessment Act 1936* as in force at a particular time (the ***relevant time***) during the period for which the transition entity owned, or is assumed to have owned, the unit, the transition entity may make the nomination or election, as the case may be, and, if the nomination or election is made, it is taken to have been made at the relevant time.

(2) If the *transition entity makes a nomination under subsection 55(8) of the *Income Tax Assessment Act 1936* as in force immediately before the commencement of section 23 of the *Taxation Laws Amendment Act 1993*, the following paragraphs apply:

(a) the nomination applies to the income year for which it is taken to have been made and all later income years;

(b) a *diminishing value rate nominated must not be less than the percentage worked out by using the formula:

$$\frac{1.5}{\text{Number of years in effective life}} \times 100$$

where:

number of years in effective life means the number of years in the assumed *effective life of the unit under section 58-45;

(c) a *prime cost rate nominated must not be less than two-thirds of the percentage that would be worked out under paragraph (b) if a diminishing value rate had been nominated.

(3) If the *transition entity makes an election under subsection 55(8) of the *Income Tax Assessment Act 1936* as in force immediately before the commencement of section 7 of the *Taxation Laws Amendment Act (No. 2) 1992*, the election applies to the income year in which it is taken to have been made and all later income years.

58-80 Notional written down value

The ***notional written down value*** of the unit in relation to the *transition entity is the amount of its cost or assumed cost to the transition entity under section 58-40 less the sum of:

(a) the amounts in respect of which deductions for depreciation are assumed under section 58-55 to have been allowed to the transition entity in respect of it; and

Note: Sections 58-35 to 58-50, and sections 58-60 to 58-75, have effect for the purpose of determining the amounts referred to in paragraph (a).

(b) the amounts the transition entity has deducted or can deduct for depreciation of it; and

(c) any further amounts the transition entity could have deducted for depreciation of it for any period after the *transition time during which the transition entity was its owner and used it, or had it *installed ready for use, assuming that:

(i) the transition entity used it wholly for the purpose of producing assessable income during that period; and

(ii) the transition entity used the same rate of depreciation and the same method of depreciation during that period as the transition entity used for the income year in which a depreciation deduction was first allowable to the transition entity for it.

58-85 Calculation of depreciation deductions and balancing adjustments

(1) The rules otherwise applying in calculating depreciation deductions and balancing adjustments in respect of the unit have effect in relation to the *transition entity subject to this section and section 58-30.

(2) Sections 58-35 to 58-50 and sections 58-65 to 58-75 apply in the same way as they apply in calculating the deductions for depreciation assumed under section 58-55 to have been allowed to the *transition entity.

(3) The rate of depreciation is to be the same as the rate that was used in calculating the deduction for depreciation assumed under section 58-55 to have been allowed to the *transition entity in respect of the latest income year in the period referred to in that section.

(4) Subdivision 42-L, and sections 62AAB to 62AAV of the *Income Tax Assessment Act 1936*, do not apply in respect of the unit.

(5) Subsection 42-195(3) does not apply to any period in which the unit was used, or *installed ready for use, before the *transition time.

(6) For the purposes of section 42-200, the cost of the unit is taken to be its *notional written down value at the *transition time plus the

amounts of any capital expenditure on improving it incurred after that time.

(7) If a *balancing adjustment event occurred before the 1998-99 income year, subsection 42-190(2) has effect in relation to the unit as if paragraph (a) of that subsection were omitted and replaced by the following paragraph:

(a) the amount by which the higher of:

(i) the cost base of the *plant for the purposes of Part IIIA of the *Income Tax Assessment Act 1936*, less any amounts included in that cost base as a result of expenditure incurred after the *transition time that were not, immediately before the balancing adjustment event occurred, included in the cost of the plant to you for the purposes of Division 42; or

(ii) the *notional written down value of the plant at the transition time plus the amounts of any capital expenditure on improving it incurred after that time;

exceeds its *written down value; and

(8) If a *balancing adjustment event occurred in a later income year, subsection 42-190(2) has effect in relation to the unit as if paragraph (a) of that subsection were omitted and replaced by the following paragraph:

(a) the amount by which the higher of:

(i) the cost base (without indexation) of the *plant for the purposes of Parts 3-1 and 3-3, less any amounts included in that cost base as a result of expenditure incurred after the *transition time that were not, immediately before the balancing adjustment event occurred, included in the cost of the plant to you for the purposes of Division 42; or

(ii) the *notional written down value of the plant at the transition time plus the amounts of any capital expenditure on improving it incurred after that time;

exceeds its *written down value; and

Provisions applying where depreciation of the unit is calculated by reference to undeducted pre-existing audited book value

58-90 Exclusion of certain provisions

The following provisions do not apply in respect of the unit in relation to the *transition entity:

(a) Subdivision 57-I of the *Income Tax Assessment Act 1936*;

(b) Subdivision 57-K of that Act in so far as that Subdivision deals with depreciation balancing adjustments.

58-95 Cost of unit to transition entity

(1) The cost of the unit to the *transition entity is taken to be the *undeducted pre-existing audited book value of the unit.

(2) Sections 58-100 to 58-135 have effect for the purpose of the calculation of that value under section 58-140.

58-100 Ownership of unit

(1) If the *transition entity was an *exempt Australian government agency immediately before the *transition time and had acquired the unit from another exempt Australian government agency:

(a) assume that the transition entity acquired it at the time when it was acquired or constructed by the other exempt Australian government agency; or

(b) if it had, before its acquisition by the transition entity, been successively owned by 2 or more exempt Australian government agencies—assume that the transition entity acquired it at the time when it was acquired or constructed by the first of those exempt Australian government agencies that owned it.

(2) To avoid doubt, if subsection (1) does not apply, the *transition entity is taken to have acquired the unit at the time when the transition entity acquired or constructed it.

58-105 Assumed cost of unit to transition entity for purpose of calculating undeducted pre-existing audited book value

Assume that the cost of the unit to the *transition entity is the sum of:

(a) its *pre-existing audited book value at the test time; and

(b) the amounts of any capital expenditure on improving it incurred by the transition entity, or by an earlier owner that was an *exempt Australian government agency, during the period beginning immediately after the test time and ending immediately before the *transition time.

58-110 Effective life of unit

Assume that the *effective life of the unit is the period that would have been calculated to be its effective life:

(a) if subsection 58-100(1) applies—at the time when it is assumed under that subsection to have been acquired by the *transition entity; or

(b) if subsection 58-100(2) applies—at the time when it was acquired or constructed by the transition entity.

58-115 Election to calculate assumed effective life

For the purpose of calculating the assumed *effective life of the unit under section 58-110, if the *transition entity could have made an election under subsection 54A(1) of the *Income Tax Assessment Act 1936* at a particular time during the period for which the transition entity owned, or is assumed to have owned, it, assume that the transition entity made the election at that time.

58-120 Use of unit for producing assessable income

Assume that the unit had, at all times during the period beginning at the test time and ending immediately before the *transition time, been used wholly for the purpose of producing assessable income by the *transition entity, and assume that deductions for depreciation in respect of it had been allowed to the transition entity during that period.

58-125 Method of depreciation

Assume that the *method of depreciation selected by the *transition entity in relation to the unit for:

(a) the *transition year; or

(b) if the transition entity does not claim depreciation for the transition year—the first income year after the transition year in which the transition entity claims depreciation;

was also used by the transition entity for each income year in the period referred to in section 58-120.

58-130 Application of certain provisions in calculating depreciation rates

In calculating the rate of depreciation in relation to the unit in each income year in the period referred to in section 58-120:

(a) if section 57AG of the *Income Tax Assessment Act 1936* as in force at any time before its repeal had applied in respect of that income year—that section is to be taken into account; and

(b) if subsection 55(6) of the *Income Tax Assessment Act 1936* as in force immediately before the commencement of section 7 of the *Taxation Laws Amendment Act (No. 2) 1992* had applied in respect of that income year—that subsection is to be taken into account; and

(c) if section 57AL of the *Income Tax Assessment Act 1936* as in force at any time before its repeal had applied in respect of that income year—that section is to be disregarded.

58-135 Nomination or election of depreciation percentage

(1) If the *transition entity could have made a nomination or election under subsection 55(8) of the *Income Tax Assessment Act 1936* as in force at a particular time (the ***relevant time***) during the period referred to in section 58-120, the transition entity may make the nomination or election, as the case may be, and, if the nomination or election is made, it is taken to have been made at the relevant time.

(2) If the *transition entity makes a nomination under subsection 55(8) of the *Income Tax Assessment Act 1936* as in force immediately before the commencement of section 23 of the *Taxation Laws Amendment Act 1993*, the following paragraphs apply:

(a) the nomination applies to the income year in which it is taken to have been made and all later income years;

(b) a *diminishing value rate nominated must not be less than the percentage worked out by using the formula:

$$\frac{1.5}{\text{Number of years in effective life}} \times 100$$

where:

number of years in effective life means the number of years in the assumed *effective life of the unit under section 58-110;

(c) a *prime cost rate nominated must not be less than two-thirds of the percentage that would be worked out under paragraph (b) if a diminishing value rate had been nominated.

(3) If the *transition entity makes an election under subsection 55(8) of the *Income Tax Assessment Act 1936* as in force immediately before the commencement of section 7 of the *Taxation Laws Amendment Act (No. 2) 1992*, the election applies to the income year in which it is taken to have been made and all later income years.

58-140 Undeducted pre-existing audited book value

The ***undeducted pre-existing audited book value*** of the unit in relation to the *transition entity is:

(a) if the test time in relation to the unit is less than one year before the *transition time—the amount of its assumed cost under section 58-105; or

(b) if the test time in relation to the unit is one year or more before the transition time—the amount of its assumed cost under section 58-105 less any amounts in respect of which deductions for depreciation are assumed under section 58-120 to have been allowed to the transition entity in respect of it.

Note: Sections 58-100 to 58-135 have effect for the purpose of determining the amounts referred to in paragraph (b).

58-145 Calculation of depreciation deductions and balancing adjustments

(1) The rules otherwise applying in calculating depreciation deductions and balancing adjustments in respect of the unit have effect in relation to the *transition entity subject to this section and section 58-95.

(2) Sections 58-100, 58-110 and 58-115 apply in the same way as they apply in calculating the *undeducted pre-existing audited book value of the unit.

(3) Subdivision 42-L, and sections 62AAB to 62AAV of the *Income Tax Assessment Act 1936*, do not apply in respect of the unit.

(4) Subsection 42-195(3) does not apply to any period in which the unit was used, or *installed ready for use, before the *transition time.

(5) Section 42-175 has effect in relation to the unit as if that section provided that the *undeducted cost of the unit were the *undeducted pre-existing audited book value of the unit less the sum of:

(a) the amounts the *transition entity has deducted or can deduct for depreciation of it; and

(b) any further amounts the transition entity could have deducted for depreciation of it for any period after the *transition time during which the transition entity was its owner and used it, or had it *installed ready for use, assuming that:

(i) the transition entity used it wholly for the purpose of producing assessable income during that period; and

(ii) the transition entity used the same rate of depreciation and method of depreciation during that period as the transition entity used for the income year in which a depreciation deduction was first allowable to the transition entity for it.

(6) If the test time in relation to the unit is one year or more before the *transition time, the rate of depreciation is to be the same as the rate that was used in calculating the deduction for depreciation assumed under section 58-120 to have been allowed to the *transition entity in respect of the latest income year in the period referred to in that section.

(7) If a *balancing adjustment event occurred before the 1998-99 income year, subsection 42-190(2) has effect in relation to the unit as if paragraph (a) of that subsection were omitted and replaced by the following paragraph:

(a) the amount by which the higher of:

(i) the cost base of the *plant for the purposes of Part IIIA of the *Income Tax Assessment Act 1936*, less any amounts included in that cost base as a result of expenditure incurred after the *transition time that were not, immediately before the balancing adjustment event occurred, included in the cost of the plant to you for the purposes of Division 42; or

(ii) the cost of the plant to you;

exceeds its *written down value; and

(8) If a *balancing adjustment event occurred in a later income year, subsection 42-190(2) has effect in relation to the unit as if paragraph (a) of that subsection were omitted and replaced by the following paragraph:

(a) the amount by which the higher of:

(i) the cost base (without indexation) of the *plant for the purposes of Parts 3-1 and 3-3, less any amounts included in that cost base as a result of expenditure incurred after the *transition time that were not, immediately before the balancing adjustment event occurred, included in the cost of the plant to you for the purposes of Division 42; or

(ii) the cost of the plant to you;

exceeds its *written down value; and

Subdivision 58-C—Plant acquired from exempt entities in connection with the acquisition of a business

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58-150 Purchase of unit of plant from tax exempt vendor in connection with acquisition of business

(1) If:

(a) at a particular time on or after 4 August 1997, an entity whose *ordinary income or *statutory income is to any extent assessable acquires a unit of *plant from an *exempt entity; and

(b) the unit of plant is acquired in connection with the acquisition of a *business from the exempt entity;

then:

(c) the exempt entity is the ***tax exempt vendor***; and

(d) the time when the unit of plant is acquired is the ***acquisition time***; and

(e) the income year in which the *acquisition time occurs is the ***acquisition year***; and

(f) the entity that acquired the unit of plant is the ***purchaser***; and

(g) the unit of plant is the ***unit***.

(2) The unit is taken to be acquired in connection with the acquisition of a *business from the *exempt entity if:

(a) the unit was used by the exempt entity in carrying on a business and the purchaser or another person uses the unit in carrying on the business; or

(b) both of the following subparagraphs apply:

(i) the unit was used by the exempt entity in performing functions, or engaging in activities, that did not constitute the carrying on of a business by the exempt entity;

(ii) the unit is used by the purchaser or another person in performing those functions or engaging in those activities as part of carrying on a business; or

(c) all of the following subparagraphs apply:

(i) the acquisition by the purchaser of the unit was connected with the acquisition of another asset by the purchaser or another person from the exempt entity or from an *associate of the exempt entity;

(ii) ownership of the other asset gives the purchaser or other person a right, or imposes on the purchaser or other person an obligation, to perform functions or engage in activities as part of the carrying on of a business or confers on the purchaser or other person a commercial advantage or opportunity in connection with performing functions or engaging in activities as part of the carrying on of a business;

(iii) the unit is used by the purchaser or other person in performing those functions or engaging in those activities pursuant to the right or obligation or in taking the benefit of the advantage or opportunity, as the case may be; or

(d) the unit was acquired by the purchaser under an arrangement under which the purchaser or another person acquired another asset from the exempt entity or from an associate of the exempt entity and:

(i) the other asset is taken by paragraph (a), (b) or (c); or

(ii) where the other asset is not a unit of plant, it would, if it were a unit of plant, be taken by paragraph (a), (b) or (c);

to be acquired in connection with the acquisition of a business from the exempt entity.

(3) Paragraphs (2)(b), (c) and (d) do not apply if the unit is used by the purchaser solely to derive assessable income from the provision of office or residential accommodation.

58-155 Choice by purchaser

(1) The purchaser must, in relation to the unit, do either of the following:

(a) choose that depreciation deductions and balancing adjustments are to be calculated by reference to the *notional written down value of the unit;

(b) choose that depreciation deductions and balancing adjustments are to be calculated by reference to the *undeducted pre-existing audited book value (if any) of the unit.

(2) A choice under subsection (1) must be made:

(a) by the day on which the purchaser lodges the purchaser's *income tax return for the *acquisition year; or

(b) within a further period allowed by the Commissioner.

(3) A choice, once made, applies to the *acquisition year and all later income years.

(4) If the purchaser makes a choice under paragraph (1)(a), sections 58-160 to 58-215 have effect in relation to the unit.

(5) If the purchaser makes a choice under paragraph (1)(b), sections 58-220 to 58-270 have effect in relation to the unit.

Provisions applying where depreciation of the unit is calculated by reference to notional written down value

58-160 Cost of unit to purchaser

(1) The ***cost*** of the unit to the purchaser is taken to be the amount that is the sum of:

(a) the *notional written down value of the unit in relation to the *tax exempt vendor; and

(b) the amount of any incidental costs to the purchaser in respect of the acquisition of the unit.

(2) Sections 58-165 to 58-205 have effect for the purpose of the calculation under section 58-210 of the *notional written down value referred to in paragraph (1)(a).

58-165 Ownership of unit

(1) If the *tax exempt vendor was an *exempt Australian government agency immediately before the *acquisition time and had acquired the unit from another exempt Australian government agency:

(a) assume that the tax exempt vendor acquired it at the time when it was acquired or constructed by the other exempt Australian government agency; or

(b) if it had, before its acquisition by the tax exempt vendor, been successively owned by 2 or more exempt Australian

government agencies—assume that the tax exempt vendor acquired it at the time when it was acquired or constructed by the first of those exempt Australian government agencies that owned it.

(2) To avoid doubt, if subsection (1) does not apply, the *tax exempt vendor is taken to have acquired the unit at the time when the tax exempt vendor acquired or constructed it.

58-170 Cost of unit to tax exempt vendor

(1) To avoid doubt, Subdivision 42-B applies for the purpose of determining the cost of the unit to the *tax exempt vendor.

(2) However, if the *tax exempt vendor was an *exempt Australian government agency immediately before the *acquisition time and had acquired the unit from another exempt Australian government agency:

(a) assume that its cost to the tax exempt vendor is the amount that was its cost to the other exempt Australian government agency; or

(b) if the unit had, before its acquisition by the tax exempt vendor, been successively owned by 2 or more exempt Australian government agencies, assume that its cost to the tax exempt vendor is the amount that was its cost to the first of those exempt Australian government agencies that owned it.

58-175 Effective life of unit

Assume that the *effective life of the unit is the period that would have been calculated to be its *effective life:

(a) if subsection 58-165(1) applies—at the time when it is assumed under that subsection to have been acquired by the *tax exempt vendor; or

(b) if subsection 58-165(2) applies—at the time when it was acquired or constructed by the tax exempt vendor.

58-180 Choice or election to calculate assumed effective life

For the purpose of calculating the assumed *effective life of the unit under section 58-175:

(a) if the *tax exempt vendor would have been required to make a choice under subsection 42-100(1) at a particular time during the period for which the tax exempt vendor owned, or is assumed to have owned, it—assume that the tax exempt vendor made a choice at that time under paragraph 42-100(1)(b) to adopt the effective life specified by the Commissioner; or

(b) if the tax exempt vendor could have made an election under subsection 54A(1) of the *Income Tax Assessment Act 1936* at a particular time during the period for which the tax exempt vendor owned, or is assumed to have owned, it—assume that the tax exempt vendor made the election at that time.

58-185 Use of unit for producing assessable income

Assume that the unit had, at all times during the period beginning when it was acquired or constructed, or is assumed to have been acquired, by the *tax exempt vendor and ending immediately before the *acquisition time, been used wholly for the purpose of producing assessable income by the tax exempt vendor, and assume that deductions for depreciation in respect of it had been allowed to the tax exempt vendor during that period.

58-190 Method of depreciation

(1) Assume that the *tax exempt vendor could have selected a *method of depreciation to use in relation to the unit for the income years included in the period referred to in section 58-185.

(2) The purchaser must make the selection that the *tax exempt vendor could have made.

(3) Assume that the *method of depreciation selected was used by the *tax exempt vendor for each of the income years referred to in subsection (1).

58-195 Application of certain provisions in calculating depreciation rates

In calculating the rate of depreciation in relation to the unit in each income year included in the period referred to in section 58-185:

(a) if section 57AG of the *Income Tax Assessment Act 1936* as in force at any time before its repeal had applied in respect of that income year—that section is to be taken into account; and

(b) if subsection 55(6) of the *Income Tax Assessment Act 1936* as in force immediately before the commencement of section 7 of the *Taxation Laws Amendment Act (No. 2) 1992* had applied in respect of that income year—that subsection is to be taken into account; and

(c) if section 57AL of the *Income Tax Assessment Act 1936* as in force at any time before its repeal had applied in respect of that income year—that section is to be disregarded.

58-200 Choice of rate

(1) If the *tax exempt vendor could have made a choice under subsection 42-120(1) at a particular time (the ***relevant time***) during the period referred to in section 58-185, the purchaser may make the choice and, if the choice is made, it is taken to have been made by the tax exempt vendor at the relevant time.

(2) A *diminishing value rate chosen must not be less than the percentage worked out by using the formula:

$$\frac{1.5}{\text{Number of years in effective life}} \times 100$$

where:

number of years in effective life means the number of years in the assumed *effective life of the unit under section 58-175.

(3) A *prime cost rate chosen must not be less than two-thirds of the percentage that would be worked out under subsection (2) if a *diminishing value rate had been chosen.

58-205 Nomination or election of depreciation percentage

(1) If the *tax exempt vendor could have made a nomination or election under subsection 55(8) of the *Income Tax Assessment Act 1936* as in force at a particular time (the ***relevant time***) during the period referred to in section 58-185, the purchaser may make the nomination or election, as the case may be, and, if the nomination or election is made, it is taken to have been made by the tax exempt vendor at the relevant time.

(2) If the purchaser makes a nomination under subsection 55(8) of the *Income Tax Assessment Act 1936* as in force immediately before the commencement of section 23 of the *Taxation Laws Amendment Act 1993*, the following paragraphs apply:

(a) the nomination applies to the income year in which it is taken to have been made and all later income years in the period referred to in section 58-185;

(b) a *diminishing value rate nominated must not be less than the percentage worked out by using the formula:

$$\frac{1.5}{\text{Number of years in effective life}} \times 100$$

where:

number of years in effective life means the number of years in the assumed *effective life of the unit under section 58-175;

(c) a *prime cost rate nominated must not be less than two-thirds of the percentage that would be worked out under paragraph (b) if a diminishing value rate had been nominated.

(3) If the purchaser makes an election under subsection 55(8) of the *Income Tax Assessment Act 1936* as in force immediately before the commencement of section 7 of the *Taxation Laws Amendment Act (No. 2) 1992*, the election applies to the income year in which it is taken to have been made and all later income years in the period referred to in section 58-185.

58-210 Notional written down value

The ***notional written down value*** of the unit in relation to the *tax exempt vendor is the amount of its cost or assumed cost to the tax exempt vendor under section 58-170 less the sum of the amounts in respect of which deductions for depreciation are assumed under section 58-185 to have been allowed to the tax exempt vendor in respect of it.

Note: Sections 58-165 to 58-180, and sections 58-190 to 58-205, have effect for the purpose of determining the amounts referred to in this section.

58-215 Calculation of depreciation deductions and balancing adjustments

(1) The rules otherwise applying to the purchaser in the calculation of depreciation deductions and balancing adjustments in respect of the unit have effect in relation to the purchaser subject to this section and section 58-160.

(2) If a *balancing adjustment event occurred before the 1998-99 income year, subsection 42-190(2) has effect in relation to the unit as if paragraph (a) of that subsection were omitted and replaced by the following paragraph:

(a) the amount by which the higher of:

(i) the cost base of the *plant for the purposes of Part IIIA of the *Income Tax Assessment Act 1936*, less any amounts included in that cost base as a result of expenditure incurred after the *acquisition time that were not, immediately before the balancing adjustment event occurred, included in the cost of the plant to you for the purposes of Division 42; or

(ii) the cost of the plant to you;

exceeds its *written down value; and

(3) If a *balancing adjustment event occurred in a later income year, subsection 42-190(2) has effect in relation to the unit as if paragraph (a) of that subsection were omitted and replaced by the following paragraph:

(a) the amount by which the higher of:

(i) the cost base (without indexation) of the *plant for the purposes of Parts 3-1 and 3-3, less any amounts included in that cost base as a result of expenditure incurred after the *acquisition time that were not, immediately before the balancing adjustment event occurred, included in the cost of the plant to you for the purposes of Division 42; or

(ii) the cost of the plant to you;

exceeds its *written down value; and

Provisions applying where depreciation of the unit is calculated by reference to undeducted pre-existing audited book value

58-220 Cost of unit to purchaser

(1) The ***cost*** of the unit to the purchaser is taken to be the amount that is the sum of:

(a) the *undeducted pre-existing audited book value of the unit in relation to the *tax exempt vendor; and

(b) the amount of any incidental costs to the purchaser in respect of the acquisition of the unit.

(2) Sections 58-225 to 58-260 have effect for the purpose of the calculation under section 58-265 of the *undeducted pre-existing audited book value referred to in paragraph (1)(a).

58-225 Ownership of unit

(1) If the *tax exempt vendor was an *exempt Australian government agency immediately before the *acquisition time and had acquired the unit from another exempt Australian government agency:

(a) assume that the tax exempt vendor acquired it at the time when it was acquired or constructed by the other exempt Australian government agency; or

(b) if it had, before its acquisition by the tax exempt vendor, been successively owned by 2 or more exempt Australian government agencies—assume that the tax exempt vendor acquired it at the time when it was acquired or constructed by

the first of those exempt Australian government agencies that owned it.

(2) To avoid doubt, if subsection (1) does not apply, the *tax exempt vendor is taken to have acquired the unit at the time when the tax exempt vendor acquired or constructed it.

58-230 Assumed cost of unit to tax exempt vendor for purpose of calculating undeducted pre-existing audited book value

Assume that the cost of the unit to the *tax exempt vendor is the sum of:

(a) its *pre-existing audited book value at the test time; and

(b) the amounts of any capital expenditure on improving it incurred by the tax exempt vendor, or by an earlier owner that was an *exempt Australian government agency, during the period beginning immediately after the test time and ending immediately before the *acquisition time.

58-235 Effective life of unit

Assume that the *effective life of the unit is the period that would have been calculated to be its effective life:

(a) if subsection 58-225(1) applies—at the time when it is assumed under that subsection to have been acquired by the *tax exempt vendor; or

(b) if subsection 58-225(2) applies—at the time when it was acquired or constructed by the tax exempt vendor.

58-240 Election to calculate assumed effective life

For the purpose of calculating the assumed *effective life of the unit under section 58-235, if the *tax exempt vendor could have made an election under subsection 54A(1) of the *Income Tax Assessment Act 1936* at a particular time during the period for which the tax exempt vendor owned, or is assumed to have owned, it, assume that the tax exempt vendor made the election at that time.

58-245 Use of unit for producing assessable income

Assume that the unit had, at all times during the period beginning at the test time and ending immediately before the *acquisition time, been used wholly for the purpose of producing assessable income by the *tax exempt vendor, and assume that deductions for depreciation in respect of it had been allowed to the tax exempt vendor during that period.

58-250 Method of depreciation

(1) Assume that the *tax exempt vendor could have selected a *method of depreciation to use in relation to the unit for the income years included in the period referred to in section 58-245.

(2) The purchaser must make the selection that the *tax exempt vendor could have made.

(3) Assume that the *method of depreciation selected was used by the *tax exempt vendor for each of the income years referred to in subsection (1).

58-255 Application of certain provisions in calculating depreciation rates

In calculating the rate of depreciation in relation to the unit in each income year included in the period referred to in section 58-245:

(a) if section 57AG of the *Income Tax Assessment Act 1936* as in force at any time before its repeal had applied in respect of that income year—that section is to be taken into account; and

(b) if subsection 55(6) of the *Income Tax Assessment Act 1936* as in force immediately before the commencement of section 7 of the *Taxation Laws Amendment Act (No. 2) 1992* had applied in respect of that income year—that subsection is to be taken into account; and

(c) if section 57AL of the *Income Tax Assessment Act 1936* as in force at any time before its repeal had applied in respect of that income year—that section is to be disregarded.

58-260 Nomination or election of depreciation percentage

(1) If the *tax exempt vendor could have made a nomination or election under subsection 55(8) of the *Income Tax Assessment Act 1936* as in force at a particular time (the ***relevant time***) during the period referred to in section 58-245, the purchaser may make the nomination or election, as the case may be, and, if the nomination or election is made, it is taken to have been made by the tax exempt vendor at the relevant time.

(2) If the purchaser makes a nomination under subsection 55(8) of the *Income Tax Assessment Act 1936* as in force immediately before the commencement of section 23 of the *Taxation Laws Amendment Act 1993*, the following paragraphs apply:

(a) the nomination applies to the income year in which it is taken to have been made and all later income years in the period referred to in section 58-245;

(b) a *diminishing value rate nominated must not be less than the percentage worked out by using the formula:

$$\frac{1.5}{\text{Number of years in effective life}} \times 100$$

where:

number of years in effective life means the number of years in the assumed *effective life of the unit under section 58-235;

(c) a *prime cost rate nominated must not be less than two-thirds of the percentage that would be worked out under paragraph (b) if a diminishing value rate had been nominated.

(3) If the purchaser makes an election under subsection 55(8) of the *Income Tax Assessment Act 1936* as in force immediately before the commencement of section 7 of the *Taxation Laws Amendment Act (No. 2) 1992*, the election applies to the income year in which it is taken to have been made and all later income years in the period referred to in section 58-245.

58-265 Undeducted pre-existing audited book value

The ***undeducted pre-existing audited book value*** of the unit in relation to the *tax exempt vendor is:

(a) if the test time in relation to the unit is less than one year before the *acquisition time—the amount of its assumed cost to the tax exempt vendor under section 58-230; or

(b) if the test time in relation to the unit is one year or more before the acquisition time—the amount of its assumed cost to the tax exempt vendor under section 58-230 less any amounts in respect of which deductions for depreciation are assumed under section 58-245 to have been allowed to the tax exempt vendor in respect of it.

Note: Sections 58-225 to 58-260 have effect for the purpose of determining the amounts referred to in paragraph (b).

58-270 Calculation of depreciation deductions and balancing adjustments

(1) The rules otherwise applying to the purchaser in the calculation of depreciation deductions and balancing adjustments in respect of the unit have effect in relation to the purchaser subject to this section and section 58-220.

(2) If a *balancing adjustment event occurred in the 1998-99 income year, subsection 42-190(2) has effect in relation to the unit as if paragraph (a) of that subsection were omitted and replaced by the following paragraph:

(a) the amount by which the higher of:

(i) the cost base of the *plant for the purposes of Part IIIA of the *Income Tax Assessment Act 1936*, less any amounts included in that cost base as a result of expenditure incurred after the *acquisition time that were not, immediately before the balancing adjustment event occurred, included in the cost of the plant to you for the purposes of Division 42; or

(ii) the cost of the plant to you;

exceeds its *written down value; and

(3) If a *balancing adjustment event occurred in a later income year, subsection 42-190(2) has effect in relation to the unit as if paragraph (a) of that subsection were omitted and replaced by the following paragraph:

(a) the amount by which the higher of:

(i) the cost base (without indexation) of the *plant for the purposes of Parts 3-1 and 3-3, less any amounts included in that cost base as a result of expenditure incurred after the *acquisition time that were not, immediately before the balancing adjustment event occurred, included in the cost of the plant to you for the purposes of Division 42; or

(ii) the cost of the plant to you;

exceeds its *written down value; and

[The next Part is Part 2-20.]

8 Paragraph 110-55(3)(a)

Repeal the paragraph, substitute:

(a) any amounts worked out under whichever of the following subparagraphs applies:

(i) if Division 58 does not apply to the asset—any amount included in your assessable income for any income year because of a balancing adjustment for the asset;

(ii) if Division 58 applies to the asset and an amount has been included in your assessable income for an income year because of a balancing adjustment for the asset—any part of that amount that was attributable to amounts you have deducted or can deduct for depreciation of the asset; and

9 At the end of subsection 110-55(5)

Add ", 58-80(c) or 58-145(5)(b)".

10 Paragraph 110-60(1)(a)

Repeal the paragraph, substitute:

(a) any amounts worked out under whichever of the following subparagraphs applies:

(i) if Division 58 does not apply to the asset—any amount included in the assessable income of the partnership for any income year because of a balancing adjustment for the asset;

(ii) if Division 58 applies to the asset and an amount has been included in the assessable income of the partnership for an income year because of a balancing adjustment for the asset—any part of that amount that was attributable to amounts that the partnership has deducted or can deduct for depreciation of the asset; and

11 At the end of subsection 110-60(3)

Add ", 58-80(c) or 58-145(5)(b)".

12 At the end of section 330-375

Add:

(4) ***Transport capital expenditure*** also does not include expenditure on *plant to which Subdivision 58-B or 58-C applies.

(5) ***Transport capital expenditure*** also does not include expenditure on *plant if:

(a) at any time a *transition entity or a purchaser from a *tax exempt vendor had been the owner or a *quasi-owner of the plant; and

(b) Subdivision 58-B or 58-C had applied to the plant at that time; and

(c) either of the following subparagraphs applies:

(i) the transferor was the transition entity or the purchaser from the tax exempt vendor and Common rule 1 applied to your acquisition of the plant;

(ii) the transferor was not the transition entity or the purchaser from the tax exempt vendor and Common rule 1 applied to your acquisition of the plant and all earlier successive acquisitions of the plant by entities that acquired it from, or became the owners or

quasi-owners of it after it was acquired from, the transition entity or the purchaser from the tax exempt vendor.

13 Subsection 995-1(1)

Insert:

acquisition time has the meaning given by section 58-150.

14 Subsection 995-1(1)

Insert:

acquisition year has the meaning given by section 58-150.

15 Subsection 995-1(1) (definition of exempt entity)

Repeal the definition, substitute:

exempt entity means:

(a) in Division 58:

(i) an exempt Australian government agency; or

(ii) any other entity whose *ordinary income and *statutory income are exempt from income tax; or

(b) otherwise:

(i) an entity whose *ordinary income and *statutory income are exempt from income tax because of Division 50; or

(ii) an entity whose *ordinary income and *statutory income are exempt from income tax because of any *Commonwealth law other than this Act.

16 Subsection 995-1(1)

Insert:

method of depreciation means the way of working out the depreciation allowable under this Act in respect of plant set out in section 42-160 or 42-165.

17 Subsection 995-1(1) (definition of notional written down value)

Repeal the definition, substitute:

notional written down value of a unit of *plant:

(a) in relation to a *transition entity—has the meaning given by section 58-80; or

(b) in relation to a *tax exempt vendor—has the meaning given by section 58-210; or

(c) otherwise—has the meaning given by section 42-260.

18 Subsection 995-1(1)

Insert:

pre-existing audited book value of a unit of *plant has the meaning given by subsection 58-10(1).

19 Subsection 995-1(1)

Insert:

tax exempt vendor has the meaning given by section 58-150.

20 Subsection 995-1(1) (definition of test time)

After "sections", insert "58-10,".

21 Subsection 995-1(1)

Insert:

transition entity has the meaning given by section 58-15.

22 Subsection 995-1(1)

Insert:

transition time has the meaning given by section 58-15.

23 Subsection 995-1(1)

Insert:

transition year has the meaning given by section 58-15.

24 Subsection 995-1(1)

Insert:

undeducted pre-existing audited book value of a unit of *plant:

(a) in relation to a *transition entity—has the meaning given by section 58-140; and

(b) in relation to a *tax exempt vendor—has the meaning given by section 58-265.

Part 2—Income Tax (Transitional Provisions) Act 1997

25 At the end of section 42-175

Add:

Note: The provisions of section 42-175 of the 1997 Act are replaced by other provisions in relation to a *transition entity in respect of *plant of which the entity is the owner or a *quasi-owner. Section 42-175 of this Act therefore does not have any effect in respect of such plant.

Part 3—Income Tax Assessment Act 1936

26 Paragraph 160ZA(4)(b)

After "subsection (4A)", insert "or an amount or amounts included because of subsection 42-190(2) of the *Income Tax Assessment Act 1997* as affected as mentioned in subsection 42-190(4) or (5) of that Act".

27 Paragraph 160ZA(5)(c)

After "subsection (5A)", insert "or an amount or amounts included because of subsection 42-190(2) of the *Income Tax Assessment Act 1997* as affected as mentioned in subsection 42-190(4) or (5) of that Act".

28 Subparagraph 160ZK(1)(a)(iii)

Omit "and", substitute "or".

29 At the end of paragraph 160ZK(1)(a)

Add:

(iv) would be taken into account under paragraph 58-80(c) or 58-145(5)(b) of the *Income Tax Assessment Act 1997*; and

30 Subparagraph 160ZK(3)(a)(iii)

Omit "and", substitute "or".

31 At the end of paragraph 160ZK(3)(a)

Add:

(iv) would be taken into account under paragraph 58-80(c) or 58-145(5)(b) of the *Income Tax Assessment Act 1997*; and

32 At the end of Schedule 2D

Add:

Subdivision 57-N—Division not applicable in respect of certain plant

57-130 Plant covered by Subdivision 58-B of the Income Tax Assessment Act 1997

Subdivision 57-I, and Subdivision 57-K in so far as it applies to depreciation balancing adjustments, do not apply in respect of plant to which Subdivision 58-B of the *Income Tax Assessment Act 1997* applies.

Part 4—Application of amendments

33 Application

(1) The amendments made by this Schedule other than items 8, 9, 10 and 11 apply where the transition time or acquisition time, as the case may be, referred to in Division 58 inserted in the *Income Tax Assessment Act 1997* by item 7 is a time on or after 4 August 1997.

(2) The amendments made by items 8, 9, 10 and 11 apply to assessments for the 1998-99 income year and later income years.

Schedule 4—Franking credits, franking debits and the intercorporate dividend rebate

Income Tax Assessment Act 1936

1 After paragraph 45Z(1)(c)

Insert:

(ca) the second company is a qualified person in relation to the dividend for the purposes of Division 1A of Part IIIAA; and

2 After subparagraph 45Z(2)(c)(ii)

Insert:

(iia) the second company is a qualified person in relation to the dividend for the purposes of Division 1A of Part IIIAA;

3 After paragraph 45Z(3)(c)

Insert:

(ca) the second company is a qualified person in relation to the dividend for the purposes of Division 1A of Part IIIAA; and

4 After subparagraph 45Z(4)(c)(ii)

Insert:

(iia) the second company is a qualified person in relation to the dividend for the purposes of Division 1A of Part IIIAA;

5 Before section 46

Insert:

45ZB Reduction of intercorporate dividend rebate in certain circumstances

(1) This section applies where:

(a) a partnership or the trustee of a trust has made an election under section 160APHR in relation to shares, or interests in

shares, held by the partnership or trustee and managed by or on behalf of the partnership or trust as or in a discrete fund; and

(b) dividends (the ***relevant dividends***) are paid on the shares during the year of income.

(2) For the purposes of this section:

(a) a ***notional dividend rebate*** is taken to apply in relation to the partnership or trust in respect of the relevant dividends, and the amount of the notional dividend rebate is the amount of the rebate under section 46 or 46A to which the partnership or trust would be entitled if:

(i) the partnership or trustee were a company (other than a life assurance company) and a resident of Australia; and

(ii) the average rate of tax payable by the partnership or trust were the general company tax rate; and

(iii) the amounts (the ***included amounts***) included in the net income of the partnership or trust estate, or in the partnership loss, as the case may be, that are, or are attributable to, the relevant dividends were dividends paid to the company and included in its assessable income; and

(b) a ***notional ceiling amount*** is taken to apply in relation to the fund in relation to the year of income, and the notional ceiling amount is the amount that would be the ceiling amount in relation to the fund in relation to the year of income for the purposes of section 160AQZF if subparagraphs (a)(i) and (ii) of this subsection applied.

(3) If the notional dividend rebate exceeds the notional ceiling amount, the excess is an excess rebate amount in respect of the included amounts.

(4) Each partner in the partnership or beneficiary of the trust estate who is entitled to a share in the included amounts is taken to have a share in the excess rebate amount in proportion to the share of the partner or beneficiary in the included amounts.

(5) Any person who has an interest in the included amounts acquired indirectly through a partner or beneficiary referred to in subsection (4), or through one or more partnerships or trusts interposed between such a partner or beneficiary and the person, is also taken to have a share in the excess rebate amount corresponding to the person's indirect interest in the included amounts.

(6) If:

(a) there is, in relation to a company, an assessable amount referred to in section 45Z that is directly or indirectly attributable to the included amounts; and

(b) the company has a share in the excess rebate amount;

the rebate to which the company is entitled (because of section 45Z) under section 46 or 46A in respect of an amount attributable to the relevant dividends is reduced by:

(c) unless paragraph (d) applies—the amount of the company's share in the excess rebate amount; or

(d) if the company's average rate of tax is the general company tax rate—the amount worked out by using the formula:

$$\text{The amount of the company's share in the excess rebate amount} \times \frac{\text{The company's average rate of tax}}{\text{General company tax rate}}$$

(7) In this section:

general company tax rate has the meaning given by section 160APA.

6 After subsection 46(2A)

Insert:

(2B) A shareholder is not entitled to a rebate under subsection (2) or (2A) in respect of a dividend unless the shareholder is a qualified person in relation to the dividend for the purposes of Division 1A of Part IIIAA.

7 After subsection 46A(5A)

Insert:

(5B) A shareholder is not entitled to a rebate under subsection (5) or (5A) in respect of a dividend unless the shareholder is a qualified person in relation to the dividend for the purposes of Division 1A of Part IIIAA.

8 After Division 1 of Part IIIAA

Insert:

Division 1A—Circumstances in which a taxpayer can qualify for a franking credit, a franking rebate or the intercorporate dividend rebate

Subdivision A—Preliminary

160APHC Object of Division

The object of this Division is to set out the circumstances in which a taxpayer can qualify for a franking credit, a franking rebate, or the intercorporate dividend rebate, in respect of a dividend paid on shares or in respect of a distribution from a partnership or trust that is derived from such a dividend.

160APHD Definitions

In this Division, unless the contrary intention appears:

associate has the meaning given by section 318 but includes:

(a) in relation to a trustee—the controller of the trust; and

(b) in relation to a company that is a member of a wholly-owned group (determined in accordance with Subdivision 975-W of the *Income Tax Assessment Act 1997*)—any other company that is a member of the group.

benchmark portfolio of shares has the meaning given by section 160AQZH.

closely held fixed trust: a trust is a ***closely held fixed trust*** at a particular time if, at that time, it is a fixed trust and not more than 20 entities (as defined in section 960-100 of the *Income Tax*

Assessment Act 1997 and counting entities who are associates as one entity) have interests in the trust that together entitle them to not less than 75% of:

(a) the beneficial interests in the income of the trust; or

(b) the beneficial interests in the capital of the trust.

controller, in relation to a trust, means a person:

(a) who beneficially owns, or is able in any way, whether directly or indirectly, to control the application of more than 50% of the interests in the trust property or in the trust income; or

(b) who has power to appoint or remove the trustee of the trust; or

(c) according to whose directions, instructions or wishes, the trustee of the trust is accustomed or under an obligation, whether formal or informal, to act.

distribution: a distribution in respect of an interest in shares is taken to be made in the circumstances specified in subsection 177EA(15).

employee share scheme security means:

(a) a share that is, or except for subsections 139C(3) and (4) would be, a qualifying share for the purposes of Division 13A of Part III; or

(b) a share acquired as a result of the exercise of a qualifying right within the meaning of Division 13A of Part III; or

(c) an interest in a share where:

(i) it is an interest in a share referred to in paragraph (a) or (b); and

(ii) if it is defeasible or subject to forfeiture—it becomes indefeasible, or ceases to be subject to forfeiture (other than forfeiture resulting from fraud, dishonesty or defalcation), as the case may be, within 10 years after it was issued; and

(iii) if it is an interest as a beneficiary of a trust—the sole activities of the trust are obtaining shares, or rights to acquire shares, and providing those shares or rights to

employees of a company or to associates of those employees.

ex dividend has the meaning given by section 160APHE.

fixed trust has the same meaning as in Schedule 2F.

franked distribution has the meaning given by subsection 177EA(16).

interest, in relation to shares or other property, means any legal or equitable interest in the shares or other property.

materially diminish has the meaning given by section 160APHM.

non-fixed trust has the same meaning as in Schedule 2F.

position, in relation to shares or an interest in shares, has the meaning given by section 160APHJ as that meaning is affected by sections 160APHK and 160APHL.

preference shares in a company means shares in the company that:

(a) have a fixed dividend entitlement or, having regard to the terms of their issue, are likely to have a fixed dividend return; or

(b) having regard to the terms of their issue and other relevant matters, are less risky than ordinary shares in the company.

prescribed person, in relation to a unit trust, has the meaning given by section 160APHS.

primary qualification period, in relation to a taxpayer in relation to shares or an interest in shares, means the period beginning on the day after the day on which the taxpayer acquired the shares or interest and ending:

(a) if the shares are not preference shares—on the 45th day after the day on which the shares or interest became *ex dividend*; or

(b) if the shares are preference shares—on the 90th day after the day on which the shares or interest became *ex dividend*.

qualification period, in relation to a taxpayer in relation to shares or an interest in shares, means the primary qualification period or the secondary qualification period in relation to the taxpayer in relation to the shares or interest.

qualified person, in relation to a dividend paid on shares, has the meaning given by section 160APHO, 160APHP, 160APHQ, 160APHR or 160APHT as that meaning is affected by section 160APHU.

rebateable distribution means a distribution to which section 45Z applies and in respect of which the taxpayer is entitled to a rebate under section 46 or 46A.

rebateable dividend means a dividend for which the taxpayer is entitled to a rebate under section 46 or 46A.

related payment: the making of a related payment has a meaning affected by sections 160APHN and 160APHNA.

secondary qualification period, in relation to a taxpayer in relation to shares or an interest in shares, means:

(a) if the shares are not preference shares—the period beginning on the 45th day before, and ending on the 45th day after, the day on which the shares or interest became *ex dividend*; or

(b) if the shares are preference shares—the period beginning on the 90th day before, and ending on the 90th day after, the day on which the shares or interest become *ex dividend*.

share includes:

(a) the interest in a corporate limited partnership (within the meaning of Division 5A of Part III) that a partner in the partnership has; and

(b) if a company does not have a share capital—the interest in the company that a member has.

substantially identical securities has the meaning given by section 160APHF.

wholly-owned group: the question whether 2 or more companies are members of the same wholly-owned group is to be determined

in the same way as under Subdivision 975-W of the *Income Tax Assessment Act 1997*.

widely held trust, at a particular time, means:

(a) a trust that, at that time, is neither a closely held fixed trust nor a non-fixed trust; or

(b) a trust the trustee of which is the subject of a declaration that is in force under regulations made for the purposes of paragraph 160APHR(1)(j); or

(c) a unit trust if, at that time:

(i) at least 75% of the units are held by a person who is, or persons each of whom is, a person referred to in any of paragraphs 160APHR(1)(a) to (j) or a prescribed person in relation to the trust; and

(ii) all of the units carry the same rights; and

(iii) if the units are redeemable, they are redeemable for a price determined on the basis of the trust's net asset value, according to Australian accounting principles; and

(iv) the trust engages only in qualifying activities within the meaning of subsection 160APHR(11).

160APHE Meaning of ex dividend

(1) A share in respect of which a dividend is to be paid, or an interest (other than an interest as a beneficiary of a widely held trust) in such a share, becomes *ex dividend* on the day after the last day on which the acquisition by a person of the share will entitle the person to receive the dividend.

(2) An interest as a beneficiary of a widely held trust in a share in respect of which a dividend is to be paid becomes *ex dividend* on the day after the last day on which the acquisition by a person of the interest will entitle the person to receive a distribution from the trust.

160APHF Substantially identical securities

Definition

(1) In this Division:

substantially identical securities, in relation to shares, or in relation to an interest in shares, in a company (the ***relevant company***), means property that is fungible with, or economically equivalent to, the shares or interest.

Meanings of subsections (3) and (4) not limited by subsection (1)

(2) Subsections (3) and (4) do not limit, by implication, the meaning of subsection (1).

Substantially identical securities in relation to shares

(3) The following are taken to be substantially identical securities in relation to shares (the ***relevant shares***) in the relevant company:

(a) other shares in the relevant company that are of the same class as the relevant shares;

(b) other shares in the relevant company that are of a different class from the relevant shares where there is no material difference between those classes of shares or the other shares are exchangeable at a fixed rate for the relevant shares;

(c) shares in another company that holds predominantly shares in the relevant company of the same class as shares of any of the kinds mentioned in paragraphs (a) and (b);

(d) shares in another company that are, or other property that is, exchangeable at a fixed rate for the relevant shares or for shares in the relevant company of any of the kinds mentioned in paragraphs (a) and (b);

(e) a vested and indefeasible interest in a trust whose assets consist predominantly of shares in the relevant company of the same class as shares of any of the kinds mentioned in paragraphs (a) and (b);

(f) an interest in a partnership whose assets consist predominantly of shares in the relevant company of the same

class as shares of any of the kinds mentioned in paragraphs (a) and (b).

Substantially identical securities in relation to interests in shares

(4) The following interests are taken to be substantially identical securities in relation to an interest in shares (the ***relevant shares***) in the relevant company:

(a) a vested and indefeasible interest in a trust whose assets consist predominantly of:

(i) other shares in the relevant company that are of the same class as the relevant shares; or

(ii) other shares in the relevant company that are of a different class from the relevant shares where there is no material difference between those classes of shares or the other shares are exchangeable at a fixed rate for the relevant shares;

(b) an interest in a partnership whose assets consist predominantly of:

(i) other shares in the relevant company that are of the same class as the relevant shares; or

(ii) other shares in the relevant company that are of a different class from the relevant shares where there is no material difference between those classes of shares or the other shares are exchangeable at a fixed rate for the relevant shares;

(c) if the interest in the relevant shares is a unit in a unit trust—any other unit of the same class in the trust;

(d) if the interest in the relevant shares is a vested and indefeasible interest in the whole of a share in the relevant company—that share or any other share of the same class;

(e) if the interest in the relevant shares is a vested and indefeasible interest in part of a share in the relevant company—any other vested and indefeasible interest in a corresponding part of another share in the relevant company of the same class;

(f) if the interest in the relevant shares is exchangeable at a fixed rate for another interest in shares, or for shares, in the

relevant company—the other interest or the shares, as the case may be.

Commissioner may determine an interest in the corpus of a trust to be vested and indefeasible

(5) If:

(a) a person has an interest in so much of the corpus of a trust as is comprised by shares or an interest in shares; and

(b) apart from this subsection, the interest in the trust would not be a vested or indefeasible interest; and

(c) the Commissioner considers that the interest in the trust should be treated as being vested and indefeasible, having regard to:

(i) the circumstances in which the interest is capable of not vesting or the defeasance can happen; and

(ii) the likelihood of the interest not vesting or the defeasance happening; and

(iii) the nature of the trust; and

(iv) any other matter the Commissioner thinks relevant;

the Commissioner may determine that the interest in the trust is to be taken to be vested and indefeasible.

Effect of determination

(6) A determination made under subsection (5) has effect according to its terms.

160APHG Special provisions relating to acquisition or disposal of shares or interests in shares by partners and trust beneficiaries

Partnerships

(1) If a partnership acquires, holds, or disposes of, shares or an interest in shares, each partner in the partnership is taken to acquire, hold, or dispose of, as the case may be, an interest in the shares.

Taxpayers becoming or ceasing to be partners

(2) If the assets of a partnership include shares or an interest in shares:

(a) where a taxpayer becomes a partner in the partnership—the taxpayer is taken to acquire an interest in the shares; or

(b) where a taxpayer ceases to be a partner in the partnership—the taxpayer is taken to dispose of the taxpayer's interest in the shares.

Trusts that are not widely held trusts

(3) If the trustee of a trust (other than a widely held trust) acquires, holds, or disposes of, shares or an interest in shares, each beneficiary of the trust (including, if the trust is a discretionary trust, a potential beneficiary) is taken to acquire, hold, or dispose of, as the case may be, an interest in the shares.

Taxpayers becoming or ceasing to be beneficiaries of trusts that are not widely held trusts

(4) If a trust estate (other than the trust estate of a widely held trust) includes shares or an interest in shares:

(a) where a taxpayer becomes a beneficiary (including, if the trust is a discretionary trust, a potential beneficiary) of the trust—the taxpayer is taken to acquire an interest in the shares; or

(b) where a taxpayer ceases to be a beneficiary (including, if the trust is a discretionary trust, a potential beneficiary) of the trust—the taxpayer is taken to dispose of the taxpayer's interest in the shares.

Position of beneficiary of widely held trust if trustee makes the trustee's first acquisition of shares or interests

(5) If:

(a) the trust estate of a widely held trust does not include shares or an interest in shares; and

(b) the trustee of the trust acquires shares or an interest in shares;

each beneficiary of the trust is taken to acquire an interest in the shares.

Position of beneficiary of widely held trust if trust estate includes shares or interests

(6) If the trust estate of a widely held trust has included, or includes, shares or interests in shares, each person who is a beneficiary of the trust holds an interest in the shares while the person is such a beneficiary.

Disposal of shares or interests by trustee of widely held trust

(7) If the trustee of a widely held trust disposes of some only of the shares or interests in shares that form part of the trust estate, no beneficiary of the trust is taken, because of the disposal, to dispose of that beneficiary's interest in the shares but, if the trustee disposes of all the shares and interests, each beneficiary is taken to dispose of the beneficiary's interest in the shares.

Taxpayers becoming or ceasing to be beneficiaries of widely held trust

(8) If the trust estate of a widely held trust has included or includes shares or an interest in shares:

(a) a taxpayer who becomes a beneficiary of the trust is taken to acquire an interest in the shares at the time when the taxpayer becomes the beneficiary, whether or not the trust estate includes the shares or interest in the shares at that time; and

(b) a taxpayer who is a beneficiary of the trust and acquires a further interest in the trust (whether by subscription for, or purchase of, further units or otherwise) is taken to acquire a further interest in the shares at the time when the taxpayer acquires the further interest in the trust, whether or not the trust estate includes the shares or interest in the shares at that time; and

(c) a taxpayer who disposes of an interest in the trust (whether by redemption or sale of units or otherwise) but remains a beneficiary of the trust is taken to dispose of an interest in the shares at the time when the taxpayer disposes of the interest in the trust, whether or not the trust estate includes the shares or interest in the shares at that time; and

(d) a taxpayer who ceases to be a beneficiary of a trust is taken to dispose of the interest in shares that the taxpayer held as a beneficiary of the trust at the time when the taxpayer ceases to be a beneficiary of the trust, whether or not the trust estate includes the shares or interest in the shares at that time.

Note 1: The interest that a partner in a partnership has in shares which, or an interest in which, is included in the assets of the partnership is worked out under section 160APHK.

Note 2: The interest that a beneficiary of a trust has in shares which, or an interest in which, is held by the trustee of the trust is worked out under section 160APHL.

160APHH Other special provisions relating to acquisition or disposal of shares or interests in shares

Shares or interests acquired or disposed of under a contract

(1) If:

(a) a taxpayer acquires or disposes of shares, or an interest in shares, under a contract; and

(b) the price payable for the acquisition or disposal is fixed under the contract; and

(c) either of the following applies:

(i) the contract is unconditional;

(ii) the contract is subject to a condition being complied with before the contract takes effect and the condition has been complied with;

the taxpayer is taken, for the purposes of this Division, to have acquired or disposed of, as the case may be, the shares, or the interest, at the time of the making of the contract.

Bonus shares

(2) If shares (the ***bonus shares***) are issued to a taxpayer in respect of existing shares:

(a) if any part of the bonus shares is, or is taken to be, a dividend that is included in the taxpayer's assessable income—the bonus shares are taken for the purposes of this Division to

have been acquired by the taxpayer at the time when they were issued; or

(b) otherwise—the bonus shares:

(i) are taken for the purposes of section 160APHR to have been acquired by the taxpayer at the time when they were issued; and

(ii) are taken for the purposes of the other provisions of this Division to have been acquired by the taxpayer at the time when the existing shares were acquired and to have been held by the taxpayer continuously from that time until they were issued.

In calculating the number of days for which the taxpayer is taken to have continuously held bonus shares as mentioned in subparagraph (b)(ii), any days before the bonus shares were issued in respect of which the taxpayer materially diminished risks of loss or opportunities for gain in respect of the existing shares are to be excluded, but the exclusion of those days is not taken to break the continuity of the period for which the taxpayer is taken to have held the bonus shares.

Shares or interest distributed in satisfaction of interest

(3) If:

(a) a taxpayer holds an interest in shares:

(i) under a trust; or

(ii) as a partner in a partnership; and

(b) the shares, or an interest in the shares, is distributed to the taxpayer in satisfaction of the interest referred to in paragraph (a);

the taxpayer is taken, for the purposes of this Division, to have held the shares or interest so distributed, to the extent to which the shares or interest distributed satisfies the interest referred to in paragraph (a), from the time when the taxpayer acquired the interest referred to in that paragraph.

In calculating the number of days for which the taxpayer is taken to have continuously held the shares or interest so distributed, any days in respect of which the trustee or partnership materially diminished risks of loss or opportunities for gain in respect of the

shares or interest are to be excluded, but the exclusion of those days is not taken to break the continuity of the period for which the taxpayer is taken to have held the shares or interest.

Shares or interest passing to executor or administrator

(4) If any shares or interest in shares held by a person who has died has passed to the executor of the will, or the administrator of the estate, of the dead person, the executor or administrator is taken, for the purposes of this Division, to have acquired the shares at the time when they were acquired by the dead person.

In calculating the number of days for which the executor or administrator is taken to have continuously held the shares or interest, any days in respect of which the person materially diminished risks of loss or opportunities for gain in respect of the shares or interest are to be excluded, but the exclusion of those days is not taken to break the continuity of the period for which the executor or administrator is taken to have held the shares or interest.

Shares or interest held by person under a legal disability transferred to a trustee

(5) If:

(a) a person who holds shares or an interest in shares becomes subject to a legal disability; and

(b) the shares or interest is transferred to a trustee to be held in trust for the person while the person is under a legal disability;

both the person and the trustee are taken, for the purposes of this Division, to have held the shares or interest for the periods in which the shares or interest was held by either of them.

In calculating the number of days for which the trustee is taken to have continuously held the shares or interest, any days in respect of which the person materially diminished risks of loss or opportunities for gain in respect of the shares or interest are to be excluded, but the exclusion of those days is not taken to break the continuity of the period for which the trustee is taken to have held the shares or interest.

Shares or interest transferred to a bare trustee

(6) If:

(a) a person who holds shares or an interest in shares transfers the shares or interest to a trustee; and

(b) immediately after the transfer occurs:

(i) the trustee holds the shares or interest in trust for the person; and

(ii) the person is the sole beneficiary of the trust and is absolutely entitled under the trust to the shares or interest;

the following paragraphs have effect:

(c) the trustee is taken, for the purposes of this Division, to have held the shares or interest during any period in which the person held the shares or interest; and

(d) the person is taken, for the purposes of this Division, to hold the shares or interest during any period in which:

(i) the trustee holds the shares or interest in trust for the person; and

(ii) the person is the sole beneficiary of the trust, and is absolutely entitled under the trust to the shares or interest.

In calculating the number of days for which the person or the trustee is taken to have continuously held the shares or interest, any days in respect of which the person or trustee materially diminished risks of loss or opportunities for gain in respect of the shares or interest are to be excluded, but the exclusion of those days is not taken to break the continuity of the period for which the person or the trustee is taken to have held the shares or interest.

Subsection (6) not to apply if trust becomes a widely held trust

(7) Subsection (6) does not apply in respect of any shares or interest in shares if the trust becomes a widely held trust:

(a) if the shares that were transferred, or in which the interest was transferred, were not preference shares—within 45 days; or

(b) if the shares that were transferred, or in which the interest was transferred, were preference shares—within 90 days;

after the shares or interest were transferred to the trustee.

Certain disposals to be disregarded

(8) If:

(a) a taxpayer holds, or holds an interest in, shares; and

(b) the taxpayer disposes of the shares or interest; and

(c) the taxpayer is, under subsection 26BC(4), to be treated in the determination of the matters mentioned in paragraphs 26BC(4)(a) and (b) as if the transaction effecting the disposal had not been entered into;

the disposal is to be taken for the purposes of this Division not to have occurred.

Change of trustees not to affect continuity of holding of shares or interests

(9) Any person who was a trustee of a trust during part only of a continuous period in which shares or an interest in shares formed part of the trust estate is taken, for the purposes of this Division, to have held the shares or interest throughout that period.

Certain disposals of shares or interests between companies in the same wholly-owned group not to affect continuity of holding

(10) A company that is a member of a wholly-owned group is taken, for the purposes of this Division, to have held shares or an interest in shares throughout a continuous period if:

(a) the company held the shares or interest during part of the period; and

(b) during the remainder of the period the shares or interest was held by another company or other companies that were members of the same group.

In calculating the number of days in the continuous period during which the first-mentioned company is taken to have held the shares or interest, any days in the part of the period in which the shares or interest was held by a company that made an election in relation to

the shares or interest under section 160APHR are to be excluded, but the exclusion of those days is not taken to break the continuity of the period for which the first-mentioned company is taken to have held the shares or interest.

160APHI Certain disposals of shares or interests are to be taken to be disposals of related shares or interests

Effect of section

(1) The effect of this section is that, in the calculation of the period for which a taxpayer is taken to have held shares or an interest in shares (the ***primary securities***) during a qualification period in relation to the taxpayer in relation to the primary securities:

(a) a disposal of the primary securities is taken in certain circumstances to be a disposal of certain other securities and not to be a disposal of the primary securities; and

(b) a disposal of certain other securities is taken in certain circumstances to be a disposal of the primary securities and not to be a disposal of the other securities.

*Meaning of **related securities***

(2) In this section:

related securities means:

(a) the primary securities; and

(b) any shares, or interests in shares, held by connected persons:

(i) that are substantially identical securities in relation to the primary securities; and

(ii) in respect of which a connected person has been paid, or is entitled to be paid, a franked dividend or a franked distribution or, in the case of a connected person that is a company, a rebateable dividend or a rebateable distribution, being in either case a dividend or distribution corresponding to the dividend or distribution paid on the primary securities;

but does not include shares or interests in shares:

(c) in relation to which an election is in force under section 160APHR; and

(d) which were not acquired or disposed of for the purpose, or for purposes that included the purpose (whether or not the predominant purpose), of avoiding the application of this section.

*Meaning of **connected persons***

(3) The following persons are ***connected persons*** for the purposes of this section:

(a) the taxpayer;

(b) if, at a time during the qualification period, an associate of the taxpayer, under an arrangement to which they were parties, disposed of shares or an interest in shares—the associate;

(c) if the taxpayer is a company—another company that is in the same wholly-owned group.

Related securities to be taken to be disposed of on a last-in first-out basis

(4) All related securities held by connected persons at a particular time constitute a group of securities for the purposes of this section and, subject to subsections (5), (6) and (7), any disposals of securities in the group that were effected by any connected persons during the qualification period are to be taken, in the order in which they occurred, as having been disposals on a last-in first-out basis, that is to say, as having been:

(a) first, disposals of the latest securities in the group to be acquired by any of the connected persons; and

(b) secondly, disposals of the next latest securities in the group to be so acquired, and so on.

Subsection (4) not to apply to disposal between companies in the same wholly-owned group

(5) Subsection (4) does not apply in respect of the disposal of securities by a company in a wholly-owned group to another company in the same wholly-owned group.

Time of acquisition of related securities held by company that is a member of wholly-owned group

(6) If subsection 160APHH(10) applies to a company that is a member of a wholly-owned group in respect of any related securities in relation to a period, the securities are taken, for the purposes of subsection (4), to have been acquired at the beginning of the period.

Subsection (4) not to apply if primary securities not held for requisite continuous period

(7) If primary securities are disposed of during a qualification period and:

(a) if section 160APHO applies to the taxpayer in respect of the securities—the taxpayer has not satisfied subsection 160APHO(2) in relation to the qualification period; or

(b) if the primary securities are an interest in shares and section 160APHP applies to the taxpayer in respect of the interest—the taxpayer has not held the interest for the continuous period referred to in subsection 160APHP(1);

subsection (4) does not apply in respect of the disposal.

Where value of securities actually disposed of is less than value of securities taken to be disposed of

(8) If the value of any securities actually disposed of is less than the value of the securities that are taken to be disposed of, only such of the last-mentioned securities are taken to be disposed of as have a value equal to the value of the securities actually disposed of.

Where value of securities actually disposed of exceeds value of securities taken to be disposed of

(9) If the value of any securities actually disposed of exceeds the value of the securities that are taken to have been disposed of, such other related securities as have a value equal to the excess are taken to be disposed of in accordance with subsection (4).

Where a disposal is taken to be a disposal of 2 or more parcels of securities

(10) If, as a result of the application of subsection (4), a disposal of securities is taken to be a disposal of 2 or more parcels of related securities because those parcels of securities were acquired at the same time:

(a) the connected persons may agree as to the parcel of related securities that is to be taken to be disposed of; or

(b) if they are unable to agree, the Commissioner may determine the parcel of related securities that is taken to be disposed of.

Where 2 or more disposals are taken to be disposals of the same securities

(11) If, as a result of the application of subsection (4), the disposals of 2 or more parcels of related securities would be taken to constitute a disposal of the same securities because those 2 parcels of related securities were disposed of at the same time:

(a) the connected persons may agree as to the related securities that are to be taken to be respectively disposed of by the disposals of the parcels of related securities; or

(b) if they are unable to agree, the Commissioner may determine the related securities that are to be taken to be respectively disposed of by the disposals of the parcels of related securities.

Notional re-acquisition of securities that are taken to constitute a disposal of other securities

(12) If, as a result of this section, the primary securities are taken to have been disposed of by the taxpayer but are actually still held by

the taxpayer, they are taken to have been re-acquired by the taxpayer immediately after the time when they are taken to be disposed of.

Effect of agreement or determination

(13) An agreement or determination made under subsection (10) or (11) has effect according to its terms.

160APHJ Position in relation to shares or interests etc.

Regulations may prescribe what constitutes a position

(1) The regulations may, either generally, or as otherwise provided in the regulations, prescribe:

(a) what is a position, a short position, a long position or a net position in relation to shares or an interest in shares; and

(b) when a position relates to particular shares or a particular interest in shares; and

(c) how the delta of a position is to be calculated;

and the following provisions of this section have effect subject to any such regulations.

*Meaning of **position***

(2) A ***position***, in relation to shares or an interest in shares, is anything that has a delta in relation to the shares or interest, and includes, without limiting the generality of the above:

(a) a short sale, or a future sale, of:

(i) the shares or interest; or

(ii) property that is substantially similar to, or related to, the shares or interest; and

(b) a purchase, or a future purchase, of property that is substantially similar to, or related to, the shares or interest; and

(c) an option to buy or sell the shares or interest; and

(d) an option to buy or sell:

(i) property that is substantially similar to, or related to, the shares or interest; or

(ii) an interest in such property; and

(e) an option in relation to the shares or interest that is embedded in other property; and

(f) a non-recourse loan made to acquire the shares or interest; and

(g) an indemnity or guarantee in respect of the shares or interest.

However, if a share, or an interest in a share, is an employee share scheme security, a condition attached to the share or interest, or a term of the document that created the interest, that prevents the holder of the share or interest from disposing of it or could result in the share or interest being forfeited is not a position in relation to the share or interest.

*Meaning of **short position***

(3) A ***short position***, in relation to shares or an interest in shares, is a position that has a negative delta in relation to the shares or interest. For example, a short sale, a sold future, a sold call option, a bought put option, and a sold share index future, are short positions.

*Meaning of **long position***

(4) A ***long position***, in relation to shares or an interest in shares, is a position that has a positive delta in relation to the shares or interest. For example, a share purchase, a bought future, a bought call option, a sold put option, and a bought share index future, are long positions. To avoid doubt, shares or interests in shares are to be treated as a long position (with a delta of +1) in relation to themselves.

*Meaning of **net position***

(5) The ***net position*** of a taxpayer or fund in relation to shares, or in relation to an interest in shares, is calculated by adding the taxpayer's or fund's:

(a) long positions in the shares or interest (calculated on the basis of their deltas); and

(b) short positions in the shares or interest (calculated on the basis of their deltas).

For example, if a taxpayer sells 2 call options (each of which has a delta of -0.5) in respect of shares in a company and buys one share in the company (which has a delta of +1) in respect of those call options, the taxpayer has a net position of nil as a result of those transactions. In such a case, the taxpayer has materially diminished risks of loss and opportunities for gain in relation to the share.

Certain short positions in companies that deal in commodities to be disregarded

(6) If:

(a) a taxpayer holds shares, or an interest in shares, in a company; and

(b) the sole or dominant business of the company is producing, purchasing, consuming, trading in, or otherwise dealing in, any of the commodities mentioned in subsection (7); and

(c) the taxpayer is a controller of the company for the purposes of section 140-20 of the *Income Tax Assessment Act 1997*;

then, any of the taxpayer's short positions in the shares or interest that:

(d) relate to any of those commodities; and

(e) are taken in the ordinary course of the taxpayer's business;

are to be disregarded for the purposes of subsection (5).

Commodities to which subsection (6) applies

(7) The commodities referred to in subsection (6) are as follows:

(a) minerals;

(b) gold;

(c) ores of a metal included in the table of metals in subsection 330-60(1) of the *Income Tax Assessment Act 1997*.

Certain short positions of life assurance companies or trustees of eligible entities to be disregarded

(8) If:

(a) a taxpayer that is a life assurance company or a trustee of an eligible entity (within the meaning of Part IX) holds shares or an interest in shares; and

(b) the company, or the relevant fund or unit trust, has a short position arising from the obligations of the company or trustee to pass on to holders of policies issued by the company or to beneficiaries in the fund or trust the risks of loss and opportunities for gain in relation to the shares or interest; and

(c) the full value of any franking rebate in respect of the shares or interest is passed on to the holders of those policies or to those beneficiaries; and

(d) the obligations referred to in paragraph (b) do not directly or indirectly reduce the taxable income of the company, or of the fund or trust, or increase any loss (for the purposes of this Act) incurred by the company, or by the fund or trust;

the short position referred to in paragraph (b) is to be disregarded for the purposes of subsection (5) only in so far as the net position of the company, or of the fund or trust, is relevant to section 160AQT, 160AQYA or 160AQZA.

Short position of associate of taxpayer in shares or interest to be attributable to taxpayer

(9) If, under an arrangement to which a taxpayer and an associate of the taxpayer are parties, the associate has a short position in shares, or in an interest in shares, held by the taxpayer, the associate's position is taken, for the purposes of subsection (5), to be a position that the taxpayer has.

Deltas of positions to be taken not to have changed in certain circumstances

(10) If:

(a) a taxpayer acquires shares or interests in shares; and

(b) on the day of the acquisition, or on a later day, the taxpayer enters into or has positions in relation to any of the shares or interests;

then, so long as the taxpayer continues to hold the shares or interests, continues to have those positions and does not enter into any further positions in relation to the shares or interests:

(c) in calculating the delta of a position held by the taxpayer in relation to the shares or interests:

(i) for the purposes of this Division other than paragraphs 106APHO(1)(b) and 160APHP(1)(b); or

(ii) for the purposes of either of those paragraphs in its application to a related payment under an arrangement entered into before the commencement of this subsection, other than an arrangement that has been varied, renewed or replaced after that commencement;

those positions are taken to continue to have the deltas that they had on the later of the following days:

(iii) the day on which the shares or interests were acquired;

(iv) a day on which any of the positions was entered into; or

(d) in calculating the delta of a position held by the taxpayer in relation to the shares or interests for the purposes of paragraph 160APHO(1)(b) or 160APHP(1)(b) in its application to a related payment under an arrangement:

(i) entered into after the commencement of this subsection (including an arrangement that renewed or replaced an arrangement entered into before that commencement); or

(ii) entered into before that commencement that was varied after that commencement;

those positions are taken to continue to have the deltas that they had on the latest of the following days:

(iii) the day on which the shares or interests were acquired by the taxpayer;

(iv) a day on which any of the positions that the taxpayer has in relation to the shares or interests was entered into;

(v) if the secondary qualification period in relation to the taxpayer in relation to the shares or interests is the

second, or a subsequent, qualification period since the shares or interests were acquired by the taxpayer—the first day of the secondary qualification period.

(11) This section has effect subject to sections 160APHK and 160APHL.

160APHK Assets of partnership include shares or interest in shares: how to determine a partner's interest in the shares

Application

(1) If:

(a) the assets of a partnership include, or include an interest in, a share (the ***relevant share***); and

(b) an amount is included in the partnership's assessable income because of the partnership holding and the whole or a part of that amount (the ***dividend income***) is:

(i) a dividend; or

(ii) attributable, through one or more interposed trusts or partnerships, to a dividend; and

(c) there is a partnership amount in respect of the partnership in relation to a taxpayer who is a partner in the partnership, being a partnership amount that is wholly or partly attributable to the dividend income;

this section sets out how the taxpayer's interest in the relevant share is to be calculated in determining whether the taxpayer is a qualified person for the purposes of Subdivision B or BA in relation to a dividend paid on the share.

Note: The calculation is not required unless the partnership is a qualified person in relation to the dividend. If the partnership is not a qualified person, no partner in the partnership can receive a franking rebate or franking credit through the partnership.

Partnership holding

(2) For the purposes of this section, the ***partnership holding*** is the share, or the interest in the share, that is included in the assets of the partnership as mentioned in subsection (1).

Calculation of interest

(3) For the purposes of subsections 160APHG(1) and (2), the taxpayer's interest in the relevant share is the amount worked out by using the formula:

$$\text{Partnership holding} \times \frac{\text{Partner's share of the dividend income}}{\text{The dividend income}}$$

where:

partner's share of the dividend income means the partnership amount in relation to the partner to the extent to which that amount is attributable to the dividend income.

A position held by partnership is to be attributed to a partner to whom the position relates

(4) A position, or an appropriate part of a position, of the partnership in relation to the partnership holding is taken to be a position of a partner in a partnership if the position relates to the partner's interest in the relevant share.

When a position of partnership relates to a partner

(5) Without limiting by implication the circumstances in which a position of the partnership can be regarded as relating to the partner's interest in the relevant share, a position of the partnership relates to that interest if:

(a) the whole or a part of the profit or loss from the position will be distributed to, or deducted from an amount that would otherwise be distributed to, the partner; or

(b) the benefit or detriment of the position will otherwise be wholly or partly passed to the partner.

160APHL Trustee holding shares or interest in shares: how to determine a beneficiary's interest in the shares

Application in respect of a trust other than a widely held trust

(1) If:

(a) the trustee of a trust other than a widely held trust holds, or holds an interest in, a share (the ***relevant share***); and

(b) an amount is included in the assessable income of the trust estate because of the trust holding and the whole or a part of that amount (the ***dividend income***) is:

(i) a dividend; or

(ii) attributable, through one or more interposed trusts or partnerships, to a dividend; and

(c) there is a trust amount in respect of the trust estate in relation to a taxpayer who is a beneficiary of the trust estate, being a trust amount that is wholly or partly attributable to the dividend income;

this section sets out how the taxpayer's interest in the relevant share is to be calculated in determining whether the taxpayer is a qualified person for the purposes of Subdivision B or BA in relation to a dividend paid on the share.

Note: The calculation is not required unless the trustee is a qualified person in relation to the dividend. If the trustee is not a qualified person, no beneficiary of the trust can receive a franking rebate or franking credit through the trust.

Application in respect of widely held trust

(2) If:

(a) the trustee of a trust that is a widely held trust has held or holds, or has held or holds interests in, shares (the ***relevant shares***); and

(b) an amount is included in the assessable income of the trust estate because of the trust holding and the whole or a part of that amount (the ***dividend income***) is:

(i) a dividend; or

(ii) attributable, through one or more interposed trusts or partnerships, to a dividend; and

(c) there is a trust amount in respect of the trust estate in relation to a taxpayer who is a beneficiary of the trust estate, being a trust amount that is wholly or partly attributable to the dividend income;

this section sets out how the taxpayer's interest in the relevant shares is to be calculated in determining whether the taxpayer is a qualified person for the purposes of Subdivision B or BA in relation to a dividend paid on the shares.

Note: The calculation is not required unless the trustee is a qualified person in relation to the dividend. If the trustee is not a qualified person, no beneficiary of the trust can receive a franking rebate or franking credit through the trust.

Trust holding in relation to trust other than a widely held trust

(3) For the purposes of the application of this section in respect of a trust other than a widely held trust, the ***trust holding*** is the share, or the interest in a share, that is held by the trustee as mentioned in subsection (1).

Trust holding in relation to a widely held trust

(4) For the purposes of the application of this section in respect of a widely held trust, the ***trust holding*** is all the shares and interests in shares that the trustee has held or holds as mentioned in subsection (2).

Calculation of interest under a trust other than a widely held trust

(5) For the purposes of subsections 160APHG(3) and (4) in relation to a taxpayer referred to in subsection (1), the taxpayer's interest in the relevant share is the amount worked out by using the formula:

$$\text{Trust holding} \times \frac{\text{Beneficiary's share of the dividend income}}{\text{The dividend income}}$$

where:

beneficiary's share of dividend income means the trust amount in relation to the taxpayer to the extent to which that amount is attributable to the dividend income.

Calculation of interest under a widely held trust

(6) For the purposes of subsections 160APHG(5) to (8) in relation to a taxpayer referred to in subsection (2), the taxpayer's interest in the relevant shares is the amount worked out by using the formula:

$$\text{Trust holding} \times \frac{\text{Beneficiary's share of the dividend income}}{\text{The dividend income}}$$

where:

beneficiary's share of dividend income means the trust amount in relation to the taxpayer to the extent to which that amount is attributable to the dividend income.

Taxpayer's interest to be a long position

(7) The taxpayer's interest in the relevant share worked out under subsection (5), or the taxpayer's interest in the relevant shares worked out under subsection (6), is a long position with a delta of + 1 in relation to itself.

Trust other than widely held trusts: when trustee's position attributed to taxpayer

(8) If the trust is not a widely held trust, a position, or an appropriate part of a position, of the trustee in relation to the trust holding is taken to be a position of the taxpayer to the extent to which the position relates to the taxpayer's interest in the relevant share. However, if the trustee has a position in relation to 2 or more shares or interests in shares, the trustee's position is taken to constitute separate positions in relation to each of the shares or interests in accordance with an allocation made in a reasonable way.

When a position of the trustee of a trust other than a widely held trust relates to the taxpayer's interest

(9) Without limiting by implication the circumstances in which a position of the trustee of a trust other than a widely held trust will be taken to relate to the taxpayer's interest in a share or shares, a position of the trustee relates to that interest if:

(a) the position relates wholly or partly to shares in which the taxpayer has a vested and indefeasible interest; or

(b) the whole or a part of the profits or losses from the position will be distributed to, or deducted from an amount that would otherwise be distributed to, the taxpayer; or

(c) the benefit or detriment of the position will be wholly or partly passed to the taxpayer.

Additional positions of the taxpayer

(10) If:

(a) the trust is not a family trust within the meaning of Schedule 2F; and

(b) the trust is not a trust for the purposes of this Act merely because of the reference to executors and administrators in paragraph (a) of the definition of ***trustee*** in subsection 6(1); and

(c) the taxpayer's interest in the relevant share or the relevant shares is not an employee share scheme security;

the taxpayer has, in addition to any other long and short positions (including the positions that the taxpayer is taken to have under subsection (8)) in relation to the taxpayer's interest in the relevant share or relevant shares, a short position equal to the taxpayer's long position under subsection (7) and a long position equal to so much of the taxpayer's interest in the trust holding as is a fixed interest.

A vested and indefeasible interest constitutes a fixed interest

(11) For the purposes of subsection (10), the taxpayer's interest in the trust holding is a fixed interest to the extent that the interest is constituted by a vested and indefeasible interest in so much of the corpus of the trust as is comprised by the trust holding.

Certain interests in trust holding taken to be defeasible

(12) Subject to subsection (13), if the taxpayer has an interest in the trust holding and either:

(a) the interest may be redeemed under the terms of the trust for less than its value; or

(b) the value of the interest may be materially reduced by:

(i) if the trust is a unit trust—the issue of further units; or

(ii) otherwise—the creation of other interests under the trust;

the interest is taken to be defeasible.

Case where interest not defeasible

(13) If:

(a) the trust is a unit trust and the taxpayer holds units in the unit trust; and

(b) the units are redeemable or further units are able to be issued; and

(c) where units in the unit trust are listed for quotation in the official list of an approved stock exchange (within the meaning of section 470)—the units held by the taxpayer 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) where the units are not listed as mentioned in paragraph (c)—the units held by the taxpayer will be redeemed, or any further units will be issued, for a price determined on the basis of the unit trust's net asset value, according to Australian accounting principles, 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 taxpayer's interest, as a unit holder, in so much of the corpus of the trust as is comprised by the trust holding is defeasible.

Commissioner may determine an interest to be vested and indefeasible

(14) If:

(a) the taxpayer has an interest in so much of the corpus of the trust as is comprised by the trust holding; and

(b) apart from this subsection, the interest would not be a vested or indefeasible interest; and

(c) the Commissioner considers that the interest should be treated as being vested and indefeasible, having regard to:

(i) the circumstances in which the interest is capable of not vesting or the defeasance can happen; and

(ii) the likelihood of the interest not vesting or the defeasance happening; and

(iii) the nature of the trust; and

(iv) any other matter the Commissioner thinks relevant;

the Commissioner may determine that the interest is to be taken to be vested and indefeasible.

Effect of determination

(15) A determination made under subsection (14) has effect according to its terms.

160APHM Material diminution of risks of loss or opportunities for gain in respect of shares or interests in shares

Regulations may prescribe what constitutes material diminution

(1) The regulations may prescribe the circumstances in which a taxpayer is taken to have ***materially diminished*** risks of loss or opportunities for gain in respect of shares or interests in shares, and the following provisions of this section have effect subject to any such regulations.

Material diminution if net position has less than 30% of risks and opportunities

(2) A taxpayer is taken to have ***materially diminished*** risks of loss or opportunities for gain on a particular day in respect of shares held by the taxpayer, or in respect of an interest held by the taxpayer in shares, if the taxpayer's net position on that day in relation to the shares or interest has less than 30% of those risks and opportunities.

Net position worked out by reference to deltas

(3) A taxpayer's net position is worked out using the financial concept known as delta (see section 160APHJ). For example, an option to sell a share with a delta of minus 0.5 in relation to the share reduces the risks of loss and opportunities for gain by 50%.

160APHN Related payments

(1) This section gives examples of, but does not limit, what constitutes, for the purposes of this Division, the making of a ***related payment*** by a taxpayer or an associate of a taxpayer in respect of a dividend paid in respect of shares, or in respect of a distribution made in respect of interests in shares, held by the taxpayer.

(2) The taxpayer or associate is taken, for the purposes of this Division, to have made, to be under an obligation to make, or to be likely to make, a related payment in respect of the dividend or distribution if, under an arrangement, the taxpayer or associate has done, is under an obligation to do, or may reasonably be expected to do, as the case may be, anything having the effect of passing the benefit of the dividend or distribution to one or more other persons.

(3) Without limiting subsection (2), the doing of any of the following by the taxpayer or an associate of the taxpayer in the circumstances mentioned in subsection (4) may have the effect of passing the benefit of the dividend or distribution to one or more other persons:

(a) causing a payment or payments to be made to, or in accordance with the directions of, the other person or other persons; or

(b) causing an amount or amounts to be credited to, or applied for the benefit of, the other person or other persons; or

(c) causing services to be provided to, or in accordance with the directions of, the other person or other persons; or

(d) causing property to be transferred to, or in accordance with the directions of, the other person or other persons; or

(e) allowing any property or money to be used by the other person or other persons or by someone nominated by the other person or other persons; or

(f) causing an amount or amounts to be set off against, or to be otherwise applied in reduction of, a debt or debts owed by the other person or other persons to the taxpayer or associate; or

(g) agreeing to treat an amount or amounts owed to the other person or other persons by the taxpayer or associate as having been increased.

(4) The circumstances referred to in subsection (3), are where:

(a) the amount or the sum of the amounts paid, credited or applied; or

(b) the value or the sum of the values of the services provided, of the property transferred or of the use of the property or money; or

(c) the amount or the sum of the amounts of the set-offs, reductions or increases;

as the case may be:

(d) is, or may reasonably be expected to be, equal to; or

(e) approximates or may reasonably be expected to approximate; or

(f) is calculated by reference to;

the amount of the dividend or distribution.

(5) The distribution by a trustee of a dividend to a beneficiary or beneficiaries of the trust who are presently entitled to it does not constitute the making of a related payment in respect of the dividend.

(6) If an amount is taken into account in any way in favour of, or is notionally accredited to, a person in fixing a price or value, or in determining another amount, the first-mentioned amount is taken, for the purposes of this section, to be credited to the other person.

(7) This section has effect subject to section 160APHNA.

160APHNA Certain payments not to be regarded as related payments

If:

(a) a company (the ***relevant company***) is a member of a wholly-owned group; and

(b) all the shares in the relevant company are held by one or more other companies that are members of the group; and

(c) the company or companies holding those shares (each a ***seller***) enter into a contract or contracts to sell the shares to

one or more persons (each a ***buyer***) who are not members of the group; and

(d) within 6 months after a contract is entered into as mentioned in paragraph (c) by a seller to a buyer to sell any of those shares, the relevant company pays a dividend in respect of the shares to the seller; and

(e) it is reasonable to assume that no substantial part of the dividend is attributable to profits of the relevant company before it became, or after it ceased to be, a member of the group; and

(f) the price paid for the sale of the shares was reduced by an amount representing the dividend;

the reduction in price is taken not to be the making of a related payment in respect of the dividend.

Subdivision B—Qualification for franking benefits and intercorporate dividend rebate

160APHO Persons qualified by holding shares or interests in shares for a prescribed number of days during a qualification period

(1) A taxpayer who has held shares or an interest in shares on which a dividend has been paid is a ***qualified person*** in relation to the dividend if:

(a) where neither the taxpayer nor an associate of the taxpayer has made, is under an obligation to make, or is likely to make, a related payment in respect of the dividend—the taxpayer has satisfied subsection (2) in relation to the primary qualification period in relation to the dividend; or

(b) where the taxpayer or an associate of a taxpayer has made, is under an obligation to make, or is likely to make, a related payment in respect of the dividend—the taxpayer has satisfied subsection (2) in relation to the secondary qualification period in relation to the dividend.

(2) A taxpayer who has held shares or an interest in shares on which a dividend has been paid satisfies this subsection in relation to a

qualification period in relation to the shares or interest if, during the period:

(a) where the taxpayer held the shares—the taxpayer held the shares for a continuous period (not counting the day on which the taxpayer acquired the shares or, if the taxpayer has disposed of the shares, the day on which the disposal occurred) of not less than:

(i) if the shares are not preference shares—45 days; or

(ii) if the shares are preference shares—90 days; or

(b) where the taxpayer held the interest in the shares—the taxpayer held the interest for a continuous period (not counting the day on which the taxpayer acquired the interest or, if the taxpayer has disposed of the interest, the day on which the disposal occurred) of not less than:

(i) if the shares are not preference shares—45 days; or

(ii) if the shares are preference shares—90 days.

(3) In calculating the number of days for which the taxpayer continuously held the shares or interest, any days on which the taxpayer has materially diminished risks of loss or opportunities for gain in respect of the shares or interest are to be excluded, but the exclusion of those days is not taken to break the continuity of the period for which the taxpayer held the shares or interest.

(4) This section does not apply to a taxpayer in respect of an interest in shares held by the taxpayer as a beneficiary of a widely held trust.

160APHP Persons qualified by holding interests in shares as beneficiaries of a widely held trust for a prescribed number of days during a qualifying period

(1) A taxpayer who as a beneficiary of a widely held trust has held an interest in shares contained in the trust holding (within the meaning of subsection 160APHL(4)) of the widely held trust is a ***qualified person*** in relation to a dividend paid on any of the shares to which a distribution from the trust to the taxpayer is attributable if:

(a) where neither the taxpayer nor an associate of the taxpayer has made, is under an obligation to make, or is likely to make, a related payment in respect of the distribution—

during the primary qualification period in relation to the taxpayer in relation to the interest; or

(b) where the taxpayer or an associate of the taxpayer has made, is under an obligation to make, or is likely to make, a related payment in respect of the distribution—during the secondary qualification period in relation to the taxpayer in relation to the interest;

the taxpayer has held an interest in the shares contained in the trust holding as a beneficiary of the trust for a continuous period (not counting the day on which the taxpayer acquired the interest or, if the taxpayer has disposed of the interest, the day on which the disposal occurred) of not less than 45 days.

(2) In calculating the number of days for which the taxpayer continuously held the interest, any days on which the taxpayer has materially diminished risks of loss or opportunities for gain in respect of the interest are to be excluded, but the exclusion of those days is not taken to break the continuity of the period for which the taxpayer held the interest.

160APHQ Persons qualified by holding shares or interests in shares where the shares were issued in connection with a winding up

A taxpayer who has held shares, or an interest in shares, in a company on which a dividend is paid is a ***qualified person*** in relation to the dividend if:

(a) the shares were issued in connection with a proposed winding up of the company; and

(b) the shares or interest was not disposed of by the taxpayer before the commencement of the winding up; and

(c) neither the taxpayer nor an associate of the taxpayer has made, is under an obligation to make, or is likely to make, a related payment in respect of the dividend.

160APHR Persons qualified by electing to have franking credit ceilings and franking rebate ceilings applied by reference to franking credits or rebates on a benchmark portfolio of shares

Taxpayers who may make election

(1) Subject to this section, a taxpayer referred to in any of the following paragraphs may elect to have Subdivision BA of Division 7 apply to the taxpayer, in respect of a year of income specified in the election (the ***specified year of income***) and all later years of income, in relation to shares, or an interest in shares, managed by or on behalf of the taxpayer as or in a discrete fund (the ***managed fund***):

(a) the trustee of a unit trust that, at the time when the election is made, is a listed widely held trust (as defined in section 272-115 in Schedule 2F to the *Income Tax Assessment Act 1936*;

(b) the trustee of a unit trust that, at the time when the election is made, is an unlisted very widely held trust (as defined in section 272-120 in Schedule 2F to the *Income Tax Assessment Act 1936*;

(c) a life assurance company within the meaning of section 110;

(d) a general insurance company (as defined in subsection 121AB(4));

(e) a friendly society;

(f) an organisation referred to in subparagraph 23(eb)(i) that only carries on business as a registered health benefits organisation within the meaning of the *National Health Act 1953*;

(g) the trustee of a fund (other than an excluded fund) that is a complying superannuation fund for the purposes of Part IX in relation to the specified year of income;

(h) the trustee of a fund (other than an excluded fund) that is a complying ADF for the purposes of Part IX in relation to the specified year of income;

(i) the trustee of a unit trust that is a pooled superannuation trust for the purposes of Part IX in relation to the specified year of income;

(j) a taxpayer who is declared by the regulations to be a taxpayer, or is included in a class of taxpayers who are declared by the regulations to be taxpayers, to whom this section applies in relation to the specified year of income;

(k) the trustee of a unit trust if, at the time when the election is made:

(i) at least 75% of the units are held by a person who is, or persons each of whom is, a person referred to in a preceding paragraph or a prescribed person in relation to the trust; and

(ii) all of the units carry the same rights; and

(iii) if the units are redeemable, they are redeemable for a price determined on the basis of the trust's net asset value, according to Australian accounting principles; and

(iv) the trust engages only in qualifying activities.

Regulations may preclude election

(2) A taxpayer referred to in any of paragraphs (1)(a) to (i) and (k) cannot make an election under subsection (1) if, under the regulations, the taxpayer is precluded from making such an election.

Election ineffective if related payments made

(3) An election under subsection (1) does not have any effect in respect of a particular dividend or distribution if:

(a) the taxpayer or an associate of the taxpayer has made, is under an obligation to make, or is likely to make, a related payment in respect of the dividend or distribution; and

(b) the payment was or will be a payment of a prescribed kind.

Prescribed kinds of payments

(4) For the purposes of subsection (3), a payment is taken to have been, or will be, a ***payment of a prescribed kind*** if:

(a) unless the regulations otherwise provide, the payment occurred or will occur pursuant to:

(i) an obligation under a securities lending arrangement (other than such an obligation to which section 160AQUA applies); or

(ii) an obligation under an arrangement of a kind known as an equity swap; or

(b) the payment is included in a class of payments declared by the regulations to be payments to which subsection (3) applies.

Consequences of ineffective elections

(5) If an election under subsection (1) does not have any effect in respect of a particular dividend or distribution because of subsection (3), neither the share nor the interest in respect of which the dividend or distribution was made, nor the positions that the taxpayer has in relation to the share or interest, are to be taken into account in calculating the net equity exposure that the managed fund has in shares, or interests in shares, included in the fund for the purposes of section 160AQZH.

Commissioner's consent required for revocation of election

(6) An election under subsection (1) is irrevocable without the consent of the Commissioner.

Breach of condition of consent

(7) If:

(a) the Commissioner consents to the revocation of an election subject to specified conditions; and

(b) the election is revoked but any of the conditions is breached;

the revocation of the election is taken not to have been made.

Taxpayer making election is a qualified person

(8) A taxpayer who makes an election under subsection (1) is a ***qualified person*** in relation to every dividend paid during a year of income to which the election applies on shares held by the taxpayer or in which the taxpayer has an interest.

Effect of determination by Commissioner

(9) If the Commissioner has made a determination under subsection 177EA(5) in respect of:

(a) a dividend paid in respect of shares held by a taxpayer; or

(b) a distribution that:

(i) was derived from a dividend paid in respect of shares; and

(ii) is made in respect of an interest held by a taxpayer in the shares;

the following paragraphs have effect:

(c) if the shares or interest is included in a discrete fund to which an election under subsection (1) relates—the Commissioner may determine that the election ceases or ceased to have effect from the beginning of the year of income in which the determination was made or from the beginning of a later year of income specified in the determination;

(d) if the shares or interest is not included in such a fund—the taxpayer is not entitled, without the consent of the Commissioner, to make an election under subsection (1).

A determination under this subsection has effect according to its terms.

Effect of entering into certain positions

(10) If:

(a) an election made by a taxpayer under subsection (1) is in force in respect of the shares or interests in shares included in a discrete fund managed by or on behalf of the taxpayer; and

(b) the Commissioner informs the taxpayer that the Commissioner is of the opinion that:

(i) the taxpayer has entered into, or caused another person (for example, the asset overlay manager of the fund) on behalf of the taxpayer, to enter into; or

(ii) under an arrangement to which the taxpayer and an associate are parties, the associate has entered into;

a position or positions that, apart from this subsection, would not be taken into account under subsection 160AQZH(2) for a purpose of materially diminishing risks of loss and opportunities for gain in respect of the shares or interests;

the following provisions have effect:

(c) the short position or positions are to be taken into account under subsection 160AQZH(2);

(d) the Commissioner may determine that the election ceases or ceased to have effect from a time specified in the determination;

(e) if such a determination is made:

(i) the determination has effect according to its terms; and

(ii) the taxpayer is not entitled to make another election under subsection (1) without the consent of the Commissioner; and

(iii) if the Commissioner consents to the making of such an election subject to specified conditions and the election is made but any of the conditions is breached—the election is taken not to have been made.

Definitions

(11) In this section:

excluded fund has the meaning given by subsection 10(1) of the *Superannuation Industry Supervision Act 1993*.

qualifying activity means 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 relevant trust; and

(c) is conducted at arm's length.

160APHS Prescribed persons in relation to a unit trust

(1) This section has effect for the purposes of subparagraph (c)(i) of the definition of ***widely held trust*** in section 160APHD and subparagraph 160APHR(1)(k)(i).

(2) A company is a ***prescribed person*** in relation to a unit trust if:

(a) the company is a non-resident; or

(b) were the company to receive a distribution from the trust, the distribution would be exempt income of the company for the purposes of this Part.

(3) A trustee is a ***prescribed person*** in relation to a unit trust if:

(a) all the beneficiaries in the trust are prescribed persons under other provisions of this section; or

(b) were the trustee to receive a distribution from the trust, the distribution would be exempt income of the trust estate for the purposes of this Part.

(4) A partnership is a ***prescribed person*** in relation to a unit trust if:

(a) all the partners are prescribed persons under other provisions of this section; or

(b) were the partnership to receive a distribution from the trust, the distribution would be exempt income of the partnership for the purposes of this Part.

(5) An individual (other than a trustee) is a ***prescribed person*** in relation to a unit trust if:

(a) he or she is a non-resident; or

(b) were he or she to receive a distribution from the trust, the distribution would be exempt income of the individual for the purposes of this Part.

(6) The Commonwealth, each of the States, the Australian Capital Territory, the Northern Territory and Norfolk Island are ***prescribed persons*** in relation to a unit trust.

160APHT Individuals qualified by electing to have a franking rebate ceiling applied

(1) A taxpayer who is an individual may elect to have a franking rebate ceiling applied in respect of him or her in relation to a specified year of income in accordance with Subdivision BB of Division 7.

(2) Subject to subsection (3), if a taxpayer makes such an election, the taxpayer is a ***qualified person*** in relation to every dividend paid during the year of income specified in the election on shares that the taxpayer held or in which the taxpayer held an interest.

(3) A taxpayer is ***not a qualified person*** under subsection (2) in relation to a dividend if the taxpayer or an associate of the taxpayer has made, is under an obligation to make, or is likely to make, a related payment in respect of the dividend or a distribution attributable to the dividend.

160APHU Beneficiary or partner not to be a qualified person if trustee or partnership is not a qualified person: trustee or partnership may be entitled to deduction

Disqualification of beneficiary or partner

(1) If a taxpayer that is a trustee or partnership is not a qualified person in relation to a dividend (including a trustee or partnership that is not a qualified person because of a previous application of this subsection), then, despite any other provision of this Subdivision, no beneficiary of the trust or partner in the partnership is a qualified person in relation to the dividend.

Allowable deduction to trustee or partnership in certain circumstances

(2) If:

(a) a taxpayer that is a trustee or a partnership is not a qualified person in relation to a dividend; and

(b) the dividend is not paid to the trustee or partnership as the holder of the shares on which the dividend is paid (that is, the

trustee or partnership receives a trust amount or partnership amount in respect of the dividend);

a deduction is allowable to the trustee or partnership, from the assessable income of the trust estate or partnership of the year of income in which the relevant trust amount or partnership amount was received, of an amount equal to the sum of the amounts represented by the letters PR and EPR in the definition of ***potential rebate amount*** in section 160APA in so far as it relates to the trust amount or partnership amount.

9 At the end of subsection 160APP(6)

Add "or if the shareholder is not a qualified person in relation to the dividend for the purposes of Division 1A".

10 After paragraph 160APQ(1)(b)

Insert:

and (c) the company is a qualified person in relation to the relevant franked dividend for the purposes of Division 1A;

11 After paragraph 160APQ(2)(b)

Insert:

and (c) the company is a qualified person in relation to the relevant franked dividend for the purposes of Division 1A;

12 At the end of paragraphs 160AQT(1)(a) and (b)

Add "and".

13 After paragraph 160AQT(1)(b)

Insert:

(ba) the shareholder is a qualified person in relation to the dividend for the purposes of Division 1A; and

14 After paragraph 160AQT(1AB)(b)

Insert:

(ba) the shareholder is a qualified person in relation to the dividend for the purposes of Division 1A; and

15 After paragraph 160AQT(1A)(b)

Insert:

(ba) the shareholder is a qualified person in relation to the dividend for the purposes of Division 1A; and

16 After paragraph 160AQT(1C)(b)

Insert:

(ba) the shareholder is a qualified person in relation to the dividend for the purposes of Division 1A; and

17 After paragraph 160AQX(1)(c)

Insert:

and (ca) the taxpayer is a qualified person in relation to the relevant franked dividend for the purposes of Division 1A;

18 After paragraph 160AQY(1)(b)

Insert:

and (ba) the trustee is a qualified person in relation to the relevant franked dividend for the purposes of Division 1A;

19 After paragraph 160AQYA(1)(c)

Insert:

and (ca) the taxpayer is a qualified person in relation to the relevant franked dividend for the purposes of Division 1A;

20 After paragraph 160AQYA(2)(c)

Insert:

and (ca) the taxpayer is a qualified person in relation to the relevant franked dividend for the purposes of Division 1A;

21 After paragraph 160AQZ(1)(c)

Insert:

and (ca) the taxpayer is a qualified person in relation to the relevant franked dividend for the purposes of Division 1A;

22 After Subdivision B of Division 7 of Part IIIAA

Insert:

Subdivision BA—Maximum franking credits, maximum franking rebates, and maximum potential rebate amounts (and allowable deductions), for taxpayers who elect under section 160APHR

160AQZD Application of Subdivision

This Subdivision applies in relation to a year of income to a taxpayer (the ***electing taxpayer***) who makes an election under section 160APHR in relation to the year of income.

160AQZE Maximum franking credits

(1) If:

(a) any dividends are paid on shares during the year of income; and

(b) the electing taxpayer is a company that held the shares or had interests in the shares; and

(c) the shares or interests are managed by or on behalf of the electing taxpayer as or in a discrete fund; and

(d) the election under section 160APHR related to the shares or interests; and

(e) the sum of the franking credits to which the electing taxpayer is entitled under this Part in respect of all those dividends exceeds the ceiling amount in relation to the fund in relation to the year of income;

there arises, at the end of the year of income, a franking debit of the company equal to the excess.

(2) If the electing taxpayer is entitled to both class A franking credits and class C franking credits under this Part in respect of any of the dividends referred to in subsection (1), the ***sum of the franking credits to which the taxpayer is entitled under this Part*** in respect of all the dividends referred to in that subsection is the sum of:

(a) the class C franking credits in respect of any of those dividends; and

(b) the amount worked out by using the formula:

$$\text{The class A franking credits in respect of any of those dividends} \times \frac{39}{61} \times \frac{64}{36}$$

(3) The ***ceiling amount***, in relation to the fund in relation to the year of income, is the notional total credit amount in relation to the fund in relation to the year of income increased by:

(a) if paragraph (b) does not apply—20%; or

(b) if a different percentage is prescribed by the regulations in relation to the index by reference to which the relevant benchmark portfolio of shares that applies in respect of the fund is determined—that percentage.

(4) The ***notional total credit amount***, in relation to the fund in relation to the year of income, is:

(a) subject to paragraph (b), an amount equal to the sum of the franking credits to which a taxpayer (the ***notional taxpayer***) of the same class or kind as the electing taxpayer would be entitled under this Part in respect of dividends on shares in the benchmark portfolio of shares that applies in respect of the fund (being shares that become ex dividend during the year of income) if:

(i) those dividends were paid to the notional taxpayer in the year of income; and

(ii) the notional taxpayer were a qualified person under section 160APHO in relation to those dividends; or

(b) if the regulations provide another method of calculating notional total credit amounts in relation to funds managed in the year of income by or on behalf of a class of taxpayers in which the electing taxpayer is included—the amount calculated in relation to the fund in accordance with that method.

(5) If the first acquisition of shares or interests in shares that are managed by or on behalf of the electing taxpayer as or in a particular discrete fund occurred during the year of income, the notional total credit amount in relation to the fund in relation to the year of income is to be worked out as if the year of income did not

include the part of the year of income before the acquisition occurred.

(6) If all the shares and interests in shares that were managed by or on behalf of the electing taxpayer as or in a particular discrete fund are disposed of during the year of income, the notional total credit amount in relation to the fund in relation to the year of income is to be worked out as if the year of income did not include the part of the year of income after the last disposal of any of the shares or interests occurred.

(7) The regulations may determine what constitutes a kind of taxpayer or class of taxpayers for the purposes of this section.

160AQZF Maximum franking rebates or intercorporate dividend rebates

(1) If:

(a) any dividends are paid on shares during the year of income; and

(b) the electing taxpayer held the shares or had interests in the shares; and

(c) the shares or interests are managed by or on behalf of the electing taxpayer as or in a discrete fund; and

(d) the election under section 160APHR related to the shares or interests;

the sum of the rebates of tax to which the electing taxpayer is entitled under this Part or Subdivision D of Division 2 of Part III in respect of all those dividends is not to exceed the ceiling amount in relation to the fund in relation to the year of income.

(2) The ***ceiling amount***, in relation to the fund in relation to the year of income, is the notional total rebate amount in relation to the fund in relation to the year of income increased by:

(a) if paragraph (b) does not apply—20%; or

(b) if a different percentage is prescribed by the regulations in relation to the index by reference to which the relevant benchmark portfolio of shares that applies in respect of the fund is determined—that percentage.

(3) The ***notional total rebate amount***, in relation to the fund in relation to the year of income, is:

(a) subject to paragraph (b), an amount equal to the sum of the rebates of tax to which a taxpayer (the ***notional taxpayer***) of the same class or kind as the electing taxpayer would be entitled under this Part in respect of dividends on shares in the benchmark portfolio of shares that applies in respect of the fund (being shares that become ex dividend during the year of income) if:

(i) those dividends were paid to the notional taxpayer in the year of income; and

(ii) the notional taxpayer were a qualified person under section 160APHO in relation to those dividends; or

(b) if the regulations provide another method of calculating notional total rebate amounts in relation to funds managed in the year of income by or on behalf of a class of taxpayers in which the electing taxpayer is included—the amount calculated in relation to the fund in accordance with that method.

(4) If the first acquisition of shares or interests in shares that are managed by or on behalf of the electing taxpayer as or in a particular discrete fund occurred during the year of income, the notional total rebate amount in relation to the fund in relation to the year of income is to be worked out as if the year of income did not include the part of the year of income before the acquisition occurred.

(5) If all the shares and interests in shares that were managed by or on behalf of the electing taxpayer as or in a particular discrete fund are disposed of during the year of income, the notional total rebate amount in relation to the fund in relation to the year of income is to be worked out as if the year of income did not include the part of the year of income after the last disposal of any of the shares or interests occurred.

(6) The regulations may determine what constitutes a kind of taxpayer or class of taxpayers for the purposes of this section.

160AQZG Maximum potential rebate amount and allowable deduction

(1) If:

(a) any dividends are paid on shares during the year of income; and

(b) the electing taxpayer is a taxpayer mentioned in paragraph 160APHR(1)(a), (b), (j) or (k) who held the shares or had interests in the shares; and

(c) the shares or interests are managed by or on behalf of the electing taxpayer as or in a discrete fund; and

(d) the election under section 160APHR related to the shares or interests;

the sum of the amounts represented by the letters PR and EPR in the formulas in the definition of ***potential rebate amount*** in section 160APA in relation to the electing taxpayer in respect of all those dividends is not to exceed the ceiling amount in relation to the fund in relation to the year of income.

(2) The ***ceiling amount***, in relation to the fund in relation to the year of income, is the notional total rebate amount in relation to the fund in relation to the year of income increased by:

(a) if paragraph (b) does not apply—20%; or

(b) if a different percentage is prescribed by the regulations in relation to the index by reference to which the relevant benchmark portfolio of shares that applies in respect of the fund is determined—that percentage.

(3) The ***notional total rebate amount***, in relation to the fund in relation to the year of income, is:

(a) subject to paragraph (b), an amount equal to the sum of the rebates of tax to which a taxpayer (the ***notional taxpayer***) who is a natural person and a resident of Australia would be entitled under this Part in respect of dividends on shares in the benchmark portfolio of shares that applies in respect of the fund (being shares that become ex dividend during the year of income) if:

(i) those dividends were paid to the notional taxpayer in the year of income; and

(ii) the notional taxpayer were a qualified person under section 160APHO in relation to those dividends; or

(b) if the regulations provide another method of calculating notional total rebate amounts in relation to funds managed in the year of income by or on behalf of a class of taxpayers in which the electing taxpayer is included—the amount calculated in relation to the fund in accordance with that method.

(4) If the first acquisition of shares or interests in shares that are managed by or on behalf of the electing taxpayer as or in a particular discrete fund occurred during the year of income, the notional total rebate amount in relation to the fund in relation to the year of income is to be worked out as if the year of income did not include the part of the year of income before the acquisition occurred.

(5) If all the shares and interests in shares that were managed by or on behalf of the electing taxpayer as or in a particular discrete fund are disposed of during the year of income, the notional total rebate amount in relation to the fund in relation to the year of income is to be worked out as if the year of income did not include the part of the year of income after the last disposal of any of the shares or interests occurred.

(6) If the sum of the amounts referred to in subsection (1) in relation to the electing taxpayer in respect of dividends paid during the year of income exceeds the ceiling amount referred to in that subsection in relation to the year of income, the excess is allowable as a deduction from the electing taxpayer's assessable income of the year of income.

160AQZH Benchmark portfolio of shares

(1) The ***benchmark portfolio of shares*** that is applicable in respect of a fund managed by or on behalf of a taxpayer is the portfolio of the shares and other securities used to calculate:

(a) the All Ordinaries Index published by the Australian Stock Exchange Limited; or

(b) if the regulations prescribe another index in relation to a class of taxpayers in which the taxpayer is included—the other index;

being a portfolio whose value is equal to the net equity exposure of the fund for the year of income.

(2) The ***net equity exposure*** of a fund for the year of income is the average of the values calculated for each relevant week during the year of income of the long and short positions that the fund has in such of the shares, or in interests in such of the shares, included in the fund as:

(a) are shares:

(i) in companies that are residents of Australia; and

(ii) that are included in the relevant index; or

(b) if the relevant index is the index referred to in paragraph (1)(a)—are ordinary shares:

(i) in companies that are residents of Australia; and

(ii) that are listed for quotation in the official list of Australian Stock Exchange Limited.

(3) The ***value*** of a position in a share, or a position in an interest in a share, is calculated by multiplying the value of the share or interest by the delta of the position in the share or interest.

(4) The values calculated for each relevant week as mentioned in subsection (2) are to be calculated on the same day each week (being the day chosen for the first calculation) or, if another basis for calculating those values is prescribed by the regulations, are to be calculated on that other basis.

(5) A ***relevant week*** referred to in subsection (2) is each week during the year of income other than:

(a) if the first acquisition of shares or interests in shares that are managed by or on behalf of the electing taxpayer as or in a particular discrete fund occurred during the year of income—a week occurring before the week in which the acquisition occurred; and

(b) if all the shares or interests in shares that are managed by or on behalf of the electing taxpayer as or in a particular

discrete fund were disposed of during the year of income—a week occurring after the week in which the last disposal of shares or interests occurred.

Subdivision BB—Maximum franking rebates and allowable deductions for taxpayers who elect under section 160APHT

160AQZI Application of Subdivision

This Subdivision applies in relation to a year of income to a taxpayer who makes an election under section 160APHT in relation to the year of income.

160AQZJ Maximum franking rebates

(1) The sum of the rebates of tax to which the taxpayer is entitled under sections 160AQU, 160AQX and 160AQZ in respect of dividends paid or distributions made during the year of income is not to exceed the amount (the ***applicable amount***) worked out in accordance with subsection (2).

(2) The applicable amount is worked out as follows:

(a) calculate the total of the amounts of the rebates of tax to which the taxpayer would be entitled under sections 160AQU, 160AQX and 160AQZ in respect of the year of income if he or she had not made the election referred to in section 160AQZI but were a qualified person in relation to each of those dividends because of section 160APHO;

(b) deduct from $2000 an amount of $4 for each $1 by which the total amount calculated under paragraph (a) exceeds $2000;

(c) the amount (if any) remaining is the applicable amount.

160AQZK Deduction allowable

(1) An amount calculated in accordance with subsection (2) is allowable as a deduction from the taxpayer's assessable income of the year of income.

(2) The amount allowable as a deduction is the lesser of $2,500 or the amount worked out using the formula:

Total rebates − $2,000 + Deducted amount

where:

deducted amount is the amount deducted under paragraph 160AQZJ(2)(b).

total rebates means the total of the amounts of the rebates of tax calculated under paragraph 160AQZJ(2)(a).

23 After section 160ARAA

Insert:

160ARAB Adjustment where taxpayer who receives a trust amount or partnership amount is not a qualified person under Division 1A in relation to relevant franked dividend

(1) If:

(a) a trust amount is included in a taxpayer's assessable income of a year of income; and

(b) the taxpayer is not a qualified person in relation to the relevant franked dividend for the purposes of Division 1A; and

(c) no deduction has been allowed, or is allowable, from the taxpayer's assessable income of any year of income under section 160AR in respect of the trust amount;

an amount equal to so much of the class A potential rebate amount, the class B potential rebate amount or the class C potential rebate amount that, if the taxpayer were such a qualified person, would arise in relation to the trust amount as does not exceed the trust amount is allowable as a deduction from the taxpayer's assessable income of the year of income.

(2) If:

(a) a partnership amount is included in, or is allowable as a deduction from, a taxpayer's assessable income of a year of income; and

(b) the taxpayer is not a qualified person in relation to the relevant franked dividend for the purposes of Division 1A; and

(c) no deduction has been allowed, or is allowable, from the taxpayer's assessable income of any year of income under section 160AR in respect of the partnership amount;

the class A potential rebate amount, the class B potential rebate amount or the class C potential rebate amount that, if the taxpayer were such a qualified person, would arise in relation to the partnership amount is allowable as a deduction from the taxpayer's assessable income of the year of income.

24 At the end of subsection 272-87(2) of Schedule 2F

Add:

; or (g) persons in the group are the only persons who, under the terms of the trust, can obtain the beneficial enjoyment of the income and capital of the trust.

25 Application of amendments

(1) Subject to this item, the amendments made by this Schedule apply in respect of shares, or interests in shares, where the shares or interests were acquired by the taxpayer on or after 1 July 1997, except where the shares or interests were acquired under a contract made before 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.

(2) If:

(a) a taxpayer has acquired, or acquires, shares or an interest in shares on or after 1 July 1997; and

(b) the acquisition constituted, or constitutes, an acquisition or reacquisition of replacement securities for the purposes of subparagraph 26BC(3)(a)(ii) of the *Income Tax Assessment Act 1936*;

the acquisition is taken for the purposes of subitem (1) to have occurred before 1 July 1997.

(3) If:

(a) a taxpayer acquired, or is taken for the purposes of subitem (1) to have acquired, before 1 July 1997 an interest in shares:

(i) under a trust; or

(ii) as a partner in a partnership; and

(b) the shares, or an interest in the shares, was or is distributed to the taxpayer on or after that date in satisfaction of the interest referred to in paragraph (a);

the acquisition of the shares or interest so distributed, to the extent to which the shares or interest distributed satisfied the interest referred to in paragraph (a), is taken for the purposes of subitem (1) to have occurred before that date.

(4) If:

(a) shares (the ***bonus shares***) have been issued to a taxpayer in respect of existing shares; and

(b) the existing shares were acquired, or are taken for the purposes of subitem (1) to have been acquired, by the taxpayer before 1 July 1997; and

(c) no part of the bonus shares has been, or is taken to have been, a dividend included in the taxpayer's assessable income;

the acquisition of the bonus shares is taken for the purposes of subitem (1) to have occurred before that date.

(5) Despite subitem (1):

(a) references to shares, or interests in shares, in Subdivisions BA and BB of Division 7 of Part IIIAA of the *Income Tax Assessment Act 1936* include references to shares, or interests in shares, acquired by the taxpayer before 1 July 1997; and

(b) in calculating the net position of a taxpayer or fund in relation to shares, or an interest in shares, for the purposes of section 160APHJ of the *Income Tax Assessment Act 1936*, regard is to be had to the long positions and the short positions of the taxpayer or fund in relation to shares, or interests in shares, acquired before 1 July 1997.

(6) Section 160APHL of the *Income Tax Assessment Act 1936* is taken to have come into effect at 3.00 pm by legal time in the Australian Capital Territory on 31 December 1997 and applies to:

(a) all trusts (other than widely held public share-trading trusts) that receive dividends from shares, or distributions in respect of interests in shares, but only in relation to shares or

interests in shares acquired after that time (other than shares or interests acquired under an obligation contained in a contract made before that time); and

(b) widely held public share-trading trusts established after that date.

(7) If:

(a) the trustee of a trust (other than a widely held public share-trading trust) acquired an interest in shares before 3.00 pm by legal time in the Australian Capital Territory on 31 December 1997; and

(b) the shares, or an interest in the shares, was distributed to the trustee after that time in satisfaction of the interest referred to in paragraph (a);

the acquisition of the shares or interest so distributed, to the extent to which the shares or interest distributed satisfied the interest referred to in paragraph (a), is taken for the purposes of paragraph (a) of subitem (6) to have occurred before that time.

(8) If:

(a) shares (the ***bonus shares***) have been issued to the trustee of a trust in respect of existing shares; and

(b) the existing shares were acquired by the trustee before 3.00 pm by legal time in the Australian Capital Territory on 31 December 1997; and

(c) no part of the bonus shares has been, or is taken to have been, a dividend included in the net income of the trust estate;

the acquisition of the bonus shares is taken for the purposes of paragraph (a) of subitem (6) to have occurred before that time.

(9) A reference in a provision inserted in the *Income Tax Assessment Act 1936* by this Schedule to a related payment in respect of a dividend or distribution:

(a) is a reference to a related payment under an arrangement entered into after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997, whether or not the shares or interests in shares in respect of which the dividend was paid or the distribution was made were acquired by the taxpayer before or after that time; but

(b) does not include a reference to a related payment made under a contract for the sale of derivatives known as Share Price Index Futures that was made before 2 July 1998.

(10) Section 160APHN of the *Income Tax Assessment Act 1936* has effect for the purposes of subitem (9) of this item in the same way as it has effect for the purposes of Division 1A of Part IIIAA of that Act.

(11) In this item:

arrangement has the same meaning as in Division 1 of Part IIIAA of the *Income Tax Assessment Act 1936*.

widely held public share-trading trust means a widely held trust that:

(a) is open to investment by members of the public; and

(b) buys and sells shares with a view to profit.

widely held trust has the same meaning as in Division 1A of Part IIIAA of the *Income Tax Assessment Act 1936*.

Schedule 5—Franking of dividends by exempting companies and former exempting companies

Income Tax Assessment Act 1936

1 Subsection 46F(1)

Insert:

exempting company has the same meaning as in Part IIIAA.

2 Subsection 46F(1) (at the end of the definition of unfranked part)

Add "or 160AQFA".

3 Subsection 46F(2)

Repeal the subsection, substitute:

(2) Subject to this section, a shareholder that is a private company in relation to a year of income and to which a dividend is paid in the year of income is not entitled to, and is not to be allowed, a rebate under section 46 or 46A in respect of:

(a) if the dividend was paid by a company other than an exempting company, or the dividend was paid by an exempting company and section 160APPA applies in relation to the dividend:

(i) the unfranked part of the dividend; or

(ii) any part of the dividend in respect of which a determination is made under paragraph 160AQCBA(3)(b) or 177EA(5)(b); or

(b) if the dividend was paid by an exempting company and section 160APPA does not apply in relation to the dividend—any part of the dividend.

4 Paragraph 46M(3)(b)

After "(1AAA)(c)", insert "or 160AQFA(1)(c) or (2)(c)".

5 Subparagraph 46M(4)(a)(ii)

After "(1AAA)(c)", insert "or 160AQFA(1)(c) or (2)(c)".

6 Subparagraph 102AAU(1)(c)(iii)

After "160AQF", insert "or 160AQFA".

7 Subsection 109ZC(2)

After "160AQF", insert "or 160AQFA".

8 Paragraph 109ZC(3)(a)

Repeal the paragraph, substitute:

(a) section 160APP, 160APPA or 160AQCNC (which gives, to companies receiving franked dividends or exempted dividends, franking credits or exempting credits except to the extent to which the dividends are exempt income); or

9 At the end of paragraphs 128B(3)(a) to (g), (gaa) and (gb)

Add "or".

10 Paragraph 128B(3)(ga)

Repeal the paragraph, substitute:

(ga) income that consists of so much of a dividend as has been franked in accordance with section 160AQF or 160AQFA (other than a dividend in respect of which a determination is made under paragraph 160AQCBA(3)(b) or a dividend or a part of a dividend in respect of which a determination is made under paragraph 177EA(5)(b)); or

11 At the end of paragraph 128TE(2)(d)

add "or 160AQFA".

12 Section 160APA

Insert:

accountable interest, in relation to shares in a company, has the meaning given by section 160APHBD.

13 Section 160APA

Insert:

accountable share, in relation to a company, has the meaning given by section 160APHBC.

14 Section 160APA

Insert:

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

15 Section 160APA

Insert:

associate has the same meaning as in section 318.

16 Section 160APA

Insert:

class A exempted amount, in relation to a dividend, means so much of the dividend as has been franked in accordance with subsection 160AQFA(1).

17 Section 160APA

Insert:

class A exempted dividend means a dividend to the extent (if any) to which it has been franked in accordance with subsection 160AQFA(1).

18 Section 160APA

Insert:

class A exempting account balance, in relation to a former exempting company, means:

(a) if the company has a class A exempting surplus—the amount of the surplus; or

(b) if the company has a class A exempting deficit—the amount of the deficit; or

(c) otherwise—nil.

19 Section 160APA

Insert:

class A exempting deficit means a deficit calculated under subsection 160AQCND(3).

20 Section 160APA

Insert:

class A exempting surplus means a surplus calculated under subsection 160AQCND(1).

21 Section 160APA (definition of class A franked dividend)

Repeal the definition, substitute:

class A franked dividend means a dividend to the extent (if any) to which it has been franked in accordance with subsection 160AQF(1).

22 Section 160APA

Insert:

class C exempted amount, in relation to a dividend, means so much of the dividend as has been franked in accordance with subsection 160AQFA(2).

23 Section 160APA

Insert:

class C exempted dividend means a dividend to the extent (if any) to which it has been franked in accordance with subsection 160AQFA(2).

24 Section 160APA

Insert:

class C exempting account balance, in relation to a former exempting company, means:

(a) if the company has a class C exempting surplus—the amount of the surplus; or

(b) if the company has a class C exempting deficit—the amount of the deficit; or

(c) otherwise—nil.

25 Section 160APA

Insert:

class C exempting deficit means a deficit calculated under subsection 160AQCND(4).

26 Section 160APA

Insert:

class C exempting surplus means a surplus calculated under subsection 160AQCND(2).

27 Section 160APA (definition of class C franked dividend)

Repeal the definition, substitute:

class C franked dividend means a dividend to the extent (if any) to which it has been franked in accordance with subsection 160AQF(1AAA).

28 Section 160APA

Insert:

effectively owned by prescribed persons has the meaning given by section 160APHBB.

29 Section 160APA

Insert:

eligible continuing substantial shareholder has the meaning given by section 160APHBJ.

30 Section 160APA

Insert:

eligible employee share scheme: the question whether a share was acquired under an eligible employee share scheme is to be determined in accordance with section 160APHBH.

31 Section 160APA

Insert:

exempted amount, in relation to a dividend, means so much of the dividend as has been franked in accordance with section 160AQFA.

32 Section 160APA

Insert:

exempted dividend means a dividend to the extent (if any) to which it has been franked in accordance with section 160AQFA.

33 Section 160APA

Insert:

exempting company has the meaning given by section 160APHBA.

34 Section 160APA

Insert:

exempting credit means a class A exempting credit or a class C exempting credit.

35 Section 160APA

Insert:

exempting debit means a class A exempting debit or a class C exempting debit.

36 Section 160APA

Insert:

fixed trust has the same meaning as in Schedule 2F.

37 Section 160APA

Insert:

former exempting company has the meaning given by section 160APHBE.

38 Section 160APA (definition of franked dividend)

Repeal the definition, substitute:

franked dividend means a dividend to the extent (if any) to which it has been franked in accordance with section 160AQF.

39 Section 160APA

Insert:

interest, in relation to shares or other property, has the meaning given by section 160APHD.

40 Section 160APA

Insert:

member of the same effectively wholly-owned group of companies has the meaning given by section 160APHBI.

41 Section 160APA

Insert:

prescribed person has the meaning given by section 160APHBF or 160APHBG.

42 Before Division 1A of Part IIIAA

Insert:

Division 1AA—Interpretative provisions relating to exempting companies and former exempting companies

160APHBA Exempting companies

A company is taken to be, or to have been, an ***exempting company*** at a particular time if:

(a) that time is, or was, as the case may be, a time later than 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997; and

(b) at that time the company is or was, as the case may be, effectively owned by prescribed persons.

160APHBB Effective ownership of company by prescribed persons

(1) A company is taken to be, or to have been, ***effectively owned by prescribed persons*** at a particular time if:

(a) at that time:

(i) not less than 95% of the accountable shares in the company; or

(ii) not less than 95% of the accountable interests in shares in the company;

are or were held by, or held indirectly for the benefit of, prescribed persons; or

(b) paragraph (a) does not apply but it would nevertheless be reasonable to conclude that, at that time, the risks involved in, and the opportunities resulting from, holding accountable shares, or accountable interests in shares, in the company that are not, or were not, held by, or directly or indirectly for the benefit of, prescribed persons are or were substantially borne by, or substantially accrue or accrued to, prescribed persons.

(2) In deciding whether it would be reasonable to conclude as mentioned in paragraph (1)(b):

(a) regard is to be had to any arrangement in respect of shares (including unissued shares), or in respect of interests in shares, in the company (including any derivatives held or

issued in connection with those shares or interests) of which the company is aware; but

(b) no regard is to be had to risks involved in the ownership of shares, or interests in shares, in the company that are substantially borne by any person in the person's capacity as a secured creditor.

160APHBC Accountable shares

(1) The purpose of this section is to identify which shares in a company are relevant in determining whether the company is effectively owned by prescribed persons.

(2) A share in a company is an ***accountable share*** if it is not an excluded share.

(3) A share in a company is an ***excluded share*** if, having regard to:

(a) the purposes for which the share was issued; and

(b) any special or limited rights connected with, arising from, or attached to:

(i) the share; or

(ii) other shares in the company held by the holder of the share; or

(iii) shares in the company held by persons other than the holder of the share; or

(iv) interests in any of the above;

including rights that are conferred or exercisable only if the holder of the shares or interests concerned is, or is not, a prescribed person; and

(c) the extent to which any such special or limited rights are similar to or differ from the rights that are normally attached to the ownership of ordinary shares in companies; and

(d) the relationship between the value of the share and the value of the company; and

(e) any relationship or connection (whether of a personal or business nature) between holders of shares in the company of which the company is aware; and

(f) any arrangement in respect of shares (including unissued shares) in the company, or interests in shares in the company, of which the company is aware;

it would be reasonable to conclude that the share is not relevant in determining whether the company is effectively owned by prescribed persons because holding the share does not involve the holder bearing the risks, or result in the accrual to the holder of the opportunities, of ownership of the company that ordinarily arise from, or are ordinarily attached to, the holding of ordinary shares in a company.

(4) In applying subsection (3), the fact that a person is a trustee is to be disregarded.

(5) Without limiting subsection (3), a share in a company held by a person who is not a prescribed person is an ***excluded share*** if:

(a) it is a finance share; or

(b) it is a dividend access share; or

(c) it does not carry the right to receive dividends; or

(d) it was issued, transferred or acquired for a purpose (other than an incidental purpose) of ensuring that the company is not effectively owned by prescribed persons.

(6) A share is a ***finance share*** if, having regard to the rights attached to the share and to any arrangement with respect to the share of which the company is aware, the share is equivalent to a debt owed by the company to the holder of the share.

(7) A share to which subsection (6) does not apply is a ***finance share*** if:

(a) the manner in which the dividends payable in respect of the share are calculated, and the conditions applying to the payment of such dividends, indicate that the dividends paid are equivalent to the receipt by the person to whom they are paid of interest or an amount in the nature of or similar to interest; or

(b) the capital invested by the holder of the share will be redeemed, or, because of an arrangement between the holder and the company or an associate of the company, it is

reasonable for the holder to expect that the capital will be redeemed, for an amount that is not less than, or for property (including other shares in the company) the value of which is not less than, the amount paid for the share; or

(c) the share is redeemable by the company by payment of a lump sum or by the transfer of property, or the share has a preferred right to a repayment of capital on a winding up, where the amount of the lump sum or the value of the property, or the amount of the capital to be repaid, as the case may be, is to be calculated by reference to an implicit interest rate.

(8) A share in a company is a ***dividend access share*** if, having regard to:

(a) the terms of the issue of the share, including any guarantee of payment of dividends; and

(b) the amounts of the dividends paid on the share relative to the issue price of the share; and

(c) whether there is any guaranteed rate at which franked dividends are to be paid on the share; and

(d) the duration of the period within which the share was issued; and

(e) the rights attached to other shares in the company; and

(f) any other relevant matters;

it could be concluded that the share was issued only for the purpose of paying dividends to the holder of the share.

160APHBD Accountable interests

(1) The purpose of this section is to identify which interests in shares in a company are relevant in determining whether the company is effectively owned by prescribed persons.

(2) An interest in a share in a company is an ***accountable interest*** if it is not an excluded interest.

(3) An interest in a share in a company is an ***excluded interest*** if, having regard to:

(a) the purposes for which the interest was granted; and

(b) the nature of the interest; and

(c) any special or limited rights connected with or arising from:

(i) the interest; or

(ii) other shares, or interests in other shares, in the company held by the holder of the interest; or

(iii) shares, or interests in shares, in the company held by persons other than the holder of the interest;

including rights that are conferred or exercisable only if the holder of the interests or shares concerned is, or is not, a prescribed person; and

(d) the extent to which the interest is similar to or differs from beneficial ownership; and

(e) the relationship between the value of the interest and the value of the company; and

(f) any relationship or connection (whether of a personal or business nature) between holders of interests in shares in the company, and the holders of shares in the company, of which the company is aware; and

(g) any arrangement in respect of shares (including unissued shares) in the company, or interests in shares in the company, of which the company is aware;

it would be reasonable to conclude that the interest is not relevant in determining whether the company is effectively owned by prescribed persons because holding the share to which the interest relates does not involve the holder bearing the risks, or result in the accrual to the holder of the opportunities, of ownership of the company that ordinarily arise from, or are ordinarily attached to, the holding of ordinary shares in a company.

(4) In applying subsection (3), the fact that a person is a trustee is to be disregarded.

(5) Without limiting subsection (3), an interest in an accountable share in a company is also an ***excluded interest*** if it was granted or otherwise created, or was transferred or acquired, for a purpose (other than an incidental purpose) of ensuring that the company is not effectively owned by prescribed persons.

160APHBE Former exempting companies

(1) Subject to subsection (2), a company is a ***former exempting company*** if it has at any time ceased to be an exempting company and is not again an exempting company.

(2) If a company that, at any time whether before or after the commencement of this section, became or becomes effectively owned by prescribed persons ceased or ceases to be so effectively owned within 12 months after that time, the company is not taken, by so ceasing, to have become, or to become, a former exempting company.

160APHBF Prescribed persons

(1) A company is a ***prescribed person*** in relation to another company if:

(a) the first company is a non-resident; or

(b) were the first company to receive a dividend paid by the other company, the dividend would be exempt income of the company for the purposes of this Part.

(2) A trustee is a ***prescribed person*** in relation to a company if:

(a) all the beneficiaries in the trust are prescribed persons under other provisions of this section; or

(b) were the trustee to receive a dividend paid by the company, the dividend would be exempt income of the trust estate for the purposes of this Part.

(3) A partnership is a ***prescribed person*** in relation to a company if:

(a) all the partners are prescribed persons under other provisions of this section; or

(b) were the partnership to receive a dividend paid by the company, the dividend would be exempt income of the partnership for the purposes of this Part.

(4) An individual (other than a trustee) is a prescribed person in relation to a company if:

(a) he or she is a non-resident; or

(b) were he or she to receive a dividend paid by the company, the dividend would be exempt income of the individual for the purposes of this Part.

(5) The Commonwealth, each of the States, the Australian Capital Territory, the Northern Territory and Norfolk Island are prescribed persons in relation to any company.

160APHBG Persons who are taken to be prescribed persons

(1) This section applies to a person that:

(a) is a company, a trustee, or a partnership, that holds shares (whether accountable shares or excluded shares), or interests in shares (whether accountable interests or excluded interests), in a company (the ***relevant company***); and

(b) is not a prescribed person under section 160APHBF.

(2) A company (the ***shareholding company***) that holds shares, or interests in shares, in the relevant company is taken to be a ***prescribed person*** in relation to the relevant company if the risks involved in, and the opportunities resulting from, holding the shares or interests are substantially borne by, or substantially accrue to, as the case may be, one or more prescribed persons.

(3) A trustee of a trust who holds shares, or interests in shares, in the relevant company is taken to be a ***prescribed person*** in relation to the relevant company if the risks involved in, and the opportunities resulting from, holding the shares or interests are substantially borne by, or substantially accrue to, as the case may be, one or more prescribed persons.

(4) A trustee of a trust who holds shares, or interests in shares, in the relevant company is taken to be a ***prescribed person*** in relation to the relevant company if:

(a) unless subsection (7) applies, the trust is controlled by one or more persons who are prescribed persons; or

(b) all the beneficiaries who are presently entitled to, or during the relevant year of income become presently entitled to, income from the trust are prescribed persons.

(5) In determining whether subsection (3) or (4) applies in respect of a trust that is controlled by a person, regard is to be had to the way in which the person, or any associate of the person, exercises powers in relation to the trust.

(6) A person ***controls a trust*** if:

(a) the person has the power, either directly, or indirectly through one or more interposed entities, to control the application of the income, or the distribution of the property, of the trust; or

(b) the person has the power, either directly, or indirectly through one or more entities, to appoint or remove the trustee of the trust; or

(c) the person has the power, either directly, or indirectly through one or more entities, to appoint or remove beneficiaries of the trust; or

(d) the trustee of the trust is accustomed or under an obligation, whether formal or informal, to act according to the directions, instructions or wishes of the person or of an associate of the person.

(7) Paragraph (4)(a) does not apply in relation to a trust if some of the beneficiaries receiving income from the trust are not prescribed persons and the Commissioner considers that it is reasonable to conclude that the risks involved in, and the opportunities resulting from, holding the shares and interests in the relevant company are substantially borne by, or substantially accrue to, as the case may be, one or more persons who are not prescribed persons.

(8) A partnership that holds shares, or interests in shares, in the relevant company is taken to be a ***prescribed person*** in relation to the relevant company if the risks involved in, and the opportunities resulting from, holding the shares or interests are substantially borne by, or substantially accrue to, as the case may be, one or more prescribed persons.

(9) If any of the prescribed persons referred to in subsection (2), (3), (4) or (6) is a company, that subsection applies even if the risks involved in, and the opportunities resulting from, holding any of the shares, or interests in shares, in that company are substantially

borne by, or substantially accrue to, as the case may be, one or more persons who are not prescribed persons.

160APHBH Eligible employee share schemes

(1) A share in a company is taken to be acquired by a person under an ***eligible employee share scheme*** if:

(a) the share is acquired by the person in respect of, or for or in relation directly or indirectly to, any employment of the person by the company or by a company that is a subsidiary of the company; and

(b) all the shares available for acquisition under the scheme are ordinary shares or are preference shares to which are attached substantially the same rights as are attached to ordinary shares; and

(c) immediately after the acquisition of the shares:

(i) the person does not hold a legal or beneficial interest in more than 5% of the shares in the company; and

(ii) the person is not in a position to control, or control the casting of, more than 5% of the maximum number of votes that might be cast at a general meeting of the company.

(2) The question whether a company is a subsidiary of another company is to be determined in the same way as the question whether a corporation is a subsidiary of another corporation is determined under the Corporations Law.

160APHBI Membership of same effectively wholly-owned group of companies

(1) 2 companies are members of the same effectively wholly-owned group of companies on a particular day if:

(a) throughout that day, not less than 95% of the accountable shares in each of the companies, and not less than 95% of the accountable interests in shares in each of the companies, are held by, or are held indirectly for the benefit of, the same persons; or

(b) paragraph (a) does not apply but it would nevertheless be reasonable to conclude, having regard to the matters mentioned in subsection (2), that, throughout that day, the risks involved in, and the opportunities resulting from, holding accountable shares, or accountable interests in shares, in each of the companies are substantially borne by, or substantially accrue to, the same persons.

(2) The matters to which regard is to be had as mentioned in paragraph (1)(b) are:

(a) any special or limited rights attaching to accountable shares, or accountable interests in shares, in each of the companies held by persons other than the persons mentioned in paragraph (1)(b) or their associates; and

(b) any special rights attaching only to accountable shares, or accountable interests in shares, in each of the companies held by the persons mentioned in paragraph (1)(b) or their associates; and

(c) the respective proportions:

(i) that accountable shares in each of the companies held by the persons mentioned in paragraph (1)(b) or their associates, and other accountable shares in the company concerned, bear to all the accountable shares in that company; and

(ii) that accountable interests in shares in each of the companies held by the persons mentioned in paragraph (1)(b) or their associates, and other accountable interests in shares in the company concerned, bear to all the accountable interests in shares in that company; and

(d) the respective proportions that:

(i) the total value of accountable shares in each of the companies held by the persons mentioned in paragraph (1)(b) or their associates, and the total value of other accountable shares in the company concerned, bear to the total value of all the accountable shares in that company; and

(ii) the total value of accountable interests in shares in each of the companies held by the persons mentioned in

paragraph (1)(b) or their associates, and the total value of other accountable interests in shares in the company concerned, bear to the total value of all the accountable interests in shares in that company; and

(e) the purposes for which accountable shares, or accountable interests in shares, in each of the companies were issued or granted to persons other than the persons mentioned in paragraph (1)(b) or their associates; and

(f) any arrangement in respect of accountable shares, or accountable interests in shares, in each of the companies held by persons other than the persons mentioned in paragraph (1)(b) or their associates (including any derivatives held or issued in connection with those shares or interests) of which the company concerned is aware.

160APHBJ Eligible continuing substantial shareholders

(1) A shareholder is an ***eligible continuing substantial shareholder*** in relation to a dividend paid by a former exempting company (the ***relevant former exempting company***) if the following provisions apply.

(2) At both of the following times:

(a) the time when the dividend was paid; and

(b) the time immediately before the relevant former exempting company ceased to be an exempting company;

the shareholder:

(c) was entitled to not less than the prescribed percentage of:

(i) if the voting shares (as defined in the Corporations Law) in the relevant former exempting company are not divided into classes—those voting shares; or

(ii) if the voting shares (as so defined) in the relevant former exempting company are divided into 2 or more classes—the shares in one of those classes; and

(d) was a person referred to in one or more of the following subparagraphs:

(i) a non-resident; or

(ii) a life assurance company; or

(iii) an exempting company; or

(iv) a former exempting company; or

(v) a trustee of a trust in which an interest was held by a person referred to in any of subparagraphs (i) to (iv); or

(vi) a partnership in which an interest was held by a person referred to in any of subparagraphs (i) to (iv).

(3) If the assumptions set out in subsection (4) are made:

(a) if the shareholder was a person referred to in any of subparagraphs (2)(d)(i) to (iv)—the shareholder; or

(b) if the shareholder was a trustee of a trust or a partnership, being a trust or partnership in which a person referred to in any of those subparagraphs held an interest—the holder of the interest;

would (if a non-resident) be exempt from dividend withholding tax on the dividend or (if a resident) be entitled to a franking credit or a franking rebate in respect of the dividend.

(4) The assumptions referred to in subsection (3) are that:

(a) the relevant former exempting company was an exempting company at the time it paid the dividend; and

(b) the dividend was a franked dividend paid to the shareholder; and

(c) if the shareholder was a former exempting company—the shareholder was an exempting company; and

(d) if the shareholder was a trustee of a trust or partnership in which a former exempting company had an interest—that former exempting company was an exempting company.

(5) The question whether a person was entitled at a particular time to not less than the prescribed percentage of voting shares or a class of voting shares in a company is to be determined in the same way as that question is determined under subsection 708(5) of the Corporations Law.

(6) A person is taken to hold an interest in a trust if:

(a) the person is a beneficiary under the trust; or

(b) the person derives, or will derive, income indirectly, through interposed trusts or partnerships, from dividends received by the trustee.

(7) A person is taken to hold an interest in a partnership if:

(a) the person is a partner in the partnership; or

(b) the person derives, or will derive, income indirectly, through interposed trusts or partnerships, from dividends received by the partnership.

43 Before subsection 160APP(1)

Insert:

(1AA) This section does not apply in relation to a class A franked dividend, a class B franked dividend or a class C franked dividend, paid to a shareholder by an exempting company. However, section 160APPA may apply in relation to such a dividend.

44 After section 160APP

Insert:

160APPA Receipt of certain franked dividends by exempting companies

(1) Subject to this section, if, on a particular day, a class A franked dividend is paid by an exempting company (the ***first company***) to a shareholder being another exempting company (the ***second company***) and:

(a) the second company is a resident at the time the dividend is paid; and

(b) either of the following subparagraphs applies:

(i) the first company and the second company are members of the same effectively wholly-owned group of companies;

(ii) the second company holds more than 5% of the shares in the first company (other than finance shares or dividend access shares within the meaning of section 160APHBC or shares that do not carry the right to

receive dividends) and it would be reasonable to conclude that the risks involved in, and the opportunities resulting from, holding those shares are substantially borne by, or substantially accrue to, the second company;

there arises on that day a class A franking credit of the second company equal to the class A franked amount of the dividend.

(2) Subject to this section, if, on a particular day, a class C franked dividend is paid by an exempting company (the ***first company***) to a shareholder being another exempting company (the ***second company***) and:

(a) the second company is a resident at the time the dividend is paid; and

(b) either of the following subparagraphs applies:

(i) the first company and the second company are members of the same effectively wholly-owned group of companies;

(ii) the second company holds more than 5% of the shares in the first company (other than finance shares or dividend access shares within the meaning of section 160APHBC or shares that do not carry the right to receive dividends) and it would be reasonable to conclude that the risks involved in, and the opportunities resulting from, holding those shares are substantially borne by, or substantially accrue to, the second company;

there arises on that day a class C franking credit of the second company equal to the class C franked amount of the dividend.

(3) In deciding whether it would be reasonable to conclude as mentioned in subparagraph (1)(b)(ii) or (2)(b)(ii):

(a) regard is to be had to any arrangement in respect of shares (including unissued shares) in the first company (including any derivatives held or issued in connection with those shares); but

(b) no regard is to be had to risks involved in the ownership of shares in the first company that are substantially borne by any person in the person's capacity as a secured creditor.

(4) No franking credit arises if the dividend is wholly exempt income of the second company.

(5) If a determination is made under paragraph 160AQCBA(3)(b) or 177EA(5)(b) in respect of the whole of the dividend, no franking credit arises in respect of the dividend.

(6) If a determination is made under paragraph 177EA(5)(b) in respect of a part of the dividend, the franking credit that would otherwise arise in respect of the dividend is reduced by the same proportion as that part of the dividend bears to the whole of the dividend.

(7) If the dividend is partly exempt income of the second company, the franking credit arising under subsection (1) or (2) is reduced by the amount worked out by using the formula:

$$\text{Franking credit} \times \frac{\text{Exempt part of dividend}}{\text{Dividend}}$$

where:

dividend means the number of dollars in the total amount of the dividend.

exempt part of dividend means the number of dollars in the part of the dividend that is exempt income.

franking credit means the franking credit determined under whichever of subsections (1) and (2) is applicable.

(8) In determining for the purposes of subsection (3) or (7) whether the dividend is wholly or partly exempt income of the second company, section 124ZM (which exempts dividends paid by PDFs) is to be disregarded.

(9) The franking credit arising under subsection (1) or (2) is to be reduced by 80% if:

(a) the second company is a life assurance company; and

(b) the assets of the second company from which the dividend was derived were included in insurance funds of the second company at any time during the period beginning at the start of the year of income of the second company in which the

dividend was paid and ending at the time the dividend was paid.

(10) No franking credit arises if the dividend was paid as part of a dividend stripping operation.

45 Paragraph 160AQCBA(3)(a)

After "franking debit", insert "or an exempting debit".

46 Subsections 160AQCBA(8) to (12)

Repeal the subsections, substitute:

Effect of determination of franking debit or exempting debit

(8) If the Commissioner makes a determination under paragraph (3)(a):

(a) on the day on which notice of the determination is served in writing on the company, a franking debit or exempting debit of the company arises in respect of the dividend or other benefit; and

(b) the amount of the franking debit or exempting debit is worked out in accordance with subsections (9) to (13).

Franking debit or exempting debit in respect of partly franked dividend

(9) In the case of a franking debit or exempting debit in respect of a partly franked or partly exempted dividend, the amount of the franking debit or exempting debit is the difference between the franked amount or the exempted amount and the amount that would have been the franked amount or exempted amount if the dividend had been franked to the maximum extent to which the dividends paid to the advantaged shareholders were franked.

Franking debit in respect of unfranked dividend

(10) In the case of a franking debit in respect of an unfranked dividend, the amount of the franking debit is the amount that would have been the franked amount if the dividend had been franked to the

maximum extent to which the dividends paid to the advantaged shareholders were franked.

Exempting debit in respect of dividend that has not been franked in accordance with section 160AQFA

(10A) In the case of an exempting debit in respect of a dividend that has not been franked in accordance with section 160AQFA, the amount of the exempting debit is the amount that would have been the franked amount if the dividend had been franked to the maximum extent to which the dividends paid to the advantaged shareholders were franked.

Franking debit or exempting debit in respect of bonus shares from share premium account

(11) In the case of a franking debit or exempting debit in respect of a benefit by way of the issue of bonus shares from a share premium account, the amount of the franking debit or exempting debit is the amount that, if the company had paid a dividend of an amount equal to the amount debited to the share premium account in respect of the bonus shares and had franked the dividend to the maximum extent to which the dividends paid to the advantaged shareholders were franked, would have been the franked amount of the dividend.

Franking debit or exempting debit in respect of any other benefit

(12) In the case of a franking debit or exempting debit in respect of any other benefit, the amount of the franking debit or exempting debit is the amount that, if the company had paid a dividend of an amount equal to the value of the benefit at the time when it was paid and had franked the dividend to the maximum extent to which the dividends paid to the advantaged shareholders were franked, would have been the franked amount of the dividend.

47 Subparagraph 160AQCBA(16)(a)(i)

After "160APP", insert "or 160APPA".

48 At the end of subsection 160AQCBA(16)

Add:

; or (e) the shareholder is a company and an exempting credit of the company arises under section 160AQCNF.

49 Subsection 160AQCBA(17)

Repeal the subsection, substitute:

Meaning of ***greater benefit from franking credits***

(17) The circumstances in which a shareholder would, in a year of income, derive a ***greater benefit from franking credits*** than another shareholder include, but are not limited to:

(a) any of the following circumstances existing in relation to the other shareholder and not in relation to the first shareholder:

(i) the shareholder is a non-resident;

(ii) the amount of tax (if any) that, apart from this Part, would be payable by the shareholder is less than the amount of the rebate of tax to which the shareholder would be entitled under section 160AQU or 160AQY;

(iii) the shareholder is a company that is unable to pay a dividend to its shareholders in the year of income because it has not made any profits or has not made sufficient profits to do so;

(iv) the shareholder is an exempting company or a company for which no franking credits arise; and

(b) any of the following circumstances existing in relation to the first shareholder and not in relation to the other shareholder:

(i) a franking credit arises under section 160APPA;

(ii) a franking credit or exempting credit arises under section 160AQCNF;

(iii) subsection 160AQTA(2) or (5) applies;

(iv) section 160AQTB applies.

50 Sections 160AQCNA and 160AQCNB

After "franking debit" (wherever occurring), insert "or exempting debit".

51 After Division 2 of Part IIIAA

Insert:

Division 2A—Exempting companies and former exempting companies

160AQCND Calculation of surplus or deficit

(1) The class A exempting surplus of a former exempting company at a particular time in a franking year is the amount by which the total of the class A exempting credits of the company arising in the franking year and before that time exceeds the total of the class A exempting debits of the company arising in the franking year and before that time.

(2) The class C exempting surplus of a former exempting company at a particular time in a franking year is the amount by which the total of the class C exempting credits of the company arising in the franking year and before that time exceeds the total of the class C exempting debits of the company arising in the franking year and before that time.

(3) The class A exempting deficit of a former exempting company at a particular time in a franking year is the amount by which the total of the class A exempting debits of the company arising in the franking year and before that time exceeds the total of the class A exempting credits of the company arising in the franking year and before that time.

(4) The class C exempting deficit of a former exempting company at a particular time in a franking year is the amount by which the total of the class C exempting debits of the company arising in the franking year and before that time exceeds the total of the class C exempting credits of the company arising in the franking year and before that time.

160AQCNE Payment of exempted dividends by former exempting companies

(1) If, on a particular day, a former exempting company pays a class A exempted dividend, there arises on that day a class A exempting debit of the company equal to the amount that, except for subsection 160AQFA(4), would be the class A exempted amount of the dividend.

(2) If, on a particular day, a former exempting company pays a class C exempted dividend, there arises on that day a class C exempting debit of the company equal to the amount that, except for subsection 160AQFA(4), would be the class C exempted amount of the dividend.

160AQCNF Receipt of exempted dividends by former exempting companies or by exempting companies

(1) Subject to this section, if, on a particular day, a class A exempted dividend is paid to a former exempting company, or to an exempting company, that is a resident at the time the dividend is paid, there arises on that day a class A exempting credit of the former exempting company or a class A franking credit of the exempting company, as the case may be, equal to the class A exempted amount of the dividend.

(2) Subject to this section, if, on a particular day, a class C exempted dividend is paid to a former exempting company, or to an exempting company, that is a resident at the time the dividend is paid, there arises on that day a class C exempting credit of the former exempting company or a class C franking credit of the exempting company, as the case may be, equal to the class C exempted amount of the dividend.

(3) No exempting credit or franking credit arises if the dividend is wholly exempt income of the company.

(4) If a determination is made under paragraph 160AQCBA(3)(b) or 177EA(5)(b) in respect of the dividend, no exempting credit or franking credit arises in respect of the dividend.

(5) If a determination is made under paragraph 177EA(5)(b) in respect of a part of the dividend, the exempting credit or franking credit that would otherwise arise in respect of the dividend is reduced by the same proportion as that part of the dividend bears to the whole of the dividend.

(6) If the dividend is partly exempt income of the company, the exempting credit or franking credit arising under subsection (1) or (2) is reduced by the amount worked out by using the formula:

$$\text{Credit} \times \frac{\text{Exempt part of dividend}}{\text{Dividend}}$$

where:

credit means the exempting credit or franking credit, as the case may be, determined under whichever of subsections (1) and (2) is applicable.

dividend means the number of dollars in the total amount of the dividend.

exempt part of dividend means the number of dollars in the part of the dividend that is exempt income.

(7) In determining for the purposes of subsection (3) or (6) whether the dividend is wholly or partly exempt income of the former exempting company or of the exempting company, section 124ZM (which exempts dividends paid by PDFs) is to be disregarded.

(8) The exempting credit or franking credit arising under subsection (1) or (2) is to be reduced by 80% if:

(a) the former exempting company, or the exempting company, is a life assurance company; and

(b) the assets of the former exempting company, or of the exempting company, from which the dividend was derived were included in insurance funds of the company at any time during the period beginning at the start of the year of income of the company in which the dividend was paid and ending at the time the dividend was paid.

(9) No exempting credit or franking credit arises if the dividend was paid as part of a dividend stripping operation.

160AQCNG Conversion of franking surplus to exempting credit when an exempting company becomes a former exempting company

(1) If:

(a) an exempting company becomes a former exempting company; and

(b) at the time when it becomes a former exempting company it has a class A franking surplus;

then, subject to section 160AQCNI, immediately after it became a former exempting company:

(c) there arises a class A franking debit of the company equal to the surplus; and

(d) there arises a class A exempting credit of the company equal to the surplus.

(2) If:

(a) an exempting company becomes a former exempting company; and

(b) at the time when it becomes a former exempting company it has a class C franking surplus;

then, subject to section 160AQCNI, immediately after it became a former exempting company:

(c) there arises a class C franking debit of the company equal to the surplus; and

(d) there arises a class C exempting credit of the company equal to the surplus.

(3) For the purpose of calculating the franking debit referred to in paragraph (1)(c) or (2)(c) and the exempting credit referred to in paragraph (1)(d) or (2)(d), in relation to the company, the franking surplus referred to in paragraph (1)(b) or (2)(b) is taken:

(a) to be increased by so much of any franking credit of the company; and

(b) to be reduced by so much of any franking debit of the company;

that arose during the year of income in which the company became a former exempting company as is not attributable to a period in which, or to an event taking place at a time when, the company was an exempting company or would have been an exempting company if paragraph 160APHBA(a) had not been enacted.

(4) For the purposes of subsection (3), a class C franking credit that arose under section 160ASI is taken to be attributable to a period or time to the extent to which the class A franking credit or class B franking credit because of which the class C franking credit arose was attributable to that period or time.

160AQCNH Conversion of franking deficit to exempting debit when an exempting company becomes a former exempting company

(1) If:

(a) an exempting company becomes a former exempting company; and

(b) at the time when it becomes a former exempting company it has a class A franking deficit;

then, subject to section 160AQCNI, immediately after it became a former exempting company:

(c) there arises a class A franking credit of the company equal to the deficit; and

(d) there arises a class A exempting debit of the company equal to the deficit.

(2) If:

(a) an exempting company becomes a former exempting company; and

(b) at the time when it becomes a former exempting company it has a class C franking deficit;

then, subject to section 160AQCNI, immediately after it became a former exempting company:

(c) there arises a class C franking credit of the company equal to the deficit; and

(d) there arises a class C exempting debit of the company equal to the deficit.

(3) For the purpose of calculating the franking credit referred to in paragraph (1)(c) or (2)(c) and the exempting debit referred to in paragraph (1)(d) or (2)(d), in relation to the company, the franking deficit referred to in paragraph (1)(b) or (2)(b) is taken:

(a) to be reduced by so much of any franking credit of the company; and

(b) to be increased by so much of any franking debit of the company;

that arose during the year of income in which the company became a former exempting company as is not attributable to a period in which, or to an event taking place at a time when, the company was an exempting company or would have been an exempting company if paragraph 160APHBA(a) had not been enacted.

(4) For the purposes of subsection (3), a class C franking credit that arose under section 160ASI is taken to be attributable to a period or time to the extent to which the class A franking credit or class B franking credit because of which the class C franking credit arose was attributable to that period or time.

160AQCNI Transitional provisions for certain exempting companies that become former exempting companies

Conversion of franking surplus or deficit not to apply if change in company's status resulted from contract made before particular time

(1) Subject to subsection (2), sections 160AQCNG, 160AQCNH, 160AQCNM and 160AQCNN do not apply to an exempting company that became a former exempting company as mentioned in the section concerned as a result of an acquisition of shares in the company under a contract that was entered into before 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.

Exception where contract made for purpose of obtaining franking credits

(2) Subsection (1) does not apply if the contract was entered into for a purpose (whether or not the purpose was the dominant purpose but not including an incidental purpose) of obtaining a franking credit benefit within the meaning of subsection 177EA(18).

Former exempting company reverts to that status within 12 months after becoming an exempting company

(3) If:

(a) a former exempting company becomes an exempting company; and

(b) within a period of less than 12 months afterwards it again becomes a former exempting company;

whichever of the following subsections is applicable has effect.

Exempting company has franking surplus

(4) If, at the time when the company again became a former exempting company, it had a class A franking surplus or a class C franking surplus, the references in paragraphs 160AQCNG(1)(c) or (d) or (2)(c) or (d), as the case may be, to the surplus are taken to be references to only so much of the surplus as would have been the company's class A exempting surplus or class C exempting surplus, as the case may be, if the company had remained a former exempting company throughout that period.

Exempting company has franking deficit

(5) If, at the time when the company again became a former exempting company, it had a class A franking deficit or a class C franking deficit, the references in paragraphs 160AQCNH(1)(c) or (d) or (2)(c) or (d), as the case may be, to the deficit are taken to be references to only so much of the deficit as would have been the company's class A exempting deficit or class C exempting deficit, as the case may be, if the company had remained a former exempting company throughout that period.

160AQCNJ Exempting debits may arise when certain former exempting companies pay frankable dividends

(1) If a former exempting company pays a frankable dividend in respect of which there is a class A required franking amount and:

(a) the reckoning day of the dividend is before the day on which the company became a former exempting company; or

(b) subsection 160AQE(3) or (4) applies in relation to the dividend;

then, subject to subsection (3), there arises a class A exempting debit of the company equal to the amount (if any) by which the class A required franking amount of the dividend exceeds the actual franked amount of the dividend.

(2) If a former exempting company pays a frankable dividend in respect of which there is a class C required franking amount and:

(a) the reckoning day of the dividend is before the day on which the company became a former exempting company; or

(b) subsection 160AQE(3) or (4) applies in relation to the dividend;

then, subject to subsection (3), there arises a class C exempting debit of the company equal to the amount (if any) by which the class C required franking amount of the dividend exceeds the actual franked amount of the dividend.

(3) If:

(a) a class A exempting debit, or a class C exempting debit, of a company arises under subsection (1) or (2) in respect of a dividend paid by the company; and

(b) a class A exempting debit, or a class C exempting debit, of the company arises under subsection 160AQCNE(1) or (2) in respect of the dividend;

the amount of the debit that, apart from this subsection, would arise under subsection (1) or (2) is reduced by the amount of the debit that arises under subsection 160AQCNE(1) or (2).

(4) When a class A exempting debit of a company arises, or, apart from subsection (3), would arise, under subsection (1), or a class C exempting debit of a company arises, or, apart from subsection (3),

would arise, under subsection (2), in respect of the payment of a dividend, the dividend is taken for the purposes of section 160APX to have been class A franked or class C franked, as the case may be, to the extent of the amount worked out by using the formula:

$$\text{Dividend} \times \text{Notional percentage}$$

(5) For the purposes of subsection (4), the ***notional percentage*** is the percentage worked out by using the formula:

$$\frac{\text{Franking debit} + \text{Exempting debit}}{\text{Dividend}} \times 100$$

(6) In the formulas in subsections (4) and (5):

dividend means the amount of the dividend.

exempting debit means the amount of the class A exempting debit or class C exempting debit that, apart from subsection (3), would arise in respect of the dividend under subsection (1) or (2).

franking debit means the amount (if any) of the class A franking debit or class C franking debit arising in respect of the dividend under section 160AQB.

160AQCNK Conversion of exempting surplus to franking credit when former exempting company becomes an exempting company

(1) If:

(a) a former exempting company becomes an exempting company; and

(b) at the time when it becomes an exempting company it has a class A exempting surplus;

then, immediately after it becomes an exempting company:

(c) there arises a class A exempting debit of the company equal to the surplus; and

(d) there arises a class A franking credit of the company equal to the surplus.

(2) If:

(a) a former exempting company becomes an exempting company; and

(b) at the time when it becomes an exempting company it has a class C exempting surplus;

then, immediately after it becomes an exempting company:

(c) there arises a class C exempting debit of the company equal to the surplus; and

(d) there arises a class C franking credit of the company equal to the surplus.

160AQCNL Conversion of exempting deficit to franking debit when former exempting company becomes an exempting company

(1) If:

(a) a former exempting company becomes an exempting company; and

(b) at the time when it becomes an exempting company it has a class A exempting deficit;

then, immediately after it becomes an exempting company:

(c) there arises a class A exempting credit of the company equal to the deficit; and

(d) there arises a class A franking debit of the company equal to the deficit.

(2) If:

(a) a former exempting company becomes an exempting company; and

(b) at the time when it becomes an exempting company it has a class C exempting deficit;

then, immediately after it becomes an exempting company:

(c) there arises a class C exempting credit of the company equal to the deficit; and

(d) there arises a class C franking debit of the company equal to the deficit.

160AQCNM Conversion of certain franking credits of former exempting company to exempting credits

(1) If, apart from this section, a franking credit of a former exempting company would have arisen under any of sections 160APM, 160APMAA, 160APMAB, 160APMD, 160APQA, 160APQB, 160APU to 160APVH and 160ASI, the following provisions of this section have effect.

(2) If the franking credit is wholly attributable to a period during which, or to an event taking place at a time when, the company was an exempting company:

(a) the franking credit is taken not to arise; and

(b) an exempting credit of the company equal to the amount of the franking credit is taken to arise.

(3) If the franking credit is partly attributable to a period during which, or to an event taking place at a time when, the company was an exempting company:

(a) the franking credit is, to the extent to which it is so attributable, taken not to arise; and

(b) an exempting credit of the company equal to the amount of the franking credit, to the extent to which it is so attributable, is taken to arise.

(4) A reference in subsection (2) or (3) to a period during which, or to a time when, a company was an exempting company includes a reference to a period during which, or to a time when, a company would have been an exempting company if paragraph 160APHBA(1)(a) had not been enacted.

(5) For the purposes of subsection (2) or (3), a class C franking credit that arises under section 160ASI is taken to be attributable to a period or time to the extent to which the class A franking credit or class B franking credit because of which the class C franking credit arose was attributable to that period or time.

160AQCNN Conversion of certain franking debits of former exempting company to exempting debits

(1) If, apart from this section, a franking debit of a former exempting company would have arisen under section 160APY, 160APYA, 160APYBA, 160APYBB, 160APYC, 160APZ, 160AQC, 160AQCB, 160AQCBA, 160AQCCA to 160AQCN and 160ASI, the following provisions of this section have effect.

(2) If the franking debit is wholly attributable to a period during which, or to an event taking place at a time when, the company was an exempting company:

(a) the franking debit is taken not to arise; and

(b) an exempting debit of the company equal to the amount of the franking debit is taken to arise.

(3) If the franking debit is partly attributable to a period during which, or to an event taking place at a time when, the company was an exempting company:

(a) the franking debit is, to the extent to which it is so attributable, taken not to arise; and

(b) an exempting debit of the company equal to the amount of the franking debit, to the extent to which it is so attributable, is taken to arise.

(4) A reference in subsection (2) or (3) to a period during which, or to a time when, a company was an exempting company includes a reference to a period during which, or to a time when, a company would have been an exempting company if paragraph 160APHBA(1)(a) had not been enacted.

(5) For the purposes of subsection (2) or (3), a class C franking debit that arises under section 160ASI is taken to be attributable to a period or time to the extent to which the class A franking debit or class B franking debit because of which the class C franking debit arose was attributable to that period or time.

160AQCNO Conversion of exempting deficit to franking debit

(1) If, apart from this subsection, a former exempting company would have a class A exempting deficit at the end of a franking year, then, immediately before the end of that franking year:

(a) there is taken to have arisen a class A exempting credit of the company equal to the deficit; and

(b) there is taken to have arisen a class A franking debit of the company equal to the deficit.

(2) If, apart from this subsection, a former exempting company would have a class C exempting deficit at the end of a franking year, then, immediately before the end of that franking year:

(a) there is taken to have arisen a class C exempting credit of the company equal to the deficit; and

(b) there is taken to have arisen a class C franking debit of the company equal to the deficit.

160AQCNP Treasurer may convert exempting surplus to franking credit of former exempting company previously owned by the Commonwealth

Application

(1) This section applies if:

(a) at a particular time, whether before or after the commencement of this section, a company was or is an exempting company; and

(b) at that time all the shares in the company were or are owned by the Commonwealth; and

(c) the Commonwealth has offered for sale or sold, or proposes to offer for sale, some or all of the shares; and

(d) the Treasurer is satisfied, having regard to the matters mentioned in subsection (2), that it is desirable to make a declaration or declarations under this section in relation to the company.

Matters to be taken into account

(2) The matters to which the Treasurer is to have regard under paragraph (1)(d) are:

(a) whether the making of the declaration or declarations is necessary to enable the company to pay fully franked dividends after the sale; and

(b) the extent to which the success of the sale or proposed sale depended or will depend upon the ability of the company to pay franked dividends; and

(c) the extent to which the reduction in receipts of income tax resulting from the making of the declaration or declarations would be offset by the receipt of increased proceeds from the sale; and

(d) any other matters that the Treasurer thinks relevant.

When declarations may be made

(3) The following provisions of this section apply after the company became or becomes a former exempting company.

Conversion of class A exempting surplus

(4) If the former exempting company would, apart from this section, have a class A exempting surplus at the end of a franking year, the Treasurer may, in writing, declare that:

(a) a class A exempting debit of the company (not exceeding the class A exempting surplus) specified in the declaration is taken to have arisen immediately before the end of that franking year; and

(b) a class A franking credit of the company equal to the amount of the debit is taken to have arisen immediately before the end of that franking year.

Conversion of class C exempting surplus

(5) If the former exempting company would, apart from this section, have a class C exempting surplus at the end of a franking year, the Treasurer may, in writing, declare that:

(a) a class C exempting debit of the company (not exceeding the class C exempting surplus) specified in the declaration is taken to have arisen immediately before the end of that franking year; and

(b) a class C franking credit of the company equal to the amount of the debit is taken to have arisen immediately before the end of that franking year.

Declarations may be conditional

(6) A declaration may be expressed to be subject to compliance by the former exempting company with such conditions as are specified in the declaration.

Effect of breach of condition

(7) If a condition specified in a declaration is not complied with, the Treasurer may revoke the declaration and, if he or she thinks appropriate, make a further declaration under subsection (4) or (5), as the case requires.

Effect of declaration

(8) A declaration, unless it is revoked, has effect according to its terms.

52 At the end of paragraphs 160AQF(1)(a) and (b)

Add "and".

Note: The heading to section 160AQF is replaced by the heading "**What constitutes franking with a franked amount**".

53 At the end of section 160AQF

Add:

(3) If:

(a) an exempting company makes a declaration under subparagraph 160AQF(1)(c)(i), paragraph 160AQF(1)(d), subparagraph 160AQF(1AAA)(c)(i) or paragraph 160AQF(1AAA)(d) in relation to a dividend or dividends; and

(b) the company becomes a former exempting company before the reckoning day for the dividend or for at least one of the dividends;

subsection (2) does not prevent the company from varying or revoking the declaration.

54 After section 160AQF

Insert:

160AQFA What constitutes franking with an exempted amount

Franking with class A exempted amount

(1) If:

(a) a frankable dividend (the ***current dividend***) is paid by a former exempting company to a shareholder in that company; and

(b) the company is a resident at the time of payment; and

(c) where the current dividend is paid under a resolution:

(i) the company makes a declaration, before the reckoning day for the current dividend, that each dividend to which the resolution relates is a class A exempted dividend to the extent of a percentage (not exceeding 100%) specified in the declaration in relation to the dividend; and

(ii) the percentage so specified is the same for each of the dividends to which the resolution relates; and

(d) where the current dividend is not paid under a resolution—the company makes a declaration before the reckoning day for the current dividend that the current dividend is a class A exempted dividend to the extent of a percentage (not exceeding 100%) specified in the declaration;

the current dividend is taken to have been class A exempted to the extent of the amount calculated in accordance with the formula:

Current dividend × Specified percentage

where:

current dividend is the amount of the current dividend.

specified percentage is the percentage specified in the declaration in relation to the dividend.

Note: Because of subsection 46M(3) and paragraph 46M(4)(a), paragraph (c) of this subsection does not apply to dividends that are taken by subsection 46M(3) or paragraph 46M(4)(a) not to be frankable dividends.

Franking with class C exempted amount

(2) If:

(a) a frankable dividend (the ***current dividend***) is paid by a former exempting company to a shareholder in that company; and

(b) the company is a resident at the time of payment; and

(c) if the current dividend is paid under a resolution:

(i) before the reckoning day for the current dividend, the company makes a declaration that each dividend to which the resolution relates is a class C exempted dividend to the extent of a percentage (not exceeding 100%) specified in the declaration in relation to the dividend; and

(ii) the percentage so specified is the same for each of the dividends to which the resolution relates; and

(d) if the current dividend is not paid under a resolution—the company makes a declaration before the reckoning day for the current dividend that the current dividend is a class C exempted dividend to the extent of a percentage (not exceeding 100%) specified in the declaration;

the current dividend is taken to have been class C exempted to the extent of the amount worked out using the formula:

Current dividend × Specified percentage

where:

current dividend means the amount of the current dividend.

specified percentage means the percentage specified in the declaration in relation to the dividend.

Note: Because of subsection 46M(3) and paragraph 46M(4)(a), paragraph (c) of this subsection does not apply to dividends that are taken by subsection 46M(3) or paragraph 46M(4)(a) not to be frankable dividends.

Limits on exempted amounts

(3) Despite subsections (1) and (2), a dividend is taken not to have been class A exempted or class C exempted if the sum of:

(a) the class A exempted amount of the dividend; and

(b) the class C exempted amount of the dividend; and

(c) any class A franked amount of the dividend; and

(d) any class C franked amount of the dividend;

exceeds the amount of the dividend.

Franking with exempted amounts limited to dividends on certain shares

(4) A dividend is taken by subsection (1) or (2) to be class A exempted or class C exempted only to the extent (if any) to which it is paid to:

(a) an eligible continuing substantial shareholder; or

(b) an employee who acquired the share in respect of which the dividend is paid under an eligible employee share scheme.

All dividends paid under resolution to be franked to same extent

(5) A former exempting company is not entitled to make a declaration under subparagraph (1)(c)(i) or (2)(c)(i) specifying a percentage in relation to a dividend paid to a shareholder in the company unless it also makes a declaration under that subparagraph specifying the same percentage in relation to each other frankable dividend in the same combined class of dividends that it paid to a shareholder in the company.

All dividends not paid under resolution to be franked to same extent

(6) A former exempting company is not entitled to make a declaration under paragraph (1)(d) or (2)(d) specifying a percentage in relation to a dividend paid to a shareholder in the company unless it also

makes a declaration under that paragraph specifying the same percentage in relation to each other frankable dividend in the same combined class of dividends that it paid during the same franking year to a shareholder in the company.

Declaration to be irrevocable

(7) A declaration made for the purposes of this section cannot be varied or revoked.

Combined class of dividends

(8) In this section:

combined class of dividends has the meaning given by subsection 160AQG(1).

55 Subsection 160AQG(2)

After "160AQF", insert "or 160AQFA".

56 Paragraph 160AQH(a)

Repeal the paragraph, substitute:

(a) if the company is not a former exempting company and the dividend is not a franked dividend—a declaration to that effect; and

(aa) if the company is a former exempting company and the dividend is neither a franked dividend nor an exempted dividend—a declaration to that effect; and

57 Subparagraph 160AQH(b)(ii)

Repeal the subparagraph.

58 Paragraph 160AQH(c)

Repeal the paragraph, substitute:

(c) if the dividend is an exempted dividend—the exempted amount of the dividend; and

(d) if the company is not a former exempting company and the dividend is a franked dividend—the amount of the dividend that is not a franked amount; and

(e) if the company is a former exempting company and the dividend is a franked dividend or an exempted dividend or both—the amount of the dividend that is neither a franked amount nor an exempted amount; and

(f) in any case—such other information in relation to the dividend as is required by the approved form to be set out.

59 At the end of section 160AQH

Add:

(2) An exempting company that pays a dividend to a shareholder in the company must, before or at the time of payment of the dividend, give to the shareholder a statement to the effect that Australian resident shareholders are not entitled to a franking rebate or franking credit in respect of the dividend except for certain companies and employees who receive the dividend in connection with an eligible employee share scheme.

60 Before subsection 160AQT(1)

Insert:

(1AAA) This section has effect subject to section 160AQTA.

61 At the end of Subdivision A of Division 6 of Part IIIAA

Add:

160AQTA Where franked dividend paid by exempting company

Grossed-up amount not to be included in assessable income of shareholder

(1) Subject to subsections (2) and (5), section 160AQT does not apply in relation to a class A franked dividend, a class B franked dividend, or a class C franked dividend, paid to a shareholder by an exempting company.

Exception where shareholder is life assurance company holding all the shares or substantially bearing the risks associated with holding the shares

(2) Subsection (1) does not preclude section 160AQT from applying in relation to a franked dividend paid by an exempting company to a life assurance company (other than a life assurance company acting as a trustee) in respect of accountable shares held by the life assurance company in the exempting company if:

(a) the exempting company and the life assurance company are members of the same effectively wholly-owned group of companies; or

(b) the life assurance company holds more than 5% of the shares in the exempting company (other than finance shares or dividend access shares within the meaning of section 160APHBC or shares that do not carry the right to receive dividends) and it would be reasonable to conclude that the risks involved in, and the opportunities resulting from, holding those shares are substantially borne by, or substantially accrue to, the life assurance company.

Matters to be taken into account in determining whether life assurance company bears the risks associated with the holding of shares

(3) In deciding whether it would be reasonable to conclude as mentioned in paragraph (2)(b):

(a) regard is to be had to any arrangement in respect of shares (including unissued shares) in the exempting company held by persons who are not, and are not associates of, the life assurance company (including any derivatives held or issued in connection with those shares); but

(b) no regard is to be had to risks involved in the ownership of shares in the exempting company that are substantially borne by any person in the person's capacity as a secured creditor.

Exception for grossing-up limited to grossed-up amount attributable to credits arising while life assurance company held shares

(4) Subsection (2) does not apply to so much of the franked amount of a franked dividend paid by an exempting company to a life assurance company as related to franking credits of the exempting company that arose at a time before the life assurance company acquired the shares in respect of which the dividend was paid.

Exception where shares held under employee share scheme

(5) Subsection (1) does not preclude section 160AQT from applying in relation to a franked dividend paid by an exempting company in respect of a share held by a person who:

(a) was an employee of the exempting company, or of a company that was a subsidiary of the exempting company, at the time when the dividend was paid; and

(b) acquired the share under an eligible employee share scheme; and

(c) did not hold the share as a trustee.

160AQTB Where exempted dividend paid by former exempting company

Grossed-up amount to be included in assessable income of life assurance company that holds shares

(1) Subject to this section, if:

(a) a class A exempted dividend, or a class C exempted dividend, is paid in a year of income to a shareholder in a former exempting company in respect of accountable shares held by the shareholder in the former exempting company; and

(b) at both of the following times:

(i) the time when the dividend was paid;

(ii) the time immediately before the former exempting company ceased to be an exempting company;

the shareholder was a life assurance company;

subsection 160AQT(1A) or (1C) applies as if the dividend were a class A franked dividend or a class C franked dividend and the class A exempted amount or class C exempted amount were a class A franked amount or a class C franked amount, as the case may be.

Grossing-up limited to grossed-up amount attributable to credits arising while life assurance company held shares

(2) Subsection (1) does not apply to so much of the exempted amount of an exempted dividend paid by a former exempting company to a life assurance company as related to exempting credits of the former exempting company that arose at a time before the life assurance company acquired the shares in respect of which the dividend was paid.

Grossed-up amount to be included in assessable income of holder of shares under employee share scheme

(3) If a class A exempted dividend, or a class C exempted dividend, is paid in a year of income in respect of a share in a former exempting company held by a person who:

(a) was an employee of the former exempting company, or of a company that was a subsidiary of the former exempting company, at the time when the dividend was paid; and

(b) acquired the share under an eligible employee share scheme;

subsection 160AQT(1) or (1AB) applies as if the dividend were a class A franked dividend or a class C franked dividend and the class A exempted amount or class C exempted amount were a class A franked amount or a class C franked amount, as the case may be.

160AQTC Subsidiaries

The question whether a company is a subsidiary of another company for the purposes of sections 160AQTA and 160AQTB is to be determined in the same way as the question whether a corporation is a subsidiary of another corporation is determined under the Corporations Law.

62 Paragraph 160AQUA(1)(a)

After "franked dividend", insert "or exempted dividend".

63 At the end of Subdivision B of Division 7 of Part IIIAA

Add:

160AQZB Where franked dividend paid by exempting company to trust or partnership

Person holding an interest in a trust or partnership to be treated as having received share of dividend directly from exempting company

(1) If:

(a) a class A franked dividend or a class C franked dividend (the ***relevant dividend***) is paid by an exempting company to a shareholder that is a trustee of a trust or is a partnership; and

(b) at the time when the relevant dividend was paid, a person who held an interest in the trust or partnership was a life assurance company, an exempting company, or a person who acquired the interest under an eligible employee share scheme, being a company or person in respect of whom or in respect of which a franking credit or franking rebate would have arisen if the relevant dividend had been paid to the company or person; and

(c) an amount attributable to the relevant dividend is included in the assessable income of the holder of the interest, or would have been so included if:

(i) sections 110C, 112A and 116FB had not been enacted; and

(ii) the definition of ***eligible insurance policy*** in section 116E were amended by omitting "an RA policy, a superannuation policy, a sickness policy, a funeral policy or an eligible policy" and substituting "an RA policy or a superannuation policy";

then, for the purposes of the application of this Part in relation to the holder of the interest:

(d) the part of the relevant dividend to which the amount referred to in paragraph (1)(c) is attributable is taken:

(i) to have been a class A franked dividend or a class C franked dividend, as the case may be, paid to the holder of the interest; and

(ii) to have been franked to the same extent as the relevant dividend; and

(e) the holder of the interest is taken to have been the holder of the share in respect of which the relevant dividend was paid.

Holding an interest in a trust

(2) A person is taken to hold an interest in a trust if:

(a) the person is a beneficiary under the trust; or

(b) the person derives, or will derive, income indirectly, through interposed trusts or partnerships, from dividends received by the trustee.

Holding an interest in a partnership

(3) A person is taken to hold an interest in a partnership if:

(a) the person is a partner in the partnership; or

(b) the person derives, or will derive, income indirectly, through interposed trusts or partnerships, from dividends received by the partnership.

Calculation of part of dividend to which amount received by holder of interest is attributable

(4) For the purposes of subsection (1), the ***part of the relevant dividend to which the amount referred to in paragraph (1)(c) is attributable*** is taken to be the amount worked out using the formula:

$$\text{Amount of dividend} \times \frac{\text{Share of income}}{\text{Total income}}$$

where:

amount of dividend means the amount of the relevant dividend paid to the trustee or partnership.

share of income means the share of the income of the trust, or of the income of the partnership, of the year of income to which the holder of the interest is entitled.

total income means the income of the trust or partnership of the year of income.

160AQZC Where exempted dividend paid by former exempting company to trust or partnership

Person holding an interest in a trust or partnership to be treated as having received share of dividend directly from former exempting company

(1) If:

(a) a class A exempted dividend or a class C exempted dividend (the ***relevant dividend***) is paid by a former exempting company to a shareholder that is a trustee of a trust or is a partnership; and

(b) at the time when the relevant dividend was paid, a person who held an interest in the trust or partnership was a life assurance company, an exempting company, a former exempting company, or a person who acquired the interest under an eligible employee share scheme, being a company or person in respect of which or in respect of whom a franking credit, franking rebate or exempting credit would have arisen if the relevant dividend had been paid to the company or person; and

(c) an amount attributable to the relevant dividend is included in the assessable income of the holder of the interest, or would have been so included if:

(i) sections 110C, 112A and 116FB had not been enacted; and

(ii) the definition of ***eligible insurance policy*** in section 116E were amended by omitting "an RA policy, a superannuation policy, a sickness policy, a funeral policy or an eligible policy" and substituting "an RA policy or a superannuation policy";

then, for the purposes of the application of this Part in relation to the holder of the interest:

(d) the part of the relevant dividend to which the amount referred to in paragraph (1)(c) is attributable is taken:

(i) to have been a class A exempted dividend or a class C exempted dividend, as the case may be, paid to the holder of the interest; and

(ii) to have been exempted to the same extent as the relevant dividend; and

(e) the holder of the interest is taken to have been the holder of the share in respect of which the relevant dividend was paid.

Holding an interest in a trust

(2) A person is taken to hold an interest in a trust if:

(a) the person is a beneficiary under the trust; or

(b) the person derives, or will derive, income indirectly, through interposed trusts or partnerships, from dividends received by the trustee.

Holding an interest in a partnership

(3) A person is taken to hold an interest in a partnership if:

(a) the person is a partner in the partnership; or

(b) the person derives, or will derive, income indirectly, through interposed trusts or partnerships, from dividends received by the partnership.

Calculation of part of dividend to which amount received by holder of interest is attributable

(4) For the purposes of subsection (1), the ***part of the relevant dividend to which the amount referred to in paragraph (1)(c) is attributable*** is taken to be the amount worked out using the formula:

$$\text{Amount of dividend} \times \frac{\text{Share of income}}{\text{Total income}}$$

where:

amount of dividend means the amount of the relevant dividend paid to the trustee or partnership.

share of income means the share of the income of the trust, or of the income of the partnership, of the year of income to which the holder of the interest is entitled.

total income means the income of the trust or partnership of the year of income.

64 Paragraph 160ASC(b)

After "class C franking account balance", insert "and, if the company is a former exempting company, includes a reference to matters relevant to working out the class A exempting account balance or the class C exempting account balance".

65 Subsection 177EA(1) (paragraph (a) of the definition of franked)

After "160AQF", insert "or 160AQFA".

66 Paragraph 177EA(5)(a)

After "franking debit", insert "or exempting debit".

67 Subsection 177EA(10)

Repeal the subsection, substitute:

Effect of determination of franking debit or exempting debit

(10) If the Commissioner makes a determination under paragraph (5)(a):

(a) on the day on which notice in writing of the determination is served on the company, a franking debit or exempting debit of the company arises in respect of the dividend; and

(b) the amount of the franking debit or exempting debit is such amount as is stated in the Commissioner's determination, being an amount that:

(i) the Commissioner considers reasonable in the circumstances; and

(ii) does not exceed the amount of the franking debit or exempting debit of the company arising under section 160AQB or 160AQCNE in respect of the dividend.

68 Subsection 177EA(16)

Repeal the subsection, substitute:

Meaning of franked distribution

(16) A distribution in respect of an interest in shares is taken to be ***franked*** if:

(a) there is a class A flow-on franking amount, a class B flow-on franking amount or a class C flow-on franking amount in relation to the relevant partnership amount or trust amount; or

(b) the distribution is taken by section 160AQZB or 160AQZC to be franked.

69 Subparagraph 177EA(18)(a)(i)

After "160APP", insert "or 160APPA".

70 At the end of subsection 177EA(18)

Add:

; or (e) the shareholder is a company and an exempting credit of the company arises under section 160AQCNF.

71 Paragraph 177EA(19)(c)

After "franking credits" (wherever occurring), insert "or exempting credits".

72 Subsection 177EA(20)

Repeal the subsection, substitute:

Meaning of ***greater benefit from franking credits***

(20) The circumstances in which the relevant taxpayer would, in a year of income, derive a ***greater benefit from franking credits*** than

another person referred to in paragraph (19)(b) include, but are not limited to:

(a) any of the following circumstances existing in relation to the other person and not in relation to the relevant taxpayer:

(i) the person is a non-resident;

(ii) the amount of tax (if any) that, apart from Part IIIAA, would be payable by the person is less than the amount of the rebate of tax to which the person would be entitled under section 160AQU, 160AQX, 160AQY, 160AQYA, 160AQZ or 160AQZA;

(iii) the person is a company that is unable to pay a dividend to its shareholders in the year of income because it has not made any profits or has not made sufficient profits to do so;

(iv) the person is an exempting company or a company for which no franking credits arise; and

(b) any of the following circumstances existing in relation to the relevant taxpayer and not in relation to the other person:

(i) a franking credit arises under section 160APPA;

(ii) a franking credit or exempting credit arises under section 160AQCNF;

(iii) subsection 160AQTA(2) or (5) applies;

(iv) section 160AQTB applies.

73 Subsection 221YHZC(1B)

Repeal the subsection, substitute:

(1B) Subsection (1A) does not apply in relation to income paid in respect of a share investment if the income is paid as a dividend that has been franked in accordance with section 160AQF or 160AQFA and:

(a) the franking percentage (within the meaning of section 160APA), if any, in relation to the dividend is 100%; and

(b) if the dividend is an exempted dividend—the sum of the exempted amount and the franked amount (if any) is equal to the amount of the dividend.

74 Subsection 221YHZC(1D)

Repeal the subsection, substitute:

(1D) If:

(a) unattributed income is to be paid, in respect of a share investment, as a dividend that has been franked in accordance with section 160AQF or 160AQFA; and

(b) the percentage to which the dividend has been franked in accordance with section 160AQF or 160AQFA is less than 100%;

the amount to be deducted, in accordance with paragraph (1A)(d) of this section, from the unattributed income is the amount (being a multiple of 5 cents) that is, or is nearest to, the amount worked out by using the formula:

$$\left(\text{Unattributed income} - \text{Franked amount} + \text{Exempted amount}\right) \times \text{Factor}$$

where:

exempted amount means the exempted amount in relation to the dividend.

factor means the factor prescribed for the purposes of subsection (1C).

franked amount means the franked amount (within the meaning of section 160APA) in relation to the dividend.

unattributed income means the amount of unattributed income.

75 After subsection 221YL(3)

Insert:

(3AA) For the purpose of determining whether a deduction is required to be made under subsection (2) in relation to an exempted dividend paid to the trustee of a trust, or a partnership, in which a non-resident holds an interest within the meaning of section 160AQZB or 160AQZC, the dividend is taken to have been franked in accordance with section 160AQFA to the extent of the lesser of:

(a) so much of the dividend as the non-resident is entitled to receive or to have credited to the non-resident, or otherwise dealt with on behalf of the non-resident or as the non-resident directs, by the trustee or partnership; and

(b) the exempted amount of the dividend.

76 Paragraph 365(3)(b)

After "160AQF", insert "or 160AQFA".

77 At the end of paragraph 377(1)(e)

Add "or 160AQFA".

78 At the end of paragraph 402(2)(b)

Add "or 160AQFA".

79 At the end of paragraph 436(1)(d)

Add "or 160AQFA".

80 Statements given by company to shareholders before 2 April 1998

A company is not liable to a penalty under section 160ARY merely because:

(a) the company gave to a shareholder before 2 April 1998 a dividend statement that complied with section 160AQH of the *Income Tax Assessment Act 1936* as in force at the time when the statement was given; or

(b) the company gave to a shareholder before that date a dividend statement that the Commissioner is satisfied reasonably complied with section 160AQH of the *Income Tax Assessment Act 1936* as amended by this Schedule.

81 Application

The amendments made by this Schedule apply to dividends paid at or after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997 other than:

(a) dividends declared before that time by a listed public company (within the meaning of the *Income Tax Assessment Act 1997*); or

(b) dividends paid after that time that related to dividends referred to in paragraph (a).

Schedule 6—Deductions for gifts

Income Tax Assessment Act 1997

1 Subsection 30-40(2) (at the end of the table)

Add:

3.2.4	The Menzies Research Centre Public Fund	the gift must be made after 2 April 1998

2 Subsection 30-315(2) (after table item 72)

Insert:

72A	Menzies Research Centre Public Fund	item 3.2.4

Schedule 7—Distributions to beneficiaries and partners that are equivalent to interest

Income Tax Assessment Act 1936

1 Before subsection 45Z(1)

Insert:

(1A) This section is subject to section 45ZA.

2 After section 45Z

Insert:

45ZA Trustee or partnership not entitled to intercorporate dividend rebate for distribution that is equivalent to interest

(1) This section applies if:

(a) an amount (the ***distributed amount***) is included in the assessable income of a taxpayer that:

(i) is a company; and

(ii) is a beneficiary in a trust estate or a partner in a partnership; and

(b) an amount (the ***attributable amount***) that is the whole or a part of the distributed amount was attributable to the payment of a dividend by a company; and

(c) the attributable amount was paid to the taxpayer:

(i) in respect of an interest in the trust or partnership that was created before the commencing time and either was acquired on or after 2 July 1998 or was created or acquired for a term that was extended at or after the commencing time; or

(ii) in respect of an interest in the trust or partnership that was created at or after the commencing time; or

(iii) under a finance arrangement (including an arrangement extending an earlier arrangement) to which the trustee

of the trust, or the partnership, is a party and which was or is entered into at or after the commencing time; and

(d) the payment to the taxpayer of the attributable amount or the distributed amount may reasonably be regarded as equivalent to the payment of interest on a loan.

(2) In determining whether the payment of the attributable amount or the distributed amount may reasonably be regarded as equivalent to the payment of interest on a loan, regard is to be had to:

(a) the way in which the amount was calculated; and

(b) the conditions applying to the payment of the amount; and

(c) any other relevant matters.

(3) The taxpayer is not entitled to a rebate of tax under section 46 or 46A (as the section concerned has effect under section 45Z) in respect of the attributable amount.

(4) In this section:

arrangement means any agreement, arrangement or understanding, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

associate has the meaning given by section 318 but includes:

(a) in relation to a trustee—the controller of the trust; and

(b) in relation to a company that is a member of a wholly-owned group (determined in accordance with Subdivision 975-W of the *Income Tax Assessment Act 1997*)—any other company that is a member of the group.

commencing time means 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.

controller, in relation to a trust, means a person:

(a) who beneficially owns, or is able in any way, whether directly or indirectly, to control the application of, more than 50% of the interests in the trust property or in the trust income; or

(b) who has power to appoint or remove the trustee of the trust; or

(c) according to whose directions, instructions or wishes the trustee of the trust is accustomed or under an obligation, whether formal or informal, to act.

finance includes money (including money in the currency of a foreign country) raised by the issue of shares or the creation of an interest in a trust or partnership.

finance arrangement, in relation to a trustee or a partnership, means an arrangement entered into or carried out by any of the parties to the arrangement for the purpose, or for purposes that include the purpose:

(a) of enabling the trustee or partnership, or the company referred to in paragraph (1)(b), or an associate of the trustee, partnership or company, to obtain finance (whether by way of renewal or otherwise); or

(b) of enabling the trustee or partnership, or the company referred to in paragraph (1)(b), or an associate of the trustee, partnership or company, to obtain an extension of the period for which finance was obtained under an earlier arrangement.

interest, in relation to a trust that is a discretionary trust, includes a right to receive, at the discretion of the trustee of the trust, benefits under the trust.

loan includes the provision of credit or any other form of financial accommodation.

paid: an attributable amount or distributed amount is taken to have been paid to a taxpayer if it is included in the taxpayer's assessable income.

3 After subsection 128B(3)

Insert:

(3A) Paragraph (3)(ga) does not apply to income consisting of a dividend, or a part of a dividend, that is derived by the trustee of a trust, or to a partnership, to the extent (if any) to which any amount

paid to, or applied for the benefit of, a taxpayer (being a beneficiary in the trust or a partner in the partnership) that:

(a) was attributable to the dividend; and

(b) was paid or applied:

(i) in respect of an interest in the trust or partnership that was acquired, or was acquired for a period that was extended, at or after the commencing time; or

(ii) under a finance arrangement (including an arrangement extending an earlier arrangement) entered into at or after the commencing time;

may reasonably be regarded as equivalent to the payment of interest on a loan.

(3B) In subsection (3A):

commencing time means 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.

finance arrangement has the same meaning as in section 45ZA.

(3C) In determining for the purposes of subsection (3A) the extent (if any) to which an amount may reasonably be regarded as equivalent to the payment of interest on a loan, regard is to be had to:

(a) the way in which the amount was calculated; and

(b) the conditions applying to the payment or application of the amount; and

(c) any other relevant matters.

4 Section 160APA

Insert:

finance arrangement has the same meaning as in section 45ZA.

5 At the end of section 160APQ

Add:

(6) A franking credit of a company does not arise under this section if:

(a) the trust amount or partnership amount was paid:

(i) in respect of an interest in the trust or partnership that was acquired, or was acquired for a period that was extended, at or after the commencing time; or

(ii) under a finance arrangement (including an arrangement extending an earlier arrangement) entered into at or after the commencing time; and

(b) the payment may reasonably be regarded as the payment of interest on a loan.

(7) In subsection (6):

commencing time means 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.

paid: a trust amount or partnership amount is taken to have been paid to a taxpayer if it is included in, or is allowed as a deduction from, the taxpayer's assessable income.

(8) In determining whether the payment of the trust amount or partnership amount may reasonably be regarded as equivalent to the payment of interest on a loan, regard is to be had to:

(a) the way in which the amount was calculated; and

(b) the conditions applying to the payment of the amount; and

(c) any other relevant matters.

6 At the end of section 160AQX

Add:

(4) A taxpayer is not entitled to a rebate of tax under subsection (1) if:

(a) the trust amount was paid:

(i) in respect of an interest in the trust that was acquired, or was acquired for a period that was extended, at or after the commencing time; or

(ii) under a finance arrangement (including an arrangement extending an earlier arrangement) entered into at or after the commencing time; and

(b) the payment may reasonably be regarded as equivalent to the payment of interest on a loan.

(5) In subsection (4):

commencing time means 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.

paid: a trust amount is taken to have been paid to a taxpayer if it is included in the taxpayer's assessable income.

(6) In determining whether the payment of the trust amount may reasonably be regarded as equivalent to the payment of interest on a loan, regard is to be had to:

(a) the way in which the amount was calculated; and

(b) the conditions applying to the payment of the amount; and

(c) any other relevant matters.

7 At the end of section 160AQY

Add:

(5) A trustee is not entitled to a rebate of tax under subsection (1) if:

(a) the trust amount was paid:

(i) in respect of an interest in the trust or partnership that was acquired, or was acquired for a period that was extended, at or after the commencing time; or

(ii) under a finance arrangement (including an arrangement extending an earlier arrangement) entered into at or after the commencing time; and

(b) the payment may reasonably be regarded as equivalent to the payment of interest on a loan.

(6) In subsection (5):

commencing time means 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.

paid: a trust amount is taken to have been paid to a taxpayer if it is included in the taxpayer's assessable income.

(7) In determining whether the payment of the trust amount may reasonably be regarded as equivalent to the payment of interest on a loan, regard is to be had to:

(a) the way in which the amount was calculated; and
(b) the conditions applying to the payment of the amount; and
(c) any other relevant matters.

8 After subsection 160AQYA(1)

Insert:

(1A) A taxpayer is not entitled to a rebate of tax under subsection (1) if:
(a) the trust amount was paid:
(i) in respect of an interest in the trust or partnership that was acquired, or was acquired for a period that was extended, at or after the commencing time; or
(ii) under a finance arrangement (including an arrangement extending an earlier arrangement) entered into at or after the commencing time; and
(b) the payment may reasonably be regarded as equivalent to the payment of interest on a loan.

(1B) In subsection (1A):

commencing time means 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.

paid: a trust amount is taken to have been paid to a taxpayer if it is included in the taxpayer's assessable income.

(1C) In determining whether the payment of the trust amount may reasonably be regarded as equivalent to the payment of interest on a loan, regard is to be had to:
(a) the way in which the amount was calculated; and
(b) the conditions applying to the payment of the amount; and
(c) any other relevant matters.

9 At the end of section 160AQYA

Add:

(5) A taxpayer is not entitled to a rebate of tax under subsection (1) if:
(a) the partnership amount was paid:

(i) in respect of an interest in the trust or partnership that was acquired, or was acquired for a period that was extended, at or after the commencing time; or

(ii) under a finance arrangement (including an arrangement extending an earlier arrangement) entered into at or after the commencing time; and

(b) the payment may reasonably be regarded as equivalent to the payment of interest on a loan.

(6) In subsection (5):

commencing time means 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.

paid: a partnership amount is taken to have been paid to a taxpayer if it is included in, or is allowed as a deduction from, the taxpayer's assessable income.

(7) In determining whether the payment of the partnership amount may reasonably be regarded as equivalent to the payment of interest on a loan, regard is to be had to:

(a) the way in which the amount was calculated; and

(b) the conditions applying to the payment of the amount; and

(c) any other relevant matters.

10 At the end of section 160AQZ

Add:

(4) A taxpayer is not entitled to a rebate of tax under subsection (1) if:

(a) the partnership amount was paid:

(i) in respect of an interest in the trust or partnership that was acquired, or was acquired for a period that was extended, at or after the commencing time; or

(ii) under a finance arrangement (including an arrangement extending an earlier arrangement) entered into at or after the commencing time; and

(b) the payment may reasonably be regarded as equivalent to the payment of interest on a loan.

(5) In subsection (4):

commencing time means 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.

paid: a partnership amount is taken to have been paid to a taxpayer if it is included in, or is allowed as a deduction from, the taxpayer's assessable income.

(6) In determining whether the payment of the partnership amount may reasonably be regarded as equivalent to the payment of interest on a loan, regard is to be had to:

(a) the way in which the amount was calculated; and

(b) the conditions applying to the payment of the amount; and

(c) any other relevant matters.

11 At the end of section 160AQZA

Add:

(6) A taxpayer is not entitled to a rebate of tax under subsection (1) if:

(a) the trust amount or partnership amount was paid:

(i) in respect of an interest in the trust or partnership that was acquired, or was acquired for a period that was extended, at or after the commencing time; or

(ii) under a finance arrangement (including an arrangement extending an earlier arrangement) entered into at or after the commencing time; and

(b) the payment may reasonably be regarded as equivalent to the payment of interest on a loan.

(7) In subsection (6):

commencing time means 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997.

paid: a trust amount or partnership amount is taken to have been paid to a taxpayer if it is included in, or is allowed as a deduction from, the taxpayer's assessable income.

(8) In determining whether the payment of the trust amount or partnership amount may reasonably be regarded as equivalent to the payment of interest on a loan, regard is to be had to:

(a) the way in which the amount was calculated; and

(b) the conditions applying to the payment of the amount; and

(c) any other relevant matters.

12 After section 160ARAB

Insert:

160ARAC Adjustment where rebate not allowed in respect of trust amount or partnership amount

(1) If:

(a) a trust amount is included in a taxpayer's assessable income of a year of income; and

(b) the taxpayer is not entitled to a rebate of tax in respect of the trust amount because of subsection 160APQ(6), 160AQX(4), 160AQY(5), 160AQYA(1A) or 160AQZA(6); and

(c) no deduction has been allowed, or is allowable, from the trustee's assessable income of any year of income under section 160AR or 160ARAB;

an amount equal to the class A potential rebate amount, the class B potential rebate amount, or the class C potential rebate amount, that arises in relation to the trust amount is allowable as a deduction from the trustee's assessable income of the year of income.

(2) If:

(a) a partnership amount is included in a taxpayer's assessable income of a year of income; and

(b) the taxpayer is not entitled to a rebate of tax in respect of the partnership amount because of subsection 160APQ(6), 160AQYA(5), 160AQZ(4) or 160AQZA(6); and

(c) no deduction has been allowed, or is allowable, from the partnership's assessable income of any year of income under section 160AR or 160ARAB;

an amount equal to the class A potential rebate amount, the class B potential rebate amount, or the class C potential rebate amount, that

arises in relation to the partnership amount is allowable as a deduction from the partnership's assessable income of the year of income.

[*Minister's second reading speech made in—*
House of Representatives on 3 December 1998
Senate on 19 April 1999]

(232/98)