





# **New Business Tax System (Integrity and Other Measures) Act 1999**

**Act No. 169 of 1999 as amended**

This compilation was prepared on 20 August 2001

[This Act was amended by Act No. 89 of 2000 and Act No. 78 of 2001]

## **Amendments from Act No. 89 of 2000**

[Schedule 8 (item 9) amended Schedule 7 (Division 2 of Part 1) (heading)]

Schedule 8 (item 10) amended Schedule 7 (subitem 12(2))

For saving provisions *see* Schedule 8 (item 11)

Schedule 8 (items 9–11) commenced on 30 June 2000]

## **Amendment from Act No. 78 of 2001**

[Schedule 3 (item 14) repealed and substituted Schedule 7 (item 9) (note)]

For saving provision *see* Schedule 3 (item 15)

Schedule 3 (item 14) commences on 22 September 2002

Schedule 3 (item 15) commenced on 30 June 2001]

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# **An Act to implement the New Business Tax System by amending the law relating to taxation, and for related purposes**

## **1 Short title**

This Act may be cited as the *New Business Tax System (Integrity and Other Measures) Act 1999*.

## **2 Commencement**

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Schedule 5 is taken to have commenced on 22 February 1999.
- (3) Schedule 7 (except Division 2 of Part 1) commences on the later of the following days (or on either of them if they are the same):
  - (a) the day on which this Act receives the Royal Assent;
  - (b) the day on which Subdivision 960-Q of the *Income Tax Assessment Act 1997* commences.
- (4) Division 2 of Part 1 of Schedule 7 commences on 22 September 2002.
- (5) The amendment of subsection 6AD(4) of the *Income Tax Assessment Act 1936* made by Schedule 9 commences immediately after the start of the day on which the *A New Tax System (Tax Administration) Act 1999* receives the Royal Assent if that day is on or after the day on which this Act receives the Royal Assent.

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Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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# Schedule 1—Disposal of leases and leased plant

## *Income Tax Assessment Act 1997*

### **1 Section 9-1 (after table item 2)**

Insert:

- 2A A company that was a member of a wholly-owned group if section 45-25  
a former subsidiary in the group is treated as having  
disposed of leased plant and does not pay all of the income  
tax resulting from that treatment

### **2 Subsection 9-5(1) (before item 1A)**

Insert:

- 1AA A company that was a member of a wholly-owned group section 45-25  
is jointly and severally liable to pay an amount of income  
tax if a former subsidiary in the group is treated as having  
disposed of leased plant and does not pay all of the income  
tax resulting from that treatment.

### **3 Section 10-5 (table item headed “depreciation”)**

Repeal the item, substitute:

#### **depreciation**

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leased plant or lease, disposal of.....	45-5
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### **4 Section 10-5 (at the end of the table item headed “leases”)**

Add:

see also *depreciation*

### **5 Section 12-5 (table item headed “depreciation”)**

Repeal the item, substitute:

#### **depreciation**

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generally	Division 42
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**6 Section 12-5 (at the end of the table item headed “leases”)**

Add:

see also *depreciation*

**7 Subsection 41-40(1)**

Omit “2 ways”, substitute “3 ways”.

**8 At the end of section 41-40**

Add:

*Transferee taken to have inherited certain other characteristics for the purposes of Division 45*

(4) Third, for the purposes of Division 45:

- (a) if the transferor, or a partnership of which the transferor was a member, leased the property to another entity for most of the time that the transferor or partnership owned or was the \*quasi-owner of the property, the transferee is taken also to have done so; and
- (b) if the transferor, or a partnership of which the transferor was a member, leased the property to another entity for a period on or after 22 February 1999, the transferee is taken also to have done so; and
- (c) if the main \*business of the transferor, or a partnership of which the transferor was a member, was to lease assets, the

main business of the transferee is taken also to have been to lease assets.

- (5) However, subsection (4) does not apply to roll-over relief under this Common rule because of section 41-23 if the sum of the amounts specified in paragraph 45-5(1)(e) or 45-10(1)(f), or subsection 45-5(4) or 45-10(4), is at least equal to the market value of the \*plant or interest concerned.

Note: There is an additional rule for disposals between 22 February 1999 and 21 September 1999: see Division 41 of the *Income Tax (Transitional Provisions) Act 1997*.

## 9 Subsection 42-205(1) (after table item 12)

Insert:

- 12A that you are taken to the market value of the \*plant have disposed of under section 45-15

## 10 At the end of subsection 42-285(1)

Add:

Note: Offsetting under this section is not available for a company when it is treated as if it had disposed of plant under Division 45.

## 11 At the end of subsection 42-290(1)

Add:

Note: Offsetting under this section is not available for a company when it is treated as if it had disposed of plant under Division 45.

## 12 Before Division 46

Insert:

# Division 45—Disposal of leases and leased plant

## Guide to Division 45

### 45-1 What this Division is about

This Division is designed to prevent tax being avoided through:
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- (a) the disposal of leased plant, or an interest in leased plant; or
- (b) the disposal of a partnership interest in a partnership that leased plant; or
- (c) the disposal of shares in a 100% subsidiary that leased plant;

where amounts have been deducted for depreciation of the plant.

It includes amounts in assessable income. Any benefit received, and any reduction in a liability, is taken into account in calculating the amounts included.

Where the disposal of shares in a 100% subsidiary is involved, the companies in the former wholly-owned group may be made jointly and severally liable for tax that the former subsidiary does not pay.

### **Table of sections**

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45-10	Disposal of interest in partnership
45-15	Disposal of shares in 100% subsidiary that leases plant
45-20	Disposal of shares in 100% subsidiary that leases plant in partnership
45-25	Group members liable to pay outstanding tax
45-30	Reduction for certain plant acquired before 21.9.99
45-35	Limit on amount included for plant for which there is a CGT exemption

*[This is the end of the Guide.]*

### **Operative provisions**

#### **45-5 Disposal of leased plant or lease**

- (1) An amount is included in your assessable income if:
  - (a) you have deducted or can deduct an amount for depreciation of \*plant; and
  - (b) for most of the time when you owned or were the \*quasi-owner of the plant, you leased it to another entity; and

- (c) all or part of the lease period occurred on or after 22 February 1999; and
  - (d) on or after that day, you dispose of the plant or an interest in the plant, and that disposal constitutes a \*balancing adjustment event; and
  - (e) the sum of the following amounts is *more than* the plant's \*written down value or of that part of it that is attributable to that interest:
    - (i) the money you receive or are entitled to receive for the disposal;
    - (ii) the amount of any reduction in a liability of yours as a result of the disposal;
    - (iii) the market value of any other benefit you receive or are entitled to receive as a result of the disposal.
- (2) The amount included is the excess referred to in paragraph (1)(e). It is included for the income year in which the disposal occurred.
- Example: Sean owns a leased asset. The asset has a written down value of \$20,000. He has an outstanding loan for the asset of \$60,000.
- Sean sells a 50% interest in the asset to Leprechaun Pty Ltd for \$40,000. Leprechaun agrees to take over 50% of Sean's obligation to make debt service payments.
- The excess referred to in paragraph 45-5(1)(e) is:
- $$20,000 + 30,000 = 50,000 - 10,000 = 40,000$$
- That amount is included in Sean's assessable income.
- This amount would be reduced if part of it is included in Sean's assessable income under another provision (see subsection 45-5(5)).
- Note 1: There is a reduction of the amount included for certain plant acquired before 21 September 1999: see section 45-30.
- Note 2: There is a limit on the amount included for plant for which there is a CGT exemption: see section 45-35.
- (3) An amount is also included in your assessable income if:
- (a) you have deducted or can deduct an amount for depreciation of \*plant; and
  - (b) for most of the time when you owned or were the \*quasi-owner of the plant, you leased it to another entity; and
  - (c) all or part of the lease period occurred on or after 22 February 1999; and
-

- (d) on or after that day, you dispose of:
  - (i) your interest in the plant, or part of it; or
  - (ii) a right under, or an interest in, the lease;and that disposal does not constitute a \*balancing adjustment event.
- (4) The amount included is the sum of the following amounts:
  - (a) the money you receive or are entitled to receive for the disposal;
  - (b) the amount of any reduction in a liability of yours as a result of the disposal;
  - (c) the market value of any other benefit you receive or are entitled to receive as a result of the disposal;It is included for the income year in which the disposal occurred.
- (5) However, an amount is not included in your assessable income under this section to the extent that:
  - (a) it is included in that assessable income under a provision of this Act outside this Division; or
  - (b) you apply it under section 42-285, 42-290 or 42-293 (about offsetting balancing charges); or
  - (c) roll-over relief is available for the disposal under section 41-20.

Note: There are special rules for disposals between 22 February 1999 and 21 September 1999; see Division 45 of the *Income Tax (Transitional Provisions) Act 1997*.

#### **45-10 Disposal of interest in partnership**

- (1) An amount is included in your assessable income if:
  - (a) a partnership of which you are (or were) a member has deducted or can deduct an amount for depreciation of \*plant; and
  - (b) the deductions have been or would be reflected in your interest in the partnership net income or partnership loss; and
  - (c) for most of the time when the partnership owned or was the \*quasi-owner of the plant, it leased it to another entity; and
  - (d) all or part of the lease period occurred on or after 22 February 1999; and

- (e) on or after that day, you dispose of your interest in the plant, or part of it, and that disposal constitutes a \*balancing adjustment event; and
  - (f) the sum of the following amounts is *more than* that part of the plant's \*written down value that is attributable to that interest:
    - (i) the money you receive or are entitled to receive for the disposal;
    - (ii) the amount of any reduction in a liability of yours as a result of the disposal;
    - (iii) the market value of any other benefit you receive or are entitled to receive as a result of the disposal.
- (2) The amount included is the excess referred to in paragraph (1)(f). It is included for the income year in which the disposal occurred.
- Example: Chris has a 50% share in a partnership formed to lease an asset. The asset has a written down value of \$124,000 (of which Chris' share is \$62,000).
- Chris assigns his partnership share to another entity for \$34,000 plus the other entity agreeing to take over Chris' obligations to service his share of the partnership debt (which is \$165,000). The total consideration is:
- $$\$34,000 + \$165,000 = \$199,000$$
- The amount assessable under section 45-10 is the excess referred to in paragraph 45-10(1)(f), which is:
- $$\$199,000 - \$62,000 = \$137,000$$
- This amount would be reduced if part of it is included in Chris' assessable income under another provision (see subsection 45-10(5)).
- Note 1: There is a reduction of the amount included for certain plant acquired before 21 September 1999: see section 45-30.
- Note 2: There is a limit on the amount included for plant for which there is a CGT exemption: see section 45-35.
- (3) An amount is also included in your assessable income if:
- (a) a partnership of which you are (or were) a member has deducted or can deduct an amount for depreciation of \*plant; and
  - (b) the deductions have been or would be reflected in your interest in the partnership net income or partnership loss; and

- (c) for most of the time when the partnership owned or was the \*quasi-owner of the plant, it leased it to another entity; and
  - (d) all or part of the lease period occurred on or after 22 February 1999; and
  - (e) on or after that day, you dispose of:
    - (i) your interest in the plant, or part of it; or
    - (ii) a right under, or an interest in, the lease;and that disposal does not constitute a \*balancing adjustment event.
- (4) The amount included is the sum of the following amounts:
- (a) the money you receive or are entitled to receive for the disposal;
  - (b) the amount of any reduction in a liability of yours as a result of the disposal;
  - (c) the market value of any other benefit you receive or are entitled to receive as a result of the disposal.
- It is included for the income year in which the disposal occurred.
- (5) However, an amount is not included in your assessable income under this section to the extent that:
- (a) it is included in that assessable income under a provision of this Act outside this Division; or
  - (b) you apply it under section 42-285, 42-290 or 42-293 (about offsetting balancing charges).

Note: There are special rules for disposals between 22 February 1999 and 21 September 1999; see Division 45 of the *Income Tax (Transitional Provisions) Act 1997*.

#### **45-15 Disposal of shares in 100% subsidiary that leases plant**

- (1) A company (the *former subsidiary*) is treated as if it had disposed of \*plant, received its market value for that disposal and immediately reacquired it for the same amount if:
- (a) the former subsidiary has deducted or can deduct an amount for depreciation of the plant; and
  - (b) the former subsidiary was a \*100% subsidiary of another company in a \*wholly-owned group at a time when it owned or was the \*quasi-owner of the plant; and

- (c) for most of the time when the former subsidiary owned or was the quasi-owner of the plant, the plant was leased to another entity; and
  - (d) the main \*business of the former subsidiary was to lease assets; and
  - (e) all or part of the lease period occurred on or after 22 February 1999; and
  - (f) on or after that day, the direct or indirect beneficial ownership of more than 50% of the \*shares in the former subsidiary is acquired by an entity or entities none of which is a member of the wholly-owned group; and
  - (g) the plant's \*written down value at the time of that acquisition is less than its market value at that time.
- (2) However, the former subsidiary is not treated as if it had disposed of \*plant and reacquired it if the main business of each of the entities that acquired the direct or indirect beneficial ownership of \*shares in the former subsidiary is the same as the main business of the \*wholly-owned group of which the former subsidiary was a member.
- (3) The disposal and reacquisition of the \*plant:
- (a) is taken to have occurred when that direct or indirect beneficial ownership was acquired; and
  - (b) is taken not to have affected any lease of the plant.
- (4) Despite sections 42-285 and 42-290, offsetting is not available under those sections for the disposal referred to in this section.

**45-20 Disposal of shares in 100% subsidiary that leases plant in partnership**

- (1) A company (also the *former subsidiary*) is treated as if it had disposed of its interest in \*plant, received its market value for that disposal and immediately reacquired it for the same amount if:
- (a) a partnership of which the former subsidiary is (or was) a member has deducted or can deduct an amount for depreciation of the plant; and
  - (b) the former subsidiary was a \*100% subsidiary of another company in a \*wholly-owned group at a time when:

- (i) it was a member of that partnership; and
  - (ii) the partnership owned or was the \*quasi-owner of the plant; and
  - (c) for most of the time when the partnership owned or was the quasi-owner of the plant, the plant was leased to another entity; and
  - (d) the main \*business of the partnership was to lease assets; and
  - (e) all or part of the lease period occurred on or after 22 February 1999; and
  - (f) on or after that day, the direct or indirect beneficial ownership of more than 50% of the \*shares in the former subsidiary is acquired by an entity or entities none of which is a member of the wholly-owned group; and
  - (g) the plant's \*written down value at the time of that acquisition is less than its market value at that time.
- (2) However, the former subsidiary is not treated as if it had disposed of the interest and reacquired it if the main business of each of the entities that acquired the direct or indirect beneficial ownership of \*shares in the former subsidiary is the same as the main business of the \*wholly-owned group of which the former subsidiary was a member.
- (3) The disposal and reacquisition of the interest:
- (a) is taken to have occurred when that direct or indirect beneficial ownership was acquired; and
  - (b) is taken not to have affected any lease of the plant.
- (4) Despite sections 42-285 and 42-290, offsetting is not available under those sections for the disposal referred to in this section.

#### **45-25 Group members liable to pay outstanding tax**

- (1) The consequences specified in subsection (2) apply if:
- (a) an amount is included in the former subsidiary's assessable income for an income year because of section 45-15 or 45-20; and
  - (b) the former subsidiary is liable to pay an amount of income tax for that income year; and

- (c) the former subsidiary does not pay all of that income tax within 6 months after it became payable.
- (2) The consequences are that:
  - (a) the former subsidiary remains liable to pay the outstanding amount of income tax (reduced by any payments of tax imposed by the *New Business Tax System (Former Subsidiary Tax Imposition) Act 1999*); and
  - (b) each company that was, just before the time when the direct or indirect beneficial ownership referred to in paragraph 45-15(1)(f) or 45-20(1)(f) was acquired, a member of the former subsidiary's former \*wholly-owned group, is jointly and severally liable to pay tax imposed by the *New Business Tax System (Former Subsidiary Tax Imposition) Act 1999*.

#### **45-30 Reduction for certain plant acquired before 21.9.99**

- (1) The amount included in your assessable income under subsection 45-5(2) or 45-10(2) is reduced if:
  - (a) you acquired the \*plant at or before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999 and you disposed of the plant or an interest in it after that time; and
  - (b) the sum of the amounts (your *proceeds*) referred to in paragraph 45-5(1)(e) or 45-10(1)(f) is more than the plant's \*cost, or that part of it that is attributable to the interest you disposed of.
- (2) The amount included is reduced by the lesser of:
  - (a) the amount (if any) by which the \*plant's \*cost base exceeds its \*cost, or that part of the excess that is attributable to the interest you disposed of; and
  - (b) the difference between your proceeds and the plant's cost, or that part of its cost that is attributable to the interest you disposed of.
- (3) However, the amount is not reduced under this section if:
  - (a) the \*plant was a \*pre-CGT asset at the time of the \*balancing adjustment event; or

- (b) a \*capital gain or \*capital loss from the plant or interest would be disregarded because of a provision listed in the table in this subsection if:
- (i) you had made the gain or loss from \*CGT event A1; and
  - (ii) that CGT event had happened at the time of the balancing adjustment event.

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**Plant for which a reduction is not made under this section**

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Item	Provision	Subject matter
1	section 118-5	cars, motor cycles and valour decorations
2	section 118-10	collectables and personal use assets
3	section 118-12	plant used to produce exempt income

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**45-35 Limit on amount included for plant for which there is a CGT exemption**

- (1) For \*plant to which subsection 45-30(3) applies there is a limit on the amount that can be included in your assessable income under subsection 45-5(2) or 45-10(2).
- (2) The limit for subsection 45-5(2) is the lesser of:
  - (a) the excess referred to in paragraph 45-5(1)(e); and
  - (b) the amounts you have deducted or can deduct for depreciation of the \*plant or, if you disposed of an interest in the plant, so much of those amounts as is attributable to that interest.
- (3) The limit for subsection 45-10(2) is the lesser of:
  - (a) the excess referred to in paragraph 45-10(1)(f); and
  - (b) that part of the amounts the partnership has deducted or can deduct for depreciation of the \*plant that has been or would be reflected in your interest in the partnership net income or partnership loss (your *partnership amount*) or, if you disposed of part of your interest in the plant, so much of your partnership amount as is attributable to that part of that interest.

**13 Subsection 58-85(6)**

Omit “section 42-200”, substitute “sections 42-200, 45-5 and 45-10”.

***Income Tax (Transitional Provisions) Act 1997***

**14 Before Division 42 (link note)**

Omit “42”, substitute “41”.

**15 Before Division 42**

Insert:

**Division 41—Common rules for capital allowances**

**Subdivision 41-A—Common rule 1 (Roll-over relief for related entities)**

**Table of sections**

41-40 Application of section 41-40 to disposals between February 1999 and September 1999

**41-40 Application of section 41-40 to disposals between February 1999 and September 1999**

In applying Division 45 of the *Income Tax Assessment Act 1997* to disposals of plant or interests in plant on or after 22 February 1999 and before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999, section 41-40 of that Act applies as if this provision were added at the end of subsection 41-40(4):

and (d) if the transferor was a member of a partnership that has deducted or could deduct an amount for depreciation of the property, the amount representing the extent to which the deductions have been or would be reflected in the transferor’s interest in the partnership net income or partnership loss is taken to be an amount deducted by the transferee for depreciation of the property.

**16 Section 43-110 (link note)**

Repeal the link note.

**17 After Division 43**

Insert:

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## **Division 45—Disposal of leases and leased plant**

### **Table of sections**

45-1	Application of Division 45 of the <i>Income Tax Assessment Act 1997</i>
45-3	Application of Division 45 to disposals between February 1999 and September 1999
45-40	Application of Division to plant formerly owned by exempt entities

### **45-1 Application of Division 45 of the Income Tax Assessment Act 1997**

Division 45 of the *Income Tax Assessment Act 1997* applies to assessments for the income year in which 22 February 1999 occurs and later income years.

### **45-3 Application of Division 45 to disposals between February 1999 and September 1999**

- (1) For disposals of plant or interests in plant on or after 22 February 1999 and before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999, Division 45 of the *Income Tax Assessment Act 1997* applies with the modifications specified in this section.
- (2) That Division applies as if subsection 45-5(2) were replaced by this provision:
  - (2) The amount included is the lesser of:
    - (a) the excess referred to in paragraph (1)(e); and
    - (b) the amounts you have deducted or can deduct for depreciation of the plant or, if you disposed of an interest in the plant, so much of those amounts as is attributable to that interest.

It is included for the income year in which the disposal occurred.
- (3) That Division applies as if paragraph 45-5(5)(a) were replaced by this provision:
  - (a) it is included in that assessable income under a provision of this Act outside this Division and Parts 3-1 and 3-3 (about capital gains and losses); or

- (4) That Division applies as if subsection 45-10(2) were replaced by this provision:
- (2) The amount included is the lesser of:
  - (a) the excess referred to in paragraph (1)(f); and
  - (b) that part of the amounts the partnership has deducted or can deduct for depreciation of the plant that has been or would be reflected in your interest in the partnership net income or partnership loss (your *partnership amount*) or, if you disposed of part of your interest in the plant, so much of your partnership amount as is attributable to that part of that interest.

It is included for the income year in which the disposal occurred.
- (5) That Division applies as if paragraph 45-10(5)(a) were replaced by this provision:
  - (a) it is included in that assessable income under a provision of this Act outside this Division and Parts 3-1 and 3-3 (about capital gains and losses); or
- (6) That Division applies as if this section were added at the end of that Division:

**45-40 Application of Division to plant formerly owned by exempt entities**

- (1) There are the consequences set out in this table for a transition entity that disposes of the plant, interest in plant or interest (or part) in a partnership to an entity specified in subsection (3).

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**Consequences for transition entities**

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<b>Item</b>	<b>In this situation:</b>	<b>There are these consequences:</b>
1	The entity chooses, under section 58-20, that depreciation deductions and balancing adjustments are to be calculated by reference to the notional written down value of plant	(a) section 45-5 has effect as if paragraph 45-5(2)(b) were omitted and replaced by paragraph 58-85(8)(a); and (b) section 45-10 has effect as if paragraph 45-10(2)(b) operated on that part of the amount worked out under paragraph 58-85(8)(a) that has been or would be reflected in the entity's interest in the partnership net income or partnership loss if that amount were an amount deducted for depreciation of the plant.
2	The entity chooses, under section 58-20, that depreciation deductions and balancing adjustments are to be calculated by reference to the undeducted pre-existing audited book value of plant	(a) section 45-5 has effect as if paragraph 45-5(2)(b) were omitted and replaced by paragraph 58-145(8)(a); and (b) section 45-10 has effect as if paragraph 45-10(2)(b) operated on that part of the amount worked out under paragraph 58-145(8)(a) that has been or would be reflected in the entity's interest in the partnership net income or partnership loss if that amount were an amount deducted for depreciation of the plant.

- (2) There are the consequences set out in this table for an entity that:
- (a) acquired the plant from a tax exempt vendor in connection with the acquisition of a business; and
  - (b) disposes of the plant, interest in plant or interest (or part) in a partnership to an entity specified in subsection (3).

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**Consequences for transition entities**

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Item	In this situation:	There are these consequences:
1	The entity chooses, under section 58-155, that depreciation deductions and balancing adjustments are to be calculated by reference to the notional written down value of plant	(a) section 45-5 has effect as if paragraph 45-5(2)(b) were omitted and replaced by paragraph 58-215(3)(a); and (b) section 45-10 has effect as if paragraph 45-10(2)(b) operated on that part of the amount worked out under paragraph 58-215(3)(a) that has been or would be reflected in the entity's interest in the partnership net income or partnership loss if that amount were an amount deducted for depreciation of the plant.
2	The entity chooses, under section 58-155, that depreciation deductions and balancing adjustments are to be calculated by reference to the undeducted pre-existing audited book value of plant	(a) section 45-5 has effect as if paragraph 45-5(2)(b) were omitted and replaced by paragraph 58-270(3)(a); and (b) section 45-10 has effect as if paragraph 45-10(2)(b) operated on that part of the amount worked out under paragraph 58-270(3)(a) that has been or would be reflected in the entity's interest in the partnership net income or partnership loss if that amount were an amount deducted for depreciation of the plant.

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(3) The entities are:

- (a) an exempt entity; or
- (b) the trustee of a complying superannuation fund; or
- (c) the trustee of a complying approved deposit fund; or
- (d) the trustee of a pooled superannuation trust; or
- (e) an entity that is not an Australian resident; or
- (f) an entity that is a State/Territory body for the purposes of Division 1AB of Part III of the *Income Tax Assessment Act 1936* and whose income is exempt under that Division.

*Apportionment*

- (4) If the entity concerned disposed of an interest in the plant rather than the plant (for a paragraph 45-5(2)(b) case), instead of the amount worked out under the table in subsection (1) or (2), the entity uses so much of that amount as is attributable to that interest.

- (5) If the entity concerned disposed of part of its interest in the plant rather than all of it (for a paragraph 45-10(2)(b) case), instead of the amount worked out under the table in subsection (1) or (2), the entity uses so much of that amount as is attributable to that part of that interest.

*[The next Part is Part 2-15.]*

## **18 Application of amendments**

The amendments made by this Schedule apply to assessments for the income year in which 22 February 1999 occurs and later income years.

## **Schedule 2—Value shifting through debt forgiveness**

### ***Income Tax Assessment Act 1997***

#### **1 Subsection 116-30(1) (note)**

Omit “section 138-30”, substitute “sections 138-30 and 139-20”.

#### **2 At the end of section 138-15**

Add:

Note: Division 139 (about value shifting through debt forgiveness) also provides for cost base adjustments to interests in companies under common ownership.

#### **3 After Division 138**

Insert:

### **Division 139—Value shifting through debt forgiveness**

#### **Guide to Division 139**

##### **139-5 What this Division is about**

Companies under common ownership can shift value between themselves by forgiving, or substantially and permanently reducing the value of, debts.

This Division requires adjustments to the cost base of direct and indirect interests in those companies where value has been shifted in that way.

#### **Table of sections**

##### **Operative provisions**

139-10	When this Division may affect you
139-15	Timing of adjustments
139-20	Market value substitution rule not to apply

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139-25	Reduction in cost base of shares
139-30	Different calculation in some circumstances
139-35	Reduction in cost base of loans
139-40	Different calculation in some circumstances
139-45	Reduction of cost base of indirect interests in creditor company
139-50	Compensatory increases in interests in debtor company

*[This is the end of the Guide.]*

## **Operative provisions**

### **139-10 When this Division may affect you**

- (1) You may have to make an adjustment under this Division if:
- (a) a company (the **debtor company**) has an obligation to pay a debt to another company (the **creditor company**); and
  - (b) you have a \*share in, a loan to or an indirect interest in the creditor company or a share in or an indirect interest in a share in the debtor company; and
  - (c) the conditions in subsection (3) or (4) are satisfied.

#### *Exception*

- (2) No adjustment is required if the debtor company is a \*100% subsidiary of the creditor company.

#### *Conditions*

- (3) The conditions are that:
- (a) \*CGT event C2 (the **trigger event**) happens to the debt or part of it (the **surrendered amount**) at a time (the **forgiveness time**) on or after 22 February 1999; and
  - (b) the creditor company and debtor company are \*under common ownership at the forgiveness time; and
  - (c) there is a shift in value from the creditor company to the debtor company as a result of the trigger event because the \*capital proceeds the creditor company receives or is entitled to receive from the trigger event are less than the market value of the surrendered amount (at the forgiveness time).
- (4) The conditions are that:

- (a) there is a substantial and permanent reduction in the value of the debt because of something done (also the *trigger event*) by the creditor company or by both companies at a time (also the *forgiveness time*) on or after 22 February 1999; and
- (b) the creditor company and debtor company are \*under common ownership at the forgiveness time; and
- (c) there is a shift in value from the creditor company to the debtor company as a result of the trigger event because the money, and market value of other property (if any), that the creditor company receives or is entitled to receive for that reduction is less than the amount of the reduction.

### 139-15 Timing of adjustments

- (1) All reductions to \*cost bases and \*reduced cost bases of direct interests in the creditor company are to be made as at the forgiveness time.
- (2) The adjustments to \*cost bases and \*reduced cost bases of indirect interests in the creditor company, and direct and indirect interests in the debtor company, are to be made as at the time of the \*CGT event referred to in section 139-45 or 139-50.

### 139-20 Market value substitution rule not to apply

In working out the \*capital proceeds from a \*CGT event (for this Division), disregard section 116-30 (the market value substitution rule).

### 139-25 Reduction in cost base of shares

- (1) If you owned a \*share in the creditor company at the forgiveness time, and you \*acquired it *on or after* 20 September 1985, you must reduce its \*cost base and \*reduced cost base in accordance with this section.

Note: A different calculation may apply in some circumstances: see section 139-30.

- (2) You must work out the factor (the *share reduction factor*) obtained by dividing the market value of the \*share just before the forgiveness time by the sum of the market values of all the shares

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in the creditor company (that were acquired *on or after* 20 September 1985) just before that time.

- (3) Reduce the \*cost base and \*reduced cost base of the \*share in this way:

*Method statement*

*Step 1.* Reduce the market value of the surrendered amount (just before the forgiveness time) or the amount of the substantial and permanent reduction in the value of the debt by:

- (a) the \*capital proceeds the creditor company receives or is entitled to receive from the trigger event; or
- (b) the money, and market value of other property (if any), that the creditor company receives or is entitled to receive for the substantial and permanent reduction.

*Step 2.* Multiply the result by the share reduction factor.

*Step 3.* The result is the ***maximum reduction amount***.

*Step 4.* Reduce the \*cost base and \*reduced cost base of the \*share to the extent possible by the maximum reduction amount.

### **139-30 Different calculation in some circumstances**

- (1) However, you do not make a reduction for a \*share under section 139-25 if:
- (a) at the forgiveness time:
    - (i) there were 2 or more classes of shares owned in the creditor company; or
    - (ii) you or another entity owned a share in the creditor company that you or the other entity \*acquired *before* 20 September 1985; and

- (b) it would be unreasonable to reduce the \*cost base and \*reduced cost base of the share by as much as would be the case under that section.
- (2) Instead, you reduce the \*cost base and \*reduced cost base of the \*share by a reasonable amount having regard to:
  - (a) the circumstances in which you \*acquired the share; and
  - (b) the extent by which its market value was reduced by the trigger event.

### 139-35 Reduction in cost base of loans

- (1) If you owned a loan to the creditor company at the forgiveness time, and:
  - (a) you \*acquired it *on or after* 20 September 1985; and
  - (b) either:
    - (i) the value of the loan was reduced by the trigger event; or
    - (ii) you did not deal at arm's length with the creditor company in connection with the loan;you must work out any reduction in its \*cost base and \*reduced cost base in accordance with this section if:
  - (c) the cost base or reduced cost base of one or more \*shares in the creditor company is reduced to nil under section 139-25; or
  - (d) no shares in the creditor company were acquired *on or after* 20 September 1985 and before the forgiveness time; or
  - (e) the market value of all shares in the creditor company that were acquired *on or after* that day is nil just before the forgiveness time.

Note: A different calculation may apply in some circumstances: see section 139-40.

- (2) You must work out the factor (the *loan reduction factor*) obtained by dividing the market value of the loan just before the forgiveness time by the sum of the market values of all the loans to the creditor company (that were acquired *on or after* 20 September 1985) just before that time.
- (3) If:

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- (a) there were no \*shares in the creditor company on which section 139-25 could operate; or
  - (b) the market value of all shares in the creditor company that were acquired *on or after* 20 September 1985 is nil just before the forgiveness time;
- you reduce the \*cost base and \*reduced cost base of the loan in the same way as for section 139-25, except that you use the loan reduction factor rather than the share reduction factor.
- (4) If section 139-25 has operated to reduce the \*cost base of one or more \*shares in the creditor company to nil, and the maximum reduction amount exceeded the cost base, multiply the excess by the loan reduction factor. This is done for each share whose cost base is reduced to nil.
  - (5) The sum of the amounts is the reduction in the \*cost base of the loan.
  - (6) If section 139-25 has operated to reduce the \*reduced cost base of one or more \*shares in the creditor company to nil, and the maximum reduction amount exceeded the reduced cost base, multiply the excess by the loan reduction factor. This is done for each share whose reduced cost base is reduced to nil.
  - (7) The sum of the amounts is the reduction in the \*reduced cost base of the loan.

#### **139-40 Different calculation in some circumstances**

- (1) However, you do not reduce the \*cost base or \*reduced cost base of a loan under section 139-35 if:
  - (a) at the forgiveness time:
    - (i) you or another entity owned a \*share in the creditor company that you or the entity \*acquired *before* 20 September 1985; or
    - (ii) you owned another loan to the creditor company; or
    - (iii) another loan to the creditor company was owned by a company that was a member of the same \*wholly-owned group at that time or by an individual referred to in paragraph 138-15(2)(b) (about the ultimate owners); and

- (b) it would be unreasonable to reduce it by as much as would be the case under that section.
- (2) Instead, you reduce it by a reasonable amount having regard to:
  - (a) the circumstances in which you \*acquired the loan; and
  - (b) the extent by which its market value was reduced by the trigger event.

**139-45 Reduction of cost base of indirect interests in creditor company**

- (1) You reduce the \*cost base and \*reduced cost base of a \*CGT asset you own if:
  - (a) because of owning the asset, you have an indirect interest (through one or more interposed companies or trusts) in a \*share in or a loan to the creditor company; and
  - (b) you owned the asset at the forgiveness time; and
  - (c) a \*CGT event happens in relation to the asset; and
  - (d) you \*acquired the CGT asset *on or after* 20 September 1985; and
  - (e) an earlier provision of this Division has operated to reduce the cost base or reduced cost base of one or more shares in, or loans to, the creditor company.
- (2) The amount of the reduction is such amount as is reasonable having regard to:
  - (a) the reduction in the value of the \*CGT asset as a result of the trigger event; and
  - (b) for the \*cost base—inflation measured by reference to the All Groups Consumer Price Index Number (up to the end of 30 September 1999).

**139-50 Compensatory increases in interests in debtor company**

- (1) You increase the \*cost base and \*reduced cost base of a \*CGT asset under this section if:
  - (a) the asset is a \*share in the debtor company or an asset that gives you an indirect interest in a share in that company (through one or more interposed companies or trusts); and
  - (b) you owned the asset at the forgiveness time; and

- (c) an earlier provision of this Division has operated to reduce the cost base or reduced cost base of one or more shares in, or loans to, the creditor company; and
  - (d) a \*CGT event happens in relation to the asset; and
  - (e) you \*acquired the CGT asset *on or after* 20 September 1985.
- (2) The amount of the increase is such amount as is reasonable having regard to:
- (a) the increase in the value of the \*CGT asset as a result of the trigger event; and
  - (b) the amount of any relevant reductions made under this Division; and
  - (c) for the \*cost base—inflation measured by reference to the All Groups Consumer Price Index Number (up to the end of 30 September 1999).

### ***Income Tax Assessment Act 1936***

#### **4 Paragraph 245-85(1)(c) of Schedule 2C**

Repeal the paragraph, substitute:

- (c) any amount by which the cost base to the debtor of any asset for CGT purposes has been, or will be, reduced as a result of the forgiveness of the debt under Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997* (except a reduction under Division 139 of that Act).

#### **5 Application of amendments**

The amendments made by this Schedule apply to trigger events that happen on or after 22 February 1999.

## Schedule 3—Excess deductions

### *Income Tax Assessment Act 1997*

#### **1 Paragraph 26-55(2)(b)**

Repeal the paragraph.

#### **2 Paragraph 165-55(2)(b)**

Omit “, if the company has elected that the deductions not be limited by the \*available assessable income”.

#### **3 Paragraphs 165-55(5)(g) and (h)**

Repeal the paragraphs.

#### **4 After section 330-330**

Insert:

#### **330-335 Subdivision to stop applying**

Sections 330-300 and 330-305 do not apply to limit your deductions under Subdivision 300-A or 300-C for the 1999-2000 income year.

#### **330-340 Treatment of excess deductions**

- (1) If you have an amount of excess deductions available for the 1999-2000 income year because of the operation of sections 330-300, 330-305 and 330-310 for the 1998-99 income year or an earlier one, that amount becomes, after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999, an amount you can deduct unless an event has occurred before that time that has already converted that amount into an amount you can deduct.
- (2) If:
  - (a) you have an amount of excess deductions available for the 1999-2000 income year because of the operation of sections 330-300, 330-305 and 330-310 for the 1998-99 income year or an earlier one; and

(b) you have adopted an accounting period under section 18 of the *Income Tax Assessment Act 1936* that ends after 21 September in a financial year;  
that amount becomes, on and after the first day of your 1999-2000 income year, an amount you can deduct.

### ***Income Tax Assessment Act 1936***

#### **5 Paragraph 268-35(2)(b) of Schedule 2F**

Omit “, if the trust has elected that the deductions not be limited by the available assessable income”.

#### **6 Paragraphs 268-35(5)(g) and (h) of Schedule 2F**

Repeal the paragraphs.

#### **7 Application of amendments**

The amendments made by this Schedule apply to assessments for the 1999-2000 income year and later income years.

## Schedule 4—Transfers of assets within company groups

### *Income Tax Assessment Act 1997*

#### **1 Before section 41-15**

Insert:

#### **41-14 Application of Subdivision**

This Subdivision does not apply in respect of a \*CGT event or disposal in respect of which Subdivision 170-D applies.

#### **2 At the end of section 110-55**

Add:

- (9) The *reduced cost base* is to be reduced by any amount that you have deducted or can deduct, or could have deducted except for Subdivision 170-D, as a result of a \*CGT event that happens in relation to a \*CGT asset. However, do not make a reduction for an amount that relates to a cost that could never have formed part of the reduced cost base or is excluded from the reduced cost base as a result of another provision of this section.

#### **3 At the end of section 110-60**

Add:

- (7) The *reduced cost base* of an entity's interest in a \*CGT asset of a partnership is to be reduced by the entity's share of any amount that the partnership has deducted or can deduct, or could have deducted except for Subdivision 170-D, as a result of a \*CGT event that happens in relation to the asset. However, a reduction is not to be made for an amount that relates to a cost that could never have formed part of the reduced cost base or is excluded from the reduced cost base as a result of another provision of this section.

#### **4 Paragraph 126-55(1)(a)**

Repeal the paragraph, substitute:

(a) either:

- (i) the trigger event would have resulted in the originating company making a \*capital gain, or making no \*capital loss and not being entitled to a deduction; or
- (ii) the originating company \*acquired the roll-over asset before 20 September 1985; and

**5 Subsection 126-55(2)**

Repeal the subsection.

**6 Subsection 126-60(1)**

Omit “or \*capital loss”.

**7 Subsection 126-60(4) (note)**

Repeal the note.

**8 Sections 126-65 and 126-70**

Repeal the sections.

**9 Section 126-80**

Repeal the section.

**10 Subsection 126-85(1)**

Omit “or \*capital loss”.

**11 Subsection 126-85(3)**

Omit “or \*capital loss” (first occurring).

**12 Subsection 126-85(3) (method statement, steps 2 and 3)**

Repeal the steps, substitute:

*Step 2.* Work out (disregarding this Subdivision):

- (a) the sum of the \*capital gains the subsidiary would make on the \*disposal of its CGT roll-over assets to the holding company; and

- (b) the sum of the \*capital losses it would make except for Subdivision 170-D on the disposal of its \*CGT assets to the holding company;

in the course of the liquidation assuming the \*capital proceeds were the assets' market values at the time of the disposal.

*Step 3.* If, after subtracting the sum of the \*capital losses from the sum of the \*capital gains, there is an overall capital gain from step 1 and an overall capital gain from step 2, then continue. Otherwise there is no adjustment.

**13 Subsection 126-85(3) (method statement, steps 5 and 6)**

Omit “or \*capital loss” (wherever occurring).

**14 Section 170-225 (link note)**

Repeal the link note.

**15 At the end of Division 170**

Add:

**Subdivision 170-D—Transactions by a company that is a member of a linked group**

**Guide to Subdivision 170-D**

**170-250 What this Subdivision is about**

This Subdivision provides that there is a deferral of a \*capital loss or deduction if a company (the *originating company*) that is a member of a \*linked group disposes of a \*CGT asset to, or creates a CGT asset in, another entity that:

- (a) is a company that is also a member of the linked group; or
- (b) is a connected entity of the originating company or an \*associate of such a connected entity;

and the disposal or creation of the asset would have resulted in the originating company making a capital loss or becoming entitled to a deduction.

## Table of sections

### Operative provisions

170-255	Application of Subdivision
170-260	Linked group
170-265	Connected entity
170-270	Immediate consequences for originating company
170-275	Subsequent consequences for originating company
170-280	What happens if the asset is acquired by an entity of a particular kind within 4 years

*[This is the end of the Guide.]*

## Operative provisions

### 170-255 Application of Subdivision

- (1) This Subdivision applies if:
  - (a) an event (the *deferral event*) happens involving a company (the *originating company*) and another entity; and
  - (b) one or more of the following apply:
    - (i) the deferral event is a \*CGT event that would have resulted in the originating company making a \*capital loss (except a capital loss that would be disregarded under a provision of this Act other than this Subdivision);
    - (ii) the deferral event would have resulted in the originating company becoming entitled to a deduction in respect of the disposal of a CGT asset;
    - (iii) if the originating company is a partner in a partnership—the deferral event would have resulted in the partnership becoming entitled to a deduction in respect of the disposal of a CGT asset; and
  - (c) if subparagraph (b)(i) applies—the CGT event is one of the following:

- (i) CGT events A1 and B1 (a *disposal case*);
- (ii) CGT events D1, D2, D3 and F1 (a *creation case*); and

Note: The full list of CGT events is in section 104-5.

- (d) one of the following applies:
  - (i) the originating company is a resident at the time of the deferral event;
  - (ii) if the deferral event is a CGT event D1—one of the items in the table in subsection 136-15(1) is satisfied;
  - (iii) if the deferral event is a CGT event A1, B1 or F1—the asset or the subject of the lease, as the case may be, had the \*necessary connection with Australia immediately before the deferral event;
  - (iv) if the deferral event is a CGT event D2—the option had the \*necessary connection with Australia immediately after the deferral event; and
- (e) at the time of the deferral event, the originating company is a member of a \*linked group and one of the following applies:
  - (i) the other entity is a company that is not a connected entity of the originating company and is a member of that linked group;
  - (ii) the other entity is a connected entity of the originating company;
  - (iii) the other entity is an \*associate of such a connected entity.

- (2) However, this Subdivision does not apply because of \*CGT event B1 if title in the \*CGT asset does not pass to the other entity when the agreement ends.

### 170-260 Linked group

- (1) Companies that are linked to one another are a *linked group*.
- (2) Two companies are *linked* to each other if:
  - (a) one of them has a controlling stake in the other; or
  - (b) the same entity has a controlling stake in each of them.
- (3) For the purposes of this section, an entity has a *controlling stake in a company* at a particular time if the entity, or the entity and the entity's \*associates between them:

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- (a) are able at that time to exercise, or control the exercise of, more than 50% of the voting power in the company (either directly, or indirectly through one or more interposed entities); or
  - (b) have at that time the right to receive for their own benefit (either directly, or indirectly through one or more interposed entities) more than 50% of any dividends that the company may pay; or
  - (c) have at that time the right to receive for their own benefit (either directly, or indirectly through one or more interposed entities) more than 50% of any distribution of capital of the company.
- (4) If:
- (a) apart from this subsection, an interest that gives an entity:
    - (i) the ability to exercise, or control the exercise of, any of the voting power in a company; or
    - (ii) the right to receive dividends that a company may pay; or
    - (iii) the right to receive a distribution of capital of a company;
 would, in the application of paragraph (3)(a), (b) or (c), be counted more than once; and
  - (b) the interest is both direct and indirect;
 only the direct interest is to be counted.

**170-265 Connected entity**

- (1) An entity is a *connected entity* of the originating company at a particular time if, at that time:
  - (a) the entity is a trustee of a trust and either:
    - (i) if the trust is a \*fixed trust—one or more companies that are members of the \*linked group of which the originating company is a member, or one or more of those companies and their \*associates, between them have the right to receive for their own benefit (either directly, or indirectly through one or more interposed entities) more than 50% of any distribution to beneficiaries of the trust of income or corpus of the trust; or

- (ii) if the trust is not a fixed trust—any company that is a member of the linked group of which the originating company is a member or any associate of such a company benefits or is capable of benefiting under the trust; or
  - (b) the entity is an individual who has a controlling stake in the company.
- (2) For the purposes of paragraph (1)(b), an individual has a controlling stake in a company at a particular time if the individual, or the individual and his or her \*associates between them:
  - (a) are able at that time to exercise, or control the exercise of, more than 50% of the voting power in the company (either directly, or indirectly through one or more interposed entities); or
  - (b) have at that time the right to receive for their own benefit (either directly, or indirectly through one or more interposed entities) more than 50% of any dividends that the company may pay; or
  - (c) have at that time the right to receive for their own benefit (either directly, or indirectly through one or more interposed entities) more than 50% of any distribution of capital of the company.
- (3) If:
  - (a) apart from this subsection, an interest that gives an entity:
    - (i) the ability to exercise, or control the exercise of, any of the voting power in a company; or
    - (ii) the right to receive dividends that a company may pay; or
    - (iii) the right to receive a distribution of capital of a company;would, in the application of paragraph (2)(a), (b) or (c), be counted more than once; and
  - (b) the interest is both direct and indirect;only the direct interest is to be counted.

**170-270 Immediate consequences for originating company**

If, apart from this Subdivision:

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- (a) the originating company would have made a \*capital loss (except a capital loss that would be disregarded under a provision of this Act other than this Subdivision) as a result of the deferral event; or
  - (b) the originating company would have become entitled to a deduction in respect of the deferral event; or
  - (c) where the originating company is a partner in a partnership—the partnership would have become entitled to a deduction in respect of the deferral event;

the capital loss, the deduction or the partner's share of the deduction, as the case may be, is disregarded.

### **170-275 Subsequent consequences for originating company**

- (1) If, at a time after the deferral event, any one or more of the following events (the *new events*) happens:
  - (a) the \*CGT asset involved ceases to exist;
  - (b) the CGT asset or a greater than 50% interest in it is \*acquired by an entity that is none of the following:
    - (i) a member of the \*linked group of which the originating company is a member;
    - (ii) a connected entity of the originating company;
    - (iii) an associate of such a connected entity;
  - (c) if the asset is owned by a company that is a member of that linked group—that company ceases to be a member of the linked group;
  - (d) the originating company ceases to be a member of that linked group;
  - (e) if the CGT asset is owned by an entity that is a connected entity of the originating company or an associate of such a connected entity—the entity that owns the asset ceases to be such a connected entity or ceases to be an associate of the connected entity, as the case may be;

the originating company is taken, immediately before the time of the happening of the new event or the earliest of the new events, as the case may be, to have made a \*capital loss equal to the amount of the capital loss referred to in section 170-270 or to have become entitled to a deduction equal to the deduction, or the share of the deduction, referred to in that section, as the case may be.

- (2) If the \*capital loss referred to in section 170-270 would have been made from a \*personal use asset or from a \*collectable, any corresponding capital loss that the originating company is taken by subsection (1) of this section to have made is taken to have been made from a personal use asset or from a collectable, as the case may be.

**170-280 What happens if the asset is acquired by an entity of a particular kind within 4 years**

- (1) This section applies if:
- (a) as a result of the occurrence of a new event in respect of a \*CGT asset, the originating company is taken by subsection 170-275(1) to have made a \*capital loss or to be entitled to a deduction; and
  - (b) within 4 years after the occurrence of the new event, the asset or a greater than 50% interest in it is \*acquired by the originating company or by an entity that, at the time of the acquisition, is:
    - (i) a company that is a member of the \*linked group of which the originating company is a member; or
    - (ii) a connected entity of the originating company; or
    - (iii) an associate of such a connected entity.
- (2) The company is taken not to have made the \*capital loss or not to have been entitled to the deduction, as the case may be.
- (3) If, at a time after the new event, any one or more of the following events (the *realisation events*) happens:
- (a) the \*CGT asset involved ceases to exist;
  - (b) the CGT asset or a greater than 50% interest in it is \*acquired by an entity that is none of the following:
    - (i) a member of the \*linked group of which the originating company is a member;
    - (ii) a connected entity of the originating company;
    - (iii) an associate of such a connected entity;
  - (c) if the asset is owned by a company that is a member of that linked group—that company ceases to be a member of the linked group;

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- (d) the originating company ceases to be a member of that linked group;
  - (e) if the CGT asset is owned by an entity that is a connected entity of the originating company or an associate of such a connected entity—the entity that owns the asset ceases to be such a connected entity or ceases to be an associate of the connected entity, as the case may be;

the originating company is taken, immediately before the time of the happening of the realisation event or the earliest of the realisation events, as the case may be, to have made a \*capital loss equal to the amount of the capital loss referred to in subsection (2) or to have become entitled to a deduction equal to the deduction referred to in that subsection, as the case may be.

- (4) If the \*capital loss referred to in subsection (2) would have been made from a \*personal use asset or from a \*collectable, any corresponding capital loss that the originating company is taken by subsection (3) to have made is taken to have been made from a personal use asset or from a collectable, as the case may be.

*[The next Division is Division 175]*

## ***Income Tax Assessment Act 1936***

### **16 Before subsection 73E(1)**

Insert:

- (1A) This section does not apply in respect of a disposal in respect of which Subdivision 170-D of the *Income Tax Assessment Act 1997* applies.

### **17 Section 121AS (table 1, item 2)**

After “1997”, insert “as in force immediately before 21 October 1999”.

### **18 Before subsection 124PA(1)**

Insert:

- (1A) This section does not apply in respect of a disposal in respect of which Subdivision 170-D of the *Income Tax Assessment Act 1997* applies.

## 19 Application

- (1) The amendments made by this Schedule apply to CGT events happening on or after 21 October 1999.
- (2) The amendment made by item 2 is to be disregarded for the purposes of any application of section 110-55 of the *Income Tax Assessment Act 1997* as previously in force, or any application of subsection 160ZK(1) of the *Income Tax Assessment Act 1936*, as a result of a CGT event or disposal that occurred before 21 October 1999.
- (3) The amendment made by item 3 is to be disregarded for the purposes of any application of section 110-60 of the *Income Tax Assessment Act 1997* as previously in force, or any application of subsection 160ZK(3) of the *Income Tax Assessment Act 1936*, as a result of a CGT event or disposal that occurred before 21 October 1999.

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## **Schedule 5—Transfers of losses within wholly-owned company groups**

### *Income Tax Assessment Act 1997*

#### **1 Section 112-95**

Repeal the section, substitute:

#### **112-95 Transfer of tax losses and net capital losses within wholly-owned groups of companies**

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##### **Transfer of tax losses and net capital losses within wholly-owned groups of companies**

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	An amount of a tax loss is transferred and a company has a direct or indirect equity interest in the loss company	The total cost base and reduced cost base	170-210
2	An amount of a tax loss is transferred and a company has a direct or indirect debt interest in the loss company	The reduced cost base	170-210
3	An amount of a tax loss is transferred and a company has a direct or indirect equity or debt interest in the income company	The total cost base and reduced cost base	170-215
4	An amount of a net capital loss is transferred and a company has a direct or indirect equity interest in the loss company	The total cost base and reduced cost base	170-220

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**Transfer of tax losses and net capital losses within wholly-owned groups of companies**

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
5	An amount of a net capital loss is transferred and a company has a direct or indirect debt interest in the loss company	The reduced cost base	170-220
6	An amount of a net capital loss is transferred and a company has a direct or indirect equity or debt interest in the gain company	The total cost base and reduced cost base	170-225

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**2 At the end of subsection 170-25(1)**

Add:

Note: However, the consideration may affect how section 170-210 modifies the cost base of direct and indirect interests in the loss company.

**3 At the end of subsection 170-25(2)**

Add:

Note: However, the consideration may affect how section 170-215 modifies the cost base of direct and indirect interests in the income company.

**4 Subsection 170-105(4)**

Repeal the subsection.

**5 At the end of section 170-105**

Add:

(8) The provisions of Subdivision 170-C (so far as they relate to the transfer of net capital losses) are to be disregarded in applying the provisions of this Subdivision where the relevant agreement referred to in section 170-150 was made before 22 February 1999.

**6 Subsection 170-125(1) (note)**

Omit “170-175”, substitute “170-220”.

**7 Subsection 170-125(2) (note)**

Omit “170-175”, substitute “170-225”.

**8 Subsections 170-145(2) to (4)**

Repeal the subsections.

**9 At the end of section 170-170**

Add:

Note: This Subdivision is disregarded in calculating the attributable income of a CFC: see section 410 of the *Income Tax Assessment Act 1936*.

**10 Sections 170-175 and 170-180**

Repeal the sections.

**11 Section 170-180 (link note)**

Repeal the link note.

**12 At the end of Division 170**

Add:

**Subdivision 170-C—Provisions applying to both transfers of tax losses and transfers of net capital losses within wholly-owned groups of companies**

**Guide to Subdivision 170-C**

**170-201 What this Subdivision is about**

If a tax loss or a net capital loss is transferred between companies in the same wholly-owned group, this Subdivision provides for adjustments to:

- (a) the cost base and reduced cost base of direct and indirect equity interests held by group companies in the loss company, or in the income company or gain company; and

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- |     |  |
|-----|--|
| (b) | the reduced cost base of direct and indirect debt interest held by group companies in the loss company; and                              |
| (c) | the cost base and reduced cost base of direct and indirect debt interests held by group companies in the income company or gain company. |

## Table of sections

### Operative provisions

170-205	Object of Subdivision
170-210	Transfer of tax loss: direct and indirect interests in the loss company
170-215	Transfer of tax loss: direct and indirect interests in the income company
170-220	Transfer of net capital loss: direct and indirect interests in the loss company
170-225	Transfer of net capital loss: direct and indirect interests in the gain company

*[This is the end of the Guide]*

## Operative provisions

### 170-205 Object of Subdivision

#### *Interests in the loss company*

- (1) The main object of this Subdivision is to ensure that, if an amount of a \*tax loss or \*net capital loss is transferred by a company to another company in the same \*wholly-owned group, the loss transferred is not duplicated by a member of the group.
- (2) Duplication could occur by the making of a \*capital loss, or the reduction of a \*capital gain, from a \*CGT event that happens in relation to an equity interest held (directly or indirectly) in the loss company or by the making of a capital loss in relation to a debt interest held (directly or indirectly) in the loss company.

#### *Interests in the income company or gain company*

- (3) This Subdivision may also require an adjustment to the cost base and reduced cost base of an equity or debt interest held (directly or

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indirectly) by a group company in the income company or gain company.

- (4) This adjustment is to reflect an increase in the market value of the interest because of the transfer of the loss if the increase is still reflected in the market value of the interest when a \*CGT event happens in relation to the interest.

**170-210 Transfer of tax loss: direct and indirect interests in the loss company**

- (1) If:
- (a) an amount of a \*tax loss is transferred by a company to another company; and
  - (b) Subdivision 170-A applies in respect of the transfer; and
  - (c) a company (the *group company*) holds a \*share in the loss company or is owed a debt by the loss company in respect of a loan; and
  - (d) the group company \*acquired the share or debt on or after 20 September 1985; and
  - (e) throughout the deduction year, the group company is a member of the same \*wholly-owned group as the loss company (disregarding a period when either was not \*in existence); and
  - (f) a \*CGT event happens in relation to the share or debt on or after the commencement of this section; and
  - (g) the relevant agreement referred to in section 170-50 is made on or after that commencement;

the \*cost base and \*reduced cost base of the share or the reduced cost base of the debt is reduced in accordance with subsection (3).

- (2) If:
- (a) an amount of a \*tax loss is transferred by a company to another company; and
  - (b) Subdivision 170-A applies in respect of the transfer; and
  - (c) a company (the *group company*) holds a \*share in another company or is owed a debt by another company in respect of a loan; and
  - (d) the group company \*acquired the share or debt on or after 20 September 1985; and

- (e) the money that the group company paid for the share, or the borrowed money, has been applied (directly, or indirectly through one or more interposed entities):
    - (i) in the other company or a third company acquiring shares in the loss company; or
    - (ii) in a \*borrowing by the loss company from the other company or from a third company; and
  - (f) throughout the deduction year, the group company, the other company and the third company (if any) are all members of the same \*wholly-owned group as the loss company (disregarding, for a particular company, a period when it was not \*in existence); and
  - (g) a \*CGT event happens in relation to the share or debt on or after the commencement of this section; and
  - (h) the relevant agreement referred to in section 170-50 is made on or after that commencement;
- the \*cost base and \*reduced cost base of the share or the reduced cost base of the debt is reduced in accordance with subsection (3).
- (3) The \*cost base and \*reduced cost base of the share or the reduced cost base of the debt is reduced by an amount that is appropriate having regard to:
    - (a) the group company's direct or indirect interest in the loss company; and
    - (b) the amount of the loss transferred; and
    - (c) the extent to which the loss reduced the market value of the share or debt; and
    - (d) any consideration received by the loss company for the loss transferred; and
    - (e) whether, because of a dividend or dividends paid by the loss company, the consideration is no longer reflected (wholly or partly) in the market value of the share or debt when a \*CGT event happens in relation to it.
  - (4) Any reduction is to be made immediately before a \*CGT event happens in relation to the share or debt and is to have effect from that time or the end of the deduction year, whichever is the earlier.

Note: This subsection is relevant for indexing elements of a cost base (see sections 114-1 and 114-15).

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**170-215 Transfer of tax loss: direct and indirect interests in the income company**

(1) If:

- (a) an amount of a \*tax loss is transferred by a company to another company; and
- (b) Subdivision 170-A applies in respect of the transfer; and
- (c) a company (the **group company**) holds a \*share in the income company or is owed a debt by the income company in respect of a loan; and
- (d) the group company \*acquired the share or debt on or after 20 September 1985; and
- (e) throughout the deduction year, the group company is a member of the same \*wholly-owned group as the income company (disregarding a period when either was not \*in existence); and
- (f) a \*CGT event happens in relation to the share or debt on or after the commencement of this section; and
- (g) the relevant agreement referred to in section 170-50 is made on or after that commencement;

the \*cost base and \*reduced cost base of the share or debt are increased in accordance with subsection (3).

(2) If:

- (a) an amount of a \*tax loss is transferred by a company to another company; and
- (b) Subdivision 170-A applies in respect of the transfer; and
- (c) a company (the **group company**) holds a \*share in another company or is owed a debt by another company in respect of a loan; and
- (d) the group company \*acquired the share or debt on or after 20 September 1985; and
- (e) the money that the group company paid for the share, or the borrowed money, has been applied (directly, or indirectly through one or more interposed entities):
  - (i) in the other company or a third company acquiring shares in the income company; or
  - (ii) in a \*borrowing by the income company from the other company or from a third company; and

- (f) throughout the deduction year, the group company, the other company and the third company (if any) are all members of the same \*wholly-owned group as the income company (disregarding, for a particular company, a period when it was not \*in existence); and
  - (g) a \*CGT event happens in relation to the share or debt on or after the commencement of this section; and
  - (h) the relevant agreement referred to in section 170-50 is made on or after that commencement;
- the \*cost base and \*reduced cost base of the share or debt are increased in accordance with subsection (3).
- (3) The \*cost base and \*reduced cost base are increased by an amount that is appropriate having regard to:
- (a) the group company's direct or indirect interest in the income company; and
  - (b) the amount of the loss transferred; and
  - (c) any consideration given by the income company for the loss transferred.

Note: This is because the consideration may be less than the commercial value of the loss transferred.

- (4) However, the increase cannot exceed the increase in the market value of the \*share or debt that results from the transfer of the loss. (If no increase in that market value results, for example because the consideration paid for the transfer of the loss equals the commercial value of the loss transferred, then there is no increase in the \*cost base and \*reduced cost base.)
- (5) Any increase is to be made immediately before a \*CGT event happens in relation to the share or debt and is to have effect from that time or the end of the deduction year, whichever is the earlier.

Note: This subsection is relevant for indexing elements of a cost base (see sections 114-1 and 114-15).

- (6) No increase is to be made to the \*cost base and \*reduced cost base of a share or debt to the extent to which, because of a dividend or dividends paid by the income company, the increase in the market value of the share or debt that resulted from the transfer of the loss is no longer in existence at the time when a \*CGT event happens in relation to the share or debt.

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**170-220 Transfer of net capital loss: direct and indirect interests in the loss company**

(1) If:

- (a) an amount of a \*net capital loss is transferred by a company to another company; and
- (b) Subdivision 170-B applies in respect of the transfer; and
- (c) a company (the *group company*) holds a \*share in the loss company or is owed a debt by the loss company in respect of a loan; and
- (d) the group company \*acquired the share or debt on or after 20 September 1985; and
- (e) throughout the application year, the group company is a member of the same \*wholly-owned group as the loss company (disregarding a period when either was not \*in existence); and
- (f) the relevant agreement referred to in section 170-150 is made on or after the commencement of this section;

the \*cost base and \*reduced cost base of the share or debt are reduced in accordance with subsection (3).

(2) If:

- (a) an amount of a \*net capital loss is transferred by a company to another company; and
- (b) Subdivision 170-B applies in respect of the transfer; and
- (c) a company (the *group company*) holds a \*share in another company or is owed a debt by another company in respect of a loan; and
- (d) the group company \*acquired the share or debt on or after 20 September 1985; and
- (e) the money that the group company paid for the share, or the borrowed money, has been applied (directly, or indirectly through one or more interposed entities):
  - (i) in the other company or a third company acquiring shares in the loss company; or
  - (ii) in a \*borrowing by the loss company from the other company or from a third company; and
- (f) throughout the application year, the group company, the other company and the third company (if any) are all

members of the same \*wholly-owned group as the loss company (disregarding, for a particular company, a period when it was not \*in existence); and

- (g) the relevant agreement referred to in section 170-150 is made on or after the commencement of this section;

the \*cost base and \*reduced cost base of the share or debt are reduced in accordance with subsection (3).

- (3) The \*cost base and \*reduced cost base are reduced by an amount that is appropriate having regard to:
- (a) the group company's direct or indirect interest in the loss company; and
  - (b) the amount of the loss transferred; and
  - (c) the extent to which the loss reduced the market value of the share or debt; and
  - (d) any consideration received by the loss company for the loss transferred; and
  - (e) whether, because of a dividend or dividends paid by the loss company, the consideration is no longer reflected (wholly or partly) in the market value of the share or debt when a \*CGT event happens in relation to it.
- (4) Any reduction is to be made immediately before a \*CGT event happens in relation to the share or debt and is to have effect from that time or the end of the application year, whichever is the earlier.

Note 1: Subsection (4) is relevant for indexing elements of a cost base (see sections 114-1 and 114-15).

Note 2: Reductions under subsection 160ZP(13) of the *Income Tax Assessment Act 1936* are also relevant: see section 170-220 of the *Income Tax (Transitional Provisions) Act 1997*.

### **170-225 Transfer of net capital loss: direct and indirect interests in the gain company**

- (1) If:
- (a) an amount of a \*net capital loss is transferred by a company to another company; and
  - (b) Subdivision 170-B applies in respect of the transfer; and

- (c) a company (the **group company**) holds a \*share in the gain company or is owed a debt by the gain company in respect of a loan; and
  - (d) the group company \*acquired the share or debt on or after 20 September 1985; and
  - (e) throughout the application year, the group company is a member of the same \*wholly-owned group as the gain company (disregarding a period when either was not \*in existence); and
  - (f) the relevant agreement referred to in section 170-150 is made on or after the commencement of this section;
- the \*cost base and \*reduced cost base of the share or debt are increased in accordance with subsection (3).

(2) If:

- (a) an amount of a \*net capital loss is transferred by a company to another company; and
  - (b) Subdivision 170-B applies in respect of the transfer; and
  - (c) a company (the **group company**) holds a \*share in another company or is owed a debt by another company in respect of a loan; and
  - (d) the group company \*acquired the share or debt on or after 20 September 1985; and
  - (e) the money that the group company paid for the share, or the borrowed money, has been applied (directly, or indirectly through one or more interposed entities):
    - (i) in the other company or a third company acquiring shares in the gain company; or
    - (ii) in a \*borrowing by the gain company from the other company or from a third company; and
  - (f) throughout the application year, the group company, the other company and the third company (if any) are all members of the same \*wholly-owned group as the gain company (disregarding, for a particular company, a period when it was not \*in existence); and
  - (g) the relevant agreement referred to in section 170-150 is made on or after the commencement of this section;
- the \*cost base and \*reduced cost base of the share or debt are increased in accordance with subsection (3).

- (3) The \*cost base and \*reduced cost base are increased by an amount that is appropriate having regard to:
- (a) the group company's direct or indirect interest in the gain company; and
  - (b) the amount of the loss transferred; and
  - (c) any consideration given by the gain company for the loss transferred.

Note: This is because the consideration may be less than the commercial value of the loss transferred.

- (4) However, the increase cannot exceed the increase in the market value of the \*share or debt that results from the transfer of the loss. (If no increase in that market value results, for example because the consideration paid for the transfer of the loss equals the commercial value of the loss transferred, then there is no increase in the \*cost base and \*reduced cost base.)

- (5) Any increase is to be made immediately before a \*CGT event happens in relation to the share or debt and is to have effect from that time or the end of the application year, whichever is the earlier.

Note: This subsection is relevant for indexing elements of a cost base (see sections 114-1 and 114-15).

- (6) No increase is to be made to the \*cost base and \*reduced cost base of a share or debt to the extent to which, because of a dividend or dividends paid by the gain company, the increase in the market value of the share or debt that resulted from the transfer of the loss is no longer in existence at the time when a \*CGT event happens in relation to the share or debt.

Note: Increases under subsections 160ZP(14) and (15) of the *Income Tax Assessment Act 1936* are also relevant: see section 170-225 of the *Income Tax (Transitional Provisions) Act 1997*.

*[The next Division is Division 175.]*

## ***Income Tax (Transitional Provisions) Act 1997***

### **13 Sections 170-175 and 170-180**

Repeal the sections.

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**14 At the end of Division 170**

Add:

**Subdivision 170-C—Provisions applying to both transfers of tax losses and transfers of net capital losses within wholly-owned groups of companies**

**170-220 Direct and indirect interests in the loss company**

Any reduction in the cost base and reduced cost base of a share or in the reduced cost base of a debt that has been made or is required to be made under subsection 160ZP(13) of the *Income Tax Assessment Act 1936* (as that subsection applied from time to time) is taken to have been made or to be required to be made under section 170-220 of the *Income Tax Assessment Act 1997*.

**170-225 Direct and indirect interests in the gain company**

Any increase in the cost base and reduced cost base of a share or debt that has been made or is authorised to be made under subsections 160ZP(14) and (15) of the *Income Tax Assessment Act 1936* (as those subsections applied from time to time) is taken to have been made or to be authorised to be made under section 170-225 of the *Income Tax Assessment Act 1997*.

***Income Tax Assessment Act 1936***

**15 At the end of section 160ZP**

Add:

- (16) The provisions of Subdivision 170-C of the *Income Tax Assessment Act 1997* (so far as they relate to the transfer of net capital losses) are to be disregarded in applying the provisions of this section where the relevant agreement referred to in paragraph (7)(c) was made before 22 February 1999.

***Financial Corporations (Transfer of Assets and Liabilities) Act 1993***

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**16 Section 170-25 of Schedule 1**

Repeal the section, substitute:

**170-25 Tax treatment of consideration for transferred tax loss**

- (1) If the loss company receives any consideration from the income company for the amount of the tax loss:
  - (a) that consideration is neither assessable income nor exempt income of the loss company; and
  - (b) the loss company does not make a capital gain because of the receipt of the consideration.

Note: However, the consideration may affect how section 170-210 modifies the cost base of direct and indirect interests in the loss company.

- (2) If the income company gives any consideration to the loss company for the amount of the tax loss:
  - (a) the income company cannot deduct the amount or value of the consideration; and
  - (b) the income company does not make a capital loss because of the giving of the consideration.

Note: However, the consideration may affect how section 170-215 modifies the cost base of direct and indirect interests in the income company.

**17 Subsection 170-125(1) of Schedule 2 (note)**

Omit “170-175”, substitute “170-220”.

Note: The heading to section 170-125 is altered by omitting “**tax loss**” and substituting “**net capital loss**”.

**18 Subsection 170-125(2) of Schedule 2 (note)**

Omit “170-175”, substitute “170-225”.

**19 Subsections 170-145(2) to (4) of Schedule 2**

Repeal the subsections.

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## **Schedule 6—Changes in ownership or control of company**

### ***Income Tax Assessment Act 1997***

#### **1 Section 165-5**

Omit “throughout the loss year and the income year”, substitute “throughout the period from the start of the loss year to the end of the income year”.

#### **2 Section 165-12**

Repeal the section, substitute:

##### **165-12 Company must maintain the same owners**

###### *Ownership test period*

- (1) In determining whether section 165-10 prevents a company from deducting a \*tax loss, the ***ownership test period*** is the period from the start of the \*loss year to the end of the income year.

###### *Voting power*

- (2) There must be persons who had \*more than 50% of the voting power in the company at all times during the \*ownership test period.

Note: See section 165-150 to work out who had rights to more than 50% of the voting power.

###### *Rights to dividends*

- (3) There must be persons who had rights to \*more than 50% of the company’s dividends at all times during the \*ownership test period.

Note: See section 165-155 to work out who had rights to more than 50% of the company’s dividends.

*Rights to capital distributions*

- (4) There must be persons who had rights to \*more than 50% of the company's capital distributions at all times during the \*ownership test period.

Note: See section 165-160 to work out who had rights to more than 50% of the company's capital distributions.

*When to apply the primary test*

- (5) To work out whether a condition in this section was satisfied at all times during the \*ownership test period, apply the primary test for that condition unless subsection (6) requires the alternative test to be applied.

Note: For the primary test, see subsections 165-150(1), 165-155(1) and 165-160(1).

*When to apply the alternative test*

- (6) Apply the alternative test for that condition if one or more other companies beneficially owned \*shares or interests in shares in the company at the beginning of the \*ownership test period.

Note: For the alternative test, see subsections 165-150(2), 165-155(2) and 165-160(2).

**3 Paragraphs 165-13(2)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) it must start at the start of the ownership test period;
- (b) if the period were the ownership test period, each of the conditions in section 165-12 would be satisfied.

**4 Paragraph 165-15(1)(a)**

Repeal the paragraph, substitute:

- (a) for some or all of the part of the \*ownership test period that started at the end of the \*loss year, a person controlled, or was able to control, the voting power in the company (whether directly, or indirectly through one or more interposed entities); and

**5 Section 165-93**

Repeal the section, substitute:

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### **165-93 What this Subdivision is about**

In working out its \*net capital gain for an income year, a company cannot apply a \*net capital loss for an earlier income year unless:

- (a) it has the same owners and the same control from the start of the \*loss year to the end of the income year; or
- (b) it carried on the same business, entered into no new kinds of transactions and conducted no new kinds of business.

### **6 After Subdivision 165-CB**

Insert:

### **Subdivision 165-CC—Change of ownership or control of company that has an unrealised net loss**

#### **Guide to Subdivision 165-CC**

### **165-115 What this Subdivision is about**

If a change occurs in the ownership or control of a company that has an unrealised net loss, the company cannot, to the extent of the unrealised net loss, have \*capital losses taken into account, or deduct revenue losses, in respect of \*CGT events that happen to \*CGT assets that it owned at the time of the change, unless it satisfies the same business test.

### **Table of sections**

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- 165-115C Change in ownership of company
- 165-115D Change in control of company
- 165-115E What is an unrealised net loss

165-115F Notional gains and losses

*[This is the end of the Guide.]*

## Operative provisions

### 165-115A Application of Subdivision

#### *Application*

- (1) This Subdivision applies to a company if:
  - (a) a changeover time has occurred or occurs in relation to the company after the commencement time; and
  - (b) at the changeover time the company had an unrealised net loss (see section 165-115E); and
  - (c) the company makes a \*capital loss, or apart from this section would be entitled to a deduction, in respect of a \*CGT event that happens to a \*CGT asset that the company owned at the changeover time.

#### *Commencement time*

- (2) For the purposes of this Subdivision, the **commencement time** of a company is:
  - (a) if the company was in existence at 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999—that time; or
  - (b) if the company came into existence after that time—the time when it came into existence.

#### *Asset owned at more than one changeover time*

- (3) If:
  - (a) 2 or more changeover times have occurred or occur in relation to a company; and
  - (b) the company owned a particular asset at more than one of those changeover times;this Subdivision applies to the company in respect of that asset only in relation to the later or latest of those changeover times.

Note: For **changeover time** see sections 165-115C and 165-115D.

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**165-115B What happens when the company makes a capital loss or becomes entitled to a deduction in respect of a CGT asset owned at a changeover time**

*Where capital loss or deduction is equal to or less than residual unrealised net loss*

- (1) If the \*capital loss or deduction referred to in paragraph 165-115A(1)(c) is equal to or less than the company's residual unrealised net loss at the time of the occurrence of the event that resulted in the capital loss or entitled the company to the deduction:
- (a) the capital loss is taken to have been a \*net capital loss; or
  - (b) the deduction is taken to have been a \*tax loss;
- of the company for the income year immediately before the income year in which the changeover time occurred.

*Where capital loss or deduction is greater than residual unrealised net loss*

- (2) If the \*capital loss or deduction referred to in paragraph 165-115A(1)(c) is greater than the company's residual unrealised net loss at the time of the occurrence of the event that resulted in the capital loss or entitled the company to the deduction:
- (a) the part of the capital loss that is equal to that unrealised net loss is taken to have been a \*net capital loss; or
  - (b) the part of the deduction that is equal to that unrealised net loss is taken to have been a \*tax loss;
- of the company for the income year immediately before the income year in which the changeover time occurred.

*Company does not meet certain conditions in relation to net capital loss or tax loss*

- (3) The company is taken not to have met, at the changeover time, the conditions in subsections 165-12(2), (3) and (4) in relation to the \*net capital loss or the \*tax loss. For the purposes of the application of section 165-13 in relation to the company, the continuity period is taken to have ended at the changeover time.

*Need to meet same business test*

- (4) The effect of subsection (3) is that the company cannot apply the \*net capital loss (see section 165-10 as it applies because of section 165-96), or deduct the \*tax loss (see section 165-10), unless it meets the conditions in section 165-13 (the same business test).

*Consequences for net capital loss*

- (5) The \*net capital loss cannot be applied against \*capital gains made in an income year before the income year in which the company made the capital loss referred to in paragraph 165-115A(1)(c).

*Consequences for tax loss*

- (6) The \*tax loss cannot be deducted from assessable income derived in an income year before the income year in which the company would have been entitled to the deduction referred to in paragraph 165-115A(1)(c).

*Order in which assets to be applied*

- (7) In applying subsection (2) in respect of assets that the company owned at the changeover time:
- (a) the company's \*capital losses are taken to have been made, and the company is taken to have become entitled to deductions, in the order in which the events that resulted in the capital losses or deductions occurred; and
  - (b) if 2 or more such events occurred at the same time, they are taken to have occurred in such order as the company determines.

*Residual unrealised net loss*

- (8) The company's **residual unrealised net loss**, at the time of an event (the **relevant event**) that resulted in the company making a \*capital loss, or resulted in the company becoming entitled to a deduction, in respect of an asset, is the amount worked out using the following formula:

$$\text{Unrealised net loss} - \begin{array}{l} \text{Previous capital losses} \\ \text{or deductions} \end{array}$$

where:

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***previous capital losses or deductions*** means capital losses that the company made, or deductions to which the company became entitled, as a result of events earlier than the relevant event in respect of other assets that the company owned at the changeover time.

***unrealised net loss*** means the company's unrealised net loss at the last changeover time that occurred before the relevant event.

Note: For ***changeover time*** see sections 165-115C and 165-115D.

### **165-115C Change in ownership of company**

- (1) A ***change takes place in the ownership*** of a company at a particular time (a ***changeover time***) if:
- (a) persons who had \*more than 50% of the voting power in the company at the reference time do not have more than 50% of that voting power immediately after the changeover time; or
  - (b) persons who had rights to \*more than 50% of the company's dividends at the reference time do not have rights to more than 50% of those dividends immediately after the changeover time; or
  - (c) persons who had rights to \*more than 50% of the company's capital distributions at the reference time do not have rights to more than 50% of those distributions immediately after the changeover time.

Note 1: See section 165-150 to work out who had more than 50% of the voting power in the company.

Note 2: See section 165-155 to work out who had rights to more than 50% of the company's dividends.

Note 3: See section 165-160 to work out who had rights to more than 50% of the company's capital distributions.

- (2) To work out whether paragraph (1)(a), (b) or (c) applied at a particular time, apply the primary test unless subsection (3) requires the alternative test to be applied.

Note: For the primary test see subsections 165-150(1), 165-155(1) and 165-160(1).

- (3) Apply the alternative test if one or more other companies beneficially owned \*shares or interests in shares in the company at the reference time.

Note: For the alternative test see subsections 165-150(2), 165-155(2) and 165-160(2).

- (4) For the purposes of the application of this section to a company at a changeover time, the *reference time* is:
- (a) if no changeover time has previously occurred—the commencement time; or
  - (b) otherwise—the time immediately after the last preceding changeover time.

#### 165-115D Change in control of company

- (1) A *change takes place in the control* of a company at a particular time (a *changeover time*) if, at that time:
- (a) a person who did not control, or was not able to control, the voting power in the company:
    - (i) if no changeover time has previously occurred—at the commencement time; or
    - (ii) otherwise—immediately after the last changeover time; began to control, or became able to control, that voting power; and
  - (b) that person so began, or became able, to control that voting power for the purpose of:
    - (i) getting some benefit or advantage in relation to how this Act applies; or
    - (ii) getting such a benefit or advantage for someone else; or for purposes including that purpose.
- (2) In this section:

*control* of the voting power in a company means control of that voting power either directly, or indirectly through one or more interposed entities.

#### 165-115E What is an unrealised net loss

The question whether a company has an *unrealised net loss* at a particular time (the *relevant time*) is worked out in this way.

<i>Method statement</i>
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*Step 1.* Work out under section 165-115F in respect of each \*CGT asset that the company owned at the relevant time any notional capital gain or notional revenue gain or any notional capital loss or notional revenue loss that the company has at that time in respect of the asset.

The sum of the notional capital gains is the company's ***unrealised capital gain*** at the relevant time.

The sum of the notional capital losses is the company's ***unrealised capital loss*** at the relevant time.

The sum of the notional revenue gains is the company's ***unrealised revenue gain*** at the relevant time.

The sum of the notional revenue losses is the company's ***unrealised revenue loss*** at the relevant time.

*Step 2.* Add up the unrealised capital gain and the unrealised revenue gain at the relevant time. The total is the ***unrealised gross gain*** at that time.

*Step 3.* Add up the unrealised capital loss and the unrealised revenue loss at the relevant time. The total is the ***unrealised gross loss*** at that time.

*Step 4.* If the unrealised gross loss at the relevant time exceeds the unrealised gross gain at that time, the excess is the company's ***unrealised net loss*** at that time.

### **165-115F Notional gains and losses**

- (1) This section applies for the purpose of calculating whether a company has at a particular time (the ***relevant time***) a notional capital gain, a notional capital loss, a notional revenue gain or a notional revenue loss in respect of a \*CGT asset that it owned at that time.
- (2) The calculation is to be made on the assumption that the company disposed of the asset at its market value at the relevant time.

- (3) In relation to an asset other than an item of trading stock:
- (a) if the company would make a \*capital gain in respect of the disposal of the asset—the company has at the relevant time in respect of the asset a **notional capital gain** equal to the amount of the capital gain; or
  - (b) if an amount (other than a capital gain) would be included in the company's assessable income in respect of the disposal of the asset—the company has at the relevant time in respect of the asset a **notional revenue gain** equal to the amount so included; or
  - (c) if the company would make a \*capital loss in respect of the disposal of the asset—the company has at the relevant time in respect of the asset a **notional capital loss** equal to the amount of the capital loss; or
  - (d) if the company would be entitled to a deduction in respect of the disposal of the asset—the company has at the relevant time in respect of the asset a **notional revenue loss** equal to the amount of the deduction.
- (4) In relation to an asset that is an item of trading stock:
- (a) if the item's market value at the relevant time exceeds:
    - (i) in respect of an item that has been valued under Division 70—the item's latest valuation under that Division; or
    - (ii) otherwise—the \*cost of the item at the relevant time; the company has at the relevant time in respect of the article a **notional revenue gain** equal to the excess; or
  - (b) if the item's market value at the relevant time is less than:
    - (i) in respect of an item that has been valued under Division 70—the item's latest valuation under that Division; or
    - (ii) otherwise—the \*cost of the item at the relevant time; the company has at the relevant time in respect of the article a **notional revenue loss** equal to the difference.

## 7 Section 165-117

Omit “during the rest of that income year and also during”, substitute “throughout the period from the day on which the debt was incurred to the end of”.

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## **8 Before section 165-120**

Insert:

### **165-119 Application of Subdivision**

This Subdivision applies to a debt only to the extent (if any) to which Subdivision 165-CC does not apply in respect of the debt.

Note: Subdivision 165-CC applies to certain capital losses or tax losses of a company to the extent to which the capital loss or tax loss does not exceed the company's unrealised net loss.

## **9 Section 165-123**

Repeal the section, substitute:

### **165-123 Company must maintain the same owners**

#### *Ownership test period*

- (1) In determining whether section 165-120 prevents a company from deducting a debt or a part of a debt, the ***ownership test period*** is the period from the start of the \*first continuity period to the end of the \*second continuity period.

#### *Voting power*

- (2) There must be persons who had \*more than 50% of the voting power in the company at all times during the \*ownership test period.

Note: See section 165-150 to work out who had rights to more than 50% of the voting power.

#### *Rights to dividends*

- (3) There must be persons who had rights to \*more than 50% of the company's dividends at all times during the \*ownership test period.

Note: See section 165-155 to work out who had rights to more than 50% of the company's dividends.

*Rights to capital distributions*

- (4) There must be persons who had rights to \*more than 50% of the company's capital distributions at all times during the \*ownership test period.

Note: See section 165-160 to work out who had rights to more than 50% of the company's capital distributions.

*When to apply the primary test*

- (5) To work out whether a condition in this section was satisfied at all times during the \*ownership test period, apply the primary test for that condition unless subsection (6) requires the alternative test to be applied.

Note: For the primary test, see subsections 165-150(1), 165-155(1) and 165-160(1).

*When to apply the alternative test*

- (6) Apply the alternative test for that condition if one or more other companies beneficially owned \*shares or interests in shares in the company at the beginning of the \*ownership test period.

Note: For the alternative test, see subsections 165-150(2), 165-155(2) and 165-160(2).

**10 Paragraph 165-129(1)(a)**

Repeal the paragraph, substitute:

- (a) for some or all of the part of the \*ownership test period that started at the end of the \*first continuity period, a person controlled, or was able to control, the voting power in the company (whether directly, or indirectly through one or more interposed entities); and

**11 Sections 165-150, 165-155, 165-160 and 165-165**

Repeal the sections, substitute:

**165-150 Who has more than 50% of the voting power in the company**

*The primary test*

- (1) Applying the primary test in respect of a company: if there are persons who at a particular time beneficially own (between them) \*shares that carry (between them) the right to exercise more than 50% of the voting power in the company, those persons have **more than 50% of the voting power** in the company at that time.

*The alternative test*

- (2) Applying the alternative test in respect of a company: if it is the case, or it is reasonable to assume, that there are persons (none of them companies) who (between them) at a particular time have beneficial interests (directly, or indirectly through one or more interposed entities) in \*shares in the company that carry (between them) more than 50% of the voting power in the company, those persons have **more than 50% of the voting power** in the company at that time.

**165-155 Who has rights to more than 50% of the company's dividends**

*The primary test*

- (1) Applying the primary test in respect of a company: if there are persons who at a particular time beneficially own (between them) \*shares that carry (between them) the right to receive more than 50% of any dividends that the company may pay, those persons have **more than 50% of the company's dividends** at that time.

*The alternative test*

- (2) Applying the alternative test in respect of a company: if it is the case, or it is reasonable to assume, that there are persons (none of them companies) who (between them) at a particular time have beneficial interests (directly, or indirectly through one or more interposed entities) in \*shares in the company that carry (between them) the right to receive more than 50% of any dividends that the

company may pay, those persons have *more than 50% of the company's dividends* at that time.

### **165-160 Who has rights to more than 50% of the company's capital distributions**

#### *The primary test*

- (1) Applying the primary test in respect of a company: if there are persons who at a particular time beneficially own (between them) \*shares that carry (between them) the right to receive more than 50% of any distribution of capital of the company, those persons have *more than 50% of the company's capital distributions* at that time.

#### *The alternative test*

- (2) Applying the alternative test in respect of a company: if it is the case, or it is reasonable to assume, that there are persons (none of them companies) who (between them) at a particular time have beneficial interests (directly, or indirectly through one or more interposed entities) in \*shares in the company that carry (between them) the right to receive more than 50% of any distribution of capital of the company, those persons have *more than 50% of the company's capital distributions* at that time.

### **165-165 Rules about tests for a condition**

- (1) A person must beneficially own, or beneficially own indirect interests in, exactly the same \*shares at all relevant times if those shares are to be taken into account in determining whether a condition has been satisfied.
- (2) A person is taken to have beneficially owned, or beneficially owned indirect interests in, a particular \*share at all relevant times if:
  - (a) where the share has been divided into 2 or more shares—at all relevant times after the division took place the person beneficially owned, or beneficially owned indirect interests in, the shares into which the first share was divided; or
  - (b) where the share has been consolidated with other shares that the person beneficially owned, or in which the person

beneficially owned indirect interests—at all relevant times after the consolidation took place the person beneficially owned, or beneficially owned indirect interests in, the share formed by the consolidation of the first share and the other shares.

- (3) A \*public company is taken to satisfy the primary test if it is reasonable to assume that the test is satisfied.

## **12 Subsection 165-180(1)**

Repeal the subsection, substitute:

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

## **13 Subsection 165-180(2)**

Omit “Before or during the income year an \*arrangement must have been entered into”, substitute “An \*arrangement must have been entered into at some time”.

## **14 Sections 165-185 and 165-190**

Repeal the sections, substitute:

### **165-185 Shares treated as not having carried rights**

- (1) In applying a test for the purposes of this Division other than Subdivision 165-CC, \*shares are taken *not* to have carried particular rights during a part of the \*ownership test period if the Commissioner is satisfied that:
- (a) the shares *stopped* carrying those rights after the ownership test period; or
  - (b) the shares will or may *stop* carrying those rights after the ownership test period;
- because of:
- (c) the company’s \*constitution as in force at some time *during* the ownership test period; or
  - (d) an \*arrangement entered into before or during the ownership test period.

- (2) In applying a test for the purposes of Subdivision 165-CC, \*shares are taken not to have carried particular rights after a particular time if the Commissioner is satisfied that:
- (a) the shares *stopped* carrying those rights after that time; or
  - (b) the shares will or may *stop* carrying those rights after that time;
- because of:
- (c) the company's \*constitution as in force at any time; or
  - (d) an \*arrangement entered into at any time.

**165-190 Shares treated as always having carried rights**

- (1) In applying a test for the purposes of this Division other than Subdivision 165-CC, \*shares are taken to have carried particular rights *at all times* during a part of the \*ownership test period if the Commissioner is satisfied that:
- (a) the shares *started* to carry those rights after the ownership test period; or
  - (b) the shares will or may *start* to carry those rights after the ownership test period;
- because of:
- (c) the company's \*constitution as in force at some time *during* the ownership test period; or
  - (d) an \*arrangement entered into before or during the ownership test period.
- (2) In applying a test for the purposes of Subdivision 165-CC, \*shares are taken to have carried particular rights after a particular time if the Commissioner is satisfied that:
- (a) the shares *started* to carry those rights after that time; or
  - (b) the shares will or may *start* to carry those rights after that time;
- because of:
- (c) the company's \*constitution as in force at any time; or
  - (d) an \*arrangement entered into at any time.

**15 Subsection 165-195(1)**

Omit “at a time during the income year”, substitute “at a particular time”.

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## **16 Application and saving**

The amendments made by this Schedule, except in so far as they relate to changes in the ownership or control of a company that has an unrealised net loss, apply to net capital losses, tax losses or deductions claimed in a return for a year of income ending after 21 September 1999.

## **Schedule 7—Deducting prepayments**

### **Part 1—New rules**

#### **Division 1—Expenditure on and after 21 September 1999**

##### ***Income Tax Assessment Act 1936***

###### **1 Subsection 82KZL(1)**

Insert:

***pre-RBT obligation*** means a contractual obligation that:

- (a) exists under an agreement before 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999; and
- (b) requires the payment of an amount for the doing of a thing under the agreement; and
- (c) requires the payment to be made before the doing of the thing; and
- (d) cannot be escaped by unilateral action by the party bound by the obligation to make the payment.

###### **2 Subsection 82KZL(1)**

Insert:

***small business taxpayer*** has the meaning given by sections 960-335 and 960-350 of the *Income Tax Assessment Act 1997*.

###### **3 At the end of paragraph 82KZM(1)(a)**

Add “and”.

###### **4 After paragraph 82KZM(1)(a)**

Insert:

- (aa) at least one of the following applies:
  - (i) the taxpayer is a small business taxpayer (see subsection 82KZL(1));
  - (ii) the expenditure is not incurred in carrying on a business;

- (iii) the expenditure meets a pre-RBT obligation (see subsection 82KZL(1)); and

Note: The heading to section 82KZM is replaced by the heading “**Expenditure by small business taxpayer and non-business expenditure**”.

## **5 After section 82KZM**

Insert:

### **82KZMA Application of sections 82KZMB, 82KZMC and 82KZMD**

#### *Overview*

- (1) Sections 82KZMB, 82KZMC and 82KZMD set the amount and timing of deductions for expenditure that a taxpayer incurs in an income year (the *expenditure year*), if:
- (a) apart from those sections, the taxpayer could deduct the expenditure under section 8-1 of the *Income Tax Assessment Act 1997* for the expenditure year; and
  - (b) the requirements in subsections (2), (3), (4) and (5) are met.

Note: Sections 82KZMB and 82KZMC deal with expenditure with an eligible service period ending up to 13 months after the expenditure was incurred. Section 82KZMD deals with expenditure with a longer eligible service period. Subsection 82KZL(1) explains what the eligible service period for expenditure is.

#### *Requirements for taxpayer*

- (2) The taxpayer:
- (a) must carry on a business; and
  - (b) must not be a small business taxpayer.

#### *Requirements for expenditure*

- (3) The expenditure must be incurred:
- (a) in carrying on the business; and
  - (b) under an agreement (see subsection 82KZL(1)); and
  - (c) in return for the doing of a thing under the agreement that is not to be wholly done within the expenditure year.

*Requirement for expenditure not to be excluded expenditure*

- (4) The expenditure must not be excluded expenditure (see subsection 82KZL(1)).

*Requirement for expenditure not to meet pre-RBT obligation*

- (5) The expenditure must not meet a pre-RBT obligation (see subsection 82KZL(1)).

*Relationship with other provisions*

- (6) Sections 82KZMB, 82KZMC and 82KZMD have effect:
- (a) despite section 8-1 of the *Income Tax Assessment Act 1997*; and
  - (b) subject to Division 245 of Schedule 2C to this Act.

**82KZMB Expenditure with eligible service period ending up to 13 months later**

*Application*

- (1) This section and section 82KZMC apply to expenditure whose eligible service period ends not more than 13 months after the taxpayer incurs the expenditure.

Note: Subsection 82KZL(1) explains what the eligible service period for expenditure is.

*Deduction for expenditure year*

- (2) The taxpayer may deduct for the expenditure year the sum of:
- (a) the amount (if any) worked out using the formula in subsection (3); and
  - (b) the amount worked out using the table in subsection (5).

*Formula for deduction for expenditure year*

- (3) The formula is:

$$\text{Expenditure} \times \frac{\text{Number of days of eligible service period in the expenditure year}}{\text{Total number of days of eligible service period}}$$

*Deduction for year of income after expenditure year*

- (4) The taxpayer may deduct for the year of income straight after the expenditure year the amount worked out using the table in subsection (5).

*Table of deductions*

- (5) The table is:

<b>Amounts included in deductions for expenditure year and next year of income</b>			
<b>Item</b>	<b>Expenditure year</b>	<b>Amount included in deduction for the expenditure year</b>	<b>Amount of deduction for the year of income straight after the expenditure year</b>
1	Year of income including 21 September 1999	80% of the later year amount	20% of the later year amount
2	Year of income including 21 September 2000	60% of the later year amount	40% of the later year amount
3	Year of income including 21 September 2001	40% of the later year amount	60% of the later year amount
4	Year of income including 21 September 2002	20% of the later year amount	80% of the later year amount

*What is the later year amount?*

- (6) The taxpayer's **later year amount** for expenditure is the difference between:
- (a) the expenditure; and
  - (b) the amount worked out using the formula in subsection (3).
- This subsection is subject to section 82KZMC.

*Nil later year amount if this section did not apply in initial year*

- (7) To avoid doubt, the later year amount for expenditure incurred in the year of income including 21 September 1999 is nil if this

section does not allow the taxpayer a deduction for the expenditure for that year of income.

Note 1: This will be the case if the requirements of section 82KZMA are not met in relation to the expenditure in that year.

Note 2: In this case, the later year amount for expenditure incurred in later years of income will also be nil under section 82KZMC, so subsection 82KZMC(4) will set the amount of deductions for years of income after the expenditure year for that expenditure.

## 82KZMC Limiting the totals of later year amounts

### *Application*

- (1) This section applies if (apart from this section) the sum of the taxpayer's later year amounts for all expenditures incurred in a year of income (the *subsequent year*) mentioned in item 2, 3 or 4 of the table in subsection 82KZMB(5) would be more than the sum of the later year amounts for all the taxpayer's expenditures in the year of income (the *initial year*) mentioned in item 1 of that table.

Note: For the purposes of this section, ignore any expenditure with an eligible service period ending more than 13 months after the expenditure was incurred. See subsection 82KZMB(1).

### *What is the later year amount?*

- (2) The taxpayer's *later year amount* for expenditure incurred in the subsequent year is an amount (which may be a nil amount) that:
  - (a) the taxpayer chooses under subsection (3); and
  - (b) is not more than the amount worked out for the expenditure under subsection 82KZMB(6).

### *Choice of later year amounts*

- (3) The taxpayer must choose later year amounts for expenditures incurred in the subsequent year so that the total of those amounts equals the sum of the later year amounts for all the taxpayer's expenditures in the initial year.

Note: This means that the taxpayer must choose nil amounts for all expenditures incurred in the subsequent year if the later year amount for expenditure incurred in the initial year is nil.

*Other deduction for years of income after expenditure year*

- (4) If the amount worked out under subsection 82KZMB(6) for the expenditure exceeds the later year amount for the expenditure chosen under this section, the taxpayer may deduct for the expenditure the amount worked out using the formula in subsection (5), for each year of income that:
- (a) contains all or part of the eligible service period for the expenditure; and
  - (b) occurs after the expenditure year.

*Formula for other deductions*

- (5) The formula is:

$$\text{Excess} \times \frac{\text{Number of days of eligible service period in the year of income}}{\text{Total number of days of eligible service period}}$$

where:

*excess* is the difference between:

- (a) the amount worked out under subsection 82KZMB(6) for the expenditure; and
- (b) the later year amount for the expenditure chosen under this section.

*Deduction is additional to deduction under section 82KZMB*

- (6) A deduction under this section for the expenditure is in addition to any deduction for the expenditure under section 82KZMB.

**82KZMD Expenditure with eligible service period ending more than 13 months later**

- (1) This section applies to expenditure whose eligible service period ends more than 13 months after the taxpayer incurs the expenditure.

Note: Subsection 82KZL(1) explains what the eligible service period for expenditure is.

- (2) For each year of income containing all or part of the eligible service period for the expenditure, the taxpayer may deduct the amount worked out using the formula:

$$\text{Expenditure} \times \frac{\text{Number of days of eligible service period in the year of income}}{\text{Total number of days of eligible service period}}$$

## **Division 2—Expenditure in years of income starting after last year of transitional relief**

### ***Income Tax Assessment Act 1936***

#### **6 Subsection 82KZMA(1)**

Omit “Sections 82KZMB, 82KZMC and 82KZMD set”, substitute “Section 82KZMD sets”.

Note: The heading to section 82KZMA is altered by omitting “sections 82KZMB, 82KZMC and” and substituting “section”.

#### **7 Subsection 82KZMA(6)**

Omit “Sections 82KZMB, 82KZMC and 82KZMD have”, substitute “Section 82KZMD has”.

#### **8 Sections 82KZMB and 82KZMC**

Repeal the sections.

#### **9 Subsection 82KZMD(1)**

Repeal the subsection.

Note: The heading to section 82KZMD is replaced by the heading “**Business expenditure (except by an STS taxpayer) and non-business expenditure by non-individual**”.

## **Part 2—Consequential amendments**

### ***Income Tax Assessment Act 1936***

#### **10 Subsection 245-140(1) of Schedule 2C (table item dealing with advance revenue expenditure)**

Repeal the item, substitute:

Advance revenue expenditure

Subdivision H of Division 3 of  
Part III

### ***Income Tax Assessment Act 1997***

#### **11 Section 12-5 (table item headed “advance expenditure”)**

Omit “82KZM”, substitute “82KZM to 82KZN”.

## Part 3—Application provisions

### 12 Application

- (1) The amendments made by Division 1 of Part 1 and by Part 2 apply in relation to:
  - (a) expenditure incurred by a taxpayer after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999; and
  - (b) the taxpayer's assessments for the year of income including that day and for later years of income.
- (2) The amendments made by Division 2 of Part 1 apply in relation to expenditure incurred by a taxpayer in a year of income after the taxpayer's year of income mentioned in item 4 of the table in subsection 82KZMB(5) of the *Income Tax Assessment Act 1936*.

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## **Schedule 8—Limiting indexation of cost bases of CGT assets**

### ***Income Tax Assessment Act 1997***

#### **1 Subsection 100-40(2)**

Omit “are indexed for inflation”, substitute “may be indexed for inflation occurring before 1 October 1999”.

#### **2 Subsection 100-40(2)**

After “capital *gain*” (last occurring), insert “for a CGT asset acquired at or before 11.45 am on 21 September 1999”.

#### **3 Section 114-1**

Omit “, index expenditure”, substitute “\*acquired at or before 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999, index expenditure incurred at or before that time”.

#### **4 Section 114-1 (notes 1, 2 and 3)**

Repeal the notes, substitute:

Note 1: Subdivision 960-M shows you how to index amounts. The indexation does not take account of inflation after 30 September 1999.

Note 2: You have to work out the cost base of a CGT asset if a CGT event happens in relation to it or if there is a cost base modification.

Note 3: You cannot index expenditure in the third element (non-capital costs of ownership): see subsection 960-275(4).

Note 4: Indexation is not relevant to expenditure incurred after 11.45 am on 21 September 1999 or any expenditure relating to a CGT asset acquired after that time.

#### **5 Subsection 114-10(1)**

After “the asset” (second occurring), insert “at or before 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999 and”.

#### **6 Subsection 960-275(2) (formula)**

Repeal the formula, substitute:

\*Index number for the quarter ending on 30 September 1999

\*Index number for the quarter in which the expenditure was incurred

## 7 Subsection 960-275(2) (notes 1 and 2)

Repeal the notes, substitute:

- Note 1: This rule does not apply to expenditure incurred after 11.45 am on 21 September 1999 or any expenditure relating to a CGT asset acquired after that time: see section 114-1.
- Note 2: This rule applies even if you do not actually pay some of the expenditure until a later time (for example, under a contract to purchase an asset by instalments).
- Note 3: There are rules affecting when the expenditure was incurred: see sections 114-15 and 114-20.

## 8 Subsection 960-275(3) (formula)

Repeal the formula, substitute:

\*Index number for the quarter ending on 30 September 1999

\*Index number for the quarter in which the amount was paid

## 9 Subsection 960-275(3) (note)

Repeal the note, substitute:

- Note 1: This subsection does not apply to shares or units you acquired before 16 August 1989: see section 960-275 of the *Income Tax (Transitional Provisions) Act 1997*.
- Note 2: This subsection does not apply to an amount paid after 11.45 am on 21 September 1999 or an amount paid in relation to a CGT asset acquired after that time: see section 114-1.

## 10 Application

The amendments made by this Schedule apply to the calculation of the cost base of a CGT asset for a CGT event occurring after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999.

## **Schedule 9—Concessions for capital gains by individuals and some other entities**

### **Part 1—New rules**

#### ***Income Tax Assessment Act 1997***

##### **1 Section 100-50**

Repeal the section, substitute:

##### **100-50 How to work out your net capital gain or loss**

1. Reduce your capital gains for the income year, in the order you choose, by your capital losses for the income year. (If the capital losses for the income year exceed the capital gains, the difference is your net capital loss. You cannot deduct a net capital loss from your assessable income.)
2. Reduce any remaining capital gains, in the order you choose, by any unapplied net capital losses for previous income years.
3. Reduce any remaining discount capital gains by the discount percentage.

To find out what is a discount capital gain and the discount percentage:  
see Division 115.

4. Add up:
  - (a) any remaining capital gains that are not discount capital gains; and
  - (b) any remaining discount capital gains.

The total is your net capital gain.

For the rules on working out your *net* capital gain or loss:  
see Division 102.

##### **2 After section 102-1**

Insert:

### 102-3 Concessions in working out your net capital gain

- (1) Concessional rules apply to working out the net capital gain of some entities (see subsection (2)) if:
  - (a) they have a capital gain (a *discount capital gain*) from a CGT asset acquired at least 12 months before the CGT event that caused the capital gain; and
  - (b) they have not chosen to include indexation in the cost base of the asset for working out the capital gain (if relevant).

Note 1: Division 115 explains what is a discount capital gain.

Note 2: Under Division 110, the entity can choose to include indexation in the cost base of a CGT asset acquired at or before 11.45 am on 21 September 1999.

- (2) Only these entities get the concession:
  - (a) individuals;
  - (b) complying superannuation entities;
  - (c) trusts.
- (3) The concession is that the net capital gain includes only *part* of the amount of the discount capital gain left after applying capital losses and net capital losses from earlier income years.

See subsection 102-5(1).

### 3 Subsection 102-5(1)

Repeal the subsection, substitute:

- (1) Your assessable income includes your net capital gain (if any) for the income year. You work out your *net capital gain* in this way:

*Working out your net capital gain*

*Step 1.* Reduce the \*capital gains you made during the income year by the \*capital losses (if any) you made during the income year.

Note 1: You choose the order in which you reduce your capital gains. You have a net capital loss for the income year if your capital losses exceed your capital gains: see section 102-10.

Note 2: Some provisions of this Act (such as Divisions 104 and 118) permit or require you to disregard certain capital gains or losses when working out your net capital gain.

**Step 2.** Apply any previously unapplied \*net capital losses from earlier income years to reduce the amounts (if any) remaining after the reduction of \*capital gains under step 1 (including any \*capital gains not reduced under that step because the \*capital losses were less than the total of your capital gains).

Note 1: Section 102-15 explains how to apply net capital losses.

Note 2: You choose the order in which you reduce the amounts.

**Step 3.** Add up the amounts of \*capital gains (if any) remaining after step 2, except amounts of \*discount capital gains. The sum is the ***non-discounted capital gain***.

Note 1: Only some entities can have discount capital gains, and only if they have capital gains from CGT assets acquired at least a year before making the gains. See Division 115.

Note 2: If you do not have any amounts of discount capital gains remaining after step 2, your non-discounted capital gain is your net capital gain (so you can go straight to step 6). This will be so if you had no discount capital gains or all you had were reduced to nil in step 1 or 2.

**Step 4.** Reduce by the \*discount percentage each amount of a \*discount capital gain remaining after step 2 (if any).

**Step 5.** Add up each amount of a \*discount capital gain remaining after step 4. The sum is the ***discounted capital gain***.

**Step 6.** Add up the non-discounted capital gain and the discounted capital gain. The sum is your ***net capital gain*** for the income year.

Note: For exceptions and modifications to these rules: see section 102-30.

#### **4 Section 102-30 (after table item 2)**

Insert:

2AA	Beneficiary of trust whose net income includes a net capital gain	The beneficiary is treated as having: (a) an extra capital gain equal to the amount of the beneficiary's share of the net income that is attributable to the trust's non-discounted capital gain; and (b) an extra capital gain of double the amount of the beneficiary's share of the net income that is attributable to the trust's discounted capital gain	Subdivision 115-C
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**5 Subsection 104-70(4)**

Omit "subsection (7)", substitute "subsections (7) and (7A)".

**6 After subsection 104-70(7)**

Insert:

(7A) The amount of the non-assessable part for an entity shown in the table is adjusted to exclude the amount shown in the table:

<b>Adjustment of non-assessable part for certain entities</b>	
<b>Entity</b>	<b>Amount excluded from non-assessable part</b>
1 Company	the amount attributable to the exclusion of an amount of a *discount capital gain from the trust's *net capital gain because of step 4 of the method statement in subsection 102-5(1)
2 *Complying superannuation entity	1/3 of the amount attributable to the exclusion of an amount of a *discount capital gain from the trust's *net capital gain because of step 4 of the method statement in subsection 102-5(1)
3 Entity that has applied a *capital loss or *net capital loss to reduce its *capital gain described in subparagraph 115-215(3)(a)(ii)	1/2 of the amount of the capital loss or net capital loss applied to reduce the capital gain

Note 1: Step 4 of the method statement in subsection 102-5(1) reduces by 50% the trust's discount capital gains remaining after application of capital losses and earlier net capital losses. That 50% is excluded from the trust's net capital gain.

Note 2: Subparagraph 115-215(3)(a)(ii) treats a beneficiary as having a capital gain equal to double the part (if any) of the amount of the trust's net income that is included in the beneficiary's assessable income and is attributable to the trust estate's discounted capital gain mentioned in subsection 102-5(1) (as it applies to the trust estate).

**7 At the end of subsection 108-10(1) (before the example)**

Add:

Note: You choose the order in which you reduce your capital gains from collectables by your capital losses from collectables.

**8 Section 109-55**

Omit "Part 3-3.", substitute "Part 3-3. Some of the rules have effect only for limited purposes."

**9 Section 109-55 (after table item 8A)**

Insert:

8B	There is a same-asset roll-over for a CGT event that happens to a CGT asset	when the entity that owned the asset before the roll-over acquired it	section 115-30
8C	You obtain a replacement-asset roll-over for replacing a CGT asset	when you acquired the original asset involved in the roll-over	section 115-30
8D	A CGT asset devolves to you as legal personal representative of a deceased individual	when the deceased acquired the asset (unless it was a pre-CGT asset just before his or her death)	section 115-30
8E	A CGT asset passes to you as beneficiary in the estate of a deceased individual	when the deceased acquired the asset (unless it was a pre-CGT asset just before his or her death)	section 115-30
8F	A surviving joint tenant acquires a deceased joint tenant's interest in a CGT asset	when the deceased acquired the interest	section 115-30

## 10 Subsection 110-25(1)

Repeal the subsection, substitute:

- (1) The *cost base* of a \*CGT asset consists of 5 elements, subject to subsections (7) and (8).

Note: You need to keep records of each element: see Division 121.

## 11 At the end of section 110-25

Add:

*Including indexation in cost base*

- (7) The *cost base* of a \*CGT asset \*acquired at or before 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999 also includes indexation of the elements of the cost base (except the third element) if the requirements of Division 114 are met.
- (8) However, for the purposes of working out the \*capital gain of an entity mentioned in an item of the table from a \*CGT event happening after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999, the *cost base* includes indexation only if the entity mentioned in the item chooses that the cost base includes indexation:

<b>Choice of indexation</b>		
<b>Item</b>	<b>For the purposes of working out the capital gain of this entity:</b>	<b>The cost base includes indexation only if this entity chooses so:</b>
1	An individual	The individual
2	A *complying superannuation entity	The trustee of the complying superannuation entity
3	A trust	The trustee of the trust

Note 1: Section 103-25 specifies when you must make the choice and provides that the way you prepare your income tax return is evidence of your choice.

Note 2: For each CGT asset whose cost base you need to work out, you may either choose to index the expenditure included in the asset's cost base or not make that choice. If you do not choose to index the expenditure, your net capital gain includes only part of your capital gain on the CGT asset as worked out on the basis of the cost base not including indexation and reduced by your capital losses.

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**12 At the end of section 114-5**

Add:

*Indexation for some entities only if indexation chosen*

- (2) Indexation is *not* relevant to the \*capital gain of an entity mentioned in an item of the table from a \*CGT event happening after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999, unless the relevant entity mentioned in that item has chosen that the \*cost base include indexation for the purposes of section 110-25:

<b>Entities for which indexation is not relevant unless chosen</b>		
<b>Item</b>	<b>Indexation is not relevant to the capital gain of this entity:</b>	<b>Unless this entity has chosen that the cost base include indexation:</b>
1	An individual	The individual
2	A *complying superannuation entity	The trustee of the complying superannuation entity
3	A trust	The trustee of the trust

**13 After Division 114**

Insert:

**Division 115—Discount capital gains and trusts’ net capital gains**

**Table of Subdivisions**

Guide to Division 115

- 115-A Discount capital gains
- 115-B Discount percentage
- 115-C Rules about trusts with net capital gains

**Guide to Division 115**

**115-1 What this Division is about**

A discount capital gain remaining after the application of any capital losses and net capital losses from previous income years is reduced by the discount percentage when working out your net capital gain.

A capital gain from a CGT asset is a discount capital gain only if the entity making the gain acquired the asset at least a year before the CGT event causing the gain and no choice has been made to include indexation in the cost base of the asset.

Special rules apply to the net income of trusts with net capital gains, to ensure that the appropriate discount percentage is applied and to let beneficiaries apply their capital losses against their share of the trust's capital gains.

**Subdivision 115-A—Discount capital gains**

**Table of sections**

**What is a discount capital gain?**

- 115-5 What is a *discount capital gain*?
- 115-10 Who can make a discount capital gain?
- 115-15 Discount capital gain must be made after 21 September 1999
- 115-20 Discount capital gain must not have indexed cost base
- 115-25 Discount capital gain must be on asset acquired at least 12 months before
- 115-30 Special rules about time of acquisition

**What are not discount capital gains?**

- 115-40 Capital gain resulting from agreement made within a year of acquisition
- 115-45 Capital gain from equity in an entity with newly acquired assets

115-50 Discount capital gain from equity in certain entities

## **What is a discount capital gain?**

### **115-5 What is a discount capital gain?**

A *discount capital gain* is a \*capital gain that meets the requirements of sections 115-10, 115-15, 115-20 and 115-25.

Note: Sections 115-40 and 115-45 identify capital gains that are *not* discount capital gains, despite this section.

### **115-10 Who can make a discount capital gain?**

To be a \*discount capital gain, the \*capital gain must be made by:

- (a) an individual; or
- (b) a \*complying superannuation entity; or
- (c) a trust.

### **115-15 Discount capital gain must be made after 21 September 1999**

To be a \*discount capital gain, the \*capital gain must result from a \*CGT event happening after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999.

### **115-20 Discount capital gain must not have indexed cost base**

To be a \*discount capital gain, the \*capital gain must have been worked out by reference to a \*cost base whose elements have not been indexed.

Note: The elements of the cost base will not be indexed unless you choose that they should be: see section 110-25.

### **115-25 Discount capital gain must be on asset acquired at least 12 months before**

- (1) To be a \*discount capital gain, the \*capital gain must result from a \*CGT event happening to a \*CGT asset that was \*acquired by the entity making the capital gain at least 12 months before the CGT event.

Note: Even if the capital gain results from a CGT event happening at least a year after the CGT asset was acquired, the gain may not be a discount

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capital gain, depending on the cause of the CGT event (see section 115-40) and the nature of the asset (see sections 115-45 and 115-50).

- (2) To avoid doubt, subsection (1) applies to the \*CGT asset shown in the table for a \*CGT event listed in the table.

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**CGT assets to which subsection (1) applies**

Item	CGT event	CGT asset to which subsection (1) applies
1	E8	the interest or part interest in the trust capital
2	K6	the *share or interest *acquired before 20 September 1985

- (3) A \*capital gain from one of these \*CGT events is *not a discount capital gain* (despite section 115-5):

- (a) \*CGT event D1;
- (b) \*CGT event D2;
- (c) \*CGT event D3;
- (d) \*CGT event E9;
- (e) \*CGT event F1;
- (f) \*CGT event F2;
- (g) \*CGT event F5;
- (h) \*CGT event H2;
- (i) \*CGT event K1.

Note: Capital gains from the CGT events mentioned in paragraphs (3)(a) to (f) are not discount capital gains because the CGT asset involved in the CGT event comes into existence at the time of the event, so it is impossible to meet the requirement in this section that the asset have been acquired at least 12 months before the event.

### 115-30 Special rules about time of acquisition

*You are treated as acquiring some CGT assets early*

- (1) Sections 115-25 and 115-40 apply as if you had \*acquired a \*CGT asset described in an item of the table at the time mentioned in that item:

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**Special application of sections 115-25 and 115-40**

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Item	Sections 115-25 and 115-40 apply as if you had acquired this CGT asset:	At this time:
1	A *CGT asset you *acquired in circumstances giving rise to a *same-asset roll-over	When the entity that owned the CGT asset before the roll-over *acquired it or, if it has been involved in an unbroken series of roll-overs, when the entity that owned it before the first roll-over in the series *acquired it
2	A *CGT asset that you *acquired as a replacement asset for a *replacement-asset roll-over	When you acquired the original asset involved in the roll-over or, if you acquired the replacement asset for a roll-over that was the last in an unbroken series of replacement-asset roll-overs, when you acquired the asset that was the original asset involved in the first roll-over in the series
3	A *CGT asset you *acquired as the *legal personal representative of a deceased individual, except one that was a *pre-CGT asset of the deceased immediately before his or her death	When the deceased *acquired the asset
4	A *CGT asset that *passed to you as the beneficiary of a deceased individual's estate, except one that was a *pre-CGT asset of the deceased immediately before his or her death	When the deceased *acquired the asset
5	A *CGT asset that: (a) you *acquired as the *legal personal representative of a deceased individual; and (b) was a *pre-CGT asset of the deceased immediately before his or her death	When the deceased died

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**Special application of sections 115-25 and 115-40**

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Item	Sections 115-25 and 115-40 apply as if you had acquired this CGT asset:	At this time:
6	A *CGT asset that: (a) *passed to you as the beneficiary of a deceased individual's estate; and (b) was a *pre-CGT asset of the deceased immediately before his or her death	When the deceased died
7	The interest (or share of an interest) you are taken under section 128-50 to have *acquired in another *CGT asset that you and another individual held as joint tenants immediately before he or she died	When the deceased *acquired his or her interest in the other CGT asset

Note: Under section 128-50, you are taken to acquire the interest of a deceased individual in a CGT asset you and the deceased held as joint tenants immediately before his or her death (or an equal share of that interest if there are other surviving joint tenants).

*CGT event E8*

- (2) For the purposes of applying sections 115-25 and 115-40 in relation to \*CGT event E8 and the \*CGT asset consisting of a beneficiary's interest in trust capital, it does not matter how long the trustee owned any of the assets of the trust.

Note: Section 115-45 limits the effect of this subsection in some cases.

*Relationship with Subdivision 109-A and Division 128*

- (3) This section has effect despite Subdivision 109-A and Division 128 (which contain rules about the time when you \*acquire a \*CGT asset).

*[The next section is section 115-40.]*

## **What are not discount capital gains?**

### **115-40 Capital gain resulting from agreement made within a year of acquisition**

Your \*capital gain on a \*CGT asset from a \*CGT event is *not* a ***discount capital gain*** (despite section 115-5) if the CGT event occurred under an agreement you made within 12 months of \*acquiring the CGT asset.

Note: Section 115-30 may affect the time when you are treated as having acquired the CGT asset.

### **115-45 Capital gain from equity in an entity with newly acquired assets**

Your \*capital gain from a \*CGT event is *not* a ***discount capital gain*** (despite section 115-5 and subsection 115-30(3)) if:

- (a) the CGT event happened to a \*CGT asset that is:
  - (i) a \*share in a company; or
  - (ii) an interest in a trust; and
- (b) the total of the \*cost bases of \*CGT assets \*acquired by the company or trust (as appropriate) *less* than 12 months before the time of the CGT event is more than half of the total of the \*cost bases of the \*CGT assets of the company or trust at that time.

### **115-50 Discount capital gain from equity in certain entities**

#### *Capital gain from share in company with 300 members*

- (1) Section 115-45 does not prevent a \*capital gain from a \*CGT event happening to a \*share in a company with at least 300 \*members from being a \*discount capital gain, unless subsection (3) or (6) applies in relation to the company.

#### *Capital gain from interest in fixed trust with 300 beneficiaries*

- (2) Section 115-45 does not prevent a \*capital gain from a \*CGT event happening to an interest in a trust from being a \*discount capital gain if:

- (a) entities have fixed entitlements to all of the income and capital of the trust; and
- (b) the trust has at least 300 beneficiaries; and
- (c) neither subsection (4) nor subsection (6) applies in relation to the trust.

*No discount capital gain if ownership is concentrated*

- (3) Section 115-45 may prevent a \*capital gain from a \*share in a company from being a \*discount capital gain if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, \*shares in the company:
  - (a) carrying fixed entitlements to:
    - (i) at least 75% of the company's income; or
    - (ii) at least 75% of the company's capital; or
  - (b) carrying at least 75% of the voting rights in the company.
- (4) Section 115-45 may prevent a \*capital gain from an interest in a trust from being a \*discount capital gain if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, interests in the trust:
  - (a) carrying fixed entitlements to:
    - (i) at least 75% of the trust's income; or
    - (ii) at least 75% of the trust's capital; or
  - (b) if beneficiaries of the trust have a right to vote in respect of activities of the trust—carrying at least 75% of those voting rights.
- (5) Subsections (3) and (4) operate as if all of these were a single individual:
  - (a) an individual, whether or not the individual holds \*shares in the company or interests in the trust (as appropriate);
  - (b) the individual's \*associates;
  - (c) for any \*shares or interests in respect of which other individuals are nominees of the individual or of the individual's associates—those other individuals.

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*No discount capital gain if rights can be varied to concentrate ownership*

- (6) Section 115-45 may prevent a \*capital gain from a \*share in a company, or from an interest in a trust, from being a \*discount capital gain if, because of anything listed in subsection (7), it is reasonable to conclude that the rights attaching to any of the \*shares in the company or interests in the trust (as appropriate) *can be varied* or abrogated in such a way that subsection (3) or (4) would be satisfied.
- (7) These are the things:
- (a) any provision in the constituent document of the company or trust, or in any contract, agreement or instrument:
    - (i) authorising the variation or abrogation of rights attaching to any of the \*shares in the company or interests in the trust (as appropriate); or
    - (ii) relating to the conversion, cancellation, extinguishment or redemption of any of those shares or interests;
  - (b) any contract, \*arrangement, option or instrument under which a person has power to acquire any of those shares or interests;
  - (c) any power, authority or discretion in a person in relation to the rights attaching to any of those shares or interests.
- (8) It does not matter for the purposes of subsection (6) whether or not the rights attaching to any of the \*shares or interests *are varied* or abrogated in the way described in that subsection.

## **Subdivision 115-B—Discount percentage**

### **Table of sections**

115-100 What is the *discount percentage* for a discount capital gain?

### **115-100 What is the discount percentage for a discount capital gain?**

- (1) The *discount percentage* for an amount of a \*discount capital gain is:
- (a) 50% if the gain is made by an individual or a trust; or

- (b) 33<sup>1</sup>/<sub>3</sub>% if the gain is made by a \*complying superannuation entity.
- (2) The *discount percentage* for an amount of a \*discount capital gain made by a \*complying superannuation entity that is a trust is 33<sup>1</sup>/<sub>3</sub>%.

## Subdivision 115-C—Rules about trusts with net capital gains

### Guide to Subdivision 115-C

#### 115-200 What this Division is about

This Subdivision sets out rules for dealing with the net income of a trust that has a net capital gain. The rules treat parts of the net income attributable to the trust's net capital gain as capital gains made by the beneficiary entitled to those parts. This lets the beneficiary reduce those parts by any capital losses and unapplied net capital losses it has.

The part attributable to the trust's discount capital gains is doubled and treated as a discount capital gain of the beneficiary (if appropriate). This lets the beneficiary apply the appropriate discount percentage (if any) after applying its capital losses.

The rules also give the beneficiary a deduction if necessary to prevent it from being taxed twice on the same parts of the trust's net income.

#### Table of sections

##### Operative provisions

- 115-210 When this Subdivision applies
- 115-215 Assessing presently entitled beneficiaries
- 115-220 Special rule for assessing trustee under subsection 98(3) of the *Income Tax Assessment Act 1936*
- 115-225 Special rule for assessing trustee under section 99A of the *Income Tax Assessment Act 1936*

[This is the end of the Guide. The next section is section 115-210.]

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## **Operative provisions**

### **115-210 When this Subdivision applies**

- (1) This Subdivision applies if a trust estate has a \*net capital gain for an income year that is taken into account in working out the trust estate's net income (as defined in section 95 of the *Income Tax Assessment Act 1936*) for the income year.
- (2) If the trust estate has a beneficiary that is a \*complying superannuation entity that is a trust, this Subdivision applies in relation to the complying superannuation entity as a beneficiary but not as a trust estate. This Subdivision does not apply otherwise to a \*complying superannuation entity that is a trust.

### **115-215 Assessing presently entitled beneficiaries**

#### *Purpose*

- (1) The purpose of this section is to ensure that appropriate amounts of the trust estate's net income attributable to the trust estate's \*capital gains are treated as a beneficiary's \*capital gains when assessing the beneficiary, so:
  - (a) the \*discount percentage (if any) appropriate to the beneficiary can be applied; and
  - (b) the beneficiary can apply \*capital losses against those amounts.

#### *Application*

- (2) This section treats you as having certain extra capital gains, and gives you a deduction, if:
  - (a) you are the beneficiary of the trust estate; and
  - (b) your assessable income for the income year includes an amount (the **trust amount**):
    - (i) under paragraph 97(1)(a) of the *Income Tax Assessment Act 1936*; or
    - (ii) under subsection 98A(1) of that Act because you are a beneficiary described in subsection 98(4) of that Act; or
    - (iii) under subsection 100(1) of that Act.

*Extra capital gains*

- (3) Division 102 applies to you as if:
- (a) you had (in addition to any other \*capital gains you have for the income year):
    - (i) a \*capital gain equal to the part (if any) of the trust amount that is attributable to the trust estate's non-discounted capital gain mentioned in subsection 102-5(1) (as it applies to the trust estate); and
    - (ii) another \*capital gain equal to twice the part (if any) of the trust amount that is attributable to the trust estate's discounted capital gain mentioned in subsection 102-5(1) (as it applies to the trust estate); and
  - (b) the capital gain mentioned in subparagraph (a)(ii) were a \*discount capital gain, if you can have a \*discount capital gain.

Note: This ensures that your share of the trust estate's net capital gain is taxed as if it were a capital gain you made (assuming you made the same choices about cost bases including indexation as the trustee).

*Section 118-20 does not reduce extra capital gains*

- (4) To avoid doubt, section 118-20 does not reduce a \*capital gain that subsection (3) treats you as having for the purpose of applying Division 102.

*Deduction*

- (5) You can deduct for the income year the sum of:
- (a) the part (if any) of the trust amount that is attributable to the trust estate's non-discounted capital gain mentioned in subsection 102-5(1); and
  - (b) the part (if any) of the trust amount that is attributable to the trust estate's discounted capital gain mentioned in subsection 102-5(1).

Note: This deduction ensures you are not taxed twice on the part of the trust amount that is attributable to the trust estate's net capital gain.

**115-220 Special rule for assessing trustee under subsection 98(3) of the Income Tax Assessment Act 1936**

*Purpose*

- (1) The purpose of this section is to ensure a trustee assessed under subsection 98(3) of the *Income Tax Assessment Act 1936* (in respect of the share of the net income to which a beneficiary that is a company is entitled) does not get the benefit in that assessment of the \*discount percentage that the company would not have got if it had been assessed in respect of the share.

*Modification of subsection 98(3)*

- (2) The trustee is to be assessed (and pay tax) under subsection 98(3) of the *Income Tax Assessment Act 1936* as if the part of the share that is attributable to the trust estate's discounted capital gain mentioned in subsection 102-5(1) were double the amount that it actually is.

**115-225 Special rule for assessing trustee under section 99A of the Income Tax Assessment Act 1936**

*Purpose*

- (1) The purpose of this section is to reverse the benefit of applying the \*discount percentage in working out the trust estate's net income when the trustee is assessed under section 99A of the *Income Tax Assessment Act 1936* on an amount of the net income.

*Modification of section 99A*

- (2) The trustee is to be assessed (and pay tax) under section 99A of the *Income Tax Assessment Act 1936* as if the part of the amount that is attributable to the trust estate's discounted capital gain mentioned in subsection 102-5(1) were double the amount that it actually is.

**14 Application and transitional provisions**

- (1) The amendments of Divisions 100, 102, 104 and 109 of the *Income Tax Assessment Act 1997* made by this Part, and Division 115 of that Act,

apply to assessments for the income year including 21 September 1999 and for later income years.

- (2) The amendments of sections 110-25 and 114-5 of the *Income Tax Assessment Act 1997* made by this Part apply to the calculation of a cost base of a CGT asset for a CGT event happening after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999.

## **Part 2—Consequential amendments**

### **Division 1—Amendment of the Income Tax Assessment Act 1936**

#### **15 Paragraph 6AD(4)(e)**

Repeal the paragraph, substitute:

- (e) the taxpayer had a capital gain or capital loss for the year of income and had to use the method statement in subsection 102-5(1) or 102-10(1) of the *Income Tax Assessment Act 1997* to work out the taxpayer's net capital gain (if any) or net capital loss (if any) for the year of income;

#### **16 At the end of subsection 97(1)**

Add:

- Note: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* also affects the assessment of the beneficiary.

#### **17 At the end of subsection 98(3)**

Add:

- Note: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* affects the assessment of the trustee.

#### **18 At the end of subsection 98A(1)**

Add:

- Note: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* also affects the assessment of the beneficiary.

#### **19 At the end of subsections 99A(4), (4A), (4B) and (4C)**

Add:

- Note: If the trust estate's net income includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* affects the assessment of the trustee.

**20 At the end of subsection 100(1)**

Add:

Note: If the net income of one or more of the trust estates includes a net capital gain, Subdivision 115-C of the *Income Tax Assessment Act 1997* also affects the assessment of the beneficiary.

**21 At the end of section 177C**

Add:

- (4) To avoid doubt, paragraph (1)(a) applies to a scheme if:
- (a) an amount of income is not included in the assessable income of the taxpayer of a year of income; and
  - (b) an amount would have been included, or might reasonably be expected to have been included, in the assessable income if the scheme had not been entered into or carried out; and
  - (c) instead, the taxpayer or any other taxpayer makes a discount capital gain (within the meaning of the *Income Tax Assessment Act 1997*) for that or any other year of income.
- (5) Subsection (4) does not limit the generality of any other provision of this Part.

**22 Application**

- (1) The amendment of section 6AD of the *Income Tax Assessment Act 1936* made by this Division applies in relation to years of income commencing on or after 1 July 2000.
- (2) The other amendments made by this Division apply to assessments for the year of income including 21 September 1999 and later years of income.

**Division 2—Amendments consequential on defining complying superannuation entity**

***Income Tax Assessment Act 1997***

**23 Paragraphs 104-215(1)(b), (c) and (d)**

Repeal the paragraphs, substitute:

- (b) is the trustee of a \*complying superannuation entity; or

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**24 Section 112-55 (table item 3)**

Repeal the item, substitute:

3	CGT asset passes to a trustee of a complying superannuation entity	First element of cost base and reduced cost base	128-25
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**25 Section 112-97 (table item 13)**

Repeal the item, substitute:

13	CGT event happens to 30 June 1988 asset of a complying superannuation entity	First element of cost base and reduced cost base	<b>section 308</b>
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**26 Subsection 118-300(1) (table item 5)**

Repeal the item, substitute:

5	A *life insurance policy or an *annuity instrument	the trustee of a *complying superannuation entity for the income year in which the *CGT event happened
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**27 Paragraph 118-350(2)(a)**

Omit “\*complying superannuation fund, a \*complying approved deposit fund or a \*pooled superannuation trust”, substitute “\*complying superannuation entity”.

**28 Section 128-10 (note 1)**

Repeal the note, substitute:

Note 1: Section 104-215 sets out an exception to this rule if the CGT asset passes to a beneficiary in your estate who is:

- an exempt entity; or
- the trustee of a complying superannuation entity; or
- not an Australian resident.

**29 Subsection 128-15(1) (note)**

Repeal the note, substitute:

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Note: Section 128-25 has different rules if the asset passes to a beneficiary in your estate who is:

- an exempt entity; or
- the trustee of a complying superannuation entity; or
- not an Australian resident.

### 30 Subsection 128-25(1)

Repeal the subsection, substitute:

- (1) This section has rules about \*cost base and \*reduced cost base that are relevant if you die and a \*CGT asset you owned just before dying \*passes to a beneficiary in your estate who (when the asset passes) is the trustee of a \*complying superannuation entity.

Note: A capital gain or loss is also made: see section 104-215.

### 31 Application

The amendments of the *Income Tax Assessment Act 1997* made by this Division apply to assessments for the income year including 21 September 1999 and later income years.

## Division 3—Signpost to beneficiary’s deduction

### *Income Tax Assessment Act 1997*

### 32 Section 12-5 (table item headed “capital gains”)

Repeal the item, substitute:

**capital gains**

beneficiary whose assessable income includes share of net income of trust with net capital gain.....	115-215
no deduction for an amount that would otherwise be deductible only because a net capital gain is included in assessable income .....	<b>51AAA</b>

### 33 Application

The amendment of the *Income Tax Assessment Act 1997* made by this Division applies to assessments for the income year including 21 September 1999 and later income years.

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## **Schedule 10—Consequential amendment of Chapter 6 (the Dictionary) of the Income Tax Assessment Act 1997**

### ***Income Tax Assessment Act 1997***

#### **1 Subsection 995-1(1)**

Insert:

*complying superannuation entity* means:

- (a) a \*complying superannuation fund; or
- (b) a \*complying approved deposit fund; or
- (c) a \*pooled superannuation trust.

#### **2 Subsection 995-1(1)**

Insert:

*discount capital gain* has the meaning given by Subdivision 115-A.

#### **3 Subsection 995-1(1)**

Insert:

*discount percentage* has the meaning given by Subdivision 115-B.

#### **4 Subsection 995-1(1)**

Insert:

*fixed trust*: a trust is a fixed trust if persons have fixed entitlements to all of the income and corpus of the trust.

#### **5 Subsection 995-1(1)**

Insert:

*linked group* has the meaning given by section 170-260.

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**6 Subsection 995-1(1) (definition of written down value)**

Omit “section 42-200”, substitute “sections 42-200 and 58-85”.

