





# **Taxation Laws Amendment Act (No. 1) 2001**

**Act No. 72 of 2001 as amended**

This compilation was prepared on 6 August 2002

**[This Act was amended by Act No. 77 of 2001  
and Act No. 57 of 2002]**

## **Amendments from Act No. 77 of 2001**

[Schedule 3 amended sections 240-3(4), 240-7(2), 240-90(4),  
240-90(5) and 243-35(3)

Schedule 3 commenced on 30 June 2001]

For transitional provision *see* Table A.

## **Amendments from Act No. 57 of 2002**

[Schedule 12 (item 51) amended Item 9 of Schedule 2

Schedule 12 (item 52) amended Heading to Item 36 of Schedule 2

Schedule 12 (items 51 and 52) commenced on 30 June 2001]

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

[Assented to 30 June 2001]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Taxation Laws Amendment Act (No 1) 2001*.

## **2 Commencement**

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

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 2—Arrangements treated as a sale and loan and limited recourse debt**

### **Part 1—Insertion of Divisions 240 and 243**

#### *Income Tax Assessment Act 1997*

##### **1 After Part 3-5**

Insert:

### **Part 3-10—Financial transactions**

*[The next Division is Division 240.]*

### **Division 240—Arrangements treated as a sale and loan**

#### **Table of Subdivisions**

Guide to Division 240

- 240-A Application and scope of Division
- 240-B The notional sale and notional loan
- 240-C Amounts to be included in notional seller's assessable income
- 240-D Deductions allowable to notional buyer
- 240-E Notional interest and arrangement payments
- 240-F The end of the arrangement
- 240-G Adjustments if total amount assessed to notional seller differs from amount of finance charge
- 240-H Application of Division 16E to certain arrangements
- 240-I Provisions applying to hire purchase agreements

**Guide to Division 240**

**240-1 What this Division is about**

For income tax purposes, some arrangements (such as hire purchase agreements) are recharacterised as a sale of property, combined with a loan, by the notional seller to the notional buyer, to finance the purchase price.

**240-3 How the recharacterisation affects the notional seller**

*Effect of notional sale*

- (1) The consideration for the notional sale is either the price stated as the cost or value of the property or its arm's length value. If the notional seller is disposing of the property as trading stock, the normal consequences of disposing of trading stock follow. In particular, the notional seller will be assessed on the sale price.
- (2) Where the property is not trading stock the notional seller's assessable income will include any profit made by the notional seller on the notional sale or on the sale of the property after a notional re-acquisition.

*Effect of notional loan*

- (3) The notional seller's assessable income will include notional interest over the period of the loan.

*Other effects*

- (4) These effects displace the income tax consequences that would otherwise arise from the arrangement. For example, the actual payments to the notional seller are not included in its assessable income. Also, the notional seller loses the right to deduct amounts under Division 40 (about capital allowances).

**240-7 How the recharacterisation affects the notional buyer**

*Effect of notional purchase*

- (1) The cost of the acquisition is either the price stated as the cost or value of the property or its arm's length value. If the notional buyer is acquiring the property as trading stock, the normal consequences of acquiring trading stock follow. In particular, the notional buyer can usually deduct the purchase price.
- (2) If the property is not trading stock, the notional buyer may be able to deduct amounts for the expenditure under Division 40 (about capital allowances).

*Effect of notional loan*

- (3) The notional buyer may be able to deduct notional interest payments over the period of the loan.

*Other effects*

- (4) These effects displace the income tax consequences that would otherwise arise from the arrangement. For example, the notional buyer cannot deduct the actual payments to the notional seller.

**Subdivision 240-A—Application and scope of Division**

**Table of sections**

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**Operative provisions**

- 240-10 Application of this Division
- 240-15 Scope of Division

**Operative provisions**

**240-10 Application of this Division**

An \*arrangement is treated as a notional sale and \*notional loan if:

- (a) the arrangement is listed in the table below; and
- (b) the arrangement relates to the kind of property listed in the table; and
- (c) any conditions listed in the table are satisfied.

Special provisions that apply to particular arrangements are also listed in the table.

**This Division applies to:**

|   | <b>*Arrangements of this kind:</b> | <b>That relate to this kind of property:</b> | <b>If these conditions are satisfied:</b> | <b>Special provisions:</b> |
|---|------------------------------------|--|---|----------------------------|
| 1 | *Hire purchase agreement           | Any goods                                    | None                                      | See Subdivision 240-I      |

**240-15 Scope of Division**

This Division has effect for the purposes of this Act and for the purposes of the *Income Tax Assessment Act 1936* other than:

- (a) Parts 3-1 and 3-3 of this Act and Part IIIA of the *Income Tax Assessment Act 1936* (capital gains tax); and
- (b) Division 11A of Part III of the *Income Tax Assessment Act 1936* (certain payments to non-residents etc.).

**Subdivision 240-B—The notional sale and notional loan**

**Table of sections**

**Operative provisions**

- 240-17 Who is the notional seller and the notional buyer?

- 240-20 Notional sale of property by notional seller and notional acquisition of property by notional buyer  
240-25 Notional loan by notional seller to notional buyer

## Operative provisions

### 240-17 Who is the notional seller and the notional buyer?

- (1) An entity is the *notional seller* if it is a party to the \*arrangement and:
  - (a) actually owns the property; or
  - (b) is the owner of the property because of a previous operation of this Division.
- (2) An entity is the *notional buyer* if it is a party to the \*arrangement and, under the arrangement, has the \*right to use the property.

Example: If the arrangement is a hire purchase agreement, the finance provider will be the notional seller and the hirer will be the notional buyer.

### 240-20 Notional sale of property by notional seller and notional acquisition of property by notional buyer

- (1) The \*notional seller is taken to have disposed of the property by way of sale to the \*notional buyer, and the notional buyer is taken to have acquired it, at the start of the \*arrangement.
- (2) The \*notional buyer is taken to own the property until:
  - (a) the \*arrangement ends; or
  - (b) the notional buyer becomes the \*notional seller under a later \*arrangement to which this Division applies.

### 240-25 Notional loan by notional seller to notional buyer

- (1) On entering into the \*arrangement, the \*notional seller is taken to have made a loan (the *notional loan*) to the \*notional buyer.
- (2) The notional loan is for a period:
  - (a) starting at the start of the \*arrangement; and
  - (b) ending on the day on which the arrangement is to cease to have effect or, if the arrangement is of indefinite duration, on the day on which it would be reasonable to conclude, having

regard to the terms and conditions of the arrangement, that the arrangement will cease to have effect.

- (3) The notional loan is of an amount (the *notional loan principal*) equal to the consideration for the sale of the property less any amount paid, or credited by the \*notional seller as having been paid, by the \*notional buyer to the notional seller, at or before the start of the \*arrangement, for the cost of the property.

Note: Section 240-80 affects the amount of the notional loan principal where the arrangement is an extension or renewal of another arrangement.

- (4) The notional loan is subject to payment of a charge (the *finance charge*).
- (5) The consideration for the sale of the property by the \*notional seller, and the cost of the acquisition of the property by the \*notional buyer, are each taken to have been:
- (a) if an amount is stated to be the cost or value of the property for the purposes of the \*arrangement and the notional seller and the notional buyer were dealing with each other at \*arm's length in connection with the arrangement—the amount so stated; or
  - (b) otherwise—the amount that could reasonably have been expected to have been paid by the notional buyer for the purchase of the property if:
    - (i) the notional seller had actually sold the property to the notional buyer at the start of the arrangement; and
    - (ii) the notional seller and the notional buyer were dealing with each other at arm's length in connection with the sale.
- (6) The \*notional loan principal is taken to be repaid, and the \*finance charge is taken to be paid, by the making of the payments under the \*arrangement.

**Subdivision 240-C—Amounts to be included in notional seller's assessable income**

**Guide to Subdivision 240-C**

**240-30 What this Subdivision is about**

This Subdivision provides for the inclusion in the notional seller's assessable income of:

- (a) amounts (notional interest) on account of the finance charge for the notional loan that the notional seller is taken to have made to the notional buyer; and
- (b) any profit made by the notional seller:
  - (i) on the notional sale of the property to the notional buyer; or
  - (ii) on a sale of the property after any notional re-acquisition of the property by the notional seller.

**Table of sections**

**Operative provisions**

- 240-35 Amounts to be included in notional seller's assessable income
- 240-40 Arrangement payments not to be included in notional seller's assessable income

*[This is the end of the Guide]*

## **Operative provisions**

### **240-35 Amounts to be included in notional seller's assessable income**

#### *Notional interest*

- (1) The \*notional seller's assessable income of an income year includes the \*notional interest for \*arrangement payment periods, and parts of arrangement payment periods, in the income year.

#### *Profit on notional sale*

- (2) If the property is not \*trading stock of the \*notional seller and the consideration for the notional sale of the property exceeds the cost of the acquisition of the property by the notional seller, the excess is included in the notional seller's assessable income of the income year of the notional sale.

#### *Profit on actual sale after notional re-acquisition*

- (3) If:
  - (a) the \*notional seller is taken under this Division to have re-acquired the property from the \*notional buyer; and
  - (b) the notional seller afterwards sells the property; and
  - (c) the consideration for the sale exceeds the cost of the re-acquisition;the excess is included in the notional seller's assessable income of the income year in which the sale occurred.

### **240-40 Arrangement payments not to be included in notional seller's assessable income**

- (1) The \*arrangement payments that the \*notional seller receives, or is entitled to receive, under the \*arrangement:
  - (a) are not to be included in the \*notional seller's assessable income of any income year; but
  - (b) are not taken to be \*exempt income of the notional seller.
- (2) However, those \*arrangement payments are taken into account in calculating \*notional interest that is included in the \*notional seller's assessable income under section 240-35.

- (3) A loss or outgoing incurred by the \*notional seller in deriving any such \*arrangement payments is not taken to be a loss or outgoing incurred by the notional seller in relation to gaining or producing \*exempt income.

## **Subdivision 240-D—Deductions allowable to notional buyer**

### **Guide to Subdivision 240-D**

#### **240-45 What this Subdivision is about**

This Subdivision provides that the notional buyer may, in certain circumstances, be entitled to deductions for the notional interest for the notional loan that the notional seller is taken to have made to the notional buyer.

#### **Table of sections**

##### **Operative provisions**

- 240-50 Extent to which deductions are allowable to notional buyer  
240-55 Arrangement payments not to be allowable deductions

*[This is the end of the Guide]*

#### **Operative provisions**

##### **240-50 Extent to which deductions are allowable to notional buyer**

- (1) The \*notional buyer is only entitled to deduct \*notional interest for an income year to the extent that the notional buyer would, apart from this Division, have been entitled to deduct \*arrangement payments for that income year if no part of those payments were capital in nature.
- (2) The \*notional buyer is entitled to deduct \*notional interest for \*arrangement payment periods, and parts of arrangement payment periods, in the income year.

## **240-55 Arrangement payments not to be allowable deductions**

The \*notional buyer is not entitled to deduct \*arrangement payments that the \*notional buyer makes under the \*arrangement, but those payments are taken into account in calculating \*notional interest that may be deducted under section 240-50.

## **Subdivision 240-E—Notional interest and arrangement payments**

### **Table of sections**

#### **Operative provisions**

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| 240-60 | Notional interest           |
| 240-65 | Arrangement payments        |
| 240-70 | Arrangement payment periods |

### **Operative provisions**

#### **240-60 Notional interest**

- (1) The \**notional interest* for an \*arrangement payment period is worked out as follows:

#### **Calculating \*notional interest**

- Step 1.* Add the \*notional interest from previous \*arrangement payment periods to the \*notional loan principal.
- Step 2.* Subtract any \*arrangement payments that have already been made or that are due but that have not been made. The result is the *outstanding notional loan principal* as at the start of the \*arrangement payment period.
- Step 3.* Work out the *implicit interest rate*. It is the rate of compound interest for the \*arrangement payment period at which the \*notional loan principal equals the sum of:

- (a) the present value of the \*arrangement payments payable by the \*notional buyer under the \*arrangement; and
- (b) the present value of any \*termination amounts.

*Step 4.* Multiply the outstanding \*notional loan principal by the implicit interest rate. The result is the ***notional interest*** for the \*arrangement payment period.

- (2) If only part of an \*arrangement payment period occurs during an income year, the \*notional interest for that part of the arrangement payment period is so much of the notional interest for that arrangement payment period as may appropriately be related to that income year in accordance with generally accepted accounting principles.
- (3) In calculating the implicit interest rate, if any of the relevant amounts are not known at the start of the \*arrangement, a reasonable estimate of the amount is to be made and is to be used for the purposes of calculating the implicit interest rate for each income year of the \*notional seller.
- (4) If a reasonable estimate cannot be made at that time, an estimate of the amount is to be made at the end of each income year of the \*notional seller for the purposes of calculating the implicit interest rate for each income year of the notional seller.

#### **240-65 Arrangement payments**

An ***arrangement payment*** is an amount that the \*notional buyer is required to pay under the \*arrangement but does not include:

- (a) an amount in the nature of a penalty payable for failure to make a payment on time; or
- (b) a \*termination amount.

#### **240-70 Arrangement payment periods**

- (1) An ***arrangement payment period*** is a period for which a payment under the \*arrangement is allocated or expressed to be payable.

- (2) However, if a period exceeds 6 months, the period is not an \*arrangement payment period but each of the following parts of the period is a separate arrangement payment period:
- (a) the part of the period beginning at the start of that period and ending 6 months later;
  - (b) each part of the period:
    - (i) beginning immediately after a part of the period that is an arrangement payment period under paragraph (a) or under a previous application of this paragraph; and
    - (ii) ending 6 months after the start of that later part or at the end of the period, whichever first occurs.

### **Subdivision 240-F—The end of the arrangement**

#### **Table of sections**

##### **Operative provisions**

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| 240-75 | When is the end of the arrangement?   |
| 240-78 | Termination amounts   |
| 240-80 | What happens if the arrangement is extended or renewed  |
| 240-85 | What happens if an amount is paid by or on behalf of the notional buyer to acquire the property |
| 240-90 | What happens if the notional buyer ceases to have the right to use the property                 |

#### **Operative provisions**

##### **240-75 When is the end of the arrangement?**

- (1) If the \*arrangement is stated to cease to have effect at a particular time, it is taken for the purposes of this Division to end (even if it is extended or renewed) at the earlier of:
- (a) that time; or
  - (b) the time at which the arrangement ceases to have effect (whether because the arrangement is terminated or for any other reason).

Note: Section 240-80 deals with extensions and renewals.

- (2) An \*arrangement is taken to have ended if it is extended or renewed.

- (3) If the \*arrangement is of indefinite duration, it ends at the time at which the arrangement ceases to have effect even if the \*arrangement is renewed.

Note: Section 240-80 deals with extensions and renewals.

- (4) An \*arrangement is taken to have ended if it is reasonable to conclude, having regard to the terms and conditions of the \*arrangement, that the arrangement has ceased to have effect.
- (5) An \*arrangement is also taken to have ended if the property has been lost or destroyed.

### 240-78 Termination amounts

A **termination amount** is an amount payable because an \*arrangement ends and includes:

- (a) if, at the end of the arrangement, the \*notional buyer acquires the property from the \*notional seller—an amount payable to the notional seller for the acquisition; or
- (b) if, at the end of the arrangement, the property is lost or destroyed—any amounts paid to the notional seller (whether by the notional buyer or another entity) as a result of the loss or destruction of the property; or
- (c) otherwise—the value of the property at the end of the arrangement.

### 240-80 What happens if the arrangement is extended or renewed

- (1) This section sets out what happens if, after the end of the \*arrangement, the \*notional buyer and \*notional seller extend or renew the \*arrangement.
- (2) This Division applies as if the original \*arrangement has ended and the extended arrangement or renewed arrangement is a separate arrangement (the **new arrangement**).
- (3) There is not, however, taken to be any disposal or acquisition as a result of the original arrangement ending or of the new arrangement starting and the \*notional buyer does not cease to own the property.
- (4) Also, the \*notional loan principal for the new loan is:

- (a) if the \*arrangement as extended or renewed states an amount as the cost or value of the property for the purposes of the extension or renewal and the \*notional seller and the \*notional buyer were dealing with each other at \*arm's length in connection with the extension or renewal—the amount so stated; or
  - (b) otherwise—the amount that could reasonably have been expected to have been paid by the notional buyer for the purchase of the property if:
    - (i) the notional seller had actually sold the property to the notional buyer when the arrangement was extended or renewed; and
    - (ii) the notional seller and notional buyer were dealing with each other at arm's length in connection with the sale.
- (5) Subdivision 240-G applies to the \*notional loan for the original arrangement. For that purpose, the \*notional loan principal for the new arrangement is taken to be a \*termination amount paid to the \*notional seller under the original arrangement.

**240-85 What happens if an amount is paid by or on behalf of the notional buyer to acquire the property**

If, at or after the end of the \*arrangement, an amount is paid to the \*notional seller by, or on behalf of, the \*notional buyer to acquire the property, the following provisions have effect:

- (a) the amount paid is not included in the notional seller's assessable income;
- (b) the notional buyer cannot deduct the payment;
- (c) the notional buyer is taken to continue to own the property;
- (d) the transfer to the notional buyer of legal title to the property is not taken to be a disposal of the property by the notional seller.

**240-90 What happens if the notional buyer ceases to have the right to use the property**

- (1) This section applies if, at the end of the \*arrangement:
  - (a) the arrangement is not extended or renewed in the way mentioned in subsection 240-80(1); and

- (b) no amount is paid to the \*notional seller by, or on behalf of, the \*notional buyer to acquire the property; and
  - (c) the property is not lost or destroyed.
- (2) The property is taken to have been disposed of by the \*notional buyer by way of sale back to the \*notional seller, and to have been acquired by the \*notional seller, at the end of the \*arrangement.
  - (3) The consideration for the sale of the property by the \*notional buyer, and the cost of the acquisition of the property by the \*notional seller, are each taken to be equal to the market value of the property at the end of the \*arrangement.
  - (4) Subsection (5) applies where the property is a \*car and if it:
    - (a) had been bought from the \*notional seller, when this Division first applied to an \*arrangement in respect of the car, by the \*notional buyer for a price equal to the \*notional loan principal; and
    - (b) had been first used by the notional buyer for any purpose in the \*financial year in which that time occurred;the cost of the car, for the purpose of working out its decline in value for that person under Division 40, would have been limited by section 40-230.
  - (5) Where an associate of the \*notional buyer acquires the \*car, the \*cost of the car for the purposes of the application of Division 40 to the associate is taken to be whichever is the lesser of:
    - (a) the sum of:
      - (i) the amount that would have been the \*adjustable value of the car at that time for the purposes of the application of that Division to the notional buyer if the notional buyer were not taken under this Division to have disposed of the car; and
      - (ii) any amount that is included in the notional buyer's assessable income under section 40-285 because the notional buyer is taken to have disposed of the car; or
    - (b) the cost of the acquisition of the car by the associate.

## **Subdivision 240-G—Adjustments if total amount assessed to notional seller differs from amount of finance charge**

### **Guide to Subdivision 240-G**

#### **240-100 What this Subdivision is about**

This Subdivision provides for adjustments if the sum of the amounts included in the notional seller's assessable income are greater or less than the finance charge, worked out at the end of the arrangement, for the notional loan.

#### **Table of sections**

##### **Operative provisions**

- 240-105 Adjustments for notional seller
- 240-110 Adjustments for notional buyer

*[This is the end of the Guide]*

#### **Operative provisions**

##### **240-105 Adjustments for notional seller**

- (1) This section applies at the end of the \*arrangement.
- (2) If the sum of:
  - (a) all amounts (other than \*termination amounts) that were paid or payable to the \*notional seller under the \*arrangement; and
  - (b) any termination amounts paid or payable to the notional seller;

exceeds the amount worked out using the formula in subsection (4), the excess is included in the notional seller's assessable income of the income year in which the arrangement ends.

Note: Subsection 240-80(5) provides that the amount of a notional loan that is taken to be made by an extended or renewed arrangement is a termination amount paid under the previous arrangement.

- (3) If the amount worked out using the formula in subsection (4) exceeds:
- (a) all amounts (other than \*termination amounts) that were paid or payable to the \*notional seller under the \*arrangement; and
  - (b) any termination amounts paid or payable to the notional seller;
- the notional seller is entitled to deduct the excess in the income year in which the arrangement ends.

Note: Subsection 240-80(5) provides that the amount of a notional loan that is taken to be made by an extended or renewed arrangement is a termination amount paid under the previous arrangement.

- (4) The formula for the purposes of subsections (2) and (3) is:

\*Notional loan principal + Assessed notional interest

where:

*assessed notional interest* means the \*notional interest that has been or is to be included in the \*notional seller's assessable income of any income year.

#### **240-110 Adjustments for notional buyer**

- (1) If:
- (a) an amount is included in the \*notional seller's assessable income of an income year under subsection 240-105(2); or
  - (b) an amount would have been so included if the notional seller had been subject to tax on assessable income;
- the \*notional buyer is entitled to deduct a corresponding amount in the notional buyer's income year.
- (2) If:
- (a) the \*notional seller is entitled to deduct an amount for an income year under subsection 240-105(3); or
  - (b) the notional seller would have been so entitled if the \*notional seller had been subject to tax on assessable income;
- a corresponding amount is included in the notional buyer's assessable income for the notional buyer's income year.
- (3) The \*notional buyer is entitled to a deduction, and is required to include an amount in his or her assessable income only to the

extent (if any) that the notional buyer would, apart from this Division, have been entitled to deduct \*arrangement payments if no part of those payments were capital in nature.

### **Subdivision H—Application of Division 16E to certain arrangements**

#### **240-112 Division 16E applies to certain arrangements**

- (1) Division 16E of Part III of the *Income Tax Assessment Act 1936* applies in relation to an arrangement (the *assignment arrangement*) between the notional seller and another person (the *holder*) to transfer the right to payments (the *Division 240 payments*) under an arrangement that is treated as a sale and loan by this Division (the *sale and loan arrangement*).
- (2) In applying Division 16E, the following assumptions are to be made:
  - (a) the assignment arrangement is the qualifying security;
  - (b) the notional seller is the issuer;
  - (c) the qualifying security is issued when the assignment arrangement is entered into;
  - (d) the issue price is consideration provided to the notional seller under the assignment arrangement;
  - (e) the Division 240 payments are payments made by the notional seller under the assignment arrangement;
  - (f) no part of the payments represent periodic interest.
- (3) This Subdivision does not apply if the assignment arrangement gives rise to a termination of the sale and loan arrangement for the purposes of this Division.
- (4) To avoid doubt, Division 6A of Part III of the *Income Tax Assessment Act 1936* does not apply to an assignment arrangement to which this Subdivision applies.

### **Subdivision 240-I—Provisions applying to hire purchase agreements**

#### **Table of sections**

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**Operative provisions**

240-115 Another person, or no person taken to own property in certain cases

**Operative provisions**

**240-115 Another person, or no person taken to own property in certain cases**

- (1) This section sets out special modifications of the effect of this Division that apply in relation to a \*hire purchase agreement unless:
  - (a) the notional buyer would have been the owner or the \*quasi-owner of the property if the \*arrangement had been a sale of the property; and
  - (b) it is reasonably likely that the right, obligation or contingent obligation to acquire the property will be exercised by, or in respect of, the notional buyer.

Note: An example of a contingent obligation is a put option.

- (2) The modifications also apply if the \*notional buyer:
  - (a) disposes of his or her interest in the property; or
  - (b) enters into a lease covered by Division 42A of Schedule 2E to the *Income Tax Assessment Act 1936* under which he or she leases the property to another person.

*Modifications*

- (3) For the purpose of the \*capital allowance provisions, if, apart from the operation of this Division, an entity other than the \*notional seller would own the property that is the subject of an agreement covered by this section, that entity is taken to be the owner of the property.
- (4) For the purpose of the \*capital allowance provisions, if, apart from the operation of this Division, the \*notional seller would own the property that is the subject of an agreement covered by this section, no entity is taken to be the owner of the property.

*[The next Division is Division 243.]*

## **Division 243—Limited recourse debt**

### **Table of Subdivisions**

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|       | Guide to Division 243                                |
| 243-A | Circumstances in which Division operates             |
| 243-B | Working out the excessive deductions                 |
| 243-C | Amounts included in assessable income and deductions |
| 243-D | Special provisions                                   |

### **Guide to Division 243**

#### **243-10 What this Division is about**

This Division tells you when you must include an additional amount in your assessable income at the termination of a limited recourse debt arrangement. It also tells you what the additional amount is.

Basically, the Division applies where the capital allowance deductions that have been obtained for expenditure that is funded by the debt and the deductions are excessive having regard to the amount of the debt that was repaid.

The reason for the adjustment is to ensure that, where you have not been fully at risk in relation to an amount of expenditure, you do not get a net deduction if you fail to pay that amount.

### **Subdivision 243-A—Circumstances in which Division operates**

#### **Table of sections**

##### **Operative provisions**

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| 243-15 | When does this Division apply?                       |
| 243-20 | What is limited recourse debt?                       |
| 243-25 | When is a debt arrangement terminated?               |
| 243-30 | What is the financed property and the debt property? |

## Operative provisions

### 243-15 When does this Division apply?

- (1) This Division applies if:
- (a) \*limited recourse debt has been used to wholly or partly finance or refinance expenditure; and
  - (b) at the time that the debt \*arrangement is terminated, the debt has not been paid in full by the debtor; and
  - (c) the debtor can deduct an amount as a \*capital allowance (other than development allowance or drought investment allowance) for the income year in which the termination occurs, or has deducted or can deduct an amount for an earlier income year, in respect of the expenditure or the \*financed property.

Note: This Division does not apply to certain limited recourse debts that are used to refinance limited recourse debt to which this Division has applied (see subsection 243-50(4)).

- (2) However, unless the net \*capital allowance deductions have been excessive having regard to the amount of the debt that remains unpaid (see section 243-35), no amount is included in the debtor's assessable income under this Division although future deductions may be reduced.
- (3) In working out if the debt has been paid in full, and in working out the unpaid amount of the debt, the following amounts are to be treated as if they were not payments in respect of the debt:
- (a) any reduction in the debt as a result of the \*financed property being surrendered or returned to the creditor at the termination of the debt;
  - (b) any payment to reduce the debt that is funded directly or indirectly by \*non-arm's length limited recourse debt or by proceeds from the disposal of the debtor's interest in the financed property.

However, any amounts accrued that are interest, \*notional interest or in the nature of interest are taken not to be unpaid.

- (4) In working out if the debt has been paid in full, and in working out the unpaid amount of the debt, payments are to be attributed first to

the payment of any accrued amounts that are interest, \*notional interest or in the nature of interest.

- (5) A \*notional loan is taken to be debt that has been used to wholly or partly finance or refinance expenditure.

Note: Notional loans arise under Division 240.

### **243-20 What is limited recourse debt?**

- (1) A **limited recourse debt** is an obligation imposed by law on an entity (the **debtor**) to pay an amount to another entity (the **creditor**) where the rights of the creditor as against the debtor in the event of default in payment of the debt or of interest are limited wholly or predominantly to any or all of the following:
- (a) rights (including the right to money payable) in relation to any or all of the following:
    - (i) the \*debt property or the use of the debt property;
    - (ii) goods produced, supplied, carried, transmitted or delivered, or services provided, by means of the debt property;
    - (iii) the loss or disposal of the whole or a part of the debt property or of the debtor's interest in the debt property;
  - (b) rights in respect of a mortgage or other security over the debt property or other property;
  - (c) rights that arise out of any \*arrangement relating to the financial obligations of an end-user of the \*financed property towards the debtor, and are financial obligations in relation to the financed property.
- (2) An obligation imposed by law on an entity (the **debtor**) to pay an amount to another entity (the **creditor**) is also a **limited recourse debt** if it is reasonable to conclude that the rights of the creditor as against the debtor in the event of default in payment of the debt or of interest are capable of being limited in the way mentioned in subsection (1). In reaching this conclusion, have regard to:
- (a) the assets of the debtor (other than assets that are indemnities or guarantees provided in relation to the debt);
  - (b) any \*arrangement to which the debtor is a party;
  - (c) whether all of the assets of the debtor would be available for the purpose of the discharge of the debt (other than assets

that are security for other debts of the debtor or any other entity);

- (d) whether the debtor and creditor are dealing at \*arm's length in relation to the debt.
- (3) An obligation imposed by law on an entity (the *debtor*) to pay an amount to another entity (the *creditor*) is also a *limited recourse debt* if there is no \*debt property and it is reasonable to conclude that the rights of the creditor as against the debtor in the event of default in payment of the debt or of interest are capable of being limited. In reaching this conclusion, have regard to:
- (a) the assets of the debtor (other than assets that are indemnities or guarantees provided in relation to the debt);
  - (b) any \*arrangement to which the debtor is a party;
  - (c) whether all of the assets of the debtor would be available for the purpose of the discharge of the debt (other than assets that are security for other debts of the debtor or any other entity);
  - (d) whether the debtor and creditor are dealing at \*arm's length in relation to the debt.
- (4) A \*notional loan under a \*hire purchase agreement is also a *limited recourse debt*.
- Note: Notional loans arise under Division 240.
- (5) However, an obligation that is covered by subsection (1) is not a limited recourse debt if the creditor's recourse is not in practice limited due to the creditor's rights in respect of a mortgage or other security over property of the debtor (other than the financed property) the value of which exceeds, or is likely to exceed, the amount of the debt.
- (6) Also, an obligation that is covered by subsection (1), (2) or (3) is not a limited recourse debt if, having regard to all relevant circumstances, it would be unreasonable for the obligation to be treated as limited recourse debt.
- (7) A \*limited recourse debt is a *non-arm's length limited recourse debt* if the debtor and creditor do not deal with each other at arm's length in relation to the debt.

### **243-25 When is a debt arrangement terminated?**

- (1) A debt arrangement is taken to have terminated if:
  - (a) it is actually terminated; or
  - (b) the debtor's obligation to repay the debt is waived, novated or otherwise varied so as to reduce, transfer or extinguish the debt; or
  - (c) an agreement is entered into to waive, novate or otherwise vary the debtor's obligation to repay the debt so as to reduce, transfer or extinguish the debt; or
  - (d) the creditor ceases to have an entitlement to recover the debt from the debtor (other than as a result of an arm's length assignment of some or all of the creditor's rights under the debt arrangement); or
  - (e) the debtor ceases to be the owner or the \*quasi-owner of some or all of the \*debt property because that property is surrendered to the creditor because of the debtor's failure to pay the whole or a part of the debt; or
  - (f) the debtor ceases to be the owner of a beneficial interest in some or all of the debt property because the interest is surrendered to the creditor because of the debtor's failure to pay the whole or a part of the debt; or
  - (g) the debt becomes a bad debt.
- (2) However, a debt arrangement that is a \*notional loan is not taken to have terminated merely because it has been renewed or extended.

Note: Notional loans arise under Division 240. Under that Division, they are taken to have ended if they are renewed or extended.
- (3) Where a debt is terminated under paragraph (1)(b) or (c) as a result of the debt being reduced, the remaining debt is taken to be a new debt to which section 243-15 applies.

### **243-30 What is the financed property and the debt property?**

- (1) Property is the *financed property* if the expenditure referred to in paragraph 243-15(1)(a) is on the property, is on the acquisition of the property, results in the creation of the property or is otherwise connected with the property.

- (2) If the debt agreement is a \*notional loan, the property that is the subject of the agreement is the *financed property*.

Note: Notional loans arise under Division 240.

- (3) Property is the *debt property* if:
- (a) it is the \*financed property; or
  - (b) the property is provided as security for the debt.

## Subdivision 243-B—Working out the excessive deductions

### Table of sections

#### Operative provisions

243-35 Working out the excessive deductions

### Operative provisions

#### 243-35 Working out the excessive deductions

- (1) The \*capital allowance deductions have been excessive having regard to the amount of the debt that remains unpaid if the amount worked out under subsection (2) exceeds the amount worked out under subsection (4).
- (2) This is how to work out the total net \*capital allowance deductions:

#### **Working out the total net capital allowance deductions**

*Step 1.* Add up all of the debtor's \*capital allowance deductions (other than development allowance or drought investment allowance) in respect of the expenditure or the \*financed property (including deductions because of balancing adjustments) for the income year in which the termination occurs or an earlier income year.

*Step 2.* Deduct from that any amount that is included in the assessable income of the debtor of any income year by virtue of a provision of this Act (other than this Division) as a result of the disposal of the \*financed property the

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effect of which is to reverse a deduction covered by Step 1.

*Step 3.* Deduct from the result an amount equal to the sum of any amounts included in the entity's assessable income as a result of an earlier application of this Division to the debt.

*Step 4.* Add to the result an amount equal to the sum of any deductions to which the entity is entitled under section 243-45 (repayments of the original debt after termination) or 243-50 (repayments of the replacement debt) because of payments in respect of the debt.

- (3) The reference in step 2 of the method statement in subsection (2) to an amount that is included in the assessable income of a taxpayer as a result of the disposal of the \*financed property includes a reference to an amount that is included under section 26AG of the *Income Tax Assessment Act 1936* as a result of the disposal of the financed property.

Note: Division 20 deals with amounts included to reverse the effect of past deductions.

- (4) This is how to work out the total net capital allowance deductions that would otherwise be allowable taking into account the amount of the debt that is unpaid:

**Working out the total net capital allowance deductions that would otherwise be allowable**

Work out the amount that would be worked out under subsection (2) if the deductions and the amounts included in assessable income had been calculated using the following assumptions:

- (1) The original expenditure in respect of which deductions were calculated was reduced by the amount of the debt that was unpaid by the debtor when the debt was terminated. (In calculating the amount unpaid the following are to be disregarded:

- (a) any reduction in the amount as a result of the \*financed property being surrendered or returned to the creditor at the termination of the debt;
  - (b) any reduction in the amount to the extent that it is funded directly or indirectly by \*non-arm's length limited recourse debt or by the consideration for the disposal of the debtor's interest in the financed property.)
- (2) Deductions for income years after the income year in which the termination occurred were also taken into account.
- (3) The original expenditure in respect of which deductions were calculated was increased by any amount that is paid by the debtor as consideration for another person assuming a liability under the debt. (This assumption does not apply to the extent that the consideration is funded directly or indirectly by \*non-arm's length limited recourse debt or by the consideration for the disposal of the debtor's interest in the \*financed property.)
- (4) Step 2 were omitted from subsection (2).

### **Subdivision 243-C—Amounts included in assessable income and deductions**

#### **Table of sections**

##### **Operative provisions**

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| 243-40 | Amount included in debtor's assessable income                       |
| 243-45 | Deduction for later payments in respect of debt                     |
| 243-50 | Deduction for payments for replacement debt                         |
| 243-55 | Effect of Division on later capital allowance deductions            |
| 243-57 | Effect of Division on later capital allowance balancing adjustments |
| 243-58 | Adjustment where debt only partially used for expenditure           |

## **Operative provisions**

### **243-40 Amount included in debtor's assessable income**

The debtor's assessable income for the income year in which the termination occurs is to include the excess referred to in subsection 243-35(1).

Note: Section 243-60 applies in relation to certain partnership debts.

### **243-45 Deduction for later payments in respect of debt**

- (1) This section applies if:
  - (a) an amount was included in the debtor's assessable income under section 243-40 or a deduction was reduced under section 243-55; and
  - (b) the debtor makes a payment to the creditor, after the termination of the debt arrangement, in respect of the debt (other than an amount to the extent to which it is a payment of interest, of \*notional interest or in the nature of interest).
- (2) This is how to work out the amount of the deduction:

#### **Working out the amount of the deduction**

- Step 1.* Work out the amount that would be worked out under subsection 243-35(2) if the debt were terminated immediately before the payment.
- Step 2.* Work out the amount that would have been worked out under subsection 243-35(4) at that time if the payment had been taken into account.
- Step 3.* The **amount of the deduction** is the amount (if any) by which the amount worked out under Step 2 exceeds the amount worked out under Step 1.

- (3) The amount can be deducted for the income year in which the payment is made.

*Limit on deductions*

- (4) The total amounts deducted under this section in respect of a debt, and under section 243-50 in respect of a replacement debt, cannot exceed the sum of:
- (a) any amounts included in the debtor's assessable income under this Division in respect of the original debt; and
  - (b) any amount by which deductions in respect of the original debt were reduced under section 243-55.

**243-50 Deduction for payments for replacement debt**

*Payments where debt refinanced*

- (1) This section applies if:
- (a) an amount was included in the debtor's assessable income under section 243-40 or a deduction was reduced under section 243-55; and
  - (b) an amount funded by a \*non-arm's length limited recourse debt (the *replacement debt*) was disregarded in calculations under subsection 243-35(4); and
  - (c) the debtor makes a payment, after the termination of the original debt arrangement, in respect of the replacement debt (other than to the extent to which it is a payment of interest, of \*notional interest or in the nature of interest).
- (2) This is how to work out the amount of the deduction:

**Working out the amount of the deduction**

*Step 1.* Work out the amount that would be worked out under subsection 243-35(2) if the replacement debt were terminated immediately before the payment.

*Step 2.* Work out the amount that would have been worked out under subsection 243-35(4) at that time if the payment had been made in respect of the original debt and it had been taken into account.

*Step 3.* The **amount of the deduction** is the amount (if any) by which the amount worked out under Step 2 exceeds the amount worked out under Step 1.

- (3) The amount can be deducted for the income year in which the payment is made.

*Division not to apply to termination of replacement debt*

- (4) This Division does not apply to termination of the replacement debt referred to in paragraph (1)(b).

*Limit on deductions*

- (5) The total amounts deducted under section 243-45 in respect of the original debt, or under this section in respect of the replacement debt, cannot exceed the sum of:
- (a) any amounts included in the debtor's assessable income under this Division in respect of the original debt; and
  - (b) any amount by which deductions in respect of the original debt were reduced under section 243-55.

### **243-55 Effect of Division on later capital allowance deductions**

- (1) This section applies where this Division (other than section 243-65) has applied in relation to a debt and the debtor is entitled to a \*capital allowance deduction (other than development allowance or drought investment allowance) in respect of the expenditure or the \*financed property in relation to a time or period after the termination of the debt.
- (2) The \*capital allowance deduction is reduced if the amount that would have been worked out under subsection 243-35(2) would have exceeded the amount worked out under subsection 243-35(4) if the following assumptions were applied in both subsections:

**Assumptions to be applied**

- (1) That the debt was terminated at the time, or at the end of the period, referred to in subsection (1) of this section.

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| <p>(2) That the amount unpaid at the time, or at the end of the period, is reduced by any amounts paid under a replacement debt.</p> <p>(3) The debtor's *capital allowance deductions in respect of the expenditure or the *financed property were increased by the amount of the capital allowance deduction referred to in subsection (1) of this section.</p> |
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- (3) The deduction is to be reduced by the amount of the excess.

**243-57 Effect of Division on later capital allowance balancing adjustments**

- (1) This section applies where this Division (other than section 243-65) has applied in relation to a debt and an amount is later included in the assessable income of an entity by virtue of a provision of this Act (other than this Division) as a result of the disposal of the \*financed property the effect of which is to reverse a deduction covered by Step 1 in subsection 243-35(2).
- (2) Any amount that would be included in the debtor's assessable income is reduced if the amount that would have been worked out under subsection 243-35(4) would have exceeded the amount worked out under subsection 243-35(2) if the following assumptions were applied in both subsections:

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| <p><b>Assumptions to be applied</b></p> |
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| <p>(1) That the debt was terminated at the time of the disposal of the *financed property, referred to in subsection (1) of this section.</p> <p>(2) The amount in Step 2 in subsection 243-35(2) were increased by the amount that would otherwise be included in the debtor's assessable income.</p> <p>(3) The amount worked out under subsection 243-35(4) were reduced by any amount by which:</p> |
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| <p>(a) the amount arising as a result of the disposal that is taken into account for the purposes of the provision mentioned in subsection (1);</p> <p>exceeds:</p> <p>(b) the unpaid amount of the debt immediately before the time of the disposal of the *financed property, referred to in subsection (1).</p> |
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(3) The amount is to be reduced by the amount of the excess.

### **243-58 Adjustment where debt only partially used for expenditure**

If the debt is only partially used to finance the expenditure, or the property, in respect of which the \*capital allowance deductions referred to in Step 1 in subsection 243-35(2) are allowed, the amount of any deduction, any reduction in a deduction or any amount included in assessable income is to be so much as is reasonable taking into account the proportion of the debt that is used for that purpose.

## **Subdivision 243-D—Special provisions**

### **Table of sections**

#### **Operative provisions**

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| 243-60 | Application of Division to partnerships                            |
| 243-65 | Application where partner reduces liability                        |
| 243-70 | Application of Division to companies ceasing to be 100% subsidiary |
| 243-75 | Application of Division where debt forgiveness rules also apply    |

### **Operative provisions**

#### **243-60 Application of Division to partnerships**

This Division applies to a partnership in respect of the partnership's debts and in respect of debts of a partner, and references to a debtor include a reference to a partnership.

### 243-65 Application where partner reduces liability

- (1) This section applies to a debt in relation to a partner in a partnership if:
  - (a) in connection with an \*arrangement, the partner's liability to pay the debt is reduced or eliminated and the partner's interest in the partnership ceases or is varied or transferred; and
  - (b) an excess would have been worked out under subsection 243-35(1) if, at the time when the debt is reduced or eliminated, the debt had been terminated and remained unpaid and this section had not applied.
- (2) If this section applies to a debt in relation to a partner in a partnership, an amount is to be included in his or her assessable income.
- (3) This is how to work out the amount to be included:

#### **Working out the amount included**

- Step 1.* Work out which income years the partner was a member of the partnership and the partnership was entitled to a \*capital allowance deduction (other than development allowance or drought investment allowance) in respect of the expenditure or the \*financed property (including deductions because of balancing adjustments).
- Step 2.* For each of those income years, work out the proportion of net income of the partnership or the partnership loss (as the case requires) that was included in the assessable income of the partner or which the partner could deduct.
- Step 3.* For each of those income years, multiply the \*capital allowance deductions (other than development allowance or drought investment allowance) in respect of the expenditure or the \*financed property (including deductions because of balancing adjustments) of the partnership by the corresponding proportion worked out under Step 2. Sum all of the amounts.

*Step 4.* Divide the sum by the total of the \*capital allowance deductions (other than development allowance or drought investment allowance) in respect of the expenditure or the \*financed property (including deductions because of balancing adjustments) of the partnership for all of those income years.

*Step 5.* Work out the amount that would have been included in the partnership's assessable income under section 243-40 if the debt had been terminated and remained unpaid and this section had not applied.

*Step 6.* Multiply the amount worked out in Step 5 by the factor worked out in Step 4. The result is the amount to be included in the partner's assessable income.

**243-70 Application of Division to companies ceasing to be 100% subsidiary**

- (1) This section applies to a company if:
  - (a) the company ceases to be a \*100% subsidiary in relation to at least one other company; and
  - (b) at that time, the company is the debtor for a \*limited recourse debt that has not been paid in full by the company; and
  - (c) the creditor's rights under the debt are transferred or assigned to another entity.
- (2) If this section applies, this Division applies as if the debt were terminated, and refinanced with \*non-arm's length limited recourse debt, at the time the company ceased to be a \*100% subsidiary of that other company.

**243-75 Application of Division where debt forgiveness rules also apply**

- (1) This section is to remove doubt about how this Division and Schedule 2C to the *Income Tax Assessment Act 1936* apply where both apply to the same debt.
- (2) Where both apply:

- (a) this Division is to be applied first and is to be applied disregarding any operation of that Schedule; and
- (b) any amounts included in assessable income under this Division are taken into account under paragraph 245-85(1)(a) of that Schedule.

*[The next Part is Part 3-45.]*

## **Part 2—Consequential amendments: arrangements treated as a sale and loan**

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

#### **2 Subsection 51AD(1) (definition of *hire-purchase agreement*)**

Repeal the definition, substitute:

*hire-purchase agreement* means a hire purchase agreement to which Division 240 of the *Income Tax Assessment Act 1997* applies.

#### **3 Subsection 82AHA(2)**

Repeal the subsection.

#### **4 Subsection 82AQ(1) (definition of *hire-purchase agreement*)**

Repeal the definition, substitute:

*hire-purchase agreement* means a hire purchase agreement to which Division 240 of the *Income Tax Assessment Act 1997* applies.

#### **5 Paragraph 672(b)**

Repeal the paragraph.

#### **6 Sections 674 and 675**

Repeal the sections, substitute:

#### **674 Meaning of *hire purchase agreement***

A *hire purchase agreement* means a hire purchase agreement to which Division 240 of the *Income Tax Assessment Act 1997* applies.

Note: Division 240 of the *Income Tax Assessment Act 1997* sets out when property under a hire purchase agreement is disposed of.

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

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**7 Section 10-5 (table)**

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

**notional sales and loans**

|                                  |            |
|----------------------------------|------------|
| adjustment amounts (lessee)..... | 240-110(2) |
| adjustment amounts (lessor)..... | 240-105(2) |
| notional interest.....           | 240-35(1)  |
| profit on actual sale.....       | 240-35(3)  |
| profit on notional sale.....     | 240-35(2)  |

**8 Section 12-5 (table)**

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

**notional sales and loans**

|   |            |
|---|------------|
| adjustment amounts (lessee).....                    | 240-110(1) |
| adjustment amounts (lessor).....                    | 240-105(3) |
| arrangement payments, no deduction for.....         | 240-55     |
| notional interest.....                              | 240-50     |
| payments to acquire property, no deduction for..... | 240-85     |

**9 Subsection 28-12(1)**

Omit “or hired a \*car under a hire purchase agreement”.

**10 At the end of subsection 28-12(1)**

Add:

Note 3: In certain circumstances (for example, under a hire purchase agreement) the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

**11 Subsection 28-45(1)**

Omit “or hired it under a \*hire purchase agreement”.

**12 Subsection 28-45(1) (note)**

Renumber the note as Note 1.

**13 At the end of subsection 28-45(1)**

Add:

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Note 2: The cost of a car to which Division 240 applies is to be worked out under section 240-25.

**14 Subsection 28-45(2)**

Omit “or are hiring it”.

**15 Subsection 28-45(3)**

Omit “, lease or hire” (wherever occurring), substitute “or lease”.

**16 Subsection 28-45(3)**

Omit “, leased or hired”, substitute “or leased”.

**17 Subsection 28-90(6)**

Omit “, or you are hiring it under a \*hire purchase agreement”.

**18 Subsection 28-90(6) (note)**

Renumber the note as Note 1.

**19 At the end of subsection 28-90(6)**

Add:

Note 2: In certain circumstances the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

**20 At the end of section 42-15**

Add:

Note 3: In certain circumstances the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

**21 Subsection 42-30(3) (after paragraph (ab) of table item 1)**

Insert:

(ac)you are taken to have ceased to be its owner as mentioned in paragraph 240-20(2)(b); or

(ad)you are taken to have disposed of it as mentioned in subsection 240-20(1) or 240-90(2); or

**22 At the end of section 42-55**

Add:

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*Notional sales and notional loans*

(9) Division 240 has special rules in respect of the \*arrangements that are taken to be a notional sale and \*notional loan.

**23 Section 42-65 (after table item 9E)**

Insert:

|    |   |  |   |
|----|---|--|---|
| 9F | you are taken to acquire as mentioned in subsection 240-90(2) | the amount applying under subsection 240-90(3) | car discount (42-70)<br>car limit (42-80)<br>double deduction (42-85)<br>prev. dep. limit (42-90) |
|----|---|--|---|

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|    |  |  |  |
|----|--|--|--|
| 9G | you acquire as mentioned in subsection 240-90(5) | the amount applying under subsection 240-90(5) |  |
|----|--|--|--|

**24 At the end of section 42-160**

Add:

Note: In certain circumstances the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

**25 At the end of section 42-175**

Add:

Note: In certain circumstances the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

**26 At the end of subsection 42-195(3)**

Add:

Note: In certain circumstances the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

**27 Section 42-205 (after table item 5D)**

Insert:

|    |   |  |                    |
|----|---|--|--------------------|
| 5E | that you are taken to have disposed of under subsection 240-20(1) | the amount worked out under subsection 240-25(5) | car limit (42-215) |
|----|---|--|--------------------|

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|    |  |  |                    |
|----|--|--|--------------------|
| 5F | of which you are taken to have ceased to be the owner under paragraph 240-20(2)(b) | the amount worked out under subsection 240-25(5) | car limit (42-215) |
| 5G | that you are taken to have disposed of under subsection 240-90(2)                  | the amount worked out under subsection 240-90(3) | car limit (42-215) |

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**28 Subsection 42-235(1) (note)**

Renumber the note as Note 1.

**29 At the end of subsection 42-235(1)**

Add:

Note 2: In certain circumstances the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

**30 Section 42-250 (note)**

Renumber the note as note 1.

**31 At the end of section 42-250**

Add:

Note 2: In certain circumstances the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

**32 At the end of subsection 42-330(1)**

Add:

Note: In certain circumstances the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

**33 At the end of section 42-365**

Add:

Note: In certain circumstances the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

**34 At the end of section 43-110**

Add:

Note: In certain circumstances the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

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**35 At the end of subsection 104-15(1)**

Add:

Note: Division 240 provides for the inclusion of amounts under hire purchase agreements in assessable income.

**36 Section 195-35 (link note)**

Repeal the link note, substitute:

*[The next Part is Part 3-10.]*

**37 At the end of subsection 330-480(1)**

Note 4: In certain circumstances (for example, under a hire purchase agreement) the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

**38 Subsection 330-480(2) (note)**

Omit “and 3”, substitute “, 3 and 4”.

**39 At the end of subsection 387-305(1)**

Add:

Note 3: In certain circumstances the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

**40 Paragraph 900-15(2)(b)**

Omit “or hired the \*car under a \*hire purchase agreement”.

**41 At the end of subsection 900-15(2)**

Add:

Note: In certain circumstances (for example, under a hire purchase agreement) the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

**42 Subsection 900-30(7) (note)**

Renumber the note as Note 1.

**43 At the end of subsection 900-30(7)**

Add:

Note 2: In certain circumstances (for example, under a hire purchase agreement) the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

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**44 Paragraph 900-70(2)(b)**

Omit “or hired the \*car under a \*hire purchase agreement”.

**45 At the end of subsection 900-70(2)**

Add:

Note: In certain circumstances (for example, under a hire purchase agreement) the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

**46 Paragraph 900-80(2)(b)**

Omit “or hired the \*car under a \*hire purchase agreement”.

**47 At the end of subsection 900-80(2)**

Add:

Note: In certain circumstances (for example, under a hire purchase agreement) the notional buyer of property is taken to be its owner (see subsection 240-20(2)).

**48 Subsection 995-1(1)**

Insert:

*arrangement payment* has the meaning given by section 240-65.

**49 Subsection 995-1(1)**

Insert:

*arrangement payment period* has the meaning given by section 240-70.

**50 Subsection 995-1(1)**

Insert:

*finance charge* has the meaning given by section 240-25.

**51 Subsection 995-1(1) (subparagraph (a)(i) of the definition of *hire purchase agreement*)**

Omit “or obligation”, substitute “, obligation or contingent obligation”.

**52 Subsection 995-1(1) (at the end of subparagraph (a)(i) of the definition of *hire purchase agreement*)**

Add:

Note: An example of a contingent obligation is a put option.

**53 Subsection 995-1(1) (subparagraph (a)(iii) of the definition of hire purchase agreement)**

Omit “to purchase”, substitute “referred to in subparagraph (a)(i)”.

**54 Subsection 995-1(1)**

Insert:

*non-arm’s length limited recourse debt* has the meaning given by subsection 243-20(6).

**55 Subsection 995-1(1)**

Insert:

*notional buyer* has the meaning given by section 240-17.

**56 Subsection 995-1(1)**

Insert:

*notional interest* has the meaning given by section 240-60.

**57 Subsection 995-1(1)**

Insert:

*notional loan* has the meaning given by section 240-25.

**58 Subsection 995-1(1)**

Insert:

*notional loan principal* has the meaning given by section 240-25.

**59 Subsection 995-1(1)**

Insert:

*notional seller* has the meaning given by section 240-17.

**60 Subsection 995-1(1)**

Insert:

*right to use* includes the right to possess.

**61 Subsection 995-1(1)**

Insert:

*termination amount* has the meaning given by section 240-78.

### **Part 3—Consequential amendments: limited recourse debt**

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

##### **62 At the end of subsection 160ZJA(2)**

Add:

However, it does not include an amount included in a taxpayer's assessable income under Division 243 of the *Income Tax Assessment Act 1997*.

##### **63 After subsection 160ZJA(2)**

Insert:

(2A) The reference in paragraph (1)(c) to an amount that has been allowed or is allowable as a deduction does not include an amount allowed under Division 243 of the *Income Tax Assessment Act 1997*.

##### **64 At the end of subsection 160ZJB(2)**

Add:

However, it does not include an amount included in a taxpayer's assessable income under Division 243 of the *Income Tax Assessment Act 1997*.

##### **65 After subsection 160ZJB(2)**

Insert:

(2A) The reference in paragraph (1)(c) to an amount that has been allowed or is allowable as a deduction does not include an amount allowed under Division 243 of the *Income Tax Assessment Act 1997*.

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

##### **66 Section 10-5 (table)**

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

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**limited recourse debt**

excessive deduction amount (debtor) ..... 243-40  
 excessive deduction amount (partner) ..... 243-65

**67 Section 12-5 (table)**

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

**limited recourse debt**

later payments ..... 243-45  
 later payments (replacement debt) ..... 243-50

**68 Section 20-5 (before table item 3)**

Insert:

|    |  |        |
|----|--|--------|
| 2A | Limited recourse debt that was used to finance expenditure deductible under a capital allowance (or on property for which you have deducted or can deduct amounts under a capital allowance) terminates: an amount is included in your assessable income | 243-40 |
|----|--|--------|

**69 At the end of section 42-55**

Add:

*Limited recourse debt*

- (10) Where you have had a deduction under this Division an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

**70 At the end of section 43-50**

Add:

- (8) Where you have had a deduction under this Division an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

**71 At the end of section 110-40**

Add:

- (4) Subsection (2) does not apply in relation to amounts that you have deducted or can deduct under Division 243.

**72 At the end of section 110-43**

Add:

- (4) Subsection (2) does not apply in relation to amounts that you have deducted or can deduct under Division 243.

**73 Paragraph 110-45(2)(a)**

After “Part 3-3” insert “and Division 243”

**74 After paragraph 110-45(2)(a)**

Insert:

- (ab) the deduction is under Division 243; or

**75 Paragraph 110-50(2)(a)**

After “Part 3-3” insert “and Division 243”

**76 After paragraph 110-50(2)(a)**

Insert:

- (ab) the deduction is under Division 243; or

**77 At the end of subsection 330-15(1)**

Add:

- Note 3: Where you have had a deduction under this Subdivision an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

**78 Section 330-80 (after note 1A)**

Insert:

- Note 1B: Where you have had a deduction under this Subdivision an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

**79 Section 330-370 (after note 1)**

Insert:

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Note 1A: Where you have had a deduction under this Subdivision an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

**80 At the end of subsection 330-435(1)**

Add:

Note: Where you have had a deduction under this Subdivision an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

**81 At the end of subsection 387-55(1)**

Add:

Note 3: Where you have had a deduction under this Subdivision an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

**82 At the end of subsection 387-125(2)**

Add:

Note 3: Where you have had a deduction under this Subdivision an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

**83 At the end of subsection 387-165(5)**

Add:

Note 3: Where you have had a deduction under this Subdivision an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

**84 At the end of subsection 387-305(1)**

Add:

Note 3: Where you have had a deduction under this Subdivision an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

**85 At the end of subsection 387-355(2)**

Add:

Note 3: Where you have had a deduction under this Subdivision an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

**86 Subsection 387-405(2) (note)**

Renumber the note as Note 1.

**87 At the end of subsection 387-405(2)**

Add:

Note 2: Where you have had a deduction under this Subdivision an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

**88 Section 387-460 (note)**

Renumber the note as Note 1.

**89 At the end of section 387-460**

Add:

Note 2: Where you have had a deduction under this Subdivision an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

**90 At the end of subsection 400-15(3)**

Add:

Note 3: Where you have had a deduction under this Subdivision an amount may be included in your assessable income if the expenditure was financed by limited recourse debt that has terminated: see Division 243.

**91 Subsection 995-1(1)**

Insert:

*debt property* has the meaning given by section 243-30.

**92 Subsection 995-1(1)**

Insert:

*financed property* has the meaning given by section 243-30.

**93 Subsection 995-1(1)**

Insert:

*limited recourse debt* has the meaning given by section 243-20.

## **Part 4—Property transferred by way of security**

### *Income Tax Assessment Act 1997*

#### **94 Section 40-5 (box relating to Common rule 3)**

Omit “Anti-avoidance provisions”, substitute “Provisions”.

#### **95 Section 41-5 (heading to table column dealing with Common rule 3)**

Omit “Anti-avoidance provisions”, substitute “Provisions”.

#### **96 Section 41-5 (table column dealing with Common rule 3)**

Omit “Does not apply” (wherever occurring), substitute “Applies (other than section 41-85)”.

#### **97 Subdivision 41-C (heading)**

Repeal the heading, substitute:

#### **Subdivision 41-C—Common rule 3 (Provisions relating to the ownership of the property)**

#### **98 At the end of Subdivision 41-C**

Add:

#### **41-90 Owner of property that is transferred by way of security**

- (1) If the rules for a \*capital allowance apply this Common rule, then for the purposes of those rules (including any other Common rule that those rules apply) disregard an acquisition or disposal of property by way of the transfer of the property for the provision or redemption of a security.
- (2) Consequently those rules apply as if the person who was the owner of the property before the transfer continues to be the owner after the transfer.

#### **99 Paragraph 42-35(c)**

Omit “anti-avoidance—”.

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**100 Subsection 387-505(3)**

Omit “anti-avoidance”.

***Income Tax Assessment Act 1936***

**101 After subsection 51AD(3A)**

Insert:

- (3B) For the purpose of this section, disregard an acquisition or disposal of property by way of the transfer of the property for the provision or redemption of a security. Consequently this section applies as if the person who was the owner of the property before the transfer continues to be the owner after the transfer.

**102 After subsection 73B(1C)**

Insert:

- (2) For the purpose of this section, disregard an acquisition or disposal of property by way of the transfer of the property for the provision or redemption of a security. Consequently this section applies as if the person who was the owner of the property before the transfer continues to be the owner after the transfer.

**103 After section 82AI**

Insert:

**82AIA Transfer by way of security**

For the purpose of this Subdivision, disregard an acquisition or disposal of property by way of the transfer of the property for the provision or redemption of a security. Consequently this Subdivision applies as if the person who was the owner of the property before the transfer continues to be the owner after the transfer.

**104 At the end of section 124K**

Add:

- (5) For the purpose of this Division, disregard an acquisition or disposal of property by way of the transfer of the property for the

provision or redemption of a security. Consequently this Division applies as if the person who was the owner of the property before the transfer continues to be the owner after the transfer.

**105 At the end of Subdivision A of Division 10BA of Part III**

Add:

**124ZAEA Transfer by way of security**

For the purpose of this Division, disregard an acquisition or disposal of property by way of the transfer of the property for the provision or redemption of a security. Consequently this Division applies as if the person who was the owner of the property before the transfer continues to be the owner after the transfer.

**106 At the end of section 159GE**

Add:

- (10) For the purpose of this Division, disregard an acquisition or disposal of property by way of the transfer of the property for the provision or redemption of a security. Consequently this Division applies as if the person who was the owner of the property before the transfer continues to be the owner after the transfer.

**107 At the end of section 673**

Add:

- (3) For the purpose of this Part, disregard an acquisition or disposal of property by way of the transfer of the property for the provision or redemption of a security. Consequently this Part applies as if the person who was the owner of the property before the transfer continues to be the owner after the transfer.

Note: The heading to section 673 is altered by omitting “: quasi-ownership”.

## **Part 5—Application of amendments**

### **108 Amendments related to arrangements treated as sale and loan**

- (1) Division 240 of the *Income Tax Assessment Act 1997* applies to arrangements entered into after 27 February 1998.
- (2) The amendments made by Part 2 of this Schedule (other than by item 35) apply to arrangements entered into after 27 February 1998.
- (3) The amendment made by item 35 of this Schedule applies to assessments for the 1998-99 income year and later income years.

### **109 Amendments related to limited recourse debt**

- (1) Division 243 of the *Income Tax Assessment Act 1997* applies to debts that are terminated after 27 February 1998.
- (2) The amendments made by Part 3 of this Schedule (other than by items 83 and 90) apply to debts that are terminated after 27 February 1998.
- (3) The amendments made by items 83 and 90 of this Schedule apply to assessments for the 1998-99 income year and later income years.

### **110 Amendments related to property transferred as security**

The amendments made by Part 4 of this Schedule apply to transfers of property where the transaction under which the property was provided, or redeemed, as security was entered into after 27 February 1998.



**Table of Acts**

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**Notes to the *Taxation Laws Amendment Act (No. 1) 2001***

**Note 1**

Act No. 72, 2001; assented to 30 June 2001  
Commenced on 30 June 2001. (*see* section 2)

**Table A**

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**Table A**

**Application, saving or transitional provisions**

*New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001 (No. 77, 2001)*

**Schedule 3**

**6 Application**

The amendments made by this Schedule apply to arrangements entered into on or after 1 July 2001.