Taxation Laws Amendment (Research and Development) Act 2001

Act No. 170 of 2001 as amended

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

Amendment from Act No. 57 of 2002

[Schedule 12 (item 63) amended subsection 2(3)
Schedule 12 (item 63) commenced on 1 October 2001]

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An Act to amend the law relating to taxation incentives for research and development, and for related purposes

[*Assented to 1 October 2001*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Taxation Laws Amendment (Research and Development) Act 2001*.

2 Commencement

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

(2) Division 1 of Part 3 of Schedule 2 is taken to have commenced at 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001.

(3) Division 2 of Part 3 of Schedule 2 commences, or is taken to have commenced, immediately after the commencement of Schedule 1 to the *New Business Tax System (Capital Allowances) Act 2001*.

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Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Streamlining amendments

Part 1—Objects provisions

Income Tax Assessment Act 1936

1 Before subsection 73B(1AA)

Insert:

(1AAA) The object of this section is to provide a tax incentive, in the form of a deduction, to make eligible companies more internationally competitive by:

(a) encouraging the development by eligible companies of innovative products, processes and services; and

(b) increasing investment by eligible companies in defined research and development activities; and

(c) promoting the technological advancement of eligible companies through a focus on innovation or high technical risk in defined research and development activities; and

(d) encouraging the use by eligible companies of strategic research and development planning; and

(e) creating an environment that is conducive to increased commercialisation of new processes and product technologies developed by eligible companies.

The benefits of the tax incentive are targeted by being limited to particular expenditure on certain defined activities.

Industry Research and Development Act 1986

2 Before section 39A

Insert:

39AA Object of Part

(1) The object of this Part is to complement the tax incentive provided by sections 73B, 73BA, 73I and 73Y of the *Income Tax Assessment Act 1936* by giving the Board the role to determine

whether eligible companies satisfy the requirements for the incentive.

(2) The object of sections 73B, 73BA, 73I and 73Y of the *Income Tax Assessment Act 1936* is to provide a tax incentive, in the form of a deduction, to make eligible companies more internationally competitive by:

(a) encouraging the development by eligible companies of innovative products, processes and services; and

(b) increasing investment by eligible companies in defined research and development activities; and

(c) promoting the technological advancement of eligible companies through a focus on innovation or high technical risk in defined research and development activities; and

(d) encouraging the use by eligible companies of strategic research and development planning; and

(e) creating an environment that is conducive to increased commercialisation of new processes and product technologies developed by eligible companies.

The benefits of the tax incentive are targeted by being limited to particular expenditure on certain defined activities.

Part 1A—Report on access to tax offset

Industry Research and Development Act 1986

2A After paragraph 46(2)(c)

Insert:

(ca) must set out:

(i) the total number of applications during the financial year for registration of eligible companies under section 39J that specified an intention to choose a tax offset under section 73I of the *Income Tax Assessment Act 1936*; and

(ii) the total amounts of the offsets involved;

and must include an analysis of the tax offset scheme, including the tax offset thresholds, for that year; and

2B Application

The amendment made by this Part applies to reports in relation to the financial year commencing on 1 July 2001 and all later financial years.

Part 3—Research and development plans

Income Tax Assessment Act 1936

5 After subsection 73B(2B)

Insert:

(2BA) Activities are not covered by the definition of ***research and development activities*** in subsection (1) unless they are carried on in accordance with a plan that complies with any guidelines formulated by the Board under section 39KA of the *Industry Research and Development Act 1986* that are in force at the time.

6 Application

The amendment made by item 5 applies to activities that commence to be carried on after 12 am, by legal time in the Australian Capital Territory, at the start of 1 July 2002.

Industry Research and Development Act 1986

7 After section 39K

Insert:

39KA Guidelines concerning plans for research and development activities

(1) The Board must, as soon as practicable (and, in any event, within 90 days) after the commencement of this section, formulate written guidelines setting out the requirements for plans for the purposes of subsection 73B(2BA) of the *Income Tax Assessment Act 1936*.

(1A) In formulating the guidelines, the Board must ensure that, having regard to the size and complexity of the activities that are to be carried out in accordance with the plans, the guidelines will not impose undue burdens on eligible companies that are small.

(2) The Board must cause the guidelines to be:

(a) published in the *Gazette*; and

(b) made available on request without charge, to any eligible company.

(3) The requirements may cover the following matters:

(a) who is to make the plans;

(b) who is to approve the plans;

(c) when the plans are to be made;

(d) what the plans are to contain;

(e) how the plans can be amended;

(f) any other matter.

(4) The Board may, at any time, and whether or not within 90 days after the commencement of this section, by writing, repeal, replace or amend guidelines made under subsection (1).

(5) An instrument formulating guidelines under subsection (1), or repealing, replacing or amending such guidelines, is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Schedule 2—Plant etc.

Part 1—Retrospective change to qualifying plant expenditure

Income Tax Assessment Act 1936

1 Subsection 73B(1) (at the end of the definition of plant expenditure)

Add “at least for an initial period”.

2 Application

The amendment made by this Part applies to expenditure incurred by an eligible company on:

(a) the acquisition, or the construction, under a contract entered into on or after 1 July 1985, of a unit of plant; or

(b) the construction by the company, being construction that commenced on or after 1 July 1985, of a unit of plant.

Part 2—Retrospective exemption of pilot plant from CGT provisions

Income Tax (Transitional Provisions) Act 1997

3 After section 118-10

Insert:

118-24A Pilot plant

(1) Disregard a *capital gain or *capital loss you make from a *CGT event happening in relation to pilot plant, as defined in subsection 73B(1) of the *Income Tax Assessment Act 1936*:

(a) if the CGT event happens after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999; or

(b) if:

(i) the CGT event is CGT event A1 (disposal of a CGT asset); and

(ii) the time of the event is when you entered into the contract for the disposal of the CGT asset; and

(iii) the change of ownership constituting the disposal occurred after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.

(2) However, subsection (1) does not apply to assessments for the 2001-2002 income year and later income years.

Part 3—Effective life basis for deduction

Division 1—Amendments commencing at 12 pm on 29 January 2001

Income Tax Assessment Act 1936

4 Subsection 73B(1) (at the end of paragraph (b) of the definition of aggregate research and development amount)

Add:

, where that expenditure was incurred in respect of plant:

(i) acquired, or constructed, under a contract entered into at or before 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001; or

(ii) that the company commenced to construct at or before 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001.

Note: The heading to section 73B is altered by omitting "**Expenditure**", and substituting "**Certain expenditure**".

5 Subsection 73B(1) (at the end of paragraph (ba) of the definition of aggregate research and development amount)

Add:

, where:

(i) the unit or units were acquired, or constructed, under a contract or contracts entered into by the company at or before 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001; or

(ii) the company commenced to construct the unit or units at or before 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001.

6 Subsection 73B(1) (after paragraph (ba) of the definition of aggregate research and development amount)

Insert:

(bb) the amount of any notional Division 42 deduction (as defined in section 73BJ) taken into account in working out a deduction allowed or allowable to the company under section 73BH in respect of the year of income; and

7 Subsection 73B(1)

Insert:

excluded plant expenditure means:

(a) expenditure incurred by an eligible company in:

(i) the acquisition, or the construction, under a contract entered into at or before 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001; or

(ii) the construction by the company, being construction that commenced at or before 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001;

of a unit of plant or pilot plant; and

(b) any other expenditure incurred by an eligible company in the acquisition or construction, or that otherwise forms part of the cost, of a unit of section 73BH plant (as defined by section 73BI).

8 Subsection 73B(1) (definition of research and development expenditure)

Omit "or expenditure incurred in the acquisition or construction of plant or pilot plant or", substitute ", excluded plant expenditure or expenditure incurred in the acquisition or construction of".

9 After subsection 73B(15)

Insert:

(15AAA) Subsection (15) does not apply to a unit of plant:

(a) acquired, or constructed, under a contract entered into by the company after 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001; or

(b) that the company commenced to construct after 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001.

10 After subsection 73B(15AA)

Insert:

(15AAAA) Subsection (15AA) does not apply to a unit of post-23 July 1996 pilot plant:

(a) acquired, or constructed, under a contract entered into by the company after 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001; or

(b) that the company commenced to construct after 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001.

11 After section 73B

Insert:

73BH Deduction for plant etc. used for purpose of carrying on research and development activities

Entitlement to deduction

(1) If an eligible company has a notional Division 42 deduction for a unit of section 73BH plant for a year of income, the company is entitled to a deduction under this section for the plant for the year of income.

Amount of deduction

(2) If the eligible company's aggregate research and development amount for the year of income is more than $20,000, the deduction is equal to the notional Division 42 deduction multiplied by 1.25. If not, it equals the notional Division 42 deduction.

No deduction if earlier Division 42 pooling or low-value pool deductions allowable

(3) An eligible company is not entitled to a deduction under this section for a unit of section 73BH plant for any period if the company was entitled to a deduction for the unit for any earlier period under Division 42 of the *Income Tax Assessment Act 1997*, in a case to which Subdivision 42-L or 42-M (about pooling and low-value pools) of that Division applied.

Expenditure deductible under this section not deductible under other provisions

(6) If the whole or a part of an amount of expenditure incurred by an eligible company has been allowed or is or may become allowable as a deduction under this section, that whole or part is not an allowable deduction, and is not to be taken into account in working out the amount of an allowable deduction, from the assessable income of the company of any year of income under any other provision of this Act.

Definitions

(7) In this section:

aggregate research and development amount has the same meaning as in section 73B.

eligible company has the same meaning as in section 73B.

notional Division 42 deduction has the meaning given by section 73BJ.

section 73BH plant has the meaning given by section 73BI.

73BI Meaning of section 73BH plant

(1) A unit of ***section 73BH plant*** of an eligible company is a thing for which the eligible company could (ignoring section 73BH) deduct an amount under section 42-15 of the *Income Tax Assessment Act 1997* if the following assumptions were made:

(b) the definition of ***plant*** in section 42-18 of that Act included capital works (other than buildings) to which Division 43 of the *Income Tax Assessment Act 1997* applies, or to which that Division would apply but for expenditure being incurred, or capital works being started, before a particular day;

(c) the eligible company satisfied any relevant requirement for deductibility under that Division.

(2) However, subsection (1) does not apply to a thing:

(a) acquired, or constructed, under a contract entered into by the company at or before 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001; or

(b) that the company commenced to construct at or before 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001.

(3) In this section:

eligible company has the same meaning as in section 73B.

73BJ Meaning of notional Division 42 deduction

Notional Division 42 deduction

(1) An eligible company has a ***notional Division 42 deduction*** for a year of income for a unit of section 73BH plant if it would be entitled to a deduction for the plant under section 42-15 of the *Income Tax Assessment Act 1997* for the year of income assuming the changes set out in this section were made.

First change: replacement of references to use or installation ready for use for purpose of producing assessable income

(2) The first change is that references in Division 42 of the *Income Tax Assessment Act 1997* to using the unit, or having it installed ready for use, for the purpose of producing assessable income are instead references to using the unit for the purpose of the carrying on by or on behalf of the eligible company of research and development activities.

Second change: method for calculating deduction where previous Division 42 deduction

(3) The second change is that, if the eligible company was actually entitled to a deduction under Division 42 of the *Income Tax Assessment Act 1997* for the unit of section 73BH plant for any period before the start of the first period for which the company will be entitled to a deduction for the plant under this subsection, the same method for calculating the deduction as the company was using for the unit for the earlier period is used.

Third change: treatment of expenditure to which section 73BK or 73BL applies

(4) The third change is that, in working out the cost of the unit of section 73BH plant, any amount of expenditure (***section 73BH plant expenditure***) that would otherwise form part of that cost is to be ignored or treated in some other way if section 73BK or 73BL so provides for the purposes of this section.

Fourth change: certain provisions to be ignored

(5) The fourth change is that Division 42 of the *Income Tax Assessment Act 1997* applies as if section 73BH of this Act and Subdivisions 42-L and 42-M of that Act had not been enacted.

Definition

(6) In this section:

section 73BH plant has the meaning given by section 73BI.

73BK Treatment of certain expenditure for the purposes of section 73BJ etc.

Requirement for registration under Industry Research and Development Act

(1) Section 73BH plant expenditure incurred by an eligible company in a year of income in relation to research and development activities is ignored for the purposes of section 73BJ unless:

(a) the company is registered, in relation to the year of income and in relation to those activities, under section 39J of the *Industry Research and Development Act 1986*; or

(b) the company is registered, in relation to the year of income and in relation to a project comprising or including those activities, under section 39P of that Act.

Non-arm's length expenditure

(2) If:

(a) an eligible company has incurred an amount of section 73BH plant expenditure; and

(b) the Commissioner is satisfied that:

(i) having regard to any connection between the company and the person to whom the expenditure was incurred and to any other relevant circumstances, the company and that other person were not dealing with each other at arm's length in relation to the incurring of that expenditure; and

(ii) the amount of that expenditure would have been less if the company and that other person had dealt with each other at arm's length in relation to the incurring of that expenditure;

so much only of that expenditure is to be taken into account for the purposes of section 73BJ as the Commissioner considers reasonable having regard to:

(c) the connection between the company and that other person; and

(d) the amount of the expenditure that would, in the opinion of the Commissioner, have been incurred by the company if the company and that other person had dealt with each other at arm's length in relation to the incurring of that expenditure; and

(e) such other matters as the Commissioner considers relevant.

Effect of certificate under section 39M or 39MA of Industry Research and Development Act

(3) Subject to subsection (8), if the Board gives to the Commissioner a certificate under section 39M or 39MA of the *Industry Research and Development Act 1986* in respect of particular activities in respect of which section 73BH plant expenditure has been incurred by an eligible company, the expenditure is ignored for the purposes of section 73BJ.

Effect of certificate under section 39N of Industry Research and Development Act

(4) Subject to subsection (8), if the Board gives to the Commissioner a certificate stating that a company has failed to comply with a notice under section 39N of the *Industry Research and Development Act 1986* in respect of particular activities in respect of which section 73BH plant expenditure has been incurred by an

eligible company, the expenditure is ignored for the purposes of section 73BJ.

Effect of certificate under subsection 39P(4) of Industry Research and Development Act

(5) Subject to subsection (8), if the Board gives to the Commissioner a certificate in relation to a company or companies under subsection 39P(4) of the *Industry Research and Development Act 1986*, section 73BH plant expenditure in relation to research and development activities referred to in the certificate that is incurred by that company or any of those companies after the day on which notice was given to the company concerned under paragraph 39P(5)(a) is ignored for the purposes of section 73BJ.

Effect of certificate under subsection 39PB(6) of Industry Research and Development Act

(6) Subject to subsections (7) and (8), if the Board gives to the Commissioner a certificate in relation to a company or companies under subsection 39PB(6) of the *Industry Research and Development Act 1986*, section 73BH plant expenditure in relation to research and development activities referred to in the certificate that is incurred by that company or any of those companies after the day stated in the certificate is ignored for the purposes of section 73BJ.

(7) Subsection (6) of this section does not apply to section 73BH plant expenditure in relation to research and development activities in respect of which a company is registered under section 39J of the *Industry Research and Development Act 1986*.

Effect of revocation of certificates mentioned above

(8) If a certificate mentioned in subsection (3), (4), (5) or (6) is revoked, this section applies, and is taken to have applied, as if the certificate had not been given.

Expenditure on overseas research and development activities

(9) Section 73BH plant expenditure incurred by an eligible company on overseas research and development activities is ignored for the purposes of section 73BJ unless the Board gave a provisional

certificate in respect of the expenditure under section 39ED of the *Industry Research and Development Act 1986* before the expenditure was incurred.

Expenditure incurred on behalf of another person

(10) Section 73BH plant expenditure incurred by an eligible company for the purpose of carrying on research and development activities on behalf of any other person is ignored for the purposes of section 73BJ.

(11) Subsection (10) does not apply in relation to expenditure incurred on behalf of a partnership by a partner in the partnership in that partner's capacity as such a partner.

Definitions

(12) In this section:

Board means the Industry Research and Development Board established by the *Industry Research and Development Act 1986*.

eligible company has the same meaning as in section 73B.

research and development activities has the same meaning as in section 73B.

section 73BH plant has the meaning given by section 73BI.

section 73BH plant expenditure has the meaning given by subsection 73BJ(4).

73BL Treatment of certain partnership expenditure for the purposes of section 73BJ etc.

When section applies

(1) If section 73BH plant expenditure has been incurred by a partnership in which, when the expenditure was incurred:
  (a) at least one partner was an eligible company; and
  (b) either:
    (i) each other partner was an eligible company or was a body corporate that was, or is taken to have been,

registered under section 39F of the *Industry Research and Development Act 1986* as a research agency in respect of the class of research and development activities on which the expenditure was incurred; or

(ii) the partnership was designated as a Co-operative Research Centre under the program known as the Co-operative Research Centres Program;

the following provisions have effect.

Contributions by partners

(2) Each partner is taken, for the purposes of sections 73BJ, 73C and 73CA of this Act, and Subdivision 20-A of the *Income Tax Assessment Act 1997*, to have incurred so much (if any) of the expenditure as was incurred out of money contributed by the partner (otherwise than by way of loan), whether in the year of income in which the expenditure was incurred or a previous year of income.

Recoupments or grants

(3) If the partnership has, whether before or after the commencement of this subsection, received, or become entitled to receive, a recoupment of, or a grant in respect of, the whole or any part of the expenditure, each partner is to be taken, for the purposes of sections 73BJ, 73C and 73CA of this Act, and Subdivision 20-A of the *Income Tax Assessment Act 1997*, to have received, or become entitled to receive, so much (if any) of the recoupment or grant as is worked out in accordance with the formula:

$$\frac{\text{Amount of recoupment or grant} \times \text{Partner's contribution}}{\text{Total contributions}}$$

where:

partner's contribution means the total contribution made (otherwise than by way of loan) by the partner to the funds of the partnership as at the time when the recoupment or grant was received or the entitlement to the recoupment or grant arose, as the case may be.

total contribution means the total of the contributions made (otherwise than by way of loan) by all the partners to the funds of the partnership as at the time when the recoupment or grant was received or the entitlement to the recoupment or grant arose, as the case may be.

Exception to subsections (2) and (3)

(4) If the partnership is not designated as a Co-operative Research Centre under the program known as the Co-operative Research Centres Program, subsection 73C(2A) does not apply in relation to the expenditure that a partner is taken to have incurred by subsection (2) or (3) of this section.

Effect on net income and partnership loss calculation

(5) Any expenditure that a partner is taken to have incurred by subsection (2) or (3) of this subsection, and any recoupment or grant that a partner is taken to have received or become entitled to receive, is not to be taken into account in determining the net income of the partnership or any partnership loss, as the case may be, of the year of income.

Provisions to apply to each partner, not partnership

(6) Subject to subsections (2) to (5) of this section, sections 73BJ, 73C and 73CA of this Act, and Subdivision 20-A of the *Income Tax Assessment Act 1997*, apply in relation to each such partner that is an eligible company as if that partner, and not the partnership, were, or had been, carrying on the relevant project and activities, but so apply with such modifications to those sections as are appropriate having regard to the partner's interest in the partnership.

Definitions

(7) In this section:

Board means the Industry Research and Development Board established by the *Industry Research and Development Act 1986*.

eligible company has the same meaning as in section 73B.

research and development activities has the same meaning as in section 73B.

section 73BH plant has the meaning given by section 73BI.

section 73BH plant expenditure has the meaning given by subsection 73BJ(4).

73BM Balancing adjustments: section 73BH plant

(1) If:

(a) a balancing adjustment event (within the meaning of subsection 42-30(3) of the *Income Tax Assessment Act 1997*) happens in relation to a unit of section 73BH plant of an eligible company; and

(b) one or more deductions have been allowed or are allowable to the eligible company under section 73BH for the unit for a year or years of income; and

(c) no deduction was allowable to the eligible company under section 42-15 of the *Income Tax Assessment Act 1997* for the unit for any year of income; and

(d) a deduction would be allowable to the eligible company, or an amount would be included in the eligible company's assessable income, in respect of the balancing adjustment event under Subdivision 42-F of that Act as so in force, if:

(i) the changes set out in section 73BJ were made; and

(ii) section 42-220A of the *Income Tax Assessment Act 1997* and this section (other than this paragraph) had not been enacted;

then the deduction mentioned in paragraph (d) is allowable to the eligible company, or the amount mentioned in paragraph (d) is included in the eligible company's assessable income, under this section for the year of income in which the balancing adjustment event occurs.

Note: If deductions have been allowable under both section 73BH of this Act and section 42-15 of the *Income Tax Assessment Act 1997* for a unit of section 73BH plant, the balancing adjustment provisions of Division 42 of that Act apply in a modified way: see section 42-220A of that Act.

Increase in deduction or assessable amount where section 73BH deductions allowable at 1.25 rate

(2) However, if at least one of the deductions mentioned in paragraph (1)(b) was worked out by multiplying a notional Division 42 deduction by 1.25, subsection (3) applies.

(3) Any amount (the ***eligible subsection (1) amount***):

(a) allowable as a deduction to the eligible company under subsection (1) of this section for the unit of section 73BH plant; or

(b) included in the assessable income of the eligible company under subsection (1) of this section for the unit of section 73BH plant, where that amount is so included as a result of the application of section 42-190 of the *Income Tax Assessment Act 1997* in accordance with paragraph (1)(d) of this section;

is increased by the amount worked out using the formula:

$$\frac{\text{Sum of all 1.25 rate notional Division 42 deductions}}{\text{Total decline in value}} \times \text{Eligible subsection (1) amount} \times 0.25$$

where:

sum of all 1.25 rate notional Division 42 deductions means the sum of all notional Division 42 deductions that were multiplied by 1.25 in working out the deductions mentioned in paragraph (1)(b) for the unit of section 73BH plant.

total decline in value means the cost of the unit of section 73BH plant, less its undeducted cost, just before the balancing adjustment event, where that cost and undeducted cost are the amounts taken into account in applying Subdivision 42-F of the *Income Tax Assessment Act 1997* in accordance with paragraph (1)(d) for the purpose of working out the deduction allowable to the eligible company, or the amount included in the eligible company's assessable income, under subsection (1) for the unit.

Assessability of amounts received in respect of results etc. of research and development activities

(4) Subject to subsections (5) and (6), if:

(a) an eligible company has incurred any expenditure in respect of which:

(i) a deduction under section 73BH has been allowed or is allowable to the company; or

(ii) in the case of a company whose income was exempt from tax when the expenditure was incurred—a deduction under section 73BH would have been allowable if the company's income had not been so exempt from tax; and

(b) the eligible company receives or is entitled to receive:

(i) an amount in respect of the results of any of the research and development activities in relation to which the expenditure was incurred; or

(ii) an amount attributable to the company having incurred the expenditure, including an amount that it is entitled to receive irrespective of the results of the activities;

that amount is included in the company's assessable income of the year of income in which the company received or became entitled to receive it.

(5) The reference in subsection (4) to a company receiving or being entitled to receive an amount in respect of the results of any research and development activities includes a reference to:

(a) the company receiving or being entitled to receive an amount from the grant of access to, or the grant of a right to use, any of those results; and

(b) the company receiving or being entitled to receive an amount from the disposal of, or of an interest in, any section 73BH plant or from the grant of a right to use any section 73BH plant where, as a result of the disposal or grant, another person has acquired a right of access to, or a right to use, any of those results;

but does not include a reference to the company receiving or being entitled to receive an amount in consequence of the use by the company of any of those results.

(6) If a company receives or is entitled to receive an amount as mentioned in paragraph (5)(b), the amount to be included in the company's assessable income under subsection (4) is only so much (if any) of the amount mentioned in that paragraph as exceeds the

cost to the company of acquiring or constructing the section 73BH plant concerned.

Definitions

(7) In this section:

eligible company has the same meaning as in section 73B.

notional Division 42 deduction has the meaning given by section 73BJ.

research and development activities has the same meaning as in section 73B.

section 73BH plant has the meaning given by section 73BI.

73BN Effective life calculation under Division 42 of Income Tax Assessment Act 1997 to take into account use for purpose of carrying on research and development activities

(1) This section has effect for the purposes of working out, under sections 42-105, 42-110 and 42-112 of the *Income Tax Assessment Act 1997* (whether in their application for the purposes of section 73BH of this Act or otherwise), the effective life of a unit of plant of an eligible company:

(a) that was acquired, or constructed, under a contract entered into by the company after 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001; or

(b) that the company commenced to construct after 12 pm, by legal time in the Australian Capital Territory, on 29 January 2001.

(2) If, at the time at which the effective life is worked out, it is reasonably likely that the plant will be used at some time by any eligible company for the purpose of the carrying on by or on behalf of the eligible company of research and development activities:

(a) references in sections 42-105, 42-110 and 42-112 of the *Income Tax Assessment Act 1997* to the period the unit can be used by any entity for income producing purposes include references to the period the unit can be used by any eligible company for the purpose of the carrying on by or on behalf

of the eligible company of research and development activities; and

(b) for the purposes of subsection 42-105(3) and paragraph 42-112(5)(c) of that Act, it is to be concluded that no eligible company that can use the unit for the purpose of the carrying on by or on behalf of the eligible company of research and development activities will scrap the unit, will sell it for scrap value or less or will abandon it, for reasons attributable to technical risk in carrying on those activities.

(3) In this section:

eligible company has the same meaning as in section 73B.

plant has the same meaning as in Division 42 of the *Income Tax Assessment Act 1997*.

research and development activities has the same meaning as in section 73B of this Act.

12 Sub-subparagraph 73C(6)(b)(iv)(C)

After “73B”, insert “or 73BH”.

13 Subparagraphs 73C(7)(c)(ii) and (iv)

After “73B”, insert “or 73BH”.

14 Subsection 73C(9)

Omit “and paragraph 73B(15)(a)”, substitute “, paragraph 73B(15)(a) and subsection 73BH(2)”.

15 Subsection 73C(9)

Omit “that subsection”, substitute “those subsections”.

16 Subsection 73C(10)

After “73B”, insert “or 73BH”.

17 Subsection 73CA(2)

After “73B”, insert “or 73BH,”.

18 Subsection 73CB(5)

After “73B”, insert “or 73BH”.

19 After section 73E

Insert:

73EB Section 73BM roll-over relief on disposal of plant to another member of wholly-owned group

Roll-over relief where CGT roll-over relief allowed

(1) This section applies to the disposal of a unit of section 73BH plant by an eligible company (the ***transferor***) to another eligible company (the ***transferee***) if:

(a) the disposal involves a CGT event for which there is a roll-over under Subdivision 126-B of the *Income Tax Assessment Act 1997* (or would be, disregarding the exemption in section 118-5 of that Act, so far as it relates to a car, motor cycle or similar vehicle, or to an interest in one); and

(b) Subdivision 170-D of the *Income Tax Assessment Act 1997* does not apply to the disposal; and

(c) subject to subsection (5), a deduction or deductions have been allowed or are allowable to the transferor in respect of the unit of plant under section 73BH; and

(d) no deduction has been allowed or is allowable to the transferor in respect of the unit of plant under Division 42 (Depreciation) of the *Income Tax Assessment Act 1997*.

No balancing charges for transferor

(2) Section 73BM does not apply in respect of the disposal of the unit by the transferor.

Effect on transferee

(3) The transferee is entitled to a deduction under section 73BH worked out using the same effective life and method for working out deductions as the transferor was using in respect of the plant under that section.

Additional consequences

(4) For the purposes of Division 45 of the *Income Tax Assessment Act 1997*:

(a) if the transferor, or a partnership of which the transferor was a member, leased the unit of plant to another entity for most of the time when the transferor or partnership held the unit—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 unit to another entity—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 units of plant of that kind—the main business of the transferee is taken also to have been to lease units of plant of that kind.

Subsequent applications of roll-over relief—relief available even if no deduction for subsequent transferor

(5) If, apart from this subsection, this section has applied to the disposal of the unit of section 73BH plant to the transferee, then, in working out whether it applies to a subsequent disposal of the unit of plant by:

(a) the transferee; or

(b) one or more subsequent successive transferees;

this section has effect as if paragraph (1)(c) (which deals with deductions) were ignored.

Notice to allow transferee to work out how this section applies

(6) The transferor must give the transferee a notice containing enough information about the transferor's holding of the unit of plant for the transferee to work out how this section applies to the transferee's holding of it.

(7) The transferor must give the notice within 6 months after the end of the transferee's year of income in which the disposal mentioned in subsection (1) occurred, or within a longer period allowed by the Commissioner.

(8) The transferee must keep the notice until the end of 5 years after the earlier of these events:

(a) the transferee disposes of the unit;

(b) the unit is lost or destroyed.

Penalty: 30 penalty units.

(9) The *Criminal Code* applies to the offence in subsection (8).

20 Subsection 82AM(2)

After “73B”, insert “or 73BH”.

21 Subsection 170(10A)

After “73B,”, insert “73BH, 73BM,”.

22 Subsection 632(2)

Omit “or 73B”, substitute “, 73B or 73BH”.

23 Subsection 642(2)

After “73B,”, insert “73BH,”.

24 Subsection 245-140(1) of Schedule 2C (table, column 2)

After “73B”, insert “or 73BH”.

25 Subsection 57-85(3) of Schedule 2D (table item 13)

Omit “**Section 73B**”, substitute “**Sections 73B and 73BH**”.

26 Subsection 57-110(2) of Schedule 2D (table item 7, column 3)

After “**and (27)**”, insert “**and section 73BM**”.

27 Subsection 57-110(2) of Schedule 2D (table item 7, column 4)

After “**Section 73B**”, insert “**or 73BH**”.

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28 Section 10-5 (table item headed “research & development”)

After “disposal” insert “etc.”.

29 Section 10-5 (table item headed “research & development”)

After “**to (27C),**”, insert “**73BM**,”.

30 Section 10-5 (table item headed “research & development”)

After “**73B(27A), (27C)**”, insert “**, 73BM(4), (6)**”.

31 Section 20-5 (table item 5)

After “**73B(27A)**”, insert “**, 73BM(4)**”.

32 Subsection 20-30(2) (table item 2.8)

After “**73B**”, insert “**or 73BH**”.

33 At the end of section 42-25

Add:

(4) If you can deduct an amount for the *plant under section 73BH of the *Income Tax Assessment Act 1936*:

(a) for a period before the first period for which you can deduct an amount for the plant under this Division; or

(b) for a period that starts at the same time as the first period for which you can deduct an amount for the plant under this Division;

you must, for the purposes of this Division, use the same method as you used, or use, for the plant for the purposes of working out the deduction under section 73BH.

34 Subsection 42-45(2)

Omit “unless you have elected under subsection 73B(18) of the *Income Tax Assessment Act 1936* that the research and development provisions are not to apply to the plant”, substitute “, for which a deduction would be allowable under section 73B of the *Income Tax Assessment Act 1936*, unless you have made an election under subsection 73B(18) of that Act that that section does not apply to the plant”.

35 Section 42-65 (table item 9)

Omit “the research and development provisions”, substitute “section 73B of the *Income Tax Assessment Act 1936*”.

36 Paragraph 42-85(2)(a)

Omit “section 73B”, substitute “sections 73B and 73BH”.

37 At the end of paragraph 42-85(2)(a)

Add:

Note: Paragraph (a) does not have the effect that deductions for the same amount of any such expenditure will be allowable under both this Division and section 73B or 73BH. Such an outcome is prevented by section 42-15 (including as applied by section 73BJ for the purposes of section 73BH) and subsections 73B(20) and 73BH(6).

38 At the end of section 42-100

Add:

Note: Section 73BN of the *Income Tax Assessment Act 1936* modifies the way in which the effective life of plant is worked out for certain companies. That section applies if it is reasonably likely that the plant will be used for the purpose of the carrying on by or on behalf of the company of research and development activities (as defined in section 73B of that Act).

39 After section 42-220

Insert:

42-220A Plant for which there are deductions under section 73BH of Income Tax Assessment Act 1936 (research and development)

Section applies if deductions for depreciation under section 73BH

(1) This section applies if you have deducted or can deduct an amount for the *plant under section 73BH of the *Income Tax Assessment Act 1936* for any income year.

Application of sections 42-190 to 42-197 to take into account section 73BH deductions

(2) If this section applies, you must, in applying sections 42-190 to 42-197 in relation to the *plant, assume that the changes set out in subsections (3) to (5) of this section were made.

First change

(3) The first change is that the references in any of sections 42-190 to 42-197, and in sections 42-175 and 42-200 and subsection 110-55(4) as applied for the purposes of those sections, to amounts you have deducted or can deduct for depreciation of the *plant include references to the notional Division 42 deductions taken into account under section 73BH of the *Income Tax Assessment Act 1936* in working out:

(a) amounts you have deducted or can deduct for the plant under that section; and

(b) if section 73EB of that Act applied to the disposal to you of the plant—amounts the transferor, and any earlier successive transferor, have deducted or can deduct for the plant under section 73BH.

Second change

(4) The second change is that the reference in paragraph 42-175(1)(b) to any further amounts you could have deducted for depreciation of the plant for any period you were its owner or *quasi-owner and used it, assuming you used it wholly for the purpose of producing assessable income during that period, includes a reference to:

(a) any further amounts you could have deducted for the plant under section 73BH of the *Income Tax Assessment Act 1936*, for any period you were its owner or *quasi-owner and used it, assuming that you used it wholly for the purpose of the carrying on by or on behalf of you of research and development activities (within the meaning of section 73B of that Act); and

(b) if section 73EB of that Act applied to the disposal to you of the plant—any further amounts the transferor, and any earlier successive transferor, could have deducted for the plant under section 73BH of that Act for any period assuming that

person was its owner or *quasi-owner and used it wholly for the purpose of the carrying on by or on behalf of that person of research and development activities.

Third change

(5) The third change is that the reference in section 42-195 to the extent to which you used the plant other than for the purpose of producing assessable income is instead a reference to the extent to which you used the plant other than for that purpose or the purpose of the carrying on by or on behalf of you of research and development activities.

Increase in amounts deductible or certain assessable amounts where 1.25 rate deductions under section 73BH

(6) If:

(a) this section applies; and

(b) the amount you have deducted or can deduct for the *plant under section 73BH of the *Income Tax Assessment Act 1936*, as mentioned in subsection (1) of this section, for at least one income year was worked out by multiplying a notional Division 42 deduction (within the meaning of section 73BJ) by 1.25;

then subsection (7) applies.

(7) Any amount (the ***eligible assessable/deductible amount***) included in your assessable income for the plant under section 42-190 (as applied in accordance with subsection (2) of this section), or any amount you can deduct for the *plant under section 42-195 or 42-197 (as applied in accordance with subsection (2) of this section), is increased by the amount worked out using the formula:

$$\frac{\text{Sum of all 1.25 rate notional Division 42 deductions}}{\text{Total decline in value}} \times \text{Eligible assessable / deductible amount} \times 0.25$$

where:

sum of all 1.25 rate notional Division 42 deductions means the sum of all notional Division 42 deductions (see paragraph (6)(b)) that were multiplied by 1.25 in working out the amounts you have

deducted or can deduct for the plant as mentioned in subsection (1).

total decline in value means the *cost of the plant, less its *undeducted cost, just before the balancing adjustment event (after applying subsection (2) of this section).

Note: The heading to section 42-220 is replaced by the following heading "**Plant for which there are deductions under section 73B of *Income Tax Assessment Act 1936* (research and development)**".

40 At the end of section 42-365

Add:

(2) However, you cannot allocate *plant to a *pool if you can deduct an amount for the plant under section 73BH of the *Income Tax Assessment Act 1936* for a period before, or starting at the same time as, the allocation would have effect.

41 At the end of section 42-455

Add:

(4) However, you cannot choose to allocate *low-cost plant to a *low-value pool if you can deduct an amount for the plant under section 73BH of the *Income Tax Assessment Act 1936* for a period before, or starting at the same time as, the allocation would have effect.

42 Paragraph 43-70(2)(g)

After "73B", insert "or 73BH".

43 Subsection 108-55(1) (table item 3)

After "73B", insert "or 73BM".

44 Subsections 118-35(1), (2) and (3)

After "73B(27A)", insert "or 73BM(4)".

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45 Subparagraph 39EB(3)(c)(ii)

After "73B", insert "or 73BH".

46 Subsection 39EC(1)

After “73B”, insert “or 73BH”.

47 Subparagraph 39EC(2)(d)(iii)

After “73B”, insert “or 73BH”.

48 Paragraphs 39EE(1)(c) and (2)(b) and 39EF(2)(b)

After “73B”, insert “or 73BH”.

49 Subsection 39HH(2) (note)

After “73B”, insert “or 73BH”.

50 Paragraph 39N(3)(b)

Omit “subsection 73B(33A)”, substitute “subsections 73B(33A) and 73BM(4)”.

51 Application

The amendments made by this Division to the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* apply to assessments for the income year in which 29 January 2001 occurs and for later income years.

Division 2—Amendments commencing immediately after the New Business Tax System (Capital Allowances) Act 2001

Income Tax Assessment Act 1936

52 Subsection 73B(1) (after paragraph (ba) of the definition of aggregate research and development amount)

Insert:

(baa) the amount of any notional Division 40 deduction (as defined in section 73BC) taken into account in working out a deduction allowed or allowable to the company under section 73BA in respect of the year of income, or that would have been so allowed or allowable if the company had not chosen a tax offset under section 73BI; and

53 Subsection 73B(1) (paragraph (b) of the definition of excluded plant expenditure)

Before “unit”, insert “section 73BA depreciating asset (as defined by section 73BB) or a”.

54 After section 73B

Insert:

73BA Deduction for certain assets etc. used for the purpose of carrying on research and development activities

Object

(1) The object of this section is to provide a tax incentive, in the form of a deduction, to make eligible companies more internationally competitive by:

(a) encouraging the development by eligible companies of innovative products, processes and services; and

(b) increasing investment by eligible companies in defined research and development activities; and

(c) promoting the technological advancement of eligible companies through a focus on innovation and high technical risk in defined research and development activities; and

(d) encouraging the use by eligible companies of strategic research and development planning; and

(e) creating an environment that is conducive to increased commercialisation of new processes and product technologies developed by eligible companies.

The benefits of the tax incentive are targeted by being limited to particular expenditure on certain defined activities.

Entitlement to deduction

(2) If an eligible company has a notional Division 40 deduction for a section 73BA depreciating asset for a year of income, the company is entitled to a deduction under this section for the asset for the year of income.

Amount of deduction

(3) If the eligible company's aggregate research and development amount for the year of income is more than $20,000, the deduction is equal to the notional Division 40 deduction multiplied by 1.25. If not, it equals the notional Division 40 deduction.

No deduction if earlier STS or Division 40 low-value pool deductions allowable

(4) An eligible company is not entitled to a deduction under this section for a section 73BA depreciating asset for any period if the company was entitled to:

(a) a deduction for the asset for any earlier period under Subdivision 328-D (about STS taxpayers) of the *Income Tax Assessment Act 1997*; or

(b) a deduction for the asset for any earlier period under Division 40 of that Act, in a case to which section 40-440 (about low-value pools) of that Act applied.

Expenditure deductible etc. under this section not deductible under other provisions

(7) If the whole or a part of an amount of expenditure incurred by an eligible company:

(a) has been allowed or is or may become allowable as a deduction under this section; or

(b) would have been so allowed or become so allowable if the company had not chosen a tax offset under section 73I;

that whole or part is not an allowable deduction, and is not to be taken into account in working out the amount of an allowable deduction, from the assessable income of the company of any year of income under any other provision of this Act.

Definitions

(8) In this section:

aggregate research and development amount has the same meaning as in section 73B.

eligible company has the same meaning as in section 73B.

notional Division 40 deduction has the meaning given by section 73BC.

research and development activities has the same meaning as in section 73B.

section 73BA depreciating asset has the meaning given by section 73BB.

73BB Meaning of section 73BA depreciating asset

(1) A ***section 73BA depreciating asset*** of an eligible company is an asset for which the eligible company could (ignoring section 73BA) deduct an amount under section 40-25 of the *Income Tax Assessment Act 1997* if the following assumptions were made:

(b) contrary to paragraph 40-30(1)(c) and subsection 40-30(2) of that Act, all intangible assets were excluded from the definition of ***depreciating asset*** in section 40-30 of that Act;

(c) subsection 40-45(2) of that Act did not, except in the case of buildings, prevent that Division from applying to capital works to which Division 43 of the *Income Tax Assessment Act 1997* applies, or to which that Division would apply but for expenditure being incurred, or capital works being started, before a particular day;

(d) the eligible company satisfied any relevant requirement for deductibility under that Division.

(2) In this section:

eligible company has the same meaning as in section 73B.

73BC Meaning of notional Division 40 deduction

(1) An eligible company has a ***notional Division 40 deduction*** for a section 73BA depreciating asset for a year of income if it would be entitled to a deduction under section 40-25 of the *Income Tax Assessment Act 1997* for the asset for the year of income assuming the changes set out in this section were made.

First change: replacement of references to use or installation ready for use for purpose of producing assessable income or for taxable purpose

(2) The first change is that references in Division 40 of the *Income Tax Assessment Act 1997* (other than for the purposes of sections 40-100, 40-105 and 40-110) to using the asset, or having it installed ready for use:

(a) for the purpose of producing assessable income; or

(b) for a taxable purpose;

are instead references to using the asset for the purpose of the carrying on by or on behalf of the eligible company of research and development activities.

Note: Section 73BG modifies sections 40-100, 40-105 and 40-110 (about effective life) so that a reference to the research and development purpose is added to the existing references, rather than replacing them.

Second change: method for working out decline in value where previous Division 40 deduction

(3) The second change is that, if the eligible company was actually entitled to a deduction under Division 40 of the *Income Tax Assessment Act 1997* for the section 73BA depreciating asset for any period before the start of the first period for which the company will be entitled to a deduction for the asset under this subsection, the same method for working out the decline in value as the company was using for the asset for the earlier period is used.

Third change: treatment of expenditure to which section 73BD or 73BE applies

(4) The third change is that, in working out the cost of the section 73BA depreciating asset, any amount of expenditure (***section 73BA depreciating asset expenditure***) that would otherwise form part of that cost is to be ignored or treated in some other way if section 73BD or 73BE so provides for the purposes of this section.

Fourth change: certain provisions to be ignored

(5) The fourth change is that Division 40 of the *Income Tax Assessment Act 1997* applies as if section 73BA of this Act, and section 40-425 and Subdivision 328-D of that Act, had not been enacted.

(6) In this section:

eligible company has the same meaning as in section 73B.

research and development activities has the same meaning as in section 73B.

section 73BA depreciating asset has the meaning given by section 73BB.

73BD Treatment of certain expenditure for the purposes of section 73BC etc.

Requirement for registration under Industry Research and Development Act

(1) Section 73BA depreciating asset expenditure incurred by an eligible company in a year of income in relation to research and development activities is ignored for the purposes of section 73BC unless:

(a) the company is registered, in relation to the year of income and in relation to those activities, under section 39J of the *Industry Research and Development Act 1986*; or

(b) the company is registered, in relation to the year of income and in relation to a project comprising or including those activities, under section 39P of that Act.

Non-arm's length expenditure

(2) If:

(a) an eligible company has incurred an amount of section 73BA depreciating asset expenditure; and

(b) the Commissioner is satisfied that:

(i) having regard to any connection between the company and the person to whom the expenditure was incurred

and to any other relevant circumstances, the company and that other person were not dealing with each other at arm's length in relation to the incurring of that expenditure; and

(ii) the amount of that expenditure would have been less if the company and that other person had dealt with each other at arm's length in relation to the incurring of that expenditure;

so much only of that expenditure is to be taken into account for the purposes of section 73BC as the Commissioner considers reasonable having regard to:

(c) the connection between the company and that other person; and

(d) the amount of the expenditure that would, in the opinion of the Commissioner, have been incurred by the company if the company and that other person had dealt with each other at arm's length in relation to the incurring of that expenditure; and

(e) such other matters as the Commissioner considers relevant.

Effect of certificate under section 39M or 39MA of Industry Research and Development Act

(3) Subject to subsection (8), if the Board gives to the Commissioner a certificate under section 39M or 39MA of the *Industry Research and Development Act 1986* in respect of particular activities in respect of which section 73BA depreciating asset expenditure has been incurred by an eligible company, the expenditure is ignored for the purposes of section 73BC.

Effect of certificate under section 39N of Industry Research and Development Act

(4) Subject to subsection (8), if the Board gives to the Commissioner a certificate stating that a company has failed to comply with a notice under section 39N of the *Industry Research and Development Act 1986* in respect of particular activities in respect of which section 73BA depreciating asset expenditure has been incurred by an eligible company, the expenditure is ignored for the purposes of section 73BC.

Effect of certificate under subsection 39P(4) of Industry Research and Development Act

(5) Subject to subsection (8), if the Board gives to the Commissioner a certificate in relation to a company or companies under subsection 39P(4) of the *Industry Research and Development Act 1986*, section 73BA depreciating asset expenditure in relation to research and development activities referred to in the certificate that is incurred by that company or any of those companies after the day on which notice was given to the company concerned under paragraph 39P(5)(a) is ignored for the purposes of section 73BC.

Effect of certificate under subsection 39PB(6) of Industry Research and Development Act

(6) Subject to subsections (7) and (8), if the Board gives to the Commissioner a certificate in relation to a company or companies under subsection 39PB(6) of the *Industry Research and Development Act 1986*, section 73BA depreciating asset expenditure in relation to research and development activities referred to in the certificate that is incurred by that company or any of those companies after the day stated in the certificate is ignored for the purposes of section 73BC.

(7) Subsection (6) of this section does not apply to section 73BA depreciating asset expenditure in relation to research and development activities in respect of which a company is registered under section 39J of the *Industry Research and Development Act 1986*.

Effect of revocation of certificates mentioned above

(8) If a certificate mentioned in subsection (3), (4), (5) or (6) is revoked, this section applies, and is taken to have applied, as if the certificate had not been given.

Expenditure on overseas research and development activities

(9) Section 73BA depreciating asset expenditure incurred by an eligible company on overseas research and development activities is ignored for the purposes of section 73BC unless the Board gave a provisional certificate in respect of the expenditure under

section 39ED of the *Industry Research and Development Act 1986* before the expenditure was incurred.

Expenditure incurred on behalf of another person

(10) Section 73BA depreciating asset expenditure incurred by an eligible company for the purpose of carrying on research and development activities on behalf of any other person is ignored for the purposes of section 73BC to the company.

(11) Subsection (10) does not apply in relation to expenditure incurred on behalf of a partnership by a partner in the partnership in that partner's capacity as such a partner.

Definitions

(12) In this section:

Board means the Industry Research and Development Board established by the *Industry Research and Development Act 1986*.

eligible company has the same meaning as in section 73B.

research and development activities has the same meaning as in section 73B.

section 73BA depreciating asset has the meaning given by section 73BB.

section 73BA depreciating asset expenditure has the meaning given by subsection 73BC(4).

73BE Treatment of certain partnership expenditure for the purposes of section 73BC etc.

When section applies

(1) If section 73BA depreciating asset expenditure has been incurred by a partnership in which, when the expenditure was incurred:
  (a) at least one partner was an eligible company; and
  (b) either:
    (i) each other partner was an eligible company or was a body corporate that was, or is taken to have been,

registered under section 39F of the *Industry Research and Development Act 1986* as a research agency in respect of the class of research and development activities on which the expenditure was incurred; or

(ii) the partnership was designated as a Co-operative Research Centre under the program known as the Co-operative Research Centres Program;

the following provisions have effect.

Contributions by partners

(2) Each partner is taken, for the purposes of sections 73BC, 73C and 73CA of this Act, and Subdivision 20-A of the *Income Tax Assessment Act 1997*, to have incurred so much (if any) of the expenditure as was incurred out of money contributed by the partner (otherwise than by way of loan), whether in the year of income in which the expenditure was incurred or a previous year of income.

Recoupments or grants

(3) If the partnership has, whether before or after the commencement of this subsection, received, or become entitled to receive, a recoupment of, or a grant in respect of, the whole or any part of the expenditure, each partner is to be taken, for the purposes of sections 73BC, 73C and 73CA of this Act, and Subdivision 20-A of the *Income Tax Assessment Act 1997*, to have received, or become entitled to receive, so much (if any) of the recoupment or grant as is worked out in accordance with the formula:

$$\frac{\text{Amount of recoupment or grant} \times \text{Partner's contribution}}{\text{Total contributions}}$$

where:

partner's contribution means the total contribution made (otherwise than by way of loan) by the partner to the funds of the partnership as at the time when the recoupment or grant was received or the entitlement to the recoupment or grant arose, as the case may be.

total contribution means the total of the contributions made (otherwise than by way of loan) by all the partners to the funds of the partnership as at the time when the recoupment or grant was received or the entitlement to the recoupment or grant arose, as the case may be.

Exception to subsections (2) and (3)

(4) If the partnership is not designated as a Co-operative Research Centre under the program known as the Co-operative Research Centres Program, subsection 73C(2A) does not apply in relation to the expenditure that a partner is taken to have incurred by subsection (2) or (3) of this section.

Effect on net income and partnership loss calculation

(5) Any expenditure that a partner is taken to have incurred by subsection (2) or (3) of this subsection, and any recoupment or grant that a partner is taken to have received or become entitled to receive, is not to be taken into account in determining the net income of the partnership or any partnership loss, as the case may be, of the year of income.

Provisions to apply to each partner, not partnership

(6) Subject to subsections (2) to (5) of this section, sections 73BC, 73C and 73CA of this Act, and Subdivision 20-A of the *Income Tax Assessment Act 1997*, apply in relation to each such partner that is an eligible company as if that partner, and not the partnership, were, or had been, carrying on the relevant project and activities, but so apply with such modifications to those sections as are appropriate having regard to the partner's interest in the partnership.

Definitions

(7) In this section:

Board means the Industry Research and Development Board established by the *Industry Research and Development Act 1986*.

eligible company has the same meaning as in section 73B.

research and development activities has the same meaning as in section 73B.

section 73BA depreciating asset has the meaning given by section 73BB.

section 73BA depreciating asset expenditure has the meaning given by subsection 73BC(4).

73BF Balancing adjustments: section 73BA depreciating assets

(1) If:

(a) a balancing adjustment event (within the meaning of section 40-295 of the *Income Tax Assessment Act 1997*) happens in relation to a section 73BA depreciating asset of an eligible company; and

(b) one or more deductions have been allowed or are allowable to the eligible company under section 73BA or 73BH for the asset for a year or years of income, or would have been so allowed or allowable if the company had not chosen a tax offset under section 73BI; and

(c) no deduction:

(i) is allowable to the eligible company under section 40-25 of the *Income Tax Assessment Act 1997* for the asset for any year of income; or

(ii) was allowable to the eligible company under section 42-15 of the *Income Tax Assessment Act 1997*, as in force before its repeal by the *New Business Tax System (Capital Allowances) Act 2001*, for the asset for any year of income; and

(d) a deduction would be allowable to the eligible company, or an amount would be included in the eligible company's assessable income, in respect of the balancing adjustment event under Subdivision 40-D of that Act if:

(i) the changes set out in section 73BC were made; and

(ii) section 40-292 of the *Income Tax Assessment Act 1997* and this section (other than this paragraph) had not been enacted;

then the deduction mentioned in paragraph (d) is allowable to the eligible company, or the amount mentioned in paragraph (d) is

included in the eligible company's assessable income, under this section for the year of income in which the balancing adjustment event occurs.

Note: If deductions have been allowed etc. under both section 73BA or 73BH of this Act and section 40-25 of the *Income Tax Assessment Act 1997* for a section 73BA depreciating asset, the balancing adjustment provisions of Division 40 of that Act apply in a modified way: see section 40-292 of that Act.

Increase in deduction or assessable amount where section 73BA deductions allowable at 1.25 rate

(2) However, if at least one of the deductions mentioned in paragraph (1)(b) was worked out by multiplying a notional Division 40 deduction or a notional Division 42 deduction by 1.25, subsection (3) applies.

(3) Any amount (the ***subsection (1) amount***) allowable as a deduction to, or included in the assessable income of, the eligible company under subsection (1) of this section for the section 73BA depreciating asset is increased by the amount worked out using the formula:

$$\frac{\text{Sum of all 1.25 rate notional Division 40 / 42 deductions}}{\text{Total decline in value}} \times \text{Adjusted subsection (1) amount} \times 0.25$$

where:

adjusted subsection (1) amount means:

(a) if the subsection (1) amount is a deduction—the amount of the deduction; or

(b) if the subsection (1) amount is an amount included in the eligible company's assessable income—so much of the subsection (1) amount as does not exceed the formula component ***total decline in value***.

sum of all 1.25 rate notional Division 40/42 deductions means the sum of all notional Division 40 deductions or notional Division 42 deductions that were multiplied by 1.25 in working out the

deductions mentioned in paragraph (1)(b) for the section 73BA depreciating asset.

total decline in value means the cost of the section 73BA depreciating asset, less its adjustable value, just before the balancing adjustment event, where that cost and adjustable value are the amounts taken into account in applying Subdivision 40-D of the *Income Tax Assessment Act 1997* in accordance with paragraph (1)(d) for the purpose of working out the subsection (1) amount.

Assessability of amounts received in respect of results etc. of research and development activities

(4) Subject to subsections (5) and (6), if:

(a) an eligible company has incurred any expenditure in respect of which:

(i) a deduction under section 73BA or 73BH has been allowed or is allowable to the company, or would have been so allowed or allowable if the company had not chosen a tax offset under section 73I; or

(ii) in the case of a company whose income was exempt from tax when the expenditure was incurred—a deduction under section 73BA or 73BH would have been allowable if the company's income had not been so exempt from tax; and

(b) the eligible company receives or is entitled to receive:

(i) an amount in respect of the results of any of the research and development activities in relation to which the expenditure was incurred; or

(ii) an amount attributable to the company having incurred the expenditure, including an amount that it is entitled to receive irrespective of the results of the activities;

that amount is included in the company's assessable income of the year of income in which the company received or became entitled to receive it.

(5) The reference in subsection (4) to a company receiving or being entitled to receive an amount in respect of the results of any research and development activities includes a reference to:

(a) the company receiving or being entitled to receive an amount from the grant of access to, or the grant of a right to use, any of those results; and

(b) the company receiving or being entitled to receive an amount from the disposal of, or of an interest in, any section 73BA depreciating asset or from the grant of a right to use any section 73BA depreciating asset where, as a result of the disposal or grant, another person has acquired a right of access to, or a right to use, any of those results;

but does not include a reference to the company receiving or being entitled to receive an amount in consequence of the use by the company of any of those results.

(6) If a company receives or is entitled to receive an amount as mentioned in paragraph (5)(b), the amount to be included in the company's assessable income under subsection (4) is only so much (if any) of the amount mentioned in that paragraph as exceeds the cost to the company of acquiring or constructing the section 73BA depreciating asset concerned.

Definitions

(7) In this section:

eligible company has the same meaning as in section 73B.

notional Division 40 deduction has the meaning given by section 73BC.

notional Division 42 deduction has the meaning given by section 73BJ.

research and development activities has the same meaning as in section 73B.

section 73BA depreciating asset has the meaning given by section 73BB.

73BG Effective life calculation under Division 40 of Income Tax Assessment Act 1997 to take into account use for purpose of carrying on research and development activities

(1) This section has effect for the purposes of working out, under sections 40-100, 40-105 and 40-110 of the *Income Tax Assessment Act 1997* (whether in their application for the purposes of section 73BA of this Act or otherwise), the effective life of a depreciating asset of an eligible company.

(2) If, at the time at which the effective life is worked out, it is reasonably likely that the depreciating asset will be used at some time by any eligible company for the purpose of the carrying on by or on behalf of the eligible company of research and development activities:

(a) the references in:

(i) item 1.1 of the table in section 40-10 of the *Income Tax Assessment Act 1997* to the period the asset can be used to produce income; and

(ii) sections 40-100, 40-105 and 40-110 of that Act to the period the asset can be used by any entity for a taxable purpose or for the purpose of producing exempt income;

include a reference to the period the asset can be used by any eligible company for the purpose of the carrying on by or on behalf of the eligible company of research and development activities; and

(b) in applying paragraph 40-100(4)(c) and subsection 40-105(2) of the *Income Tax Assessment Act 1997*, it is to be concluded that no eligible company that can use the asset for the purpose of the carrying on by or on behalf of the eligible company of research and development activities will scrap the asset, will sell it for scrap value or less or will abandon it, for reasons attributable to technical risk in the carrying on of those activities.

(3) In this section:

depreciating asset has the same meaning as in Division 40 of the *Income Tax Assessment Act 1997*.

eligible company has the same meaning as in section 73B.

research and development activities has the same meaning as in section 73B of this Act.

55 Sub-subparagraph 73C(6)(b)(iv)(C)

Omit "or 73BH", substitute ", 73BA or 73BH".

56 Subparagraphs 73C(7)(c)(ii) and (iv)

Omit "or 73BH", substitute ", 73BA or 73BH".

57 Subsection 73C(9)

Omit "and subsection 73BH(2)", substitute ", paragraph 73B(15)(a) and subsections 73BA(3) and 73BH(2)".

58 Subsection 73C(10)

Omit "or 73BH", substitute ", 73BA or 73BH".

59 Subsection 73CA(2)

Omit "or 73BH,", substitute ", 73BA or 73BH,".

60 Subsection 73CB(5)

Omit "or 73BH", substitute ", 73BA or 73BH".

61 After section 73E

Insert:

73EA Section 73BF roll-over relief on disposal of asset to another member of wholly-owned group

Roll-over relief where CGT roll-over relief allowed

(1) This section applies to the disposal of a section 73BA depreciating asset by an eligible company (the ***transferor***) to another eligible company (the ***transferee***) if:

(a) the disposal involves a CGT event for which there is a roll-over under Subdivision 126-B of the *Income Tax Assessment Act 1997* (or would be, disregarding the exemption in section 118-5 of that Act, so far as it relates to a car, motor cycle or similar vehicle, or to an interest in one); and

(b) Subdivision 170-D of the *Income Tax Assessment Act 1997* does not apply to the disposal; and

(c) subject to subsection (5), a deduction or deductions have been allowed or are allowable to the transferor in respect of the asset under section 73BA or 73BH, or would have been so allowed or allowable if the company had not chosen a tax offset under section 73I; and

(d) no deduction has been allowed or is allowable to the transferor in respect of the asset under:

(i) Division 40 (capital allowances) of the *Income Tax Assessment Act 1997*; or

(ii) Division 42 (depreciation of plant) of that Act as in force before its repeal by the *New Business Tax System (Capital Allowances) Act 2001*.

No balancing charges for transferor

(2) Section 73BF does not apply in respect of the disposal of the asset by the transferor.

Effect on transferee

(3) The transferee is entitled to a deduction under section 73BA worked out using the same effective life and method for working out decline in value as the transferor was using in respect of the asset under that section.

Additional consequences

(4) For the purposes of Division 45 of the *Income Tax Assessment Act 1997*:

(a) if the transferor, or a partnership of which the transferor was a member, leased the asset to another entity for most of the time when the transferor or partnership held the asset—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 asset to another entity—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 of

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

Subsequent applications of roll-over relief—relief available even if no deduction for subsequent transferor

(5) If, apart from this subsection, this section has applied to the disposal of the section 73BA depreciating asset to the transferee, then, in working out whether it applies to a subsequent disposal of the asset by:

(a) the transferee; or

(b) one or more subsequent successive transferees;

this section has effect as if paragraph (1)(c) (which deals with deductions) were ignored.

Notice to allow transferee to work out how this section applies

(6) The transferor must give the transferee a notice containing enough information about the transferor's holding of the asset for the transferee to work out how this section applies to the transferee's holding of it.

(7) The transferor must give the notice within 6 months after the end of the transferee's year of income in which the disposal mentioned in subsection (1) occurred, or within a longer period allowed by the Commissioner.

(8) The transferee must keep the notice until the end of 5 years after the earlier of these events:

(a) the transferee disposes of the asset;

(b) the asset is lost or destroyed.

Penalty: 30 penalty units.

(9) The *Criminal Code* applies to the offence in subsection (8).

62 Subsection 82AM(2)

Omit "or 73BH", substitute ", 73BA or 73BH".

63 Subsection 170(10A)

Before "73BM,", insert ", 73BA, 73BF,".

64 Subsection 632(2)

Omit "or 73BH", substitute ", 73BA or 73BH".

65 Subsection 642(2)

After "73B,", insert "73BA,".

66 Subsection 57-85(3) of Schedule 2D (table item 13)

Omit "**and 73BH**", substitute "**, 73BA, 73BH and 73Y**".

67 Subsection 57-110(2) of Schedule 2D (table item 7)

Omit "**and section 73BM**", substitute "**and sections 73BF and 73BM**".

68 Subsection 57-110(2) of Schedule 2D (table item 7)

Omit "**or 73BH**", substitute "**, 73BA or 73BH**".

Income Tax Assessment Act 1997

69 Section 10-5 (table item headed "research & development")

After "plant", insert ", assets".

70 Section 10-5 (table item headed "research & development")

After "to (27C),", insert "73BF,".

71 Section 10-5 (table item headed "research & development")

Before "**, 73BM(4)**", insert "**, 73BF(4), (6)**".

72 Section 20-5 (table item 5)

Before "**, 73BM(4)**", insert "**, 73BF(4),**".

73 Subsection 20-30(2) (table item 2.8)

Omit "**or 73BH**", substitute "**, 73BA or 73BH**".

74 Subsection 40-45(1)

Repeal the subsection.

75 At the end of section 40-65

Add:

Exception: expenditure deductible under research and development provisions

(6) If you can deduct an amount under section 73BA of the *Income Tax Assessment Act 1936* (or could if you had not chosen a tax offset under section 73I of that Act) for the asset:

(a) for a period before the first period for which you can deduct an amount for the asset under this Division; or

(b) for a period that starts at the same time as the first period for which you can deduct an amount for the asset under this Division;

you must, for the purposes of this Division, use the same method as you used, or use, for the asset for the purposes of working out the deduction under section 73BA.

76 At the end of section 40-95

Add:

Note: Section 73BG of the *Income Tax Assessment Act 1936* modifies the way in which the effective life of a depreciating asset is worked out for certain companies. That section applies if it is reasonably likely that the asset will be used for the purpose of the carrying on by or on behalf of the company of research and development activities (as defined in section 73B of that Act).

77 Paragraph 40-215(2)(a)

Omit “section 73B”, substitute “sections 73B and 73BA”.

78 At the end of paragraph 40-215(2)(a)

Add:

Note: Paragraph (a) does not have the effect that deductions for the same amount of any such expenditure will be allowable under both this Division and section 73B or 73BA. Such an outcome is prevented by subsection 40-25(2) (including as applied by section 73BC for the purposes of section 73BA) and subsections 73B(20) and 73BA(7).

79 After section 40-290

Insert:

40-292 Adjustments where deductions for decline in value also allowable under section 73BA or 73BH of Income Tax Assessment Act 1936

Section applies if deductions for decline in value under both this Division and section 73BA

(1) This section applies if:

(a) a *balancing adjustment event occurs for a *depreciating asset you *held and:

(i) whose decline in value you worked out under Subdivision 40-B; or

(ii) whose decline in value you would have worked out under that Subdivision if you had used the asset; and

(b) you also deducted an amount for the asset under section 73BA or 73BH of the *Income Tax Assessment Act 1936*, or could have so deducted an amount if you had not chosen a tax offset under section 73I of that Act, for any income year in which you held the asset.

Section 40-290 to be applied as if use for carrying on research and development activities were use for a taxable purpose

(2) If this section applies, you must, in applying section 40-290 (including references in that section to the reduction of deductions under section 40-25) in relation to the *depreciating asset, assume that when you used it either for a taxable purpose or for the purpose of the carrying on by or on behalf of you of research and development activities, within the meaning of section 73B of the *Income Tax Assessment Act 1936*, you used it for a taxable purpose.

Increase in amounts deductible or assessable under section 40-285 where 1.25 rate deductions under section 73BA or 73BH

(3) If:

(a) this section applies; and

(b) the amount you deducted under section 73BA or 73BH of the *Income Tax Assessment Act 1936*, as mentioned in paragraph (1)(b) of this section, for at least one income year was worked out by multiplying a notional Division 40

deduction (within the meaning of section 73BA) or a notional Division 42 deduction (within the meaning of section 73BJ) by 1.25;

then subsection (4) applies.

(4) Any amount (the ***section 40-285 amount***) that you can deduct, or that is included in your assessable income, for the *depreciating asset under section 40-285 (after applying subsection (2) of this section) is increased by the amount worked out using the formula:

$$\frac{\text{Sum of all 1.25 rate notional Division 40 / 42 deductions}}{\text{Total decline in value}} \times \text{Adjusted section 40 - 285 amount} \times 0.25$$

where:

adjusted section 40-285 amount means:

(a) if the section 40-285 amount is a deduction—the amount of the deduction; or

(b) if the section 40-285 amount is an amount included in your assessable income—so much of the section 40-285 amount as does not exceed the formula component ***total decline in value***.

sum of all 1.25 rate notional Division 40/42 deductions means the sum of all notional Division 40 deductions and notional Division 42 deductions (see paragraph (3)(b)) that were multiplied by 1.25 in working out the amounts you deducted for the *depreciating asset as mentioned in paragraph (1)(b).

total decline in value means the cost of the *depreciating asset less its *adjustable value.

80 At the end of section 40-425

Add:

Exception: research and development

(8) You cannot allocate a *depreciating asset to a low-value pool if you can deduct an amount for the asset under section 73BA of the *Income Tax Assessment Act 1936* (or could so deduct an amount if you had not chosen a tax offset under section 73I of that Act) for a

period before, or starting at the same time as, the allocation has effect.

81 Paragraph 43-70(2)(g)

Omit "or 73BH", substitute ", 73BA or 73BH".

81A After subsection 104-235(1)

Insert:

(1A) However, subsection (1) does not apply if you are an eligible company (within the meaning of section 73B of the *Income Tax Assessment Act 1936*) and the *depreciating asset is a section 73BA depreciating asset (within the meaning of section 73BB of that Act).

(1B) ***CGT event K7*** also happens if:

(a) you are an eligible company; and

(b) a *balancing adjustment event occurs for a section 73BA depreciating asset you *held; and

(c) at some time when you held the asset:

(i) you used it other than for a taxable purpose or the purpose of the carrying on by or on behalf of you of research and development activities (within the meaning of section 73B of the *Income Tax Assessment Act 1936*); or

(ii) you had it installed ready for use other than for a taxable purpose.

Note: The heading to section 104-235 is altered by inserting "**and section 73BA depreciating assets**" after "**depreciating assets**".

81B Paragraph 104-235(4)(a)

After "*depreciating asset", insert "or the section 73BA depreciating asset".

81C Subsection 104-240(1)

Omit "*depreciating asset's *termination value", substitute "*termination value of the *depreciating asset or the section 73BA depreciating asset".

81D Subsection 104-240(1) (definition of sum of reductions)

Repeal the definition, substitute:

sum of reductions is the sum of:

(a) in the case of the *depreciating asset—the reductions in your deductions for the asset under section 40-25; or

(b) in the case of the section 73BA depreciating asset—the reductions that would have been required under section 40-25 (including as applied for the purposes of section 73BC of the *Income Tax Assessment Act 1936*) on the assumption that when you used the asset either for a taxable purpose or for the purpose of the carrying on by or on behalf of you of research and development activities you used it for a taxable purpose.

81E Subsection 104-240(1) (definition of total decline)

After "*depreciating asset", insert "or the section 73BA depreciating asset".

81F Subsection 104-240(2)

Omit "*depreciating asset's * cost", substitute "*cost of the *depreciating asset or the section 73BA depreciating asset".

82 Subsection 108-55(1) (table item 3)

Before "or 73BM", insert ", 73BF".

82A Subsection 118-24(1)

Omit "*depreciating asset is", substitute "*depreciating asset or a section 73BA depreciating asset (within the meaning of section 73BB of the *Income Tax Assessment Act 1936*) is".

Note: The heading to section 118-24 is altered by adding at the end "**and section 73BA depreciating assets**".

82B Paragraphs 118-24(1)(a), (b) and (c)

Omit "a depreciating", substitute "an".

83 Subsections 118-35(1), (2) and (3)

After "73B(27A)", insert ", 73BF(4)".

84 At the end of section 328-175

Add:

Exception: assets previously deductible under research and development provisions

(9) You cannot deduct amounts for a *depreciating asset for any period under this Subdivision if you can deduct an amount for the asset under section 73BA of the *Income Tax Assessment Act 1936* (or could so deduct an amount if you had not chosen a tax offset under section 73I of that Act) for the same or an earlier period.

Industry Research and Development Act 1986

85 Subparagraph 39EB(3)(c)(ii)

Omit "or 73BH", substitute ", 73BA, 73BH or 73Y, or a tax offset under section 73I,".

86 Subsection 39EC(1)

Omit "or 73BH", substitute ", 73BA, 73BH or 73Y, or a tax offset under section 73I,".

87 Subparagraph 39EC(2)(d)(iii)

Omit "or 73BH", substitute ", 73BA, 73BH or 73Y, or a tax offset under section 73I,".

88 Paragraphs 39EE(1)(c) and (2)(b) and 39EF(2)(b)

Omit "or 73BH", substitute ", 73BA, 73BH or 73Y, or a tax offset under section 73I,".

89 Subsection 39HH(2) (note)

Omit "or 73BH", substitute ", 73BA, 73BH or 73Y, or a tax offset under section 73I,".

90 Subparagraph 39M(1)(a)(ii)

After "plant", insert ", an asset".

91 Paragraph 39N(3)(b)

Before "and 73BM(4)", insert ", 73BF(4)".

92 Application

The amendments made by this Division to the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* apply to assessments for the income year in which 1 July 2001 occurs and for later income years.

Schedule 3—Refundable tax offset

Income Tax Assessment Act 1936

1 Subsection 73B(1) (definition of advance R and D expenditure)

After “research and development expenditure”, insert “that is contracted expenditure”.

2 After subsection 73B(14)

Insert:

(14AA) A part of an eligible company’s deduction for a year of income under subsection (13) or (14) in respect of a particular amount of research and development expenditure (the ***R&D amount***) is worked out by multiplying the R&D amount by 1 rather than 1.25 if subsection (14AB) applies to the R&D amount.

(14AB) This subsection applies to an R&D amount of an eligible company for a year of income if:

(a) any other person (within the meaning of section 73H) incurred expenditure during that year of income or an earlier one in respect of all or a part of the things for which the R&D amount was for; and

(b) the other person was grouped with the eligible company as mentioned in section 73L at the time the expenditure was incurred by the other person.

(14AC) The part of the eligible company’s R&D amount for the year of income that is multiplied by 1.25 under subsection (13) or (14) is:

R&D amount – Total group markup

where:

total group markup is:

(a) the sum of the amounts derived by persons during the year of income for goods or services in respect of all or a part of the things for which the R&D amount was for while those persons were grouped with the eligible company as mentioned in section 73L; *less*

(b) the actual cost to those persons of providing those goods or services.

(14AD) The part of the eligible company's R&D amount for the year of income that is multiplied by 1 rather than 1.25 is the part of the R&D amount representing the total group markup.

3 Subparagraph 73C(7)(c)(ii)

After "that expenditure", insert "or would have been allowable under that section if the company had not chosen a tax offset under section 73I".

4 At the end of paragraph 73F(2)(b)

Add "or would have been allowed or allowable if the company had not chosen a tax offset under section 73I".

5 After section 73G

Insert:

73H Interpretation

(1) For the purposes of interpretation, sections 73I, 73J, 73K, 72L and 73M are to be read and construed as if they were part of sections 73B, 73BA and 73BH.

(2) In sections 73I, 73J, 73K, 72L and 73M:

affiliate has the meaning given by section 73M.

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

gambling supply has the meaning given by section 195-1 of the GST Act.

global GST amount has the meaning given by section 195-1 of the GST Act.

person includes (as well as a company):

(a) a body politic; and

(b) a partnership; and

(c) any other unincorporated association or body of persons; and
(d) a trust estate; and
(e) a superannuation fund.

R&D group turnover has the meaning given by section 73K.

taxable supply includes a supply made in the course of carrying on research and development activities.

tax offset has the meaning given by subsection 995-1(1) of the *Income Tax Assessment Act 1997*.

value of the supplies: the ***value of the supplies*** a taxpayer makes in a year of income is:

(a) for taxable supplies (if any) the taxpayer made during the year in the course of carrying on a business or in the course of carrying on research and development activities—the value (as defined by section 9-75 of the GST Act) of the supplies; and
(b) for other supplies the taxpayer made during the year in the course of carrying on a business or in the course of carrying on research and development activities—the prices (as defined by section 9-75 of the GST Act) of the supplies.

73I Tax offset instead of deduction under section 73B, 73BA, 73BH or 73Y

(1) An eligible company can choose a tax offset instead of a deduction under section 73B, 73BA, 73BH or 73Y for a year of income (the ***tax offset year***) if it is eligible to make that choice (see section 73J).

(2) The choice must be made in the company's return of income for the tax offset year.

(3) The eligible company's tax offset for the tax offset year is 30 cents for each dollar that the company could, apart from subsection (4), deduct for that year under section 73B, 73BA, 73BH or 73Y.

(4) An eligible company cannot deduct any amount under section 73B, 73BA, 73BH or 73Y for the tax offset year if it chooses the tax offset for that year.

Note: The tax offset is subject to the refundable tax offset rules: see section 67-25 of the *Income Tax Assessment Act 1997*.

73J Eligibility for tax offset

(1) An eligible company is eligible to choose the tax offset for the tax offset year if:

(a) it could, apart from subsection 73I(4), deduct an amount under section 73B, 73BA, 73BH or 73Y for that year; and

(b) its aggregate research and development amount for the tax offset year exceeds $20,000; and

(c) the aggregate research and development amount for the tax offset year of the company and of taxpayers with which it is grouped (while they are grouped in that year) is not more than $1,000,000; and

(d) the R&D group turnover of the company for that year is less than $5,000,000.

Note: Section 73L sets out the taxpayers with which the company is grouped.

Exception

(2) An eligible company is not eligible to choose the tax offset for the tax offset year if an exempt entity, the affiliates of an exempt entity, an exempt entity together with its affiliates, or 2 or more exempt entities, at any time during the tax offset year, legally or beneficially own, or have the right to acquire, the legal or beneficial ownership of:

(a) interests in the company that carry between them the right to exercise, or control the exercise of, at least 25% of the voting power in the company; or

(b) interests in the company that carry between them the right to receive at least 25% of any distribution of income or capital by the company.

73K Meaning of R&D group turnover

(1) The ***R&D group turnover*** of an eligible company for a year of income is the sum of:

(a) the value of the supplies the company made in the year of income; and

(b) the value of the supplies made in the year of income by other persons while they were grouped with the company;

reduced by:

(c) the value of the supplies the company made in the year of income to persons grouped with it while they were grouped with it; and

(d) the value of the supplies persons grouped with the company made in the year of income to the company while the company was grouped with them; and

(e) the value of the supplies another person made in the year of income to a third person while the other person and the third person were grouped with the company.

(2) To the extent that the taxable supplies a person makes in a year of income includes gambling supplies, use an amount equal to 11 times the person's global GST amount for those supplies rather than the value of the supplies in working out the person's R&D group turnover.

(3) In working out the value of the supplies made by a person, disregard:

(a) any supply made to the extent that the consideration for the supply is a payment or a supply by an insurer in settlement of a claim under an insurance policy; and

(b) to the extent that a supply is constituted by a loan—any repayment of principal, and any obligation to repay principal.

73L Grouped taxpayers

(1) A person is grouped with another person at a time in a year of income if, at that time:

(a) either person controls the other person in the way described in this section; or

(b) both persons are controlled in that way by the same third person; or

(c) the persons are affiliates of each other.

(2) This section applies to a person that directly controls a second person as if the first person also controlled any other person that is

directly, or indirectly by any other application or applications of this section, controlled by the second person.

Individuals, companies and fixed trusts

(3) A person controls another person if the first person, its affiliates or the first person together with the first person's affiliates:

(a) legally or beneficially own, or have the right to acquire the legal or beneficial ownership of, interests in the other person that carry between them the right to receive more than 50% of any distribution of income or capital by the other person; or

(b) if the other person is a company—legally or beneficially own, or have the right to acquire the legal or beneficial ownership of, interests in the company that carry between them the right to exercise, or control the exercise of, more than 50% of the voting power in the company.

Non-fixed trust estates

(4) A person controls a trust estate that is not a fixed trust estate if:

(a) the trustee has made a distribution, in any of the last 4 years of income (except the tax offset year) of $100,000 or more to the person, the person's affiliates or the person together with the person's affiliates; or

(b) the person, the person's affiliates or the person together with the person's affiliates:

(i) have the power, directly or indirectly, to obtain the beneficial enjoyment of any of the capital or income of the trust estate; or

(ii) are capable of gaining that enjoyment under an agreement; or

(c) a trustee of the trust estate is accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the person, the person's affiliates or the person together with the person's affiliates.

Partnerships

(5) A person controls a partnership if the person, the person's affiliates or the person together with the person's affiliates have the right to more than 50% of the partnership net income, or have more than a 50% interest in assets used in the partnership business (except assets that are leased to the partnership).

(6) A partnership (the ***controller***) controls another person if a partner in the controller, or 2 or more partners in the controller, have the right to receive more than 50% of the partnership net income, or have more than a 50% interest in assets used in the partnership business, and:

(a) if the other person is a company—the same partner, or the same 2 or more partners, have the right to receive more than 50% of any distribution of income or capital by the company, or to exercise, or to control the exercise of, more than 50% of the voting power in the company; or

(b) if the other person is a fixed trust estate—the same partner, or the same 2 or more partners, have the right to receive more than 50% of any distribution of income or capital by the trustee; or

(c) if the other person is a trust estate that is not a fixed trust estate—a condition in a paragraph of subsection (4) is satisfied for the same partner, or the same 2 or more partners in relation to the trust estate; or

(d) if the other person is a partnership—the same partner, or the same 2 or more partners, have the right to receive more than 50% of the partnership net income, or have more than a 50% interest in assets used in the partnership business, of the partnership.

73M Meaning of affiliate

(1) A person is an ***affiliate*** of another person if the person acts, or could reasonably be expected to act, in accordance with the other person's directions or wishes, or in concert with the other person, in relation to the affairs of the person's business or research and development expenditure.

(2) Another partner in a partnership in which a person is a partner is not the person's ***affiliate*** only because the partner acts, or could reasonably be expected to act, in concert with the person in relation to the affairs of the partnership.

6 After subsection 82AM(2)

Insert:

(2A) A deduction under this Subdivision is not allowable in respect of expenditure in respect of a unit of property where a deduction in respect of the expenditure would have been allowed or allowable under section 73B, 73BA, 73BH or 73Y if a company had not chosen a tax offset under section 73I.

7 Subsection 82KZL(1)

Insert:

research and development activities has the meaning given by section 73B.

8 At the end of section 82KZL

Add:

(3) This Subdivision has effect as if carrying on research and development activities were carrying on a business.

9 After subsection 632(2)

Insert:

(2A) The deduction is not allowable if a deduction in respect of the expenditure would have been allowed or allowable under section 73B, 73BA, 73BH or 73Y if a company had not chosen a tax offset under section 73I.

10 After subsection 642(2)

Insert:

(2A) The deduction is not allowable if a deduction in respect of the expenditure would have been allowed or allowable under section 73B, 73BA, 73BH or 73Y if a company had not chosen a tax offset under section 73I.

Income Tax Assessment Act 1997

11 Section 13-1 (after table item headed "rebatable ETP annuity")

Insert:

research and development	
…….	**731**

12 Paragraph 43-70(2)(g)

After "*1936*", insert ", or would be allowable under that section of that Act if a company had not chosen a tax offset under section 73I of that Act".

13 At the end of section 67-25

Add:

(3) The tax offset available under section 73I of the *Income Tax Assessment Act 1936* (research and development) is subject to the refundable tax offset rules.

Taxation (Interest on Overpayments and Early Payments) Act 1983

14 Subsection 3(1) (at the end of the definition of income tax crediting amount)

Add:

; or (c) any tax offset that is subject to the refundable tax offset rules.

Note: Section 67-25 of the *Income Tax Assessment Act 1997* lists the tax offsets that are subject to the refundable tax offset rules.

15 Subparagraph 8E(1)(d)(i)

After "rebate", insert ", except a tax offset that is subject to the refundable tax offset rules,".

16 At the end of subsection 8E(1)

Add:

Note: Section 67-25 of the *Income Tax Assessment Act 1997* lists the tax offsets that are subject to the refundable tax offset rules.

17 Subparagraph 8G(1)(d)(i)

After "rebate", insert ", except a tax offset that is subject to the refundable tax offset rules,".

18 At the end of subsection 8G(1)

Add:

Note: Section 67-25 of the *Income Tax Assessment Act 1997* lists the tax offsets that are subject to the refundable tax offset rules.

19 Application

(1) Subject to subitem (2), the amendments made by this Schedule apply to assessments for the first year of income starting after 30 June 2001 and for later years.

(2) The amendments made by items 14 to 18 (inclusive) apply to assessments made after 30 June 2001.

Schedule 4—Incremental tax incentive

Income Tax Assessment Act 1936

1 At the end of paragraph 73C(2)(b)

Add “, or another person has received or become entitled to receive such a recoupment or grant where the other person is, at the time of receipt or entitlement, grouped with the first-mentioned company as mentioned in section 73L”.

2 Paragraph 73(3)(b)

After “that the company”, insert “or the grouped person (see paragraph (2)(b))”.

3 Sub-subparagraph 73C(7)(c)(i)(A)

After “in which the company”, insert “or the grouped person (see paragraph (2)(b))”.

4 Subparagraph 73C(7)(c)(ii)

After “if the company”, insert “or the grouped person”.

5 Before section 74

Insert:

73P Interpretation

(1) For the purposes of interpretation, this section and sections 73Q to 73Z (inclusive) are to be read and construed as if they were part of sections 73B, 73BA and 73BH.

(2) In sections 73Q to 73Z (inclusive):

AA_0 means a group’s adjustment amount for the ***Y_0*** year of income.

AA_{-1} means a group’s adjustment amount for the ***Y_{-1}*** year of income.

adjustment amount has the meaning given by section 73T.

adjustment balance has the meaning given by section 73V.

group member means a primary group member or a secondary group member.

group membership period of an eligible company has the meaning given by section 73R.

incremental expenditure means expenditure that is research and development expenditure except:

(a) expenditure to lease or hire plant; and

(b) expenditure under a contract to the extent that it is, in substance, for the acquisition of plant and not for the receipt of services.

person has the same meaning as in section 73H.

premium amount has the meaning given by section 73W.

primary group member has the meaning given by section 73R.

R&D spend of an eligible company for a year of income means the sum of:

(a) the incremental expenditure of the eligible company for the year of income incurred during its group membership period; and

(b) the incremental expenditure of each group member of the eligible company for the year of income incurred during its group membership period.

$\boldsymbol{RA_0}$ means a group's running average for the $\boldsymbol{Y_0}$ year of income.

$\boldsymbol{RA_{-1}}$ means a group's running average for the $\boldsymbol{Y_{-1}}$ year of income.

running average for a particular year of income is worked out under section 73U.

secondary group member has the meaning given by section 73R.

start grant means a subsidy or grant paid to an eligible company:

(a) under an agreement between the company and the Board entered into under the program known as the R&D Start Program; and

(b) in respect of a year of income in relation to which the company is not registered as mentioned in subsection 73B(10).

viable business has the meaning given by section 73R.

(3) For the purposes of the definition of ***incremental expenditure*** in subsection (2), where expenditure under a contract is both for the acquisition of plant and for the provision of services, the expenditure must be apportioned on a reasonable basis between them.

(4) None of the expenditure referred to in subsection (3) can be ***incremental expenditure*** if a reasonable apportionment is not possible.

(5) A company's ***incremental expenditure*** for a year of income excludes the total group markup of the company for that expenditure (as worked out under subsection 73B(14AC)).

(6) In this section and in sections 73Q, 73R, 73S, 73T, 73U, 73V, 73W, 73X and 73Y, particular years of income are identified by the letter "Y" with a further identifier. Under that system:

(a) Y_0 is the year of income for which an eligible company is working out its assessable income and deductions; and

(b) Y_{-1} means the year of income before the Y_0 year of income; and

(c) Y_{-2} means the year of income 2 years before the Y_0 year of income; and

(d) Y_{-3} means the year of income 3 years before the Y_0 year of income.

73Q Eligibility to claim additional deduction

(1) An eligible company is eligible to claim an additional deduction under section 73Y for a year of income (the ***deduction year***) if the company:

(a) can deduct an amount for incremental expenditure under subsection 73B(13) or (14) for the deduction year; and

(b) has deducted or can deduct an amount for incremental expenditure under that subsection for each of the preceding 3 years of income.

(2) For the purposes of paragraph (1)(b), the eligible company is treated as if it had deducted or can deduct an amount for incremental expenditure under that subsection for each of the preceding 3 years of income if any group member of the eligible company has deducted or can deduct an amount for expenditure of that kind incurred during its group membership period under that subsection for each of those years.

(3) For the purposes of paragraph (1)(b), subsection (2) of this section and subsection 73R(1), the eligible company or any of its group members is treated as if it had deducted or can deduct an amount for incremental expenditure under subsection 73B(13) or (14) for a year of income if the company received a start grant in respect of that year of income.

73R Group members

(1) This section sets out rules for determining whether an eligible company that has deducted or can deduct an amount under subsection 73B(13) or (14) is a ***group member*** in relation to another company that has deducted or can deduct such an amount. In applying this section, use section 73L to determine whether companies are grouped.

(2) Work out the ***group members*** of the eligible company and their ***group membership periods*** in this way:

Method statement

Step 1. Work out, as at the last day of the Y_0 year of income, which companies are grouped with the eligible company. The eligible company and these grouped companies are the ***primary group members***.

Step 2. Work out the day before the last day of the Y_0 year of income, or the first day of the Y_{-3} year of income, whichever is the later, when a company that is a primary group member:

(a) was controlled, as mentioned in section 73L, by a person other than a person who controlled it as at the last day of the Y_0 year of income; or

(b) acted, or could be expected to act, in accordance with the directions or wishes of a person other than a person in accordance with whose directions or wishes it acted, or could be expected to act, as at the last day of the Y_0 year of income.

The period between this day and the last day of the Y_0 year of income is that company's ***group membership period***.

Step 3. Any other company that was grouped with a primary group member at a time during the member's group membership period is a ***secondary group member***.

Step 4. Work out the day before the last day of the Y_0 year of income when a secondary group member became grouped with the primary group member as mentioned in step 3, or the first day of the Y_{-3} year of income, whichever is the later.

Step 5. Work out the day before the last day of the Y_0 year of income when the secondary group member was not so grouped with the primary group member. The period between that day and the day worked out under step 4 is the secondary group member's ***group membership period***.

Exception: secondary member leaving with a viable business

(3) The period that would be a secondary group member's group membership period is treated as never having existed if, at the end of that period when the secondary group member stops being grouped with a primary group member, the secondary group member has a viable business.

Exception: extending group membership period

(4) The group membership period of a group member of a particular group (the ***current group***) is extended to include its history period with its former group (see subsection (5)) if, when the company became a group member of the current group, it did so with a viable business.

Viable business

(5) A company stops being or starts being a group member of a group with a ***viable business*** if:

(a) sufficient assets (including assets that have been used in carrying on research and development activities) are transferred under the transactions involved in the change of control to allow the continued operation of a business; and

(b) the person or persons that disposed of control of the company agree in writing with the person or persons that gain control that this subsection should apply; and

(c) the person or persons that disposed of control of the company provide written details of incremental expenditure incurred by the company during the period (its ***history period***) it was a group member of its former group.

Note: The definition of ***person*** includes trusts, partnerships and other entities as well as companies: see section 73H.

(6) The written agreement referred to in paragraph (5)(b) must be made, and the written details referred to in paragraph (5)(c) must be provided:

(a) for a change of control occurring before 1 July 2002—by 30 June 2002; or

(b) otherwise—by the end of the year of income in which the change of control occurs; or

(c) within a further time allowed by the Commissioner.

73S Calculating the amounts relevant to the additional deduction

If a negative result is obtained from a calculation in section 73T or 73V, that result is taken to be zero.

73T Adjustment amounts

(1) The ***adjustment amount*** for an eligible company and its group members for the Y_0 year of income is:

$$\left[\text{R\&D spend for } Y_{-2} \text{ year} \times 80\% - \text{R\&D spend for } Y_{-1} \text{ year}\right]$$

(2) The ***adjustment amount*** for an eligible company and its group members for the Y_{-1} year of income is:

$$\left[\text{R\&D spend for } Y_{-3} \text{ year} \times 80\% - \text{R\&D spend for } Y_{-2} \text{ year}\right]$$

Exceptions

(3) $\boldsymbol{AA_0}$ is zero if:

(a) the eligible company or any of its group members was eligible to claim an additional deduction under section 73Y for the Y_{-1} year of income; and

(b) there has been no change in the control of the eligible company or any of its group members for the Y_0 year of income resulting in:

(i) a company entering or leaving the group with a viable business; and

(ii) a change to the R&D spend of the eligible company for the Y_{-1}, Y_{-2} or Y_{-3} year of income.

(4) $\boldsymbol{AA_{-1}}$ is zero if:

(a) the eligible company or any of its group members was eligible to claim an additional deduction under section 73Y for the Y_{-2} year of income; and

(b) there has been no change in the control of the eligible company or any of its group members for the Y_0 or Y_{-1} year of income resulting in:

(i) a company entering or leaving the group with a viable business; and

(ii) a change to the R&D spend of the eligible company for the Y_{-1}, Y_{-2} or Y_{-3} year of income.

73U Running averages

(1) The ***running average*** for the Y_0 year of income is one-third of the sum of the R&D spend of the eligible company for each of the Y_{-1}, Y_{-2}, and Y_{-3} years of income.

(2) The ***running average*** for the Y_{-1} year of income is one-half of the sum of the R&D spend of the eligible company for each of the 2 years of income before the year for which RA_{-1} is worked out.

73V Adjustment balance

(1) The ***adjustment balance*** is, if the R&D spend of the eligible company for the Y_{-1} year of income is less than or equal to RA_{-1}:

$$AA_0 + AA_{-1}$$

(2) Otherwise, the ***adjustment balance*** is:

$$RA_{-1} + AA_0 + AA_{-1}$$

reduced by the R&D spend of the eligible company for the Y_{-1} year of income.

(3) The ***adjustment balance*** is zero if:

(a) the eligible company or any of its group members was eligible to claim an additional deduction under section 73Y for the Y_{-1} year of income; and

(b) there has been no change in the control of the eligible company or any of its group members for the Y_0 year of income resulting in:

(i) a company entering or leaving the group with a viable business; and

(ii) a change to the R&D spend of the eligible company for the Y_{-1}, Y_{-2} or Y_{-3} year of income.

73W Premium amount

The ***premium amount*** of the eligible company, together with each group member for the Y_0 year of income, is the R&D spend of the eligible company for the Y_0 year of income less:

(a) the running average for the Y_0 year of income; and

(b) the adjustment balance.

73X Apportionment between group members

(1) The premium amount is distributed between each of the group members (the ***increasing members***) that increased its incremental expenditure incurred during its group membership period for the Y_0 year of income over its incremental expenditure incurred during its group membership period for the Y_{-1} year of income.

(2) The amount distributed to each of the increasing members is the percentage of the premium amount represented by that increasing member's increase in incremental expenditure incurred during its group membership period for the Y_0 year of income compared to the total amount of increase in incremental expenditure incurred in that year by all of the increasing members during their group membership periods.

(3) If there is only one increasing member for the Y_0 year of income, all of the premium amount is distributed to that company.

73Y Additional deduction

(1) The object of this section is to provide a tax incentive, in the form of a deduction, to make eligible companies more internationally competitive by:

(a) encouraging the development by eligible companies of innovative products, processes and services; and

(b) increasing investment by eligible companies in defined research and development activities; and

(c) promoting the technological advancement of eligible companies through a focus on innovation and high technical risk in defined research and development activities; and

(d) encouraging the use by eligible companies of strategic research and development planning; and

(e) creating an environment that is conducive to increased commercialisation of new processes and product technologies developed by eligible companies.

The benefits of the tax incentive are targeted by being limited to particular expenditure on certain defined activities.

(2) Each of the companies that have all or part of the premium amount distributed to it can deduct the lesser of:

(a) 50% of that amount for the year of income for which it is distributed; or

(b) 50% of the amount of incremental expenditure incurred by the company in the Y_0 year of income that is eligible for a deduction under section 73B at the rate of 125%.

Note: The paragraph (2)(b) amount may be less than the paragraph (2)(a) amount because of sections 73C, 73CA or 73CB.

73Z Anti-avoidance

(1) This section applies to a company if:

(a) the company requests an amendment to an assessment for a year of income to reduce the amount of its research and development expenditure for a year of income; and

(b) the Commissioner is of the opinion that the purpose of the proposed amendment is to increase the company's entitlement to a deduction under section 73Y for any year of income.

(2) The amount of that reduction is ignored in working out the company's incremental expenditure for any year of income.

6 Paragraph 82KZM(1)(c)

After "section 51", insert ", 73B, 73BA, 73BH or 73Y".

7 Paragraph 82KZMA(1)(a)

Before "section 8-1", insert "section 73B, 73BA, 73BH or 73Y of this Act or".

8 Paragraph 82KZME(1)(a)

Before "section 8-1", insert "section 73B, 73BA, 73BH or 73Y of this Act or".

9 Paragraph 82KZMF(2)(a)

Before "section 8-1", insert "section 73B, 73BA, 73BH or 73Y of this Act or".

10 Subsection 170(10A)

Omit "or 73D", substitute ", 73D, 73I or 73Y".

11 Application

The amendments made by this Schedule apply to expenditure incurred in the first year of income starting after 30 June 2001.

[*Minister's second reading speech made in—*
House of Representatives on 27 June 2001
Senate on 20 August 2001]

(111/01)