New Business Tax System (Consolidation and Other Measures) Act 2003

No. 16, 2003

An Act to implement a New Business Tax System, and for related purposes

Note: An electronic version of this Act is available in SCALEplus (http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm)

Contents

1 Short title 2
2 Commencement 2
3 Schedule(s) 4
4 Amendment of income tax assessments 4

Schedule 1—Consolidation: amendments of various cost base provisions 6

Part 1—Adjustments to restrict step 4 reduction in allocable cost amount in Subdivision 705-B and 705-D cases 6

Income Tax Assessment Act 1997 6

Part 2—Consequential amendments relating to simplified imputation system 10

Income Tax Assessment Act 1997 10

Income Tax (Transitional Provisions) Act 1997 10

Part 3—Changes to tax cost setting amount in Subdivision 705-B and 705-D cases to take account of steps 3 and 5 of allocable cost amount 12

Income Tax Assessment Act 1997 12

Part 4—Adjustment to allocable cost amount for certain pre-joining time roll-overs from foreign residents 18

Income Tax Assessment Act 1997 18

Part 5—Technical corrections 27

Income Tax Assessment Act 1997 27

Part 6—Extension of transitional provision relating to step 3 of allocable cost amount on group formation 28

Income Tax (Transitional Provisions) Act 1997 28

Part 7—Transitional group's allocable cost amount for subsidiary members other than chosen transitional entities 29

Income Tax (Transitional Provisions) Act 1997 29

Part 8—Inclusion in certain transitional provisions of references to the Income Tax Assessment Act 1997 30

Income Tax (Transitional Provisions) Act 1997 30

Schedule 2—Consolidation: beneficial ownership 31

Income Tax Assessment Act 1997 31

Schedule 3—Consolidation: technical amendment of membership rules 32

Income Tax Assessment Act 1997 32

Schedule 4—Consolidation: adjustments for errors etc. 33

Part 1—New Subdivision 705-E 33

Income Tax Assessment Act 1997 33

Part 2—Consequential amendments 37

Income Tax Assessment Act 1997 37

Taxation Administration Act 1953 41

Schedule 5—Consolidation: imputation rules 45

Income Tax Assessment Act 1936 45

Income Tax Assessment Act 1997 45

Schedule 6—Consolidation: life insurance companies 54

Part 1—Life insurance companies and consolidation 54

Income Tax Assessment Act 1997 54

Part 2—Consequential amendments 59

Income Tax Assessment Act 1997 59

Part 3—Transitional provisions 61

Income Tax (Transitional Provisions) Act 1997 61

Taxation Administration Act 1953 67

Schedule 7—Consolidation: interactions between Consolidation rules and other rules 69

Part 1—New Division 715 inserted in the Income Tax Assessment Act 1997 69

Part 2—New Subdivision 719-T inserted in the Income Tax Assessment Act 1997 108

Part 3—Consequential amendment of the Income Tax Assessment Act 1997 118

Part 4—Dictionary amendments 120

Income Tax Assessment Act 1997 120

Schedule 8—Consolidation: various provisions about CFCs, FIFs and FLPs 123

Income Tax Assessment Act 1997 123

Schedule 9—Consolidation: foreign dividend accounts 131

Part 1—Basic amendments 131

Income Tax Assessment Act 1997 131

Part 2—Related amendments 139

Income Tax Assessment Act 1936 139

Income Tax Assessment Act 1997 140

Schedule 10—Consolidation: offshore banking units 142

Income Tax Assessment Act 1936 142

Income Tax Assessment Act 1997 142

Schedule 11—Consolidation: application of rules to MEC groups 144

Income Tax Assessment Act 1997 144

Income Tax (Transitional Provisions) Act 1997 145

Schedule 12—Consolidation: MEC group cost setting rules 146

Income Tax Assessment Act 1997 146

Schedule 13—Consolidation: MEC groups and losses 148

Part 1—Basic amendments 148

Income Tax Assessment Act 1997 148

Part 2—Related amendments 161

Income Tax Assessment Act 1997 161

Schedule 14—Consolidation: liability rules 162

Income Tax Assessment Act 1997 162

Taxation Administration Act 1953 166

Schedule 15—Consolidation: general application provision 168

Income Tax (Transitional Provisions) Act 1997 168

Schedule 16—Consolidation: transitional foreign-held membership structures 169

Part 1—Amendment of the Income Tax Assessment Act 1997 169

Part 2—Amendment of the Income Tax (Transitional Provisions) Act 1997 170

Schedule 17—Consolidation: transitional cost setting rule relating to roll-overs 179

Income Tax (Transitional Provisions) Act 1997 179

Schedule 18—Consolidation: extra transitional provision for foreign tax credits 181

New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002 181

Schedule 19—Consolidation: amendment of losses rules 182

Income Tax Assessment Act 1997 182

Income Tax (Transitional Provisions) Act 1997 183

New Business Tax System (Consolidation) Act (No. 1) 2002 187

Schedule 20—Consolidation: transfers of losses involving financial corporations 188

Financial Corporations (Transfer of Assets and Liabilities) Act 1993 188

Schedule 21—Consolidation: CGT events relating to various cost base provisions 193

Income Tax Assessment Act 1997 193

Schedule 22—Consolidation: thin capitalisation 197

Income Tax Assessment Act 1997 197

Schedule 23—Consolidation: research and development 198

Income Tax Assessment Act 1936 198

Income Tax Assessment Act 1997 200

Taxation Administration Act 1953 200

Schedule 24—Consolidation: pay as you go (PAYG) instalments 201

Part 1—Amendment of the Taxation Administration Act 1953 201

Part 2—Amendment of the Income Tax Assessment Act 1997 227

Schedule 25—Value shifting 229

Income Tax Assessment Act 1997 229

Income Tax (Transitional Provisions) Act 1997 230

Schedule 26—Loss integrity rules: global method of valuing assets 232

Income Tax Assessment Act 1997 232

Income Tax (Transitional Provisions) Act 1997 233

Schedule 27—Venture capital franking 235

Income Tax Assessment Act 1997 235

Income Tax (Transitional Provisions) Act 1997 259

Schedule 28—Machinery provisions for simplified imputation system 263

Income Tax Assessment Act 1997 263

Income Tax (Transitional Provisions) Act 1997 282

Taxation Administration Act 1953 292

Schedule 29—Consequential amendments relating to the simplified imputation system 294

Income Tax Assessment Act 1936 294

Income Tax Assessment Act 1997 303

Schedule 30—The effect of a cum dividend sale or securities lending arrangement under the simplified imputation system 305

Income Tax Assessment Act 1997 305

New Business Tax System (Consolidation and Other Measures) Act 2003

No. 16, 2003

An Act to implement a New Business Tax System, and for related purposes

[*Assented to 11 April 2003*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *New Business Tax System (Consolidation and Other Measures) Act 2003*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	11 April 2003
2. Schedules 1 to 3	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002*	24 October 2002
3. Schedule 4	Immediately after the commencement of Schedule 21 to this Act	24 October 2002
4. Schedules 5 to 8	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002*	24 October 2002
5. Schedule 9	Immediately after the commencement of Schedule 8 to this Act	24 October 2002

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
6. Schedule 10	Immediately after the commencement of Schedule 9 to this Act	24 October 2002
7. Schedules 11 to 13	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002*	24 October 2002
8. Schedule 14, item 1	Immediately after the commencement of Schedule 5 to this Act	24 October 2002
9. Schedule 14, items 2 to 12	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002*	24 October 2002
10. Schedules 15 to 18	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002*	24 October 2002
11. Schedule 19, items 1 to 6	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002*	24 October 2002
12. Schedule 19, item 7	Immediately after the time specified in the *New Business Tax System (Consolidation) Act (No. 1) 2002* for the commencement of item 34 of Schedule 5 to that Act	24 October 2002
13. Schedules 20 to 23	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002*	24 October 2002
14. Schedule 24	Immediately after the commencement of Schedule 6 to this Act	24 October 2002
15. Schedules 25 to 27	Immediately after the commencement of Schedule 13 to the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002*	29 June 2002
16. Schedule 28, item 1	Immediately after the commencement of the *New Business Tax System (Imputation) Act 2002*	29 June 2002

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
17. Schedule 28, items 2 to 18	Immediately after the commencement of Schedule 27 to this Act	29 June 2002
18. Schedule 28, subitem 19(1)	Immediately after the commencement of the *New Business Tax System (Imputation) Act 2002*	29 June 2002
19. Schedule 28, subitems 19(2) and (3)	Immediately after the commencement of Schedule 27 to this Act	29 June 2002
20. Schedule 29, items 1 to 11	Immediately after the commencement of item 13 of Schedule 29 to this Act	29 June 2002
21. Schedule 29, items 12 and 13	Immediately after the commencement of Schedule 27 to this Act	29 June 2002
22. Schedule 29, item 14	Immediately after the commencement of item 13 of Schedule 29 to this Act	29 June 2002
23. Schedule 30	Immediately after the commencement of Schedule 13 to the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002*	29 June 2002

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

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

4 Amendment of income tax assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the

commencement of this section for the purposes of giving effect to this Act.

Schedule 1—Consolidation: amendments of various cost base provisions

Part 1—Adjustments to restrict step 4 reduction in allocable cost amount in Subdivision 705-B and 705-D cases

Income Tax Assessment Act 1997

1 Section 705-155

Repeal the section, substitute:

705-155 Adjustments to restrict step 4 reduction of allocable cost amount to effective distributions to head company in respect of direct membership interests

Object

(1) The object of this section is to ensure that, in working out the group's *allocable cost amount for entities that become *subsidiary members of the group at the formation time, the reduction under step 4 in the table in section 705-60 (about pre-formation time distributions out of certain profits) is made only for profits that have been effectively distributed to the *head company in respect of its direct *membership interests in the entities. This ensures consistency with the ordering rule in section 705-145.

When section applies

(2) This section applies to a distribution (the ***subject distribution***) to the extent that the following conditions are satisfied:

(a) the distribution is made by an entity (the ***subject entity***) that becomes a *subsidiary member of the group at the formation time;

(b) in working out the group's *allocable cost amount for the subject entity there would, apart from this section, be a

reduction under step 4 in the table in section 705-60 for the distribution.

Step 4 reduction only if subject distribution is made to head company etc.

(3) There is no reduction as mentioned in paragraph (2)(b) for the subject distribution unless:

(a) the subject distribution is made to the *head company of the group; or

(b) the reduction is in accordance with subsection (5).

Step 4 reduction for effective distribution to head company

(4) If:

(a) at the formation time, the *head company of the group has a direct *membership interest in the subject entity; and

(b) the head company acquired the membership interest directly from another entity, or indirectly as a result of one or more acquisitions from other entities, where:

(i) section 160ZZ0 of the *Income Tax Assessment Act 1936* applied to each acquisition; or

(ii) there was a roll-over under Subdivision 126-B for each acquisition;

or a combination of these happened; and

(c) while it held the membership interest, the entity, or one of the entities, mentioned in paragraph (b) (the ***recipient of the further distribution***) received a distribution (the ***further distribution***) of some of the subject distribution from the subject entity;

the consequences in subsections (5) and (6) apply.

Reduction for further distribution that remains with recipient

(5) If:

(a) the following happen:

(i) by the formation time, any of the further distribution (the ***eligible reduction amount***) had not again been distributed by the recipient of the further distribution;

(ii) the recipient of the further distribution does not become a *subsidiary member of the group at the formation time; or

(b) the following happen:

(i) by the formation time, any of the further distribution (the ***eligible reduction amount***) had been distributed by the recipient of the further distribution to another entity directly, or indirectly though successive distributions by interposed entities;

(ii) that other entity does not become a subsidiary member of the group at the formation time; or

(c) both of the above paragraphs apply;

then, in working out the group's *allocable cost amount for the subject entity, the reduction under step 4 in the table in section 705-60 for the subject distribution only takes place to the extent that it equals the sum of all eligible reduction amounts.

Step 1 reduced cost base adjustment to reverse effect of reduction for further distribution

(6) Also, if subsection 160ZK(5) of the *Income Tax Assessment Act 1936* or subsection 110-55(7) of this Act applied to the further distribution, then for the purposes of step 1 in the table in section 705-60 in working out the group's *allocable cost amount for the subject entity:

(a) the reference in subsection 705-65(3) to a reduction resulting from the application of subsection 160ZK(5) of the *Income Tax Assessment Act 1936*; and

(b) the reference in subsection 705-65(5) to a reduction that has taken place under subsection 110-55(7);

include a reference to the reduction in the *reduced cost base of the membership interest in the subject entity resulting from the application of subsection 160ZK(5) of the *Income Tax Assessment Act 1936*, or subsection 110-55(7) of this Act, to the further distribution.

2 Section 705-230

Repeal the section, substitute:

705-230 Adjustments to restrict step 4 reduction of allocable cost amount to effective distributions to head company in respect of direct membership interests

Object

(1) The object of this section is to ensure that, in working out the group's *allocable cost amount for the linked entities, the reduction under step 4 in the table in section 705-60 (about pre-formation time distributions out of certain profits) is made only for profits that have been effectively distributed to the *head company in respect of its direct *membership interests in the entities. This ensures consistency with the ordering rule in section 705-225.

When section applies

(2) This section applies to a distribution to the extent that the following conditions are satisfied:

(a) the distribution is made by a linked entity;

(b) in working out the group's *allocable cost amount for the linked entity there would, apart from this section, be a reduction under step 4 in the table in section 705-60 for the distribution.

Step 4 reduction only if subject distribution is made to head company

(3) There is no reduction as mentioned in subsection (2) for the distribution unless it is made to the *head company of the group.

Part 2—Consequential amendments relating to simplified imputation system

Income Tax Assessment Act 1997

3 Section 705-60 (table item 3, column headed "What the step requires")

Omit "frankable", substitute "taxed".

4 Subsection 705-90(3)

Repeal the subsection, substitute:

Extent to which tax paid on undistributed profits

(3) Then work out how much of the undistributed profits does not exceed the amount worked out using the following formula as at the joining time:

$$\text{Balance of *franking account (worked out on assumptions in subsection (4))} \times \frac{1 - \text{*corporate tax rate}}{\text{*Corporate tax rate}}$$

5 Section 705-90 (heading)

Repeal the heading, substitute:

705-90 Undistributed, taxed profits accruing to joined group before joining time—step 3 in working out allocable cost amount

6 Paragraph 705-90(6)(a)

Omit ", if they had been distributed as dividends at the joining time, could have been so franked", substitute "satisfy the requirements of subsection (3)".

Income Tax (Transitional Provisions) Act 1997

7 Subsection 701-30(2)

Omit "***unfrankable***", substitute "***untaxed***".

Note: The heading to section 701-30 is altered by omitting "**unfrankable**" and substituting "**untaxed**".

8 Subsection 701-30(4)

Omit "unfrankable", substitute "untaxed".

Part 3—Changes to tax cost setting amount in Subdivision 705-B and 705-D cases to take account of steps 3 and 5 of allocable cost amount

Income Tax Assessment Act 1997

9 Section 705-160

Repeal the section, substitute:

705-160 Adjustment to allocation of allocable cost amount to take account of owned profits or losses of certain entities that become subsidiary members

Object

(1) The object of this section is to prevent a distortion under section 705-35 in the allocation of *allocable cost amount to an entity that becomes a *subsidiary member of the group where that entity has direct or indirect *membership interests in another entity that has certain profits or tax losses when it becomes a subsidiary member.

Adjustment to allocation of allocable cost amount where direct interest in entity with profits/losses

(2) If:

(a) an entity becomes a *subsidiary member of the group at the formation time; and

(b) the entity has *membership interests in a second entity that becomes a subsidiary member of the group at that time; and

(c) in working out the group's *allocable cost amount for the second entity:

(i) an amount is required to be added (the ***second entity's profit/loss adjustment amount***) under step 3 in the table in section 705-60 (about profits accruing before becoming a subsidiary member of the group); or

(ii) an amount is required to be subtracted (also the ***second entity's profit/loss adjustment amount***) under step 5 in the table in section 705-60 (about losses accruing before becoming a subsidiary member of the group);

then, for the purposes of working out under section 705-35 the *tax cost setting amount for the assets of the first entity, the *market value of the first entity's membership interests in the second entity is reduced (in a subparagraph (c)(i) case) or increased (in a subparagraph (c)(ii) case) by the first entity's interest in the second entity's profit/loss adjustment amount (see subsection (3)).

First entity's interest in second entity's profit/loss adjustment amount

(3) The first entity's interest in the second entity's profit/loss adjustment amount is worked out using the formula:

$$\frac{\text{*Market value of first entity's *membership interests in second entity}}{\text{*Market value of all *membership interests in second entity}} \times \text{Second entity's profit / loss adjustment amount}$$

Adjustment to allocation of allocable cost amount for indirect interest in entity with profits/losses

(4) If:

(a) an entity becomes a *subsidiary member of the group at the formation time; and

(b) the entity has *membership interests in a second entity that becomes a subsidiary member of the group at that time; and

(c) the second entity has, directly or indirectly through one or more interposed entities that become subsidiary members of the group at the formation time, membership interests in a third entity that becomes a subsidiary member of the group at that time; and

(d) in working out the group's *allocable cost amount for the third entity:

(i) an amount is required to be added (the ***third entity's profit/loss adjustment amount***) under step 3 in the table

in section 705-60 (about profits accruing before becoming a subsidiary member of the group); or

(ii) an amount is required to be subtracted (also the ***third entity's profit/loss adjustment amount***) under step 5 in the table in section 705-60 (about losses accruing before becoming a subsidiary member of the group);

then, for the purposes of working out under section 705-35 the *tax cost setting amount for the assets of the first entity, the *market value of the first entity's membership interests in the second entity is reduced (in a subparagraph (d)(i) case) or increased (in a subparagraph (d)(ii) case) by the first entity's interest in the third entity's profit/loss adjustment amount (see subsection (5)).

First entity's interest in third entity's profit/loss adjustment amount

(5) The first entity's interest in the third entity's profit/loss adjustment amount is worked out using the formula:

$$\frac{\text{Market value of first entity's membership interests in third entity held through second entity}}{\text{*Market value of all *membership interests in third entity}} \times \text{Third entity's profit / loss adjustment amount}$$

where:

market value of first entity's membership interests in third entity held through second entity means the *market value of all *membership interests in the third entity that the first entity holds indirectly through the second entity (including through that entity and one or more other entities that become *subsidiary members of the group and are interposed between the second entity and the third entity).

10 Section 705-235

Repeal the section, substitute:

705-235 Adjustment to allocation of allocable cost amount to take account of owned profits or losses of certain linked entities

Object

(1) The object of this section is to prevent a distortion under section 705-35 in the allocation of *allocable cost amount to a linked entity where that entity has direct or indirect *membership interests in another linked entity that has certain profits or tax losses.

Adjustment to allocation of allocable cost amount where direct interest in linked entity with profits/losses

(2) If:

(a) a linked entity has *membership interests in a second linked entity; and

(b) in working out the group's *allocable cost amount for the second linked entity:

(i) an amount is required to be added (the ***second linked entity's profit/loss adjustment amount***) under step 3 in the table in section 705-60 (about profits accruing before becoming a subsidiary member of the group); or

(ii) an amount is required to be subtracted (also the ***second linked entity's profit/loss adjustment amount***) under step 5 in the table in section 705-60 (about losses accruing before becoming a subsidiary member of the group);

then, for the purposes of working out under section 705-35 the *tax cost setting amount for the assets of the first linked entity, the *market value of the first linked entity's membership interests in the second linked entity is reduced (in a subparagraph (b)(i) case) or increased (in a subparagraph (b)(ii) case) by the first linked entity's interest in the second linked entity's profit/loss adjustment amount (see subsection (3)).

First linked entity's interest in second linked entity's profit/loss adjustment amount

(3) The first linked entity's interest in the second linked entity's profit/loss adjustment amount is worked out using the formula:

$$\frac{\text{*Market value of first linked entity's *membership interests in second linked entity}}{\text{*Market value of all *membership interests in second linked entity}} \times \text{Second linked entity's profit / loss adjustment amount}$$

Adjustment to allocation of allocable cost amount for indirect interest in linked entity with profits/losses

(4) If:

(a) a linked entity has *membership interests in a second linked entity; and

(b) the second linked entity has, directly or indirectly through one or more interposed linked entities, membership interests in a third linked entity; and

(c) in working out the group's *allocable cost amount for the third linked entity:

(i) an amount is required to be added (the ***third linked entity's profit/loss adjustment amount***) under step 3 in the table in section 705-60 (about profits accruing before becoming a subsidiary member of the group); or

(ii) an amount is required to be subtracted (also the ***third linked entity's profit/loss adjustment amount***) under step 5 in the table in section 705-60 (about losses accruing before becoming a subsidiary member of the group);

then, for the purposes of working out under section 705-35 the *tax cost setting amount for the assets of the first linked entity, the *market value of the first linked entity's membership interests in the second linked entity is reduced (in a subparagraph (c)(i) case) or increased (in a subparagraph (c)(ii) case) by the first linked entity's interest in the third linked entity's profit/loss adjustment amount (see subsection (5)).

First linked entity's interest in third linked entity's profit/loss adjustment amount

(5) The first linked entity's interest in the third linked entity's profit/loss adjustment amount is worked out using the formula:

$$\frac{\text{Market value of first linked entity's membership interests in third linked entity held through second linked entity}}{\text{*Market value of all *membership interests in third linked entity}} \times \text{Third linked entity's profit / loss adjustment amount}$$

where:

market value of first linked entity's membership interests in third linked entity held through second linked entity means the *market value of all *membership interests in the third linked entity that the first linked entity holds indirectly through the second linked entity (including through that entity and one or more other linked entities that are interposed between the second linked entity and the third linked entity).

Part 4—Adjustment to allocable cost amount for certain pre-joining time roll-overs from foreign residents

Income Tax Assessment Act 1997

11 Section 705-60 (after table item 3)

Insert:

3A	For each step 3A amount (if any) under section 705-93 (which is about pre-joining time intra-group roll-overs from foreign resident companies): (a) if the step 3A amount is an increase amount under that section—add to the result of step 3 (as affected by any previous application of this step) the step 3A amount; or (b) if the step 3A amount is a reduction amount under that section—subtract from the result of step 3 (as affected by any previous application of this step) the step 3A amount	To adjust for certain intra-group roll-overs from foreign companies before the joining time

12 Section 705-60 (table item 4, column headed "What the step requires")

Omit "step 3", substitute "step 3A".

13 At the end of section 705-60

Add:

Note: The head company may be taken to have made a capital gain, depending on the amount remaining after applying step 3A: see CGT event L2.

14 After section 705-90

Insert:

705-93 If pre-joining time roll-over from foreign resident company—step 3A in working out allocable cost amount

When there is a step 3A amount

(1) For the purposes of step 3A in the table in section 705-60, there is a step 3A amount if:

(a) before the joining time:

(i) there was a roll-over under Subdivision 126-B (a ***Subdivision 126-B roll-over***) in relation to a *CGT event that happened in relation to an asset (the ***roll-over asset***); or

(ii) section 160ZZO of the *Income Tax Assessment Act 1936* applied in relation to a disposal (a ***section 160ZZO roll-over***) of an asset (also the ***roll-over asset***); and

(b) the originating company in relation to the Subdivision 126-B roll-over, or the transferor in relation to the section 160ZZO roll-over, was a foreign resident; and

(c) the recipient company in relation to the Subdivision 126-B roll-over, or the transferee in relation to the section 160ZZO roll-over, was an Australian resident and was not the entity that became the *head company of the joined group; and

(d) between the Subdivision 126-B roll-over, or the section 160ZZO roll-over, and the joining time, no other CGT event happened in relation to the roll-over asset for which there was not a Subdivision 126-B roll-over or a section 160ZZO roll-over; and

(e) the roll-over asset is not a *pre-CGT asset at the joining time; and

(f) the roll-over asset becomes that of the head company of the joined group because subsection 701-1(1) (the single entity rule) applies when the joining entity becomes a *subsidiary member of the group.

What the step 3A amount is

(2) The step 3A amount is:

(a) if, as a result of the Subdivision 126-B roll-over mentioned in subparagraph (1)(a)(i), or the section 160ZZO roll-over mentioned in subparagraph (1)(a)(ii), a *capital loss of the

originating company was disregarded or a capital loss of the transferor was not incurred—an increase amount equal to the capital loss; or

(b) if, as a result of the Subdivision 126-B roll-over mentioned in subparagraph (1)(a)(i), or the section 160ZZO roll-over mentioned in subparagraph (1)(a)(ii), a *capital gain of the originating company was disregarded or a capital gain of the transferor did not accrue—a reduction amount equal to the capital gain.

15 After section 705-145

Insert:

705-147 Adjustment in working out step 3A of allocable cost amount to take account of membership interests held by subsidiary members in other such members

Object

(1) The object of this section is to modify the effect that section 705-93 (step 3A of allocable cost amount) has in accordance with this Subdivision so that it takes account of *membership interests that entities that become *subsidiary members hold in other such entities.

Apportionment of step 3A amount among first level interposed entities

(2) If:

(a) under section 705-93, in its application in accordance with this Subdivision, there is a step 3A amount for the purpose of working out the group's *allocable cost amount for an entity (the ***subject entity***) that becomes a *subsidiary member of the group at the formation time; and

(b) at that time one or more entities (the ***first level entities***), that become subsidiary members of the group and in which the *head company holds *membership interests, are interposed between the head company and the subject entity;

then the step 3A amount is apportioned among the first level entities and the subject entity on the following basis:

(c) each first level entity has the following proportion of the step 3A amount:

$$\frac{\text{Market value of first level entity's direct and indirect membership interests in subject entity}}{\text{Market value of all membership interests in subject entity}}$$

where:

market value of all membership interests in subject entity means the *market value, at the formation time, of all *membership interests in the subject entity that are held by entities that become *members of the group at that time.

market value of first level entity's direct and indirect membership interests in subject entity means so much of the market value of all membership interests in the subject entity (as defined above) as is attributable to *membership interests that the first level entity holds directly, or indirectly through other interposed entities that become *subsidiary members of the group at the formation time; and

(d) the subject entity has the remainder of the step 3A amount.

Step 3A amount for assets consisting of membership interests held by subsidiary members in other subsidiary members

(3) If:

(a) before the formation time:

(i) there was a roll-over under Subdivision 126-B (a ***Subdivision 126-B roll-over***) in relation to a *CGT event that happened in relation to an asset (the ***roll-over asset***); or

(ii) section 160ZZO of the *Income Tax Assessment Act 1936* applied in relation to a disposal (a ***section 160ZZO roll-over***) of an asset (also the ***roll-over asset***); and

(b) the originating company in relation to the Subdivision 126-B roll-over, or the transferor in relation to the section 160ZZO roll-over, was a foreign resident; and

(c) the recipient company in relation to the Subdivision 126-B roll-over, or the transferee in relation to the section 160ZZO

roll-over, was an Australian resident and was not the entity that became the *head company of the group; and

(d) between the Subdivision 126-B roll-over, or the section 160ZZO roll-over, and the formation time, no other CGT event happened in relation to the roll-over asset for which there was not a Subdivision 126-B roll-over or a section 160ZZO roll-over; and

(e) the roll-over asset is a *membership interest in an entity that becomes a *subsidiary member at the formation time, other than one that is held at that time by the entity that becomes the head company of the group;

then, subject to subsection (5), there is under section 705-93 a step 3A amount for the purpose of working out the group's *allocable cost amount for the entity (the ***subject entity***) that holds the roll-over asset at the formation time.

What the step 3A amount is

(4) The step 3A amount is:

(a) if, as a result of the Subdivision 126-B roll-over mentioned in subparagraph (3)(a)(i), or the section 160ZZO roll-over mentioned in subparagraph (3)(a)(ii), a *capital loss of the originating company was disregarded or a capital loss of the transferor was not incurred—an increase amount equal to the capital loss; or

(b) if, as a result of the Subdivision 126-B roll-over mentioned in subparagraph (3)(a)(i), or the section 160ZZO roll-over mentioned in subparagraph (3)(a)(ii), a *capital gain of the originating company was disregarded or a capital gain of the transferor did not accrue—a reduction amount equal to the capital gain.

Apportionment of step 3A amount among first level interposed entities

(5) If at the formation time one or more entities, that become *subsidiary members of the group and in which the *head company holds *membership interests, are interposed between the head company and the subject entity, then the step 3A amount is apportioned among those entities and the subject entity in the same way as a step 3A amount is apportioned under subsection (2).

16 Section 705-150 (heading)

Repeal the heading, substitute:

705-150 Adjustment to result of step 3A in working out allocable cost amount where pre-formation time roll-over from head company to member of wholly-owned group

17 Subsection 705-150(3) (heading)

Repeal the heading, substitute:

Adjustment to result of step 3A in allocable cost amount for head company roll-over recipient

18 Subsection 705-150(3)

Omit "step 3", substitute "step 3A".

19 Subsection 705-150(4) (heading)

Repeal the heading, substitute:

Adjustment to result of step 3A in allocable cost amount for interposed entity

20 Subsection 705-150(4)

Omit "step 3", substitute "step 3A".

21 Subsection 705-150(4) (note)

Repeal the note, substitute:

Note: If, after applying this section, the amount remaining as a result of step 3A in the table in section 705-60 is negative, the head company makes a capital gain equal to that amount: see CGT event L2.

22 After section 705-225

Insert:

705-227 Adjustment in working out step 3A of allocable cost amount to take account of membership interests held by linked entities in other linked entities

Object

(1) The object of this section is to modify the effect that section 705-93 (step 3A of allocable cost amount) has in accordance with this Subdivision so that it takes account of *membership interests that linked entities hold in other linked entities at the time (the ***linked entity joining time***) when the linked entities become *subsidiary members of the group.

Apportionment of step 3A amount among first level interposed entities

(2) If:

(a) under section 705-93, in its application in accordance with this Subdivision, there is a step 3A amount for the purpose of working out the group's *allocable cost amount for a particular linked entity (the ***subject entity***); and

(b) at the linked entity joining time, one or more of the linked entities (the ***first level entities***) in which the *head company holds *membership interests are interposed between the head company and the subject entity;

then the step 3A amount is apportioned among the first level entities and the subject entity on the following basis:

(c) each first level entity has the following proportion of the step 3A amount:

$$\frac{\text{Market value of first level entity's direct and indirect membership interests in subject entity}}{\text{Market value of all membership interests in subject entity}}$$

where:

market value of all membership interests in subject entity means the *market value, at the linked entity joining time, of all *membership interests in the subject entity that are held by entities that become *members of the group at that time.

market value of first level entity's direct and indirect membership interests in subject entity means so much of the market value of all membership interests in the subject entity (as defined above) as is attributable to *membership interests that the first level entity holds directly, or indirectly through other linked entities; and

(d) the subject entity has the remainder of the step 3A amount.

Step 3A amount for assets consisting of membership interests held by linked entities in other linked entities

(3) If:

(a) before the linked entity joining time:

(i) there was a roll-over under Subdivision 126-B (a ***Subdivision 126-B roll-over***) in relation to a *CGT event that happened in relation to an asset (the ***roll-over asset***); or

(ii) section 160ZZO of the *Income Tax Assessment Act 1936* applied in relation to a disposal (a ***section 160ZZO roll-over***) of an asset (also the ***roll-over asset***); and

(b) the originating company in relation to the Subdivision 126-B roll-over, or the transferor in relation to the section 160ZZO roll-over, was a foreign resident; and

(c) the recipient company in relation to the Subdivision 126-B roll-over, or the transferee in relation to the section 160ZZO roll-over, was an Australian resident and was not the entity that became the *head company of the group; and

(d) between the Subdivision 126-B roll-over, or the section 160ZZO roll-over, and the linked entity joining time, no other CGT event happened in relation to the roll-over asset for which there was not a Subdivision 126-B roll-over or a section 160ZZO roll-over; and

(e) the roll-over asset is a *membership interest in a linked entity, other than one that is held at that time by the entity that becomes the head company of the group;

then, subject to subsection (5), there is under section 705-93 a step 3A amount for the purpose of working out the group's *allocable cost amount for the linked entity (the ***subject entity***) that holds the roll-over asset at the linked entity joining time.

What the step 3A amount is

(4) The step 3A amount is:

(a) if, as a result of the Subdivision 126-B roll-over mentioned in subparagraph (3)(a)(i), or the section 160ZZO roll-over mentioned in subparagraph (3)(a)(ii), a *capital loss of the originating company was disregarded or a capital loss of the transferor was not incurred—an increase amount equal to the capital loss; or

(b) if, as a result of the Subdivision 126-B roll-over mentioned in subparagraph (3)(a)(i), or the section 160ZZO roll-over mentioned in subparagraph (3)(a)(ii), a *capital gain of the originating company was disregarded or a capital gain of the transferor did not accrue—a reduction amount equal to the capital gain.

Apportionment of step 3A amount among first level interposed entities

(5) If at the linked entity joining time one or more linked entities, in which the *head company holds *membership interests, are interposed between the head company and the subject entity, then the step 3A amount is apportioned among those entities and the subject entity in the same way as a step 3A amount is apportioned under subsection (2).

Part 5—Technical corrections

Income Tax Assessment Act 1997

23 Subsection 701-25(4)

Omit ", and", substitute "and".

24 Subsection 701-45(3)

Omit "*head company", substitute "entity".

25 Subparagraph 701-75(3)(a)(ii)

Omit "time.", substitute "time; and".

26 Subsections 705-150(3) and (4)

Omit "reduced (if the head company roll-over adjustment amount is an excess), or increased", substitute "increased (if the head company roll-over adjustment is an excess), or reduced".

Part 6—Extension of transitional provision relating to step 3 of allocable cost amount on group formation

Income Tax (Transitional Provisions) Act 1997

27 Subsection 701-30(1)

Repeal the subsection, substitute:

Section only applies to transitional groups formed at certain times

(1) This section applies if the day on which the transitional group comes into existence is before 1 July 2003 or is both:

(a) the first day of the first income year of the head company starting after 30 June 2003; and

(b) before 1 July 2004.

Section only applies to non-chosen transitional entities in such groups

(1A) This section applies to each transitional entity in the transitional group, other than a chosen transitional entity. This is so even if there are no chosen transitional entities at all.

Part 7—Transitional group's allocable cost amount for subsidiary members other than chosen transitional entities

Income Tax (Transitional Provisions) Act 1997

28 Paragraph 701-20(5)(c)

Omit "in the sub-group held in any other", substitute "held at or before that time in any other entity that became a".

29 Paragraph 701-20(5)(c)

After "in relation to the sub-group", insert ", and any such entity held those membership interests during the period when it actually held them".

Part 8—Inclusion in certain transitional provisions of references to the Income Tax Assessment Act 1997

Income Tax (Transitional Provisions) Act 1997

30 Subsection 701-5(2)

After "703-50(3)", insert "of the *Income Tax Assessment Act 1997*".

31 Subsection 701-5(2)

After "section 703-50", insert "of that Act".

32 Section 701-15

After "amount)", insert "of the *Income Tax Assessment Act 1997*".

33 Section 701-15 (note)

After "701-5", insert "of that Act".

34 Paragraph 701-20(4)(b)

After "705-60", insert "of the *Income Tax Assessment Act 1997*".

35 Paragraph 701-20(5)(d)

After "705-60", insert "of the *Income Tax Assessment Act 1997*".

36 Section 701-25

Omit "this Act", substitute "the *Income Tax Assessment Act 1997*".

Schedule 2—Consolidation: beneficial ownership

Income Tax Assessment Act 1997

1 After section 703-30

Insert:

703-33 Transfer time for sale of shares in company

(1) This section applies if:

(a) under a contract:

(i) a person (the ***seller***) stops being entitled to be registered as the holder of a *share in a company at a time (the ***transfer time***); and

(ii) another person (the ***buyer***) becomes entitled to be registered as the holder of the share in the company at the transfer time; and

(b) as a result of the contract, the seller stops being the beneficial owner of the share, and the buyer becomes the beneficial owner of the share; and

(c) the seller and the buyer dealt with each other at *arm's length in relation to the contract; and

(d) the seller and the buyer were not *associates of one another at any time during the period:

(i) starting when the contract was entered into; and

(ii) ending at the transfer time.

(2) For the purposes of subsection 703-30(1):

(a) the seller is taken to have stopped being the beneficial owner of the share at the transfer time; and

(b) the buyer is taken to have become the beneficial owner of the share at the transfer time.

Schedule 3—Consolidation: technical amendment of membership rules

Income Tax Assessment Act 1997

1 Subparagraph 703-50(3)(b)(i)

Omit "first income year ending after the day specified in the choice", substitute "income year during which the day specified in the choice occurs".

Schedule 4—Consolidation: adjustments for errors etc.

Part 1—New Subdivision 705-E

Income Tax Assessment Act 1997

1 Section 705-245 (link note)

Repeal the link note.

2 After Subdivision 705-D

Insert:

Subdivision 705-E—Adjustments for errors etc.

Guide to Subdivision 705-E

705-300 What this Subdivision is about

Errors in making tax cost setting amount calculations are reversed by means of an immediate capital gain or loss if it would be unreasonable to require the calculations to be re-done.

Table of sections

Operative provisions

705-305 Object of this Subdivision
705-310 Operation of Part IVA of the *Income Tax Assessment Act 1936*
705-315 Errors that attract special adjustment action
705-320 Tax cost setting amounts taken to be correct

[This is the end of the Guide.]

Operative provisions

705-305 Object of this Subdivision

The object of this Subdivision is to avoid the time and expense involved in correcting errors affecting *tax cost setting amount calculations. This is done by providing for *capital gains or *capital losses to reverse the errors.

705-310 Operation of Part IVA of the *Income Tax Assessment Act 1936*

To avoid doubt, this Subdivision does not limit the operation of Part IVA of the *Income Tax Assessment Act 1936*.

705-315 Errors that attract special adjustment action

(1) Section 705-320 (about later adjustments to correct *tax cost setting amount calculation errors) applies if the conditions in this section are satisfied.

Tax cost setting amount taken into account

(2) The first condition is that the *head company of a *consolidated group worked out a *tax cost setting amount, in purported compliance with this Division, for an asset of an entity that becomes a *subsidiary member of the group that is an asset of a kind referred to in section 705-35 as a reset cost base asset.

Error in calculation

(3) The second condition is that:

(a) the *head company made one or more errors in working out the *tax cost setting amount; and

(b) those errors caused the tax cost setting amount to differ from its correct amount.

If the errors caused the tax cost setting amount to be more, the difference is an ***overstated amount***. If the errors caused the tax cost setting amount to be less, the difference is an ***understated amount***.

Unreasonable to require recalculation

(4) The third condition is that, having regard to the following factors:

(a) the net size of the errors compared to the size of the *allocable cost amount for the joining entity;

(b) the number of *tax cost setting amounts that would have to be recalculated, and the difficulty of making the recalculations;

(c) the number of adjustments, in assessments that could be amended and in future *income tax returns, that would be necessary to correct the errors;

(d) the difficulty in obtaining any necessary information;

it is not reasonable to require a recalculation of the amounts involved.

Exception where error due to fraud or evasion

(5) However, the conditions in this section are *not* satisfied if the errors were to any extent due to fraud or evasion.

Requirement to notify

(6) The *head company of the *consolidated group must, as soon as practicable after becoming aware that it made one or more errors in working out the *tax cost setting amount, notify the Commissioner in the *approved form:

(a) that it had made the errors; and

(b) of the amount of the overstated amount or understated amount.

705-320 Tax cost setting amounts taken to be correct

(1) For the purposes of this Act (other than this Subdivision) and for the purposes of the *Taxation Administration Act 1953*, any *tax cost setting amounts that were worked out by the *head company, so far as they were due to the errors, are taken to have been correct if the conditions in section 705-315 are satisfied.

Note 1: If the conditions in section 705-315 are satisfied, CGT event L6 happens (see section 104-525).

Note 2: Subsection (1) means that the Commissioner cannot amend any assessments necessary to correct the errors, and that (except as

mentioned in subsection (2)) no offences or administrative penalties arise in respect of the errors.

(2) Subsection (1) does not apply for the purposes of determining whether there is an offence against section 8N of the *Taxation Administration Act 1953*, or an administrative penalty under section 284-75 or 284-145 in Schedule 1 to that Act, in relation to statements made before the Commissioner became aware of the errors.

Note 1: Section 8N of the *Taxation Administration Act 1953* deals with false or misleading statements. Sections 284-75 and 284-145 in Schedule 1 to that Act set out the circumstances in which an entity is liable for an administrative penalty.

Note 2: The offence and administrative penalty provisions however apply on a modified basis—see subsection 8W(1C) of the *Taxation Administration Act 1953*, and subsections 284-80(2) and 284-150(2) in Schedule 1 to that Act.

[The next Division is Division 707.]

Part 2—Consequential amendments

Income Tax Assessment Act 1997

3 Section 104-5 (at the end of the table)

Add:

L6 Error in calculation of tax cost setting amount for joining entity's assets: CGT event L6 *[See section 104-525]*	start of the income year when the Commissioner becomes aware of the errors	the net overstated amount resulting from the errors, or a portion of that amount	the net understated amount resulting from the errors, or a portion of that amount
L7 Discharged amount of liability differs from amount for allocable cost amount purposes: CGT event L7 *[See section 104-530]*	start of the income year in which the liability is realised	your allocable cost amount less what it would have been had you used the correct amount for the liability	what your allocable cost amount would have been had you used the correct amount for the liability less your allocable cost amount

4 At the end of Division 104

Add:

104-525 Error in calculation of tax cost setting amount for joining entity's assets: CGT event L6

(1) ***CGT event L6*** happens if:

(a) you are the *head company of a *consolidated group; and

(b) the conditions in section 705-315 (about errors in tax cost setting amounts) are satisfied for a *subsidiary member of the group; and

(c) you have a *net overstated amount or a *net understated amount for the subsidiary member.

(2) The time of the event is the start of the income year in which the Commissioner becomes aware of the errors.

(3) You work out whether you have a ***net overstated amount*** or ***net understated amount*** using this table:

Meaning of *net overstated amount* and *net understated amount*

Item	In this situation:	There is this result:
1	There are one or more overstated amounts under section 705-315 for the *subsidiary member but no understated amount under that section for the subsidiary member	There is a ***net overstated amount***. It is the overstated amount, or the sum of the overstated amounts.
2	There are one or more understated amounts under section 705-315 for the *subsidiary member but no overstated amount under that section for the subsidiary member	There is a ***net understated amount***. It is the understated amount, or the sum of the understated amounts.
3	There are both one or more overstated amounts and one or more understated amounts under section 705-315 for the *subsidiary member and the sum of the overstated amounts exceeds the sum of the understated amounts	There is a ***net overstated amount***. It is the difference between those sums
4	There are both one or more overstated amounts and one or more understated amounts under section 705-315 for the *subsidiary member and the sum of the overstated amounts is less than the sum of the understated amounts	There is a ***net understated amount***. It is the difference between those sums

(4) If the time when the Commissioner becomes aware of the errors is within the period within which the Commissioner may amend all of the assessments necessary to correct the errors, then, for the head company core purposes mentioned in subsection 701-1(2):

(a) if you have a *net overstated amount—you make a ***capital gain*** equal to that amount; or

(b) if you have a *net understated amount—you make a ***capital loss*** equal to that amount.

(5) If the time when the Commissioner becomes aware of the errors is not within that period, then, for the head company core purposes mentioned in subsection 701-1(2):

(a) if you have a *net overstated amount—you make a ***capital gain*** of the amount worked out under subsection (6); or

(b) if you have a *net understated amount—you make a ***capital loss*** of the amount worked out under subsection (6).

(6) The amount of the *capital gain or *capital loss is worked out as follows:

$$\text{Stated amount} \times \frac{\text{Current asset setting amount}}{\text{Original asset setting amount}}$$

where:

current asset setting amount means the *tax cost setting amount for all assets referred to in subsection 705-315(2) as reset cost base assets that the *head company of the *consolidated group held continuously from the time when the *subsidiary member joined the group until the start of the head company's income year that is the earliest income year for which the Commissioner could amend the head company's assessment to correct any of the errors.

original asset setting amount means the *tax cost setting amount for all assets referred to in subsection 705-315(2) as reset cost base assets that the *subsidiary member held at the time it joined the group.

stated amount means the *net overstated amount or the *net understated amount, as the case requires.

104-530 Discharged amount of liability differs from amount for allocable cost amount purposes: CGT event L7

(1) ***CGT event L7*** happens if you are the *head company of a *consolidated group and the conditions relating to a liability in subsection (3) are satisfied.

(2) The time of the event is the start of your income year in which the liability is discharged.

(3) The conditions are that:

(a) a liability of an entity that became a *subsidiary member of the group was taken into account in working out your

*allocable cost amount for the subsidiary member in accordance with Division 705 (your ***ACA***); and

(b) the liability was later discharged (whether by the making of a payment or by the release, waiver or other extinguishment of the liability) and the sum (the ***realised amount***) of:

(i) the amount of any payment made to discharge the liability; and

(ii) the market value of any other consideration given to discharge the liability;

differs from the amount for the liability that was taken into account in working out your ACA; and

(c) that ACA is different to what it would have been (your ***true ACA***) if you had taken the realised amount into account in working out your ACA.

(4) You make a ***capital gain*** for the head company core purposes mentioned in subsection 701-1(2) if your ACA would have been smaller had you used the realised amount in working out your ACA. The amount of the gain is the difference between the amount you worked out and your true ACA.

(5) You make a ***capital loss*** for the head company core purposes mentioned in subsection 701-1(2) if your ACA would have been greater had you used the realised amount in working out your ACA. The amount of the loss is the difference between the amount you worked out and your true ACA.

5 Section 110-10 (at the end of the table)

Add:

L6	Errors in tax cost setting amounts for entity joining consolidated group	104-525
L7	Discharged amount of liability differs from amount for allocable cost amount purposes	104-530

6 Subsection 995-1(1)

Insert:

net overstated amount has the meaning given by subsection 104-525(3).

7 Subsection 995-1(1)

Insert:

net understated amount has the meaning given by subsection 104-525(3).

Taxation Administration Act 1953

8 After subsection 8W(1B)

Insert:

(1C) If the conditions in section 705-315 of the *Income Tax Assessment Act 1997* are satisfied, then for the purposes of any application of subsection (1) of this section in relation to the errors mentioned in that section, so far as they were made in a statement made as mentioned in subsection 705-230(2) of that Act, the references in paragraphs (1)(c) and (d) of this section to the excess are taken instead to be references to the amount worked out using the formula:

$$\text{Capital gain} \times \left(1 - \frac{\text{Adjusted reset cost base asset setting amount}}{\text{Original reset cost base asset setting amount}}\right)$$

where:

adjusted reset cost base asset setting amount means:

(a) the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all assets of a kind referred to in section 705-35 of that Act as reset cost base assets that the *head company of the relevant group held continuously from the time when the *subsidiary member referred to in subsection 705-315(2) of that Act joined the group until the start of the head company's income year in which the Commissioner became aware of the errors mentioned in section 705-315 of that Act;

less:

(b) the head company's deductions under Division 40 (except under Subdivision 40-F, 40-G, 40-H or 40-I) or Subdivision 328-D of the *Income Tax Assessment Act 1997* for those assets for all income years before the earliest

income year for which the Commissioner could amend the head company's assessment to correct any of the errors.

capital gain means the capital gain that the head company makes as a result of CGT event L6 happening as mentioned in section 104-525 of the *Income Tax Assessment Act 1997*.

original reset cost base asset setting amount means the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all reset cost base assets that the *subsidiary member held at the time it joined the group, other than assets that the *head company no longer held at the start of the earliest income year for which the Commissioner could amend the head company's assessment to correct any of the errors.

9 At the end of section 284-80 in Schedule 1

Add:

(2) However, if:

(a) your shortfall amount arises in the situation covered by both item 1 in the table and item 1, 2 or 3 in the table in subsection 284-90(1); and

(b) the statement is false or misleading because of errors mentioned in section 705-315 of the *Income Tax Assessment Act 1997* that were made in the income tax return mentioned in subsection 705-230(2) of that Act, your ***shortfall amount*** is instead the amount worked out using the formula:

$$\text{Capital gain} \times \left[1 - \frac{\text{Adjusted reset cost base asset setting amount}}{\text{Original reset cost base asset setting amount}}\right]$$

where:

adjusted reset cost base asset setting amount means:

(a) the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all assets of a kind referred to in section 705-35 of that Act as reset cost base assets that the *head company of the relevant group held continuously from the time when the *subsidiary member referred to in subsection 705-315(2) of that Act joined the group until the start of the head company's income year in

which the Commissioner became aware of the errors mentioned in section 705-315 of that Act;

less:

(b) the head company's deductions under Division 40 (except under Subdivision 40-F, 40-G, 40-H or 40-I) or Subdivision 328-D of the *Income Tax Assessment Act 1997* for those assets for all income years before the income year in which the Commissioner became aware of the errors.

capital gain means the capital gain that the head company makes as a result of CGT event L6 happening as mentioned in section 104-525 of the *Income Tax Assessment Act 1997*.

original reset cost base asset setting amount means the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all reset cost base assets that the *subsidiary member held at the time it joined the group, other than assets that the *head company no longer held at the start of the earliest income year for which the Commissioner could amend the head company's assessment to correct any of the errors.

10 At the end of section 284-150 in Schedule 1

Add:

(3) However, to the extent that your scheme shortfall amount is due to errors in an income tax return as mentioned in subsection 705-230(2) of the *Income Tax Assessment Act 1997*, your ***scheme shortfall amount*** is instead the amount worked out using the formula:

$$\text{Capital gain} \times \left(1 - \frac{\text{Adjusted reset cost base asset setting amount}}{\text{Original reset cost base asset setting amount}}\right)$$

where:

adjusted reset cost base asset setting amount means:

(a) the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all assets of a kind referred to in section 705-35 of that Act as reset cost base assets that the *head company of the relevant group held continuously from the time when the *subsidiary member

referred to in subsection 705-315(2) of that Act joined the group until the start of the head company's income year in which the Commissioner became aware of the errors mentioned in section 705-315 of that Act;

less:

(b) the head company's deductions under Division 40 (except under Subdivision 40-F, 40-G, 40-H or 40-I) or Subdivision 328-D of the *Income Tax Assessment Act 1997* for those assets for all income years before the income year in which the Commissioner became aware of the errors.

capital gain means the capital gain that the head company makes as a result of CGT event L6 happening as mentioned in section 104-525 of the *Income Tax Assessment Act 1997*.

original reset cost base asset setting amount means the *tax cost setting amount, worked out under Division 705 of the *Income Tax Assessment Act 1997*, for all reset cost base assets that the *subsidiary member held at the joining time, other than assets that the *head company no longer held at the start of the earliest income year for which the Commissioner could amend the head company's assessment to correct any of the errors.

Schedule 5—Consolidation: imputation rules

Income Tax Assessment Act 1936

1 At the end of section 177EB

Add:

Section to apply to exempting credits

(11) This section applies to exempting credits arising in the exempting account of the head company of a consolidated group in the same way that it applies to credits arising in the head company's franking account.

Income Tax Assessment Act 1997

2 Section 709-85 (link note)

Repeal the link note.

3 At the end of Subdivision 709-A

Add:

709-90 Subsidiary member's distributions to foreign resident taken to be distributions by head company

Part 3-6 operates as if a *frankable distribution made by a *subsidiary member of a *consolidated group (the ***foreign-held subsidiary***) were a frankable distribution made by the *head company of the group to a *member of the head company if:

(a) the foreign-held subsidiary meets the set of requirements in section 703-45, section 701C-10 of the *Income Tax (Transitional Provisions) Act 1997* or section 701C-15 of that Act; and

(b) the frankable distribution is made to a foreign resident.

Note: Part 3-6 deals with imputation.

4 At the end of Division 709

Add:

Subdivision 709-B—Imputation issues

Guide to Subdivision 709-B

709-150 What this Subdivision is about

This Subdivision modifies the way Division 208 (exempting entities and former exempting entities) operates in relation to consolidated groups.

Table of sections

Operative provisions

709-155 Testing consolidated groups
709-160 Subsidiary member is exempting entity
709-165 Subsidiary member is former exempting entity
709-170 Head company and subsidiary are exempting entities
709-175 Head company is former exempting entity

[This is the end of the Guide.]

Operative provisions

709-155 Testing consolidated groups

(1) To determine whether a *consolidated group is an *exempting entity or *former exempting entity, the tests in Division 208 are applied to the *head company of the group.

(2) However, there are some additional rules that can alter the way that Division 208 applies to a *consolidated group. These are set out in sections 709-160 to 709-175.

(3) In applying those rules to an entity that is a *member of a *consolidated group:

(a) Division 208 is to be applied before those rules; and

(b) that Division is to be applied just after the entity became a member of the group but, for a *subsidiary member, it is to be applied on the assumption that the subsidiary was not a member of the group at that time.

(4) Except as mentioned in paragraph (3)(b), Division 208 has no application to a *subsidiary member of a *consolidated group.

709-160 Subsidiary member is exempting entity

(1) This section operates if:

(a) the *head company of a *consolidated group is neither an exempting entity nor a *former exempting entity; and

(b) a *corporate tax entity becomes a *subsidiary member of the group at a time (the ***joining time***); and

(c) the entity is an *exempting entity at the joining time.

(2) These rules apply to the *consolidated group.

Rules applying to *consolidated group

Item	Rule
1	The *head company becomes a *former exempting entity at the joining time
2	The *head company has both a *franking account and an *exempting account
3	If the *subsidiary member's *franking account has a *franking surplus at the joining time: (a) a debit equal to that surplus arises in that account at the joining time; and (b) a credit equal to that surplus arises in the *exempting account of the *head company at the joining time
4	Subsection 709-60(2) (about franking surplus) does not apply to the *subsidiary member
5	Item 1 of the table in section 208-115 does not apply to the *head company
6	Item 1 of the table in section 208-120 does not apply to the *head company
7	Item 1 of the table in section 208-130 does not apply to the *head company
8	Item 1 of the table in section 208-145 does not apply to the *head company

Note 1: If the subsidiary's franking account is in deficit, it will be liable for franking deficit tax: see subsection 709-60(3).

Note 2: The subsidiary's franking account does not operate while it is a member of the group: see section 709-65.

709-165 Subsidiary member is former exempting entity

(1) This section operates if:

(a) the *head company of a *consolidated group is neither an exempting entity nor a *former exempting entity; and

(b) a *corporate tax entity becomes a *subsidiary member of the group at a time (also the ***joining time***); and

(c) the entity is a *former exempting entity at the joining time.

(2) These rules apply to the *consolidated group.

Rules applying to *consolidated group

Item	Rule
1	The *head company becomes a *former exempting entity at the joining time
2	The *head company has both a *franking account and an *exempting account
3	If the *subsidiary member's *exempting account has an *exempting surplus at the joining time: (a) a debit equal to that surplus arises in that account at the joining time; and (b) a credit equal to that surplus arises in the exempting account of the *head company at the joining time
4	If the *subsidiary member's *exempting account has an *exempting deficit at the joining time: (a) a credit equal to that deficit arises in that account at the joining time; and (b) a debit equal to that deficit arises in the subsidiary's *franking account just before the joining time
5	The *subsidiary member's *exempting account does not operate during the period: (a) starting just after the joining time; and (b) ending when the entity ceases to be a subsidiary member of the group
6	Item 1 of the table in section 208-115 does not apply to the *head company
7	Item 1 of the table in section 208-120 does not apply to the *head company
8	Item 1 of the table in section 208-130 does not apply to the *head company
9	Item 1 of the table in section 208-145 does not apply to the *head company

Note 1: Any surplus in the subsidiary's franking account will be transferred to the head company's franking account: see subsection 709-60(2).

Note 2: If the subsidiary's franking account is in deficit, it will be liable for franking deficit tax: see subsection 709-60(3). This deficit may be increased by item 4 in the table in subsection (2).

Note 3: The subsidiary's franking account does not operate while it is a member of the group: see section 709-65.

709-170 Head company and subsidiary are exempting entities

There is no change to the status of the *head company of a *consolidated group if:

(a) the head company is an *exempting entity; and

(b) a *corporate tax entity becomes a *subsidiary member of the group at a time (also the ***joining time***); and

(c) the entity is an exempting entity at the joining time.

Note 1: If the subsidiary's franking account is in surplus, that surplus will be transferred to the head company's franking account: see subsection 709-60(2).

Note 2: If the subsidiary's franking account is in deficit, it will be liable for franking deficit tax: see subsection 709-60(3).

Note 3: The subsidiary's franking account does not operate while it is a member of the group: see section 709-65.

709-175 Head company is former exempting entity

(1) Subsection (2) operates if:

(a) the *head company of a *consolidated group is a *former exempting entity; and

(b) a *corporate tax entity becomes a *subsidiary member of the group at a time (also the ***joining time***); and

(c) the entity is an *exempting entity at the joining time.

(2) These rules apply to the *consolidated group.

Rules applying to *consolidated group

Item	Rule
1	There is no change to the status of the *head company

Rules applying to *consolidated group	
Item	**Rule**
2	If the subsidiary member's *franking account has a *franking surplus at the joining time: (a) a debit equal to that surplus arises in that account at the joining time; and (b) a credit equal to that surplus arises in the *exempting account of the *head company at the joining time
3	Subsection 709-60(2) (about franking surplus) does not apply to the *subsidiary member

Note 1: If the subsidiary's franking account is in deficit, it will be liable for franking deficit tax: see subsection 709-60(3).

Note 2: The subsidiary's franking account does not operate while it is a member of the group: see section 709-65.

(3) Subsection (4) operates if:

(a) the *head company of a *consolidated group is a *former exempting entity; and

(b) a *corporate tax entity becomes a *subsidiary member of the group at a time (also the ***joining time***); and

(c) the entity is a *former exempting entity at the joining time.

(4) These rules apply to the *consolidated group.

Rules applying to *consolidated group	
Item	**Rule**
1	There is no change to the status of the *head company
2	If the *subsidiary member's *exempting account has an *exempting surplus at the joining time: (a) a debit equal to that surplus arises in that account at the joining time; and (b) a credit equal to that surplus arises in the exempting account of the *head company at the joining time
3	If the *subsidiary member's *exempting account has an *exempting deficit at the joining time: (a) a credit equal to that deficit arises in that account at the joining time; and (b) a debit equal to that deficit arises in the subsidiary's *franking account just before the joining time

Rules applying to *consolidated group	
Item	**Rule**
4	The *subsidiary member's *exempting account does not operate during the period: (a) starting just after the joining time; and (b) ending when the entity ceases to be a subsidiary member of the group

Note 1: If the subsidiary's franking account is in deficit, it will be liable for franking deficit tax: see subsection 709-60(3). This deficit may be increased by item 3 in the table in subsection (4).

Note 2: The subsidiary's franking account does not operate while it is a member of the group: see section 709-65.

(5) There is no change to the status of the *head company of a *consolidated group if:

(a) the head company is a *former exempting entity; and

(b) a *corporate tax entity becomes a *subsidiary member of the group; and

(c) the entity is neither an *exempting entity nor a former exempting entity at the joining time.

Note 1: If the subsidiary's franking account is in surplus, that surplus will be transferred to the head company's franking account: see subsection 709-60(2).

Note 2: If the subsidiary's franking account is in deficit, it will be liable for franking deficit tax: see subsection 709-60(3).

Note 3: The subsidiary's franking account does not operate while it is a member of the group: see section 709-65.

5 Before Subdivision 719-J

Insert:

Subdivision 719-H—Imputation issues

719-425 Guide to Subdivision 719-H

This Subdivision deals with some imputation issues in relation to MEC groups.

Table of sections

Operative provisions

719-430 Transfer of franking account balance on cessation event
719-435 Distributions by subsidiary members of MEC group taken to be distributions by head company

[This is the end of the Guide.]

Operative provisions

719-430 Transfer of franking account balance on cessation event

(1) This section operates if:

(a) a *cessation event happens to the *provisional head company of a *MEC group (the ***former head company***); and

(b) another company (the ***new head company***) is appointed as the provisional head company of the group under subsection 719-60(3).

(2) When the new head company is appointed:

(a) the *franking account of the former head company ceases to operate; and

(b) the new head company has a franking account; and

(c) any *franking surplus or *franking deficit in the franking account of the former head company just before the *cessation event happened becomes that of the new head company.

719-435 Distributions by subsidiary members of MEC group taken to be distributions by head company

(1) Part 3-6 operates as if a *frankable distribution made by an *eligible tier-1 company that:

(a) is a member of a *MEC group; and

(b) is not the *provisional head company of the group;

had been made by the provisional head company of the group to a *member of the provisional head company.

Note: Part 3-6 deals with imputation.

(2) Part 3-6 operates as if a *frankable distribution made by a *subsidiary member of a *MEC group (the ***foreign-held subsidiary***) that is not an *eligible tier-1 company were a frankable distribution made by the *head company of the group to a *member of the head company if:

(a) the foreign-held subsidiary meets the set of requirements in section 703-45, section 701C-10 of the *Income Tax (Transitional Provisions) Act 1997* or section 701C-15 of that Act; and

(b) the frankable distribution is made to a foreign resident.

Schedule 6—Consolidation: life insurance companies

Part 1—Life insurance companies and consolidation

Income Tax Assessment Act 1997

1 At the end of Division 713

Add:

Subdivision 713-L—Life insurance companies

Guide to Subdivision 713-L

713-500 What this Subdivision is about

This Subdivision sets out special rules for:

(a) a life insurance company that becomes, or ceases to be, a member of a consolidated group; and

(b) the head company of a consolidated group where a life insurance company is a subsidiary member of the group.

Table of sections

Operative provisions

713-505 Head company treated as a life insurance company
713-510 Certain subsidiaries of life insurance companies cannot be members of consolidated group
713-515 Modification of cost setting rules
713-520 Valuing certain liabilities
713-525 Obligation to value virtual PST assets and segregated exempt assets
713-530 Certain amounts transferred to leaving entity

[This is the end of the Guide.]

Operative provisions

713-505 Head company treated as a life insurance company

This Act, and the *Income Tax Rates Act 1986*, apply to the *head company of a *consolidated group as if it were a *life insurance company for an income year if one or more life insurance companies are *subsidiary members of the group at any time during that year.

713-510 Certain subsidiaries of life insurance companies cannot be members of consolidated group

(1) An entity cannot be a *subsidiary member of the same *consolidated group or *consolidatable group of which a *life insurance company is a *member if:

(a) the life insurance company owns, either directly or indirectly, *membership interests in the entity; and

(b) either:

(i) some, but not all, of those membership interests are *virtual PST assets of the life insurance company; or

(ii) some, but not all, of those membership interests are *segregated exempt assets of the life insurance company.

Note: The entity could, however, be a member of another consolidated group or consolidatable group.

(2) An entity cannot continue to be a *subsidiary member of a *consolidated group if:

(a) a *life insurance company is a *member of the group; and

(b) the life insurance company owns, either directly or indirectly, *membership interests in the entity; and

(c) had the entity not been a subsidiary member of the group, either:

(i) some, but not all, of those membership interests would be *virtual PST assets of the life insurance company; or

(ii) some, but not all, of those membership interests would be *segregated exempt assets of the life insurance company.

713-515 Modification of cost setting rules

(1) If an entity that becomes a *subsidiary member of a *consolidated group at a time (the ***joining time***) is a *life insurance company, these assets are ***retained cost base assets***:

(a) a *virtual PST asset, or a *segregated exempt asset, of the company; and

(b) another asset of the company that is held by the company for the purpose of discharging its liabilities under the *net investment component of ordinary life insurance policies (except policies that provide for *participating benefits or *discretionary benefits under *life insurance business carried on in Australia); and

(c) for a life insurance company that has demutualised under Division 9AA of Part III of the *Income Tax Assessment Act 1936* where, in the period starting just after the company demutualises and ending at the joining time, all of the *membership interests in the company were owned by the same group—a goodwill asset of the company.

(2) If the *retained cost base asset is covered by paragraph (1)(a) or (b), its *tax cost setting amount is:

(a) for the purposes of working out the tax cost setting amounts for reset cost base assets (see section 705-35)—the asset's *transfer value just before the joining time; and

(b) for all other purposes—the asset's *terminating value.

(3) If the *retained cost base asset is covered by paragraph (1)(c), its *tax cost setting amount is the embedded value (see subsection 121AM(1) of the *Income Tax Assessment Act 1936*) on the applicable accounting day (see subsection 121AM(3) of that Act) of the *life insurance company concerned reduced by the net value of shareholders' assets held by the company on that day.

(4) The ***net investment component of ordinary life insurance policies*** is the component of *life insurance policies (except *exempt life insurance policies and *virtual PST life insurance policies) that:

(a) is the component in respect of the part of those policies that has not been reinsured under a *contract of reinsurance; and

(b) is not the *net risk component of those policies.

713-520 Valuing certain liabilities

(1) Despite section 705-70, if the joining entity mentioned in step 2 in the table in section 705-60 is a *life insurance company, the joining entity's liabilities mentioned in this section are to be valued as mentioned in this section.

(2) The value of the joining entity's *virtual PST liabilities (if any) is the amount worked out under section 320-190 at the joining time.

(3) The value of the joining entity's *exempt life insurance policy liabilities (if any) is the amount worked out under section 320-245 at the joining time.

(4) Subsection (5) applies to a liability of the joining entity if:

(a) the liability is under the *net risk component of a *life insurance policy; and

(b) the joining entity could deduct under section 320-80 an amount for the *risk component of claims paid under the policy had it not become a *member of the *consolidated group.

(5) The value of that liability is the *current termination value of the *net risk component of the *life insurance policy at the joining time (calculated by an *actuary).

(6) The value of the joining entity's liabilities under the *net investment component of ordinary life insurance policies is the amount worked out for those liabilities under subsection 320-190(2) as if those liabilities were *virtual PST liabilities.

713-525 Obligation to value virtual PST assets and segregated exempt assets

Division 320 has effect as if:

(a) the joining time when a *life insurance company becomes a *subsidiary member of a *consolidated group; and

(b) the time (the ***leaving time***) when a life insurance company ceases to be a subsidiary member of a consolidated group;

were a valuation time for the purposes of sections 320-175 and 320-230.

Note: This means that:

- the company must value its virtual PST assets under section 320-175 (with the consequences set out in section 320-180), and its segregated exempt assets under section 320-230 (with the consequences set out in section 320-235), as at the joining time; and
- the head company must value the life insurance company's virtual PST assets and its segregated exempt assets as at the leaving time.

713-530 Certain amounts transferred to leaving entity

(1) This section operates if:

(a) a *life insurance company ceases to be a subsidiary member of a *consolidated group in an income year; and

(b) at the leaving time, no other member of the group is a life insurance company that has a *virtual PST; and

(c) either:

(i) at the leaving time, the *head company of the group has a *net capital loss from *virtual PST assets; or

(ii) the head company has an amount referred to in subsection 320-205(2) as a difference that it could not apply to reduce any *virtual PST component of the *complying superannuation class of the company's taxable income for the income year in which the leaving time occurred.

(2) The *net capital loss, or the difference, becomes that of the *life insurance company just after the leaving time.

[The next Division is Division 715.]

Part 2—Consequential amendments

Income Tax Assessment Act 1997

2 At the end of subsection 320-175(1)

Add:

Note: The time when a life insurance company joins or leaves a consolidated group is also a valuation time: see section 713-525.

3 At the end of subsection 320-230(1)

Add:

Note: The time when a life insurance company joins or leaves a consolidated group is also a valuation time: see section 713-525.

4 At the end of section 701-60

Add:

Note: The tax cost setting amount of certain assets of a life insurance company is worked out under Subdivision 713-L.

5 At the end of section 703-20

Add:

Note: A subsidiary of a life insurance company cannot be a member of a consolidated group or consolidatable group in certain circumstances: see section 713-510.

6 At the end of subsection 705-25(5)

Add:

Note: There are some additional retained cost base assets for a joining entity that is a life insurance company: see Subdivision 713-L. The tax cost setting amount for those assets is worked out under that Subdivision.

7 At the end of subsection 705-70(1)

Add:

Note: Certain liabilities of a life insurance company are worked out under Subdivision 713-L: see section 713-520.

8 Subsection 995-1(1)

Insert:

net investment component of ordinary life insurance policies has the meaning given by subsection 713-515(4).

9 Subsection 995-1(1) (definition of *retained cost base asset*)

After "705-25(5)", insert "and 713-515(1)".

Part 3—Transitional provisions

Income Tax (Transitional Provisions) Act 1997

10 After Division 707

Insert:

Division 713—Rules for particular kinds of entities

Table of Subdivisions

713-L Transitional relief for certain transactions relating to life insurance companies

Subdivision 713-L—Transitional relief for certain transactions relating to life insurance companies

Table of sections

713-500 Object of Subdivision
713-505 When this Subdivision applies (first case)
713-510 When this Subdivision applies (second case)
713-515 Entities must choose the relief
713-520 Conditions
713-525 Time of transfer
713-530 What the relief is
713-535 Subsequent consequences
713-540 Requirement to notify happening of new event
713-545 Discount capital gain in certain cases

713-500 Object of Subdivision

The object of this Subdivision is to give an opportunity to a group of entities that includes a life insurance company to rearrange the assets of the group for the purposes of one or more of them becoming members of a consolidated group in a way that does not attract any immediate taxation consequences.

713-505 When this Subdivision applies (first case)

(1) This Subdivision provides for a deferral of the taxation consequences that would occur because of an event (the ***deferral event***) happening involving an entity (the ***originating entity***) and another entity (the ***recipient entity***) if:

(a) the event occurs in connection with a life insurance company (the ***member life insurance company***) becoming a member of a consolidated group; and

(b) the relevant conditions in section 713-520 are met.

(2) If the originating entity is a company, the deferral event referred to in subsection (1) is a CGT event referred to in subsection (4) happening to a CGT asset (the ***original asset***) where, apart from this Subdivision, the happening of the event would have resulted in:

(a) an amount (other than a capital gain) being included in the originating entity's assessable income; or

(b) the originating entity making a capital gain.

(3) If the originating entity is a trust, the deferral event referred to in subsection (1) is a CGT event referred to in subsection (4) happening to a CGT asset (also the ***original asset***) where, apart from this Subdivision, the happening of the event would have resulted in:

(a) an amount (other than a capital gain) being included in the net income of the trust; or

(b) the trustee making a capital gain.

(4) The CGT events are:

(a) CGT events A1, B1, D1, D2, D3, E2, F1 and F2; and

(b) CGT event C2, but only if the CGT asset that ends is a unit in a unit trust that is replaced by an equivalent membership interest (the ***replacement interest***) in a company or in another trust.

713-510 When this Subdivision applies (second case)

(1) This Subdivision also provides for a deferral of the taxation consequences that would occur if:

(a) a life insurance company transfers an asset (also the ***original asset***) to its virtual PST or from its virtual PST where, apart from this Subdivision, section 320-200 of the *Income Tax Assessment Act 1997* would apply to the transfer; or

(b) a life insurance company transfers an asset (also the ***original asset***) to its segregated exempt assets where, apart from this Subdivision, section 320-255 of the *Income Tax Assessment Act 1997* would apply to the transfer;

where the transfer (also the ***deferral event***) is made in connection with the life insurance company (also the ***member life insurance company***) becoming a member of a consolidated group.

(2) The relevant conditions in section 713-520 must be met.

713-515 Entities must choose the relief

(1) This Subdivision applies only if the originating entity (for a section 713-505 case) or the life insurance company (for a section 713-510 case) chooses that it apply.

(2) The choice must be made:

(a) by the day the originating entity or the life insurance company, or the head company of the consolidated group of which it is a member, lodges its income tax return for the income year in which the deferral event happened; or

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

713-520 Conditions

(1) For a section 713-505 case:

(a) the originating entity must be:

(i) a life insurance company that has virtual PST assets or segregated exempt assets and that is a member of a consolidatable group; or

(ii) an entity that is unable to be a member of the same consolidatable group as a life insurance company because of section 713-510 of the *Income Tax Assessment Act 1997*; or

(iii) an entity that is, directly or indirectly, a subsidiary of a life insurance company and is a member of the same consolidated group as the life insurance company; and

(b) the originating entity and the recipient entity must be members of the same consolidatable group or consolidated group or, if they are not, they would have been apart from section 713-510 of the *Income Tax Assessment Act 1997*; and

(c) any asset transferred by the originating entity must be transferred to the recipient entity at its transfer value.

(2) For both a section 713-505 case and a section 713-510 case:

(a) the total transfer values of the virtual PST assets of the member life insurance company just before a transfer of assets to which this Subdivision applies must be the same as the total transfer values of those assets just after the transfer; and

(b) the total transfer values of the segregated exempt assets of the member life insurance company just before a transfer of assets to which this Subdivision applies must be the same as the total transfer values of those assets just after the transfer.

(3) Any transfer of an asset under the deferral event must happen on or before the later of:

(a) 30 June 2004; and

(b) if the head company of the consolidated group of which the member life insurance company is a member has a substituted accounting period—the end of the head company's income year in which 30 June 2004 occurs.

713-525 Time of transfer

This Act, and the *Income Tax Assessment Act 1997*, apply to the transfer of an asset to which this Subdivision applies as if the asset had been transferred just before the member life insurance company became a member of the consolidated group.

713-530 What the relief is

(1) For a section 713-505 case:

(a) if the originating entity is a company:

(i) any amount (other than a capital gain) that would have been included in the originating entity's assessable income (the ***deferred amount***) as a result of the deferral event is not so included; and

(ii) any capital gain (the ***deferred gain***) that the originating entity would have made as a result of the deferral event is disregarded; and

(b) if the originating entity is a trust:

(i) any amount (other than a capital gain) that would have been included in the member life insurance company's assessable income (also the ***deferred amount***) as a result of the deferral event is not so included; and

(ii) any capital gain (also the ***deferred gain***) that the member life insurance company would have made as a result of the deferral event is disregarded.

(2) For a section 713-510 case:

(a) any amount that would have been included in the member life insurance company's assessable income (also the ***deferred amount***) under paragraph 320-15(e) or (g) of the *Income Tax Assessment Act 1997* as a result of the deferral event is not so included; and

(b) any capital gain (also the ***deferred gain***) that the member life insurance company would have made as a result of the deferral event is disregarded.

713-535 Subsequent consequences

(1) This section operates if, after the deferral event happens, another event (the ***new event***) happens where the new event is:

(a) a CGT event happening to:

(i) the original asset; or

(ii) if the deferral event was CGT event C2—the replacement asset; or

(b) the recipient entity ceasing to be a member of the consolidated group of which the member life insurance company is a member; or

(c) if the recipient entity is a life insurance company:

(i) the original asset being transferred to or from the company's virtual PST under section 320-180, 320-185 or 320-195 of the *Income Tax Assessment Act 1997*; or

(ii) the original asset being transferred to or from the company's segregated exempt assets under section 320-235, 320-240 or 320-250 of that Act; or

(d) if the originating entity is a company—the originating entity ceasing to exist.

(2) For a section 713-505 case where the originating entity is a company:

(a) the originating entity must include the deferred amount in its assessable income for the income year in which the new event happens; or

(b) the originating entity is taken, just before the new event happened, to have made a capital gain equal to the deferred gain.

Note: If the originating entity is a subsidiary member of a consolidated group, the head company of the group will have the amount included in its assessable income or will make the capital gain.

(3) For a section 713-505 case where the originating entity is a trust:

(a) the member life insurance company must include the deferred amount in its assessable income for the income year in which the new event happens; or

(b) the member life insurance company is taken, just before the new event happened, to have made a capital gain equal to the deferred gain.

(4) For a section 713-505 case where the originating entity is a life insurance company or a trust and the deferred amount or the deferred gain relates to an asset that was a virtual PST asset at the time when the deferral event happened, an amount equal to the deferred amount or deferred gain is taken to be an amount of assessable income to which subsection 320-205(3) of the *Income Tax Assessment Act 1997* applies for the relevant entity.

(5) For a section 713-510 case:

(a) the member life insurance company must include the deferred amount in its assessable income for the income year in which the new event happens; or

(b) the member life insurance company is taken, just before the new event happened, to have made a capital gain equal to the deferred gain.

(6) In addition, if the deferral event involved the transfer of assets from the member life insurance company's virtual PST, an amount equal to the deferred amount or deferred gain is taken to be an amount of assessable income to which subsection 320-205(3) of the *Income Tax Assessment Act 1997* applies for the relevant entity.

713-540 Requirement to notify happening of new event

(1) For a section 713-505 case, the recipient entity must, if it is not a member of the same consolidated group as the originating entity when the new event happens, notify the originating entity in the approved form of the happening of the new event within 60 days after the new event happens.

(2) Subsection (1) does not apply if the new event is the originating entity ceasing to exist.

713-545 Discount capital gain in certain cases

The *Income Tax Assessment Act 1997* applies as if the capital gain referred to in paragraph 713-535(2)(b), (3)(b) or (5)(b) were a discount capital gain if:

(a) the asset to which the deferral event happened is a virtual PST asset; and

(b) the asset was acquired less than 12 months before the deferral event happened; and

(c) the new event happens at least 12 months after the asset was acquired.

Taxation Administration Act 1953

11 At the end of section 286-75 of Schedule 1

Add:

(4) You are also liable to an administrative penalty if:

(a) you are required under section 713-540 of the *Income Tax (Transitional Provisions) Act 1997* to notify another entity of the happening of an event by a particular day; and

(b) you do not notify the other entity of the happening of that event by that day.

12 At the end of subsection 286-80(2) of Schedule 1

Add:

; or (c) for failing to notify the happening of an event as mentioned in subsection 286-75(4)—1 penalty unit for each period of 28 days or part of a period of 28 days starting on the day when the notification is due and ending when you notify the happening of the event (up to a maximum of 5 penalty units).

Schedule 7—Consolidation: interactions between Consolidation rules and other rules

Part 1—New Division 715 inserted in the Income Tax Assessment Act 1997

1 After Division 713

Insert:

Division 715—Interactions between this Part and other areas of the income tax law

Table of Subdivisions

715-A Treatment of unrealised losses existing when ownership or control of a company changes before or during consolidation

715-B How Subdivision 165-CD applies to consolidated groups and leaving entities

715-C Common rules for the purposes of Subdivisions 715-A and 715-B

715-D Treatment of company's deferred losses under Subdivision 170-D on joining a consolidated group

715-G How value shifting rules apply to a consolidated group

715-H Cancelling loss on realisation event for direct or indirect interest in a subsidiary member of a consolidated group

Subdivision 715-A—Treatment of unrealised losses existing when ownership or control of a company changes before or during consolidation

Table of sections

Object

715-15 Object of this Subdivision

Effect on Subdivision 165-CC of a company becoming a member of a consolidated group

715-25 Subdivision 165-CC stops applying to earlier changeover time
715-30 Meaning of ***165-CC tagged asset***
715-35 Meaning of ***final RUNL***

165-CC tagged assets that affect tax cost setting amounts

715-50 Step 1 amount is reduced if membership interest in subsidiary member is 165-CC tagged asset and same business test is failed
715-55 Step 2 amount is affected if liability of subsidiary member is 165-CC tagged asset of another group member and same business test is failed

165-CC tagged assets that form loss denial pools of head company when consolidated group is formed

715-60 Assets that the head company already owns
715-70 Assets of subsidiary member that become those of head company

How Subdivision 165-CC applies to consolidated groups

715-75 Extension of single entity rule and entry history rule

Effect on Subdivision 165-CC of entity leaving consolidated group

715-80 Application of sections 715-85 to 715-110
715-85 First changeover time for leaving company at or after leaving time
715-90 How same business test applies if leaving time is changeover time for leaving company
715-95 If ownership and control of leaving entity have ***not*** changed since head company's last changeover time
715-100 First choice: adjustable values of leaving assets reduced to nil
715-105 Second choice: head company's final RUNL applied in reducing adjustable values of leaving assets that are loss assets
715-110 Third choice: loss denial pool of leaving entity created

Effect of assets in loss denial pool of head company becoming assets of leaving entity

715-120 What happens
715-125 First choice: adjustable values of leaving assets reduced to nil
715-130 Second choice: pool's loss denial balance applied in reducing adjustable values of leaving assets that are loss assets
715-135 Third choice: loss denial pool of leaving entity created

Effect of first and second choices on various kinds of assets

715-145 Effect of choice on adjustable value of leaving asset

General provisions about loss denial pools

715-155 When asset leaves pool
715-160 How loss denial balance is applied to losses realised on assets in pool
715-165 When pool ceases to exist

Choices under this Subdivision

715-175 When choice must be made
715-180 Head company to notify leaving entity of choice
715-185 Leaving entity may choose to cancel loss denial pool by reducing adjustable values of assets in the pool

Object

715-15 Object of this Subdivision

(1) The object of this Subdivision is to give effect to the purposes of Subdivision 165-CC (about change of ownership or control of a company that has an unrealised net loss) in these cases:

(a) on formation of a *consolidated group, a *CGT asset held directly by the *head company is affected by that Subdivision, and the *same business test is failed;

(b) on an entity becoming a *subsidiary member of a consolidated group, an asset consisting of:

(i) a *membership interest that a *member of the group (including a chosen transitional entity under Division 701 of the *Income Tax (Transitional Provisions) Act 1997*) holds in the entity; or

(ii) a liability that the entity owes to such a member;

is affected by that Subdivision, and the same business test is failed;

(c) on a company becoming a subsidiary member:

(i) a CGT asset of the company that becomes an asset of the head company is affected by that Subdivision; and

(ii) because the company is a chosen transitional entity, the asset does not have its tax cost reset; and

(iii) the same business test is failed;

(d) on an entity ceasing to be a subsidiary member, a CGT asset of the head company that becomes an asset of the entity is affected by that Subdivision, and the same business test is failed.

Note: Subdivision 165-CC also affects an entity that has deferred losses under Subdivision 170-D on assets that it formerly owned. Subdivision 715-D gives effect to the purposes of Subdivision 165-CC if such an entity becomes a member of a consolidated group.

(2) This Subdivision achieves its object by supplementing and modifying the application of Subdivision 165-CC to take account of how the rest of this Part treats *members of a *consolidated group (in particular the provisions about entities becoming or ceasing to be members).

[The next section is section 715-25.]

Effect on Subdivision 165-CC of a company becoming a member of a consolidated group

715-25 Subdivision 165-CC stops applying to earlier changeover time

(1) At and after the time (the ***membership time***) when a company becomes a *member of a *consolidated group, Subdivision 165-CC does not apply to the company in relation to a *changeover time that happened before the membership time, except for the purposes of section 715-30 (which defines ***165-CC tagged asset***).

Note 1: Subdivision 165-CC is about change of ownership or control of a company that has an unrealised net loss.

Note 2: If the company has 165-CC tagged assets at the membership time, there are further consequences under this Subdivision and Subdivision 715-D.

Also, Subdivision 165-CC can apply to the head company of the group in relation to a changeover time that happens for it at or after the membership time. See section 715-75.

(2) Subsection (1) continues to have effect even if the company later stops being a *member of the group.

715-30 Meaning of *165-CC tagged asset*

A *CGT asset is a ***165-CC tagged asset*** of a company at a particular time if, and only if:

(a) that time is at or after the most recent *changeover time (if any) for the company; and

(b) at that changeover time, the company had an unrealised net loss under section 165-115E; and

(c) the asset is covered by subsection 165-115A(1A) as applying to that changeover time; and

(d) the company would not, at that changeover time, satisfy the maximum net asset value test under section 152-15; and

(e) if the company has chosen under subsection 165-115A(1B) in relation to that changeover time—the company *acquired the asset for $10,000 or more.

715-35 Meaning of *final RUNL*

A company's ***final RUNL*** at a particular time (the ***test time***) is the amount that would have been the company's *residual unrealised net loss at the time of:

(a) if no event that subsection 165-115BB(2) refers to as a relevant event actually happens at the test time—a notional event of that kind happening at the test time; or

(b) otherwise—a notional event of that kind that happens at the test time, and that the company determines under paragraph 165-115BB(1)(b) to have happened *later* than each event that actually happened at that time.

Note: This Subdivision reduces a company's final RUNL as amounts of it are applied for various purposes.

[The next section is section 715-50.]

165-CC tagged assets that affect tax cost setting amounts

715-50 Step 1 amount is reduced if membership interest in subsidiary member is 165-CC tagged asset and same business test is failed

(1) The amount taken into account under subsection 705-65(1) (about the cost of membership interests in the joining entity) for a *membership interest that a *member of the joined group holds in the joining entity at the joining time is reduced if:

(a) apart from this section, the amount would be the membership interest's *reduced cost base (if appropriate, as modified by a later provision of section 705-65); and

(b) the membership interest is at that time a *165-CC tagged asset of that member, and that member owned it at the *changeover time for that member; and

(c) that member's *final RUNL just before the joining time was greater than nil; and

(d) that member does *not* satisfy the *same business test for:

(i) the period (the ***same business test period***) consisting of the *head company's *trial year; and

(ii) the time (the ***test time***) just before the *changeover time.

(2) If at the joining time that *member holds:

(a) 2 or *more membership interests in the joining entity; or

(b) at least one membership interest in the joining entity, and at least one membership interest in another member of the joined group;

this section applies to each such membership interest in whichever order that member determines.

Amount of reduction

(3) The amount taken into account under subsection 705-65(1) is reduced to the *membership interest's *market value at the joining time.

(4) However, if that member's *final RUNL (as reduced by any previous reductions under this section) is *less than* the difference between:

(a) the *reduced cost base referred to in paragraph (1)(a); and

(b) the *market value referred to in subsection (3);

the amount taken into account under subsection 705-65(1) is instead reduced by that final RUNL.

(5) That *final RUNL is reduced by the amount of the reduction under subsection (3) or (4).

Rights and options to acquire membership interests

(6) Subsection 705-65(6) (which treats rights and options as membership interests) also applies for the purposes of this section.

715-55 Step 2 amount is affected if liability of subsidiary member is 165-CC tagged asset of another group member and same business test is failed

(1) The amount (the ***comparison amount***) applicable under the table in subsection 705-75(2) (about reduction of the step 2 amount) for an accounting liability of the joining entity that is owed to a *member of the joined group at the joining time is reduced if:

(a) apart from this section, the comparison amount would be the *reduced cost base (if appropriate, as modified by a later

provision of section 705-75) of the asset of that member that is constituted by the accounting liability; and

(b) the asset is at that time a *165-CC tagged asset of that member, and that member owned it at the *changeover time; and

(c) that member's *final RUNL just before the joining time (as reduced by any reductions under section 715-50) was greater than nil; and

(d) that member does *not* satisfy the *same business test for:

(i) the period (the ***same business test period***) consisting of the *head company's *trial year; and

(ii) the time (the ***test time***) just before the *changeover time.

Note: Paragraph (1)(c) has the effect that if both this section and section 715-50 apply to the same member of the joined group, section 715-50 is applied before this section.

(2) If at the joining time that *member holds:

(a) 2 or *more assets constituted by accounting liabilities of the joining entity; or

(b) at least one asset constituted by an accounting liability of the joining entity, and at least one asset constituted by an accounting liability of another member of the group;

this section applies to each such asset in whichever order that member determines.

Amount of reduction

(3) The comparison amount is reduced to the asset's *market value at the joining time.

(4) However, if that member's *final RUNL (as reduced by any previous reductions under section 715-50 or this section) is *less than* the difference between:

(a) the *reduced cost base referred to in paragraph (1)(a); and

(b) the asset's *market value at the joining time;

the comparison amount is instead reduced by that final RUNL.

(5) That *final RUNL is reduced by the amount of the reduction under subsection (3) or (4).

165-CC tagged assets that form loss denial pools of head company when consolidated group is formed

715-60 Assets that the head company already owns

(1) At the time (the ***formation time***) when a *consolidated group comes into existence under paragraph 703-5(1)(a), a ***loss denial pool*** of the *head company is created if:

(a) the formation time is *not* a *changeover time for the head company; and

(b) at the formation time, the head company owns a *CGT asset:

(i) that is a *165-CC tagged asset of the head company at that time; and

(ii) that it owned at the *changeover time; and

(iii) that is not a *membership interest in a *member of the group; and

(iv) that is not a right or option (including a contingent right or option), created or issued by a member of the group, to acquire such a membership interest; and

(v) that is not constituted by a liability owed to the head company by a member of the group;

or 2 or more such assets; and

(c) the head company's *final RUNL just before the formation time (as reduced by any reductions under section 715-50 or 715-55) was greater than nil; and

(d) the head company does *not* satisfy the *same business test for:

(i) the period (the ***same business test period***) consisting of the head company's *trial year; and

(ii) the time (the ***test time***) just before the *changeover time.

Note: Paragraph (1)(c) has the effect that if the head company has 165-CC tagged assets that are affected by section 715-50 or 715-55 (because they are membership interests in, or accounting liabilities owed by, another group member), those sections are applied before this section.

(2) When it is created, the pool consists of the one or more *CGT assets referred to in paragraph (1)(b), and its ***loss denial balance*** is equal to the *final RUNL referred to in paragraph (1)(c).

Note 1: The pool is distinct from any other loss denial pool of the head company, for example, one created at the formation time under section 715-70.

Note 2: 170-D deferred losses on 165-CC tagged assets of the head company may be added to the pool by subsection 715-355(1).

[The next section is section 715-70.]

715-70 Assets of subsidiary member that become those of head company

(1) At the time (the ***formation time***) when an entity becomes a *subsidiary member of a *consolidated group, a ***loss denial pool*** of the *head company of the group is created if:

(a) the formation time is *not* a *changeover time for the head company; and

(b) the entity is a chosen transitional entity under Division 701 of the *Income Tax (Transitional Provisions) Act 1997*; and

(c) subsection (2) or (4) of this section is satisfied.

Note 1: If the entity is a chosen transitional entity, section 701-15 of the *Income Tax (Transitional Provisions) Act 1997* prevents:

- section 701-10 (cost to head company of assets that entity brings into group); and
- subsection 701-35(4) (setting value of trading stock at tax-neutral amount);

of this Act from applying to the entity's assets in relation to the formation time.

Note 2: The pool is distinct from any other loss denial pool of the head company, for example, one created under this section because another entity becomes a subsidiary member of the group at the formation time.

Joining entity has 165-CC tagged assets

(2) This subsection is satisfied if:

(a) a *CGT asset of the entity, or each of 2 or more CGT assets of the entity:

(i) is a *165-CC tagged asset of the entity at the formation time; and

(ii) was owned by the entity at the *changeover time; and

(iii) is not a *membership interest in a *member of the group; and

(iv) is not a right or option (including a contingent right or option), created or issued by a member of the group, to acquire such a membership interest; and

(v) is not constituted by a liability owed to the entity by a member of the group at the formation time; and

(b) the entity's *final RUNL just before the formation time (as reduced by any reductions under section 715-50 or 715-55) was greater than nil; and

(c) the entity does *not* satisfy the *same business test for:

(i) the period (the ***same business test period***) consisting of the entity's *trial year; and

(ii) the time (the ***test time***) just before the *changeover time.

Note: Paragraph (2)(b) has the effect that if the entity has 165-CC tagged assets that are affected by section 715-50 or 715-55 (because they are membership interests in, or accounting liabilities owed by, another group member), those sections are applied before this section.

(3) When it is created because of subsection (2), the pool consists of the one or more *CGT assets referred to in paragraph (2)(a), and its ***loss denial balance*** is equal to the *final RUNL referred to in paragraph (2)(b).

Note: 170-D deferred losses on 165-CC tagged assets of the head company may be added to the pool by subsection 715-355(2).

Entity has loss denial pool

(4) This subsection is satisfied if, just before the formation time, the entity had a *loss denial pool.

(5) When it is created because of subsection (4), the *head company's loss denial pool:

(a) consists of the one or more *CGT assets of which the entity's loss *denial pool consisted; and

(b) has a ***loss denial balance*** equal to the *loss denial balance of the entity's loss denial pool;

just before the formation time.

How Subdivision 165-CC applies to consolidated groups

715-75 Extension of single entity rule and entry history rule

(1) Subsection 701-1(1) (Single entity rule) and section 701-5 (Entry history rule) also have effect for all the purposes of Subdivision 165-CC (about change of ownership or control of a company that has an unrealised net loss).

Note: One consequence of this is that the head company is the only member of a consolidated group that can have a changeover time and be subject to consequences under Subdivision 165-CC. The head company is treated as owning all CGT assets owned by group members, and as making relevant losses.

(2) This section is not intended to limit the effect that subsection 701-1(1) and section 701-5 have apart from this section.

Effect on Subdivision 165-CC of entity leaving consolidated group

715-80 Application of sections 715-85 to 715-110

Sections 715-85 to 715-110 apply if, at a particular time (the ***leaving time***), an entity (the ***leaving entity***) ceases to be a *subsidiary member of a *consolidated group.

Note 1: If a changeover time happened to the head company at or after the group came into existence and before the leaving time, Subdivision 165-CC does *not* apply to the head company at and after the leaving time, in respect of assets that leave with the leaving entity, in relation to the changeover time.

This is because the head company can no longer make a capital loss, or become entitled to a deduction, in respect of a CGT event happening to any of those assets.

Note 2: If, just before the leaving time, the head company had a loss denial pool, see section 715-120.

715-85 First changeover time for leaving company at or after leaving time

If the leaving entity is a company, its first *changeover time at or after the leaving time is determined:

(a) on the basis that the reference time under subsection 165-115A(2A) is the one that would be used in determining whether the leaving time was a changeover time for the *head company*; and

(b) making the additional assumptions in section 715-290.

Note: If the leaving entity is a trust, it cannot have a changeover time (because Subdivision 165-CC applies only to companies), so section 715-95 applies to it instead: see subsection 715-95(2).

715-90 How same business test applies if leaving time is changeover time for leaving company

(1) This section applies if:

(a) the leaving entity is a company; and

(b) the leaving time is a *changeover time for the leaving entity.

(2) The continuity period referred to in subsection 165-115B(3), as applying to the leaving time as a *changeover time for the leaving entity, is taken to have ended just *after* that time.

Note: This ensures that the same business test is applied to the business that the leaving entity carries on at the leaving time: see subsection 165-13(3).

715-95 If ownership and control of leaving entity have *not* changed since head company's last changeover time

(1) This section applies if:

(a) the leaving entity is a company; and

(b) the leaving time is *not* a *changeover time for the leaving entity; and

(c) just before the leaving time, the *head company owned at least one *CGT asset:

(i) that was a *165-CC tagged asset just before the leaving time; and

(ii) that it owned at the latest changeover time for the head company at or after the group came into existence and before the leaving time; and

(d) at least one asset covered by paragraph (c) is an asset (a ***leaving asset***) that becomes an asset of the leaving entity at

the leaving time because subsection 701-1(1) (Single entity rule) ceases to apply to the entity; and

(e) the head company's *final RUNL at the leaving time is greater than nil.

(2) This section also applies if the leaving entity is a trust.

(3) If the *head company does *not* satisfy the *same business test for:

(a) the period (the ***same business test period***) starting at the *earlier* of:

(i) the time 12 months before the leaving time; and

(ii) when the head company came into existence;

and ending just before the leaving time; and

(b) the time (the ***test time***) just before the *changeover time;

the head company must make one of the choices for which sections 715-100, 715-105 and 715-110 provide.

For provisions about making one of these choices, see sections 715-175 to 715-185.

715-100 First choice: adjustable values of leaving assets reduced to nil

The first choice is to reduce the *adjustable value of each leaving asset to nil. The choice has effect accordingly, just before the leaving time. The *head company's *final RUNL is *not* reduced because of it.

Note: The consequences of the choice are worked out under section 715-145.

715-105 Second choice: head company's final RUNL applied in reducing adjustable values of leaving assets that are loss assets

(1) The second choice is to reduce under this section the *adjustable value of each leaving asset (a ***loss asset***) for which the *head company would have had a notional capital loss, or notional revenue loss, under section 165-115F at the time (the ***test time***) just before the leaving time if the test time had been a *changeover time for the head company. The choice has effect accordingly.

Note: The consequences of the choice are worked out under this section and section 715-145.

(2) If:

(a) 2 or more entities cease to be *subsidiary members of the *consolidated group at the leaving time; and

(b) 2 or more of them make the second choice;

the choices have effect in whichever order the *head company determines.

(3) This section applies to each of the loss assets in order, according to their respective *adjustable values (apart from this section) at the test time: from largest to smallest. (If an asset has more than one such adjustable value, use the greater or greatest of them.)

(4) At the test time, the *adjustable value of the loss asset is reduced to the asset's *market value at that time.

(5) However, if the *head company's *final RUNL at the leaving time (as reduced by any previous reductions under this section) is *less than* the difference between:

(a) the *adjustable value of the loss asset (apart from this section) at the test time; and

(b) the asset's *market value at the test time;

the adjustable value is instead reduced at the test time by that final RUNL.

(6) That *final RUNL is reduced by the amount of the reduction under subsection (4) or (5). If 2 or more such reductions are made for the same asset (because it has 2 or more different characters), that final RUNL is reduced by the greater or greatest of the reductions.

715-110 Third choice: loss denial pool of leaving entity created

(1) The third choice can be made only if every asset covered by paragraph 715-95(1)(c) is a leaving asset. The choice is to have a ***loss denial pool*** of the leaving entity created at the leaving time, consisting of every leaving asset. (To avoid doubt, the choice can be made even if the leaving entity is not a company.)

(2) A choice under this section has effect accordingly. The pool is distinct from any other loss denial pool of the leaving entity.

(3) When the pool is created, its ***loss denial balance*** is equal to the *head company's *final RUNL at the leaving time.

Note: If the head company makes this choice, the leaving entity can choose to cancel the loss denial pool by reducing reduced cost bases of assets in the pool: see section 715-185.

[The next section is section 715-120.]

Effect of assets in loss denial pool of head company becoming assets of leaving entity

715-120 What happens

(1) This section applies if:

(a) at a particular time (the ***leaving time***), an entity (the ***leaving entity***) ceases to be a *subsidiary member of a *consolidated group; and

(b) just before the leaving time, the *head company had a *loss denial pool; and

(c) at the leaving time, at least one *CGT asset (a ***leaving asset***) that was in the pool just before that time becomes a CGT asset of the leaving entity because subsection 701-1(1) (Single entity rule) ceases to apply to the entity;

(2) Each leaving asset leaves the *loss denial pool at the leaving time.

(3) If:

(a) the leaving entity is a company and the leaving time is *not* a *changeover time for the leaving entity; or

(b) the leaving entity is a trust;

the *head company must make one of the choices for which sections 715-125, 715-130 and 715-135 provide.

For provisions about making one of these choices, see sections 715-175 to 715-185.

715-125 First choice: adjustable values of leaving assets reduced to nil

The first choice is to reduce the *adjustable value of each leaving asset to nil. The choice has effect accordingly, just before the

leaving time. The *loss denial balance of the *head company's *loss denial pool is *not* reduced because of it.

Note: The consequences of the choice are worked out under section 715-145.

715-130 Second choice: pool's loss denial balance applied in reducing adjustable values of leaving assets that are loss assets

(1) The second choice is to reduce under this section the *adjustable value of each leaving asset (a ***loss asset***) for which the *head company would have had a notional capital loss, or notional revenue loss, under section 165-115F at the time (the ***test time***) just before the leaving time if the test time had been a *changeover time for the head company. The choice has effect accordingly.

Note: The consequences of the choice are worked out under this section and section 715-145.

(2) If:

(a) 2 or more entities cease to be *subsidiary members of the *consolidated group; and

(b) 2 or more of them make the second choice;

the choices have effect in the same order as the entities cease being subsidiary members. If 2 or more of the entities ceased at the same time, their choices have effect in whichever order the *head company determines.

(3) This section applies to each of the loss assets in order, according to their respective *adjustable values (apart from this section) at the test time: from largest to smallest. (If an asset has more than one such adjustable value, use the greater or greatest of them.)

(4) At the test time, the *adjustable value of the loss asset is reduced to the asset's *market value at that time.

(5) However, if the *loss denial balance (as reduced by any previous reductions under this section or section 715-160) of the *head company's *loss denial pool is *less than* the difference between:

(a) the *adjustable value of the loss asset (apart from this section) at the test time; and

(b) the asset's *market value at the test time;

the adjustable value is instead reduced at the test time by that loss denial balance.

(6) That *loss denial balance is reduced at the leaving time by the amount of the reduction under subsection (3) or (4). If 2 or more such reductions are made for the same asset (because it has 2 or more different characters), that loss denial balance is reduced by the greater or greatest of the reductions.

715-135 Third choice: loss denial pool of leaving entity created

(1) The third choice can be made only if every asset that was in the *loss denial pool just before the leaving time is a leaving asset. The choice is to have a ***loss denial pool*** of the leaving entity created at the leaving time, consisting of every leaving asset. (To avoid doubt, the choice can be made even if the leaving entity is not a company.)

(2) A choice under this section has effect accordingly. The pool is distinct from any other loss denial pool of the leaving entity.

(3) When the leaving entity's loss denial pool is created, its ***loss denial balance*** equals the loss denial balance of the head company's loss denial pool (as reduced by any previous reductions under section 715-130 or 715-160).

Note: If the head company makes this choice, the leaving entity can choose to cancel the loss denial pool by reducing reduced cost bases of assets in the pool: see section 715-185.

(4) The head company's *loss denial pool ceases to exist when the leaving entity's loss denial pool is created.

[The next section is section 715-145.]

Effect of first and second choices on various kinds of assets

715-145 Effect of choice on adjustable value of leaving asset

(1) This section has effect for the purposes of determining the consequences of a choice under any of sections 715-100, 715-105,

715-125, 715-130 and 715-185 (the ***choice provisions***) for a leaving asset.

(2) The asset's ***adjustable value*** at the time (the ***test time***) just before the leaving time is worked out under this table. (If the asset is covered by 2 or more items, there are consequences for it under the choice provisions and this section in respect of each of the items.)

***Adjustable value* at the test time**

Item	If:	Its *adjustable value* is:
1	the asset is a *CGT asset	its *reduced cost base
2	the asset is an item of *trading stock of the *head company at the test time, and became part of the *head company's *trading stock in the income year (the ***test year***) in which the test time occurs	its *cost
3	the asset is an item of *trading stock of the *head company at the test time, item 2 does not apply, and at the end of the last income year before the test year, the item was *valued at its *cost	its *cost
4	the asset is an item of *trading stock of the *head company at the test time and neither of items 2 and 3 applies	its *value as trading stock of the head company on hand at the start of the income year in which the test time occurs
5	the asset is a *depreciating asset	worked out under section 40-85
6	the asset is a *revenue asset	the total of the amounts that would be subtracted from the gross disposal proceeds in calculating any profit or loss on disposal of the asset by the head company

(3) If any of the choice provisions reduces at the test time the asset's *adjustable value, the thing identified for the asset under the table in subsection (2) of this section is reduced by the same amount.

(4) Subsection (3) has effect for the purposes of working out under section 711-30 the *head company's *terminating value for the asset at the leaving time.

[The next section is section 715-155.]

General provisions about loss denial pools

715-155 When asset leaves pool

A *CGT asset leaves a *loss denial pool:

(a) just after a *realisation event happens to the asset, unless the realisation event is the ending of an income year (in the case of an item of *trading stock); or

(b) as mentioned in subsection 715-120(2) (when it becomes an asset of the leaving entity).

715-160 How loss denial balance is applied to losses realised on assets in pool

(1) If, apart from this section, a loss would be *realised for income tax purposes by a *realisation event that happens to a *CGT asset when it is in a *loss denial pool of an entity, the loss is reduced by the lesser of:

(a) the amount of the loss; and

(b) the pool's *loss denial balance (as reduced by any previous reductions under section 715-130 or this subsection);

and the loss denial balance is reduced by the same amount.

(2) Subsection (1) applies to *realisation events in the order in which they happen. If 2 or more happen at the same time, it applies to them in whichever order the entity determines.

(3) Subsection (1) reduces a *loss denial balance after section 715-130 does, unless the *realisation event happens *before* the leaving time referred to in that section.

715-165 When pool ceases to exist

(1) A *loss denial pool of a company ceases to exist when there is a *changeover time for the company.

Note: The CGT assets in the pool then become subject to the application of Subdivision 165-CC (about change of ownership or control of a company that has an unrealised net loss).

(2) A *loss denial pool of any entity ceases to exist:

(a) when there are no *CGT assets, and no *170-D deferred losses, in the pool; or

(b) just after the *loss denial balance becomes nil; or

(c) when the entity becomes a *subsidiary member of a *consolidated group; or

(d) as mentioned in subsection 715-135(4).

[The next section is section 715-175.]

Choices under this Subdivision

715-175 When choice must be made

(1) A choice under section 715-95 or 715-120 must be made within 6 months after the leaving time, or within a further period allowed by the Commissioner.

(2) After that 6 months, or that further period, the head company is taken to have made the first choice under section 715-100 or 715-125 unless it is established that the head company made a different choice within that 6 months or further period.

715-180 Head company to notify leaving entity of choice

(1) Within one month after making a choice under section 715-95 or 715-120, or within a further period allowed by the Commissioner, the head company must give the leaving entity written notice of the choice.

(2) If the choice is to have a *loss denial pool of the leaving entity created at the leaving time, the notice must also specify the pool's *loss denial balance at that time.

715-185 Leaving entity may choose to cancel loss denial pool by reducing adjustable values of assets in the pool

(1) Within 6 months after a *loss denial pool is created under section 715-110 or 715-135, or within a further period allowed by

the Commissioner, the leaving entity may choose to be treated as if the *head company had instead made:

(a) the first choice under section 715-100 or 715-125; or

(b) the second choice under section 715-105 or 715-130;

as specified by the leaving entity in its choice.

(2) If the leaving entity makes a choice under subsection (1):

(a) the *loss denial pool ceases to exist just after the leaving time; and

(b) at the leaving time, the *adjustable value of each *CGT asset in the pool is reduced to what it would have been at that time if the head company had instead made the choice specified by the leaving entity in its choice.

(3) The choice by the leaving entity does not affect how subsection 715-135(4) applies to the *head company.

Note: This means that the head company's loss denial pool still ceases to exist.

Subdivision 715-B—How Subdivision 165-CD applies to consolidated groups and leaving entities

Table of sections

How Subdivision 165-CD applies to consolidated groups

715-215 Extension of single entity rule and entry history rule
715-225 Working out adjusted unrealised loss using individual asset method
715-230 No reductions or other consequences for interests subject to loss cancellation under Subdivision 715-H

How Subdivision 165-CD applies to leaving entity that is a company

715-240 Application of sections 715-245 to 715-260
715-245 If ownership or control of leaving entity has altered since head company's last alteration time or formation of group
715-250 If head company has had an alteration time but ownership and control of leaving entity have not altered since
715-255 Consequences if leaving entity is a loss company at the leaving time
715-260 If neither of sections 715-245 and 715-250 applies

How Subdivision 165-CD applies to leaving entity that is a trust

715-270 Subdivision 165-CD applies

How Subdivision 165-CD applies to consolidated groups

715-215 Extension of single entity rule and entry history rule

(1) Subsection 701-1(1) (Single entity rule) and section 701-5 (Entry history rule) also have effect for all the purposes of Subdivision 165-CD (about reductions after alterations in ownership or control of loss company).

Note: One consequence of this is that the head company is the only member of a consolidated group that can have an alteration time and be subject to reductions or other consequences under Subdivision 165-CD. The head company is treated as owning all CGT assets owned by group members, and as making relevant losses.

Another consequence is for working out who has a relevant equity interest or relevant debt interest in a company that has an alteration time at which it is a loss company but not a member of a consolidated group. Interests in the loss company that are owned by subsidiary members of the group are treated as being owned by the head company.

(2) This section is not intended to limit the effect that subsection 701-1(1) and section 701-5 have apart from this section.

[The next section is section 715-225.]

715-225 Working out adjusted unrealised loss using individual asset method

(1) For the purposes of:

(a) using the *individual asset method to work out whether the *head company of a *consolidated group has an adjusted unrealised loss under section 165-115U at an *alteration time; or

(b) working out under section 165-115W whether the head company of a consolidated group has a trading stock decrease at an alteration time;

step 1 of the method statement in subsection 165-115U(1), or step 2 of the method statement in subsection 165-115W(1), does *not*

apply to an amount that was counted in respect of a *CGT asset at an earlier time if:

(c) at the time (the ***joining time***) when an entity became a *subsidiary member of the group, the asset became an asset of the head company because of subsection 701-1(1) (Single entity rule); and

(d) the earlier time is an *alteration time that happened in respect of the entity before the joining time;

unless the entity is a chosen transitional entity under Division 701 of the *Income Tax (Transitional Provisions) Act 1997*.

Note: If the joining entity is a chosen transitional entity, section 701-15 of the *Income Tax (Transitional Provisions) Act 1997* prevents:

- section 701-10 (cost to head company of assets that entity brings into group); and
- subsection 701-35(4) (setting value of trading stock at tax-neutral amount);

of this Act from applying to the assets of the joining entity in relation to the joining time.

If the joining entity is *not* a chosen transitional entity, it is assumed that the process of resetting the tax costs of its assets will bring their tax costs into closer alignment to their market values, and so remove the need to consider unrealised losses on those assets that existed before the joining time.

(2) This section has effect despite section 701-5 (Entry history rule).

715-230 No reductions or other consequences for interests subject to loss cancellation under Subdivision 715-H

If section 715-610 reduces a loss that would otherwise be *realised for income tax purposes by a *realisation event that happens to an interest in, or a debt owed by, a company, sections 165-115ZA and 165-115ZB do not apply (and are taken never to have applied) to the interest or debt, in relation to an *alteration time that happened for the company during the ownership period referred to in subsection 715-610(2).

Note 1: Section 715-610 is about cancelling a loss on a realisation event for a direct or indirect interest in a subsidiary member of a consolidated group.

Note 2: Sections 165-115ZA and 165-115ZB are about the consequences that an alteration time for a loss company has for relevant equity interests and relevant debt interests in the company.

[The next section is section 715-240.]

How Subdivision 165-CD applies to leaving entity that is a company

715-240 Application of sections 715-245 to 715-260

Sections 715-245 to 715-260 affect how Subdivision 165-CD (about reductions after alterations in ownership or control of loss company) applies to a company (the ***leaving entity***) at and after the time (the ***leaving time***) when it ceases to be a *subsidiary member of a *consolidated group that came into existence at a particular time (the ***formation time***).

Note: If a trust ceases to be a subsidiary member of a consolidated group: see section 715-270.

715-245 If ownership or control of leaving entity has altered since head company's last alteration time or formation of group

(1) This section applies if the leaving time would be an *alteration time for the leaving entity if:

(a) the reference time under subsection 165-115L(2) or 165-115M(2) were:

(i) if at least one alteration time has occurred in relation to the *head company of the *consolidated group since the formation time and before the leaving time—the time just after the most recent such alteration time; or

(ii) otherwise—the formation time; and

(b) the additional assumptions in section 715-290 were made.

(2) The leaving time is an ***alteration time*** for the leaving entity.

Note: One consequence of this is that the reference time for working out the leaving entity's *next* alteration time is the time just after the leaving time.

(3) The leaving entity is a ***loss company*** at that *alteration time if, and only if, it has an *adjusted unrealised loss at that time. If so, that adjusted unrealised loss is the leaving entity's ***overall loss*** at that time.

Note 1: Subsection (4) affects how the leaving entity works out its adjusted unrealised loss at the leaving time in some cases.

Note 2: If the leaving entity is a loss company at the leaving time, section 715-255 provides for the consequences.

(4) If the leaving entity uses the *individual asset method of working out its *adjusted unrealised loss at that *alteration time, then for the purposes of:

(a) step 1 of the method statement in subsection 165-115U(1); and

(b) the method statement in subsection 165-115W(1);

the leaving entity is taken to have had no earlier alteration time.

715-250 If head company has had an alteration time but ownership and control of leaving entity have not altered since

(1) This section applies if:

(a) at least one *alteration time has occurred in relation to the *head company of the *consolidated group since the formation time and before the leaving time; and

(b) the leaving time is *not* an *alteration time for the leaving entity under subsection 715-245(2).

(2) The leaving time is an ***alteration time*** for the leaving entity.

(3) However, for the purposes of determining when the leaving entity's *next* *alteration time happens, the reference time under subsection 165-115L(2) or 165-115M(2) is the time just after the most recent alteration time for the *head company *before* the leaving time.

(4) The leaving entity is a ***loss company*** at the leaving time if, and only if, the *head company would have had an *adjusted unrealised loss at the most recent *alteration time (the ***head company alteration time***) for the head company before the leaving time if that adjusted unrealised loss (if any) were worked out on the basis that:

(a) the head company chooses whether the *individual asset method or the *global method is used; and

(b) a *CGT asset is taken into account only if:

(i) the head company owned it at the head company alteration time; and

(ii) it becomes a CGT asset of the leaving entity at the leaving time because subsection 701-1(1) (the single entity rule) ceases to apply to the entity; and

(c) if the individual asset method is used, then for the purposes of:

(i) step 1 of the method statement in subsection 165-115U(1); and

(ii) the method statement in subsection 165-115W(1);

the head company had no earlier alteration time.

(5) If the leaving entity is a *loss company at the leaving time, its ***overall loss*** at that time is the *adjusted unrealised loss worked out under subsection (4).

715-255 Consequences if leaving entity is a loss company at the leaving time

(1) If:

(a) section 715-245 or 715-250 applies; and

(b) the leaving entity is a *loss company at the leaving time;

the head company must choose whether subsection (2) or (3) of this section has effect for the purposes of applying, to each *membership interest in the leaving entity, in relation to the time just before the leaving time, whichever of these provisions is appropriate:

(c) subsection 701-55(3) (about trading stock);

(d) subsection 701-55(5), but only so far as it relates to working out the *reduced cost base of a *membership interest that was *acquired on or after 20 September 1985;

(e) subsection 701-55(6) (about revenue assets).

Note: Section 701-55 is about setting the tax cost of an asset.

(2) If the *head company chooses this subsection, the interest's *tax cost setting amount (apart from this section) just before the leaving time is reduced to nil.

(3) If the *head company chooses this subsection, the interest's *tax cost setting amount (apart from this section) just before the leaving

time is reduced by the adjustment amount under section 165-115ZB, which is calculated on the basis that:

(a) just before the leaving time, all the *membership interests in the leaving entity constituted a single relevant equity interest under section 165-115X that the head company had in the leaving entity; and

(b) the adjustment amount is worked out and applied in accordance with subsection 165-115ZB(6), but disregarding the paragraphs of that subsection except paragraphs 165-115ZB(6)(a) and (d).

(4) The *head company's choice must be made within 6 months after the leaving time, or within a further period allowed by the Commissioner.

(5) After that 6 months, or that further period, the head company is taken to have chosen subsection (2) unless it is established that the head company made a different choice within that 6 months or further period.

Rights and options to acquire membership interests

(6) Subsection 711-15(2) (which treats rights and options as membership interests) also applies for the purposes of this section, on the basis that the *consolidated group referred to in section 715-240 is the old group referred to in that subsection.

715-260 If neither of sections 715-245 and 715-250 applies

(1) This section applies if:

(a) no *alteration time has occurred in relation to the *head company of the *consolidated group since the formation time and before the leaving time; and

(b) the leaving time is *not* an *alteration time for the leaving entity under subsection 715-245(2).

(2) The leaving entity's first *alteration time after the leaving time is determined:

(a) on the basis that the reference time under subsection 165-115L(2) or 165-115M(2) is the time just after the formation time; and

(b) making the additional assumptions in section 715-290.

(3) If the leaving entity uses the *individual asset method of working out its *adjusted unrealised loss at that first *alteration time, then for the purposes of:

(a) step 1 of the method statement in subsection 165-115U(1); and

(b) the method statement in subsection 165-115W(1);

the leaving entity is taken to have had no earlier alteration time.

[The next section is section 715-270.]

How Subdivision 165-CD applies to leaving entity that is a trust

715-270 Subdivision 165-CD applies

(1) At and after the time (the ***leaving time***) when a trust ceases to be a *subsidiary member of a *consolidated group, Subdivision 165-CD (about reductions after alterations in ownership or control of loss company) applies to the trust on the basis set out in this section.

(2) The trust is taken to be a company.

(3) The leaving time is the only ***alteration time*** in respect of the trust.

(4) The trust is a ***loss company*** at that time if, and only if, it has an *adjusted unrealised loss at that time. If so, that adjusted unrealised loss is its ***overall loss*** at that time.

(5) If the trust is a *loss company at the leaving time, the *head company must choose whether subsection (6) or (7) of this section has effect for the purposes of applying, to each *membership interest in the trust, in relation to the time just before the leaving time, whichever of these provisions is appropriate:

(c) subsection 701-55(3) (about trading stock);

(d) subsection 701-55(5), but only so far as it relates to working out the *reduced cost base of a *membership interest that was *acquired on or after 20 September 1985;

(e) subsection 701-55(6) (about revenue assets).

Note: Section 701-55 is about setting the tax cost of an asset.

(6) If the *head company chooses this subsection, the interest's *tax cost setting amount (apart from this section) just before the leaving time is reduced to nil.

(7) If the *head company chooses this subsection, the interest's *tax cost setting amount (apart from this section) just before the leaving time is reduced by the adjustment amount under section 165-115ZB, which is calculated on the basis that:

(a) just before the leaving time:

(i) all the *membership interests in the leaving entity constituted a single relevant equity interest under section 165-115X that the *head company had in the leaving entity; and

(ii) each of those interests was an equity under section 165-115X that the *head company had in the leaving entity; and

(b) the adjustment amount is worked out and applied in accordance with subsection 165-115ZB(6), but disregarding the paragraphs of that subsection except paragraphs 165-115ZB(6)(a) and (d).

(8) The *head company's choice must be made within 6 months after the leaving time, or within a further period allowed by the Commissioner.

(9) After that 6 months, or that further period, the head company is taken to have chosen subsection (6) unless it is established that the head company made a different choice within that 6 months or further period.

Rights and options to acquire membership interests

(10) Subsection 711-15(2) (which treats rights and options as membership interests) also applies for the purposes of this section, on the basis that the *consolidated group is the old group referred to in that subsection.

Subdivision 715-C—Common rules for the purposes of Subdivisions 715-A and 715-B

715-290 Additional assumptions to be made when using reference time

The additional assumptions to be made are that, throughout the period starting at the reference time and ending just before the leaving time:

(a) the leaving entity was in existence; and

(b) the *head company held and beneficially owned all the *membership interests in the leaving entity (instead of whoever actually did); and

(c) those membership interests remained the same; and

(d) the head company directly controlled the voting power in the leaving entity.

Subdivision 715-D—Treatment of company's deferred losses under Subdivision 170-D on joining a consolidated group

Table of sections

Key terminology

715-310 What is a ***170-D deferred loss***, and when it ***revives***

Deferred loss on 165-CC tagged asset

715-355 Head company's own deferred losses at formation time
715-360 Deferred losses brought in by subsidiary member
715-365 How loss denial balance is applied when 170-D deferred loss revives

Key terminology

715-310 What is a *170-D deferred loss*, and when it *revives*

(1) A *capital loss, deduction, or partner's share of a deduction, that section 170-270 (about transactions within linked groups) requires to be disregarded is a ***170-D deferred loss*** made:

(a) by the company that paragraph 170-255(1)(a) refers to as the originating company; and

(b) at the time of the event that paragraph refers to as the deferral event; and

(c) on the *CGT asset *acquired by the other entity referred to in that paragraph.

(2) The *170-D deferred loss ***revives*** at the time when section 170-275 (as applying in relation to the deferral event) treats the originating company as having made a *capital loss, or having become entitled to a deduction, in respect of that asset.

[The next section is section 715-355.]

Deferred loss on 165-CC tagged asset

715-355 Head company's own deferred losses at formation time

(1) This section applies if, at the time (the ***formation time***) when a *consolidated group comes into existence, the *head company has (otherwise than because of section 701-5 (Entry history rule)) a *170-D deferred loss that:

(a) it made on a *CGT asset that is a *165-CC tagged asset of the head company because of paragraph 165-115A(1A)(b) (which covers CGT assets on which it has 170-D deferred losses); and

(b) has not *revived.

(2) If a *loss denial pool of the *head company is created under section 715-60 at the formation time, each *170-D deferred loss of that kind that the head company has at that time is added to the loss denial pool at that time.

(3) Otherwise, a ***loss denial pool*** of the *head company is created at the formation time if:

(a) the formation time is *not* a *changeover time for the head company; and

(b) the head company's *final RUNL just before the formation time (as reduced by any reductions under section 715-50 or 715-55) was greater than nil; and

(c) the head company does *not* satisfy the *same business test for:

(i) the period (the ***same business test period***) consisting of the head company's *trial year; and

(ii) the time (the ***test time***) just before the *changeover time.

Note: Paragraph (3)(b) has the effect that if the head company has 165-CC tagged assets that are affected by section 715-50 or 715-55 (because they are membership interests in, or accounting liabilities owed by, another group member), those sections are applied before this section.

(4) When it is created because of subsection (3), the pool consists of each *170-D deferred loss covered by subsection (2), and its ***loss denial balance*** is equal to the *final RUNL referred to in paragraph (3)(b).

Note: The pool is distinct from any other loss denial pool of the head company, for example, one created at the formation time under section 715-360.

715-360 Deferred losses brought in by subsidiary member

(1) This section applies if, just before the time (the ***membership time***) when a company (the ***deferred loss company***) becomes a *subsidiary member of a *consolidated group, it had a *170-D deferred loss that:

(a) it made on a *CGT asset that is a *165-CC tagged asset of the company at the membership time because of paragraph 165-115A(1A)(b) (which covers CGT assets on which it has 170-D deferred losses); and

(b) as at the membership time has not *revived.

(2) If a *loss denial pool of the *head company is created under subsection 715-70(2) because of the deferred loss company becoming a *subsidiary member of the group, each *170-D deferred loss of that kind that the deferred loss company had just before the membership time is added to the loss denial pool at that time.

(3) Otherwise, a ***loss denial pool*** of the *head company is created at the membership time if:

(a) the membership time is *not* a *changeover time for the head company; and

(b) the deferred loss company's *final RUNL just before the membership time (as reduced by any reductions under section 715-50 or 715-55) was greater than nil; and

(c) the deferred loss company does *not* satisfy the *same business test for:

(i) the period (the ***same business test period***) consisting of the deferred loss company's *trial year; and

(ii) the time (the ***test time***) just before the *changeover time.

Note 1: The 170-D deferred losses become those of the head company at the formation time because of section 701-5 (Entry history rule).

Note 2: Paragraph (3)(b) has the effect that if the deferred loss company has other 165-CC tagged assets affected by section 715-50 or 715-55 (because the membership time is when the group comes into existence, and the other 165-CC tagged assets are membership interests in, or accounting liabilities owed by, another group member), those sections are applied before this section.

(4) When it is created because of subsection (3), the pool consists of each 170-D deferred loss covered by subsection (2), and its ***loss denial balance*** is equal to the *final RUNL referred to in paragraph (3)(b).

Note: The pool is distinct from any other loss denial pool of the head company, for example, one created under this section because another entity becomes a subsidiary member of the group at the membership time.

715-365 How loss denial balance is applied when 170-D deferred loss revives

(1) If a *170-D deferred loss on a *CGT asset is in a *loss denial pool of an entity when the loss *revives, the *capital loss or deduction that section 170-275 would, apart from this section, treat the entity as having made or become entitled to at that time in respect of the asset is reduced by the lesser of:

(a) the amount of the capital loss or deduction; and

(b) the pool's *loss denial balance (as reduced by any previous reductions under section 715-130, subsection 715-160(1) or this subsection);

and the loss denial balance is reduced by the same amount.

(2) Subsection (1) applies to *170-D deferred losses in the order in which they *revive. If 2 or more revive at the same time, it applies to them in whichever order the entity determines.

(3) Subsection (1) reduces a *loss denial balance before section 715-130 does, unless the *realisation event happens *after* the leaving time referred to in that section.

[The next Subdivision is Subdivision 715-G.]

Subdivision 715-G—How value shifting rules apply to a consolidated group

Table of sections

715-410 Extension of single entity rule and entry history rule
715-450 No reductions or other consequences for interests subject to loss cancellation under Subdivision 715-H

715-410 Extension of single entity rule and entry history rule

(1) Subsection 701-1(1) (Single entity rule) and section 701-5 (Entry history rule) also have effect for all the purposes of Part 3-95 (Value shifting).

Note: One consequence of this for the operation of Division 727 (about indirect value shifting affecting interests in companies and trusts, and arising from non-arm's length dealings) is that economic benefits provided by or to a subsidiary member of a consolidated group are treated as provided by or to the head company of the group. As a result:

- the head company is the only group member that can be a losing entity or gaining entity for an indirect value shift; and
- economic benefits provided by one group member to another are treated as provided by the head company to itself, and so have no relevance to Division 727.

Another consequence is that the head company is treated as owning all interests owned by group members in a losing entity or gaining entity that is not a group member.

(2) This section is not intended to limit the effect that subsection 701-1(1) and section 701-5 have apart from this section.

[The next section is section 715-450.]

715-450 No reductions or other consequences for interests subject to loss cancellation under Subdivision 715-H

If section 715-610 reduces a loss that would otherwise be *realised for income tax purposes by a *realisation event that happens to an *equity or loan interest in an entity:

(a) the loss is not subject to reduction under Division 723 (Direct value shifting by creating right over non-depreciating asset) or 727 (Indirect value shifting); and

(b) the interest's *adjustable value is not, and is taken never to have been, reduced under Division 725 because of a *direct value shift during the ownership period referred to in subsection 715-610(2); and

(c) the interest's *adjustable value is not, and is taken never to have been, reduced under Division 727 because of an *indirect value shift during that period.

Note: Section 715-610 is about cancelling a loss on a realisation event for a direct or indirect interest in a subsidiary member of a consolidated group.

Subdivision 715-H—Cancelling loss on realisation event for direct or indirect interest in a subsidiary member of a consolidated group

Table of sections

715-610 Cancellation of loss
715-615 Exception for interests in entity leaving consolidated group
715-620 Exception if loss attributable to certain matters

715-610 Cancellation of loss

(1) This section reduces to nil a loss that would otherwise be *realised for income tax purposes by a *realisation event that happens to an *equity or loan interest (the ***realised interest***) in an entity (the ***first entity***) when it is owned by another entity (the ***owner***), if the conditions in subsections (2) and (4) are met.

(2) The first condition is that, at some time during the period (the ***ownership period***) when the owner owned the realised interest:

(a) the first entity was a *subsidiary member of a *consolidated group, and the owner was *not* a *member of the group; or

(b) the realised interest was an *external indirect equity or loan interest in a subsidiary member of a consolidated group; or

(c) the realised interest was an *equity or loan interest in an entity that, at that time:

(i) owned an equity or loan interest in a subsidiary member of a consolidated group; and

(ii) was *not* a member of the group; or

(d) the realised interest was an *equity or loan interest in an entity that owned at that time an external indirect equity or loan interest in a subsidiary member of a consolidated group.

(3) An *equity or loan interest in an entity (the ***test entity***) is an ***external indirect equity or loan interest*** in a *subsidiary member of a *consolidated group if, and only if, neither the owner of the interest nor the test entity is a member of the group and:

(a) the test entity owns an equity or loan interest in the subsidiary member; or

(b) the test entity owns an equity or loan interest that is an external indirect equity or loan interest in the subsidiary member because of one or more other applications of this subsection.

(4) The second condition is that, at the same or a different time during the ownership period:

(a) the owner was, or *controlled (for value shifting purposes), the *head company of a *consolidated group because of which the first condition is satisfied; or

(b) the owner was an *associate of an entity that, at the same or a different time during the ownership period, was, or controlled (for value shifting purposes), the head company of such a consolidated group.

715-615 Exception for interests in entity leaving consolidated group

Membership interests in leaving entity

(1) If:

(a) the realised interest is a *membership interest; and

(b) during the ownership period the first entity ceased to be a *subsidiary member of a *consolidated group;

the first condition in section 715-610 cannot be satisfied, because of that consolidated group, at a time when the first entity was a member of the group, unless the interest needed to be disregarded under section 703-35 (about employee shares) in order for the first entity to be a member of the group at that time.

Liabilities owed by leaving entity

(2) If the realised interest:

(a) consists of a liability owed by the first entity to the owner; and

(b) became an asset of the owner because subsection 701-1(1) (the single entity rule) ceased to apply to the first entity when it ceased to be a *subsidiary member of a *consolidated group;

the first condition in section 715-610 cannot be satisfied, because of that consolidated group, at a time when the first entity was a member of the group.

715-620 Exception if loss attributable to certain matters

(1) The loss is not reduced if all of it can be shown to be attributable to things other than these:

(a) something that would be reflected in what would, apart from this Part, be an overall loss under section 165-115R or 165-115S, of a *member of a *consolidated group (an ***excluded group***) because of which the first condition in section 715-610 is satisfied, at an *alteration time for that member;

(b) an *indirect value shift for which, apart from this Part, a member of an excluded group would be the *losing entity or the *gaining entity.

(2) If only part of the loss can be shown to be attributable to things other than the ones listed in subsection (1), the loss is reduced to the amount of that part.

Part 2—New Subdivision 719-T inserted in the Income Tax Assessment Act 1997

2 After Subdivision 719-K

Insert:

Subdivision 719-T—Interactions between this Part and other areas of the income tax law: special rules for MEC groups

Table of sections

How Subdivision 165-CC applies to MEC groups

719-700 Changeover times under section 165-115C or 165-115D
719-705 Additional changeover times for head company of MEC group

How Subdivision 165-CD applies to MEC groups

719-720 Alteration times under section 165-115L or 165-115M
719-725 Additional alteration times for head company of MEC group
719-730 Some alteration times only affect interests in top company
719-735 Some alteration times affect only pooled interests

How indirect value shifting rules apply to a MEC group

719-755 Effect on MEC group cost setting rules if head company is losing entity or gaining entity for indirect value shift

Cancelling loss on realisation event for direct or indirect interest in a subsidiary member of a MEC group

719-775 Cancellation of loss
719-780 Exception for pooled interests in eligible tier-1 companies
719-785 Exception for interests in top company
719-790 Exception for interests in entity leaving MEC group
719-795 Exception if loss attributable to certain matters

How Subdivision 165-CC applies to MEC groups

719-700 Changeover times under section 165-115C or 165-115D

(1) This section has effect for the purposes of determining whether a time (the ***test time***) is a *changeover time under section 165-115C (about changes in ownership) or 165-115D (about changes in control) in respect of the *head company of a *MEC group.

*Modified meaning of **reference time***

(2) The ***reference time*** is:

(a) if no *changeover time has occurred in respect of the head company since the group came into existence and before the test time—when the group came into existence; or

(b) otherwise—the time just after the last such changeover time.

(3) Subsection (2) of this section has effect despite subsection 165-115A(2A).

Assumptions to make

(4) Assume that, while the *MEC group exists:

(a) the *top company for the group holds and beneficially owns all the *membership interests in the *head company (instead of whoever actually does); and

(b) those membership interests remain the same; and

(c) the top company directly controls the voting power in the head company.

719-705 Additional changeover times for head company of MEC group

(1) The time when a *potential MEC group ceases to exist is a ***changeover time*** in respect of the *head company of a *MEC group if, just before that time, the potential MEC group's membership was the same as the membership of the MEC group.

Note: The changeover times in subsections (1), (2) and (3) are based on the events described in subsections 719-280(2), (3) and (4), each of which causes the test company referred to in section 719-280 to be assumed to fail the continuity of ownership test in section 165-12.

(2) If something:

(a) happens at a time in relation to *membership interests in one or more of these entities:

(i) a company that was just before that time a *member of a *MEC group and an *eligible tier-1 company of the *top company for the MEC group;

(ii) an entity interposed between a company described in subparagraph (i) and the company that was the top company for the group just before that time; and

(b) does not cause the *potential MEC group whose membership is the same as the membership of the MEC group to cease to exist, but does cause a change in the identity of the top company for the potential MEC group;

that time is a ***changeover time*** in respect of the *head company of the *MEC group.

(3) The time when a *MEC group ceases to exist because there ceases to be a *provisional head company of the group is a ***changeover time*** in respect of the *head company of the *MEC group.

[The next section is section 719-720.]

How Subdivision 165-CD applies to MEC groups

719-720 Alteration times under section 165-115L or 165-115M

(1) This section has effect for the purposes of determining whether a time (the ***test time***) is an *alteration time under section 165-115L (about alterations in ownership) or 165-115M (about alterations in control) in respect of the *head company of a *MEC group.

*Modified meaning of **reference time***

(2) The ***reference time*** is:

(a) if no *alteration time has occurred in respect of the head company since the group came into existence and before the test time—when the group came into existence; or

(b) otherwise—the time just after the last such alteration time.

(3) In applying subsection (2), disregard an *alteration time arising under subsection 719-725(4).

(4) Subsection (2) of this section has effect despite subsections 165-115L(2) and 165-115M(2).

Assumptions to make

(5) Assume that, while the *MEC group exists:

(a) the *top company for the group holds and beneficially owns all the *membership interests in the *head company (instead of whoever actually does); and

(b) those membership interests remain the same; and

(c) the top company directly controls the voting power in the head company.

719-725 Additional alteration times for head company of MEC group

Additional alteration times based on section 719-280

(1) The time when a *potential MEC group ceases to exist is an ***alteration time*** in respect of the *head company of a *MEC group if, just before that time, the potential MEC group's membership was the same as the membership of the MEC group.

Note: The alteration times in subsections (1), (2) and (3) are based on the events described in subsections 719-280(2), (3) and (4), each of which causes the test company referred to in section 719-280 to be assumed to fail the continuity of ownership test in section 165-12.

(2) If something:

(a) happens at a time in relation to *membership interests in one or more of these entities:

(i) a company that was just before that time a *member of a *MEC group and an *eligible tier-1 company of the *top company for the MEC group;

(ii) an entity interposed between a company described in subparagraph (i) and the company that was the top company for the group just before that time; and

(b) does not cause the *potential MEC group whose membership is the same as the membership of the MEC group to cease to

exist, but does cause a change in the identity of the top company for the potential MEC group;

that time is an ***alteration time*** in respect of the *head company of the *MEC group.

(3) The time when a *MEC group ceases to exist because there ceases to be a *provisional head company of the group is an ***alteration time*** in respect of the *head company of the *MEC group.

Additional alteration times based on Subdivision 719-K

(4) If Subdivision 719-K (MEC group cost setting rules: pooling cases) applies, the time just before the trigger time referred to in paragraph 719-555(1)(a) is an ***alteration time*** in respect of the *head company of the *MEC group.

719-730 Some alteration times only affect interests in top company

(1) This section applies if an *alteration time (except one arising under subsection 719-725(4)) happens for the *head company of a *MEC group.

(2) Sections 165-115ZA and 165-115ZB apply, in relation to the alteration time, to an interest or debt that is, or is part of, a relevant equity interest or relevant debt interest that an entity has in the *head company just before the *alteration time, *only if* the interest or debt is:

(a) an *equity or loan interest in the *top company for the MEC group; or

(b) an *indirect equity or loan interest in the top company.

Note: Sections 165-115ZA and 165-115ZB are about the consequences that an alteration time for a loss company has for relevant equity interests and relevant debt interests in the company.

(3) In determining what is a relevant equity interest or relevant debt interest that an entity has in the *head company just before the *alteration time, make the assumptions in subsection 719-720(5).

719-735 Some alteration times affect only pooled interests

(1) Sections 165-115ZA and 165-115ZB do not apply in relation to an *alteration time that happens for the *head company of a *MEC

group because of subsection 719-725(4) (trigger time for MEC group cost setting rules: pooling cases).

(2) Instead, Subdivision 719-K applies to the *MEC group, in relation to the trigger time, on the basis that:

(a) what would, apart from this section, be the pooled cost amount for the purposes of the formulas in subsections 719-570(1) and (2) is reduced by the amount of the *head company's overall loss under section 165-115R or 165-115S at that alteration time; but

(b) paragraph (a) of this subsection *only* affects the application of those formulas because of subsection 719-570(3) (to work out the *reduced cost base of a *membership interest).

[The next section is section 719-755.]

How indirect value shifting rules apply to a MEC group

719-755 Effect on MEC group cost setting rules if head company is losing entity or gaining entity for indirect value shift

(1) This section has effect for the purposes of working out the consequences (if any) of an *indirect value shift if the *losing entity or *gaining entity is the *head company of a *MEC group. (Subsection (3) has effect in addition to section 727-455.)

(2) An *equity or loan interest can be an *affected interest in the *head company only if it is:

(a) an *equity or loan interest in the *top company for the MEC group; or

(b) an *indirect equity or loan interest in the top company.

(3) Subdivision 719-K (MEC group cost setting rules: pooling cases) applies to the *MEC group, in relation to the first time referred to in that Subdivision as a trigger time that happens at or after the *IVS time, on the basis that:

(a) what would, apart from this section, be the pooled cost amount for the purposes of the formulas in subsections 719-570(1) and (2) is:

(i) if the *head company is the *losing entity—reduced; or

(ii) if the head company is the gaining entity—increased;

by the amount of the indirect value shift; and

(b) paragraph (a) of this subsection also affects the application of those formulas because of subsection 719-570(3) (to work out the *reduced cost base of a *membership interest).

[The next section is section 719-775.]

Cancelling loss on realisation event for direct or indirect interest in a subsidiary member of a MEC group

719-775 Cancellation of loss

(1) This section reduces to nil a loss that would otherwise be *realised for income tax purposes by a *realisation event that happens to an *equity or loan interest (the ***realised interest***) in an entity (the ***first entity***) when it is owned by another entity (the ***owner***), if the conditions in subsections (2) and (4) are met.

(2) The first condition is that, at some time during the period (the ***ownership period***) when the owner owned the realised interest:

(a) the first entity was a *subsidiary member of a *MEC group (except an *eligible tier-1 company), and the owner was *not* a *member of the group; or

(b) the realised interest was an *external indirect equity or loan interest in a subsidiary member of a MEC group (except an eligible tier-1 company); or

(c) the realised interest was an *equity or loan interest in an entity that, at that time:

(i) owned an equity or loan interest in a subsidiary member of a MEC group (except an eligible tier-1 company); and

(ii) was *not* a member of the group; or

(d) the realised interest was an equity or loan interest in an entity that owned at that time an external indirect equity or loan interest in a subsidiary member of a MEC group (except an eligible tier-1 company); or

(e) the realised interest was an equity or loan interest, or an *indirect equity or loan interest, in an eligible tier-1 company that was a member of a MEC group at that time.

(3) An *equity or loan interest in an entity (the ***test entity***) is an ***external indirect equity or loan interest*** in a *subsidiary member of a *MEC group if, and only if, neither the owner of the interest nor the test entity is a member of the group and:

(a) the test entity owns an equity or loan interest in the subsidiary member; or

(b) the test entity owns an equity or loan interest that is an external indirect equity or loan interest in the subsidiary member because of one or more other applications of this subsection.

(4) The second condition is that, at the same or a different time during the ownership period:

(a) the owner was, or *controlled (for value shifting purposes), the *head company of a *MEC group because of which the first condition is satisfied; or

(b) the owner was an *associate of an entity that, at the same or a different time during the ownership period, was, or controlled (for value shifting purposes), the head company of such a MEC group.

719-780 Exception for pooled interests in eligible tier-1 companies

The first condition in section 719-775 cannot be satisfied, because of a *MEC group, at a time when the realised interest was a *pooled interest in an *eligible tier-1 company that is a member of the group.

719-785 Exception for interests in top company

The first condition in section 719-775 cannot be satisfied, because of a *MEC group, at a time when:

(a) the first entity was the *top company for the MEC group; or

(b) the realised interest was an *indirect equity or loan interest in the top company for the MEC group.

719-790 Exception for interests in entity leaving MEC group

Membership interests in leaving entity

(1) If:

(a) the realised interest is a *membership interest; and

(b) during the ownership period the first entity ceased to be a *subsidiary member of a *MEC group;

the first condition in section 719-775 cannot be satisfied, because of that MEC group, at a time when the first entity was a member of the group, unless the interest needed to be disregarded under section 719-30 (about employee shares) in order for the first entity to be a member of the group at that time.

Liabilities owed by leaving entity

(2) If the realised interest:

(a) consists of a liability owed by the first entity to the owner; and

(b) became an asset of the owner because subsection 701-1(1) (the single entity rule) ceased to apply to the first entity when it ceased to be a *subsidiary member of a *MEC group;

the first condition in section 719-775 cannot be satisfied, because of that MEC group, at a time when the first entity was a member of the group.

719-795 Exception if loss attributable to certain matters

(1) The loss is not reduced if all of it can be shown to be attributable to things other than these:

(a) something that would be reflected in what would, apart from this Part, be an overall loss under section 165-115R or 165-115S, of a *member of a *MEC group (an ***excluded group***) because of which the first condition in section 719-775 is satisfied, at an *alteration time for that member;

(b) an *indirect value shift for which, apart from this Part, a member of an excluded group would be the *losing entity or the *gaining entity.

(2) If only part of the loss can be shown to be attributable to things other than the ones listed in subsection (1), the loss is reduced to the amount of that part.

[The next Subdivision is Subdivision 719-X.]

Part 3—Consequential amendment of the Income Tax Assessment Act 1997

3 Subsection 165-115BB(2) (definition of *residual unrealised net loss*)

Repeal the definition, substitute:

previous capital losses, deductions or trading stock losses means the total of the following:

(a) capital losses that the company made, deductions to which the company became entitled, or trading stock losses that the company made, as a result of events earlier than the relevant event in respect of assets that the company owned at the *changeover time;

(b) each reduction that section 715-105 (as applying to the company as the *head company of a *consolidated group or *MEC group) makes in respect of such an asset because an entity ceased before the time of the relevant event to be a *subsidiary member of the group (but counting only the greater or greatest such reduction if 2 or more are made for the same asset);

or nil if there are none.

4 Before subsection 165-115ZB(1)

Insert:

(1A) This section has effect for the purposes of:

(a) section 165-115ZA; and

(b) sections 715-255 and 715-270 (about effect of alteration time for head company on membership interests of leaving entity just before leaving time).

5 Subsection 165-115ZB(1)

Omit "For the purposes of section 165-115ZA, an", substitute "An".

6 Subsection 165-115ZB(1)

Omit "referred to in that section".

7 After subsection 705-65(3)

Insert:

(3AA) If, on the assumption that:

(a) the *members of the joined group had, just before the joining time, *disposed of their *membership interest in the joining entity; and

(b) the consideration received by the members for the disposal were equal to the *market value of the membership interest at that time;

they would have made a *capital loss that section 727-615 would have reduced (because of an indirect value shift), then the *reduced cost base of the membership interest that is to be used in subsection (1) of this section is reduced by the amount of that reduction.

8 Before subsection 705-65(4)

Insert:

Certain provisions not to apply after joining time

9 Subsection 705-65(4)

After "subsection (3)", insert ", (3AA)".

10 Heading to subsection 705-75(3)

Repeal the heading, substitute:

Application of subsections 705-65(2), (3), (3AA) and (3A)

11 Subsection 705-75(3)

After "(3)", insert ", (3AA)".

12 Section 713-50 (link note)

Repeal the link note.

13 Section 719-570 (link note)

Repeal the link note, substitute:

[The next Subdivision is Subdivision 719-T.]

Part 4—Dictionary amendments

Income Tax Assessment Act 1997

14 Subsection 995-1(1) (after paragraph (a) of the definition of *adjustable value*)

Insert:

(ba) of an asset, for the purposes of determining the consequences of a choice under any of sections 715-100, 715-105, 715-125, 715-130 and 715-185, has the meaning given by section 715-145; and

15 Subsection 995-1(1)

Insert:

165-CC tagged asset has the meaning given by section 715-30.

16 Subsection 995-1(1)

Insert:

170-D deferred loss has the meaning given by section 715-310.

17 Subsection 995-1(1)

Insert:

adjusted unrealised loss at an *alteration time for a company has the meaning given by section 165-115U.

18 Subsection 995-1(1)

Insert:

alteration time:

(a) for a company has the meaning given by sections 165-115L, 165-115M, 165-115N, 165-115P, 165-115Q, 715-245, 715-250 and 719-725; and

(b) for a trust, has the meaning given by section 715-270.

19 Subsection 995-1(1)

Insert:

changeover time for a company has the meaning given by sections 165-115C, 165-115D and 719-705.

20 Subsection 995-1(1)

Insert:

external indirect equity or loan interest in a *subsidiary member of a *consolidated group or *MEC group has the meaning given by section 715-610 or 719-775.

21 Subsection 995-1(1)

Insert:

final RUNL has the meaning given by section 715-35.

22 Subsection 995-1(1)

Insert:

loss denial balance of a *loss denial pool of an entity has the meaning given by sections 715-60, 715-70, 715-110, 715-135, 715-355 and 715-360.

23 Subsection 995-1(1)

Insert:

loss denial pool of an entity has the meaning given by sections 715-60, 715-70, 715-110, 715-135, 715-355 and 715-360.

24 Subsection 995-1(1)

Insert:

residual unrealised net loss for a *changeover time has the meaning given by section 165-115BB.

25 Subsection 995-1(1)

Insert:

revive: a *170-D deferred loss ***revives*** as mentioned in section 715-310.

26 Subsection 995-1(1) (definition of *same business test period*)

Omit "and 707-135", substitute ", 707-135, 715-50, 715-55, 715-60, 715-70, 715-95, 715-355 and 715-360".

27 Subsection 995-1(1) (definition of *test time*)

Before "has the meaning", insert "for the purposes of applying the *same business test".

28 Subsection 995-1(1) (definition of *test time*)

Omit "165-115A, 165-115C, 165-115D, 165-115K, 165-115L, 165-115M,".

29 Subsection 995-1(1) (definition of *test time*)

Omit "and 707-135", substitute ", 707-135, 715-50, 715-55, 715-60, 715-70, 715-95, 715-355 and 715-360".

Schedule 8—Consolidation: various provisions about CFCs, FIFs and FLPs

Income Tax Assessment Act 1997

1 Subdivision 717-D (heading)

Repeal the heading, substitute:

Subdivision 717-D—Transfer of certain surpluses under CFC, FIF and FLP provisions: entry rules

2 After section 717-225

Insert:

717-227 Deferred attribution credits

(1) This section operates for the purposes of Part X of the *Income Tax Assessment Act 1936* if:

(a) a company (the ***joining company***) becomes a *subsidiary member of a *consolidated group at a time (the ***joining time***); and

(b) assuming the joining company had not done so, an attribution credit would have arisen under subsection 371(8) of that Act at a later time for an attribution account entity in relation to the joining company for the purposes of that Part.

Credit in relation to the head company

(2) The attribution credit arises instead at the later time for the attribution account entity in relation to the *head company of the group.

3 Subsection 717-230(4)

Repeal the subsection, substitute:

(4) That Part operates in relation to the *head company of the *consolidated group, in relation to the *FIF in respect of the

notional accounting period of that FIF that included the joining time, as if any interest in the FIF of which the head company became the holder because subsection 701-1(1) (the single entity rule) applies at the joining time had been acquired by the head company at that time.

(5) Paragraph 538(2)(d) of that Act operates in relation to the *head company of the *consolidated group, in relation to the *FIF in respect of the notional accounting period of that FIF that included the joining time, as if the amount or value of the consideration paid or given by the head company in respect of any acquisition mentioned in subsection (4) of this section was equal to the amount worked out under paragraph 538(2)(a) of that Act in relation to the joining company in relation to the FIF in respect of the notional accounting period mentioned in subsection (2) of this section.

4 Subdivision 717-E (heading)

Repeal the heading, substitute:

Subdivision 717-E—Transfer of certain surpluses under CFC, FIF and FLP provisions: exit rules

5 Group heading before section 717-245

Repeal the heading, substitute:

Transfers

6 Group heading before section 717-255

Repeal the heading.

7 After section 717-260

Insert:

717-262 Deferred attribution credits

(1) This section operates for the purposes of Part X of the *Income Tax Assessment Act 1936* if:

(a) a company (the ***leaving company***) ceases to be a *subsidiary member of a *consolidated group at a time (the ***leaving time***); and

(b) disregarding this section, an attribution credit (the ***original credit***) will arise under subsection 371(8) of that Act at a later time for an attribution account entity in relation to the *head company of the group (including because of the operation of section 717-227) for the purposes of that Part; and

(c) at the leaving time the leaving company's attribution account percentage in relation to the attribution account entity for the purposes of that Part is more than nil.

Credit in relation to the leaving company

(2) An attribution credit arises at the later time for the attribution account entity in relation to the leaving company. The credit is the amount worked out under subsection (3).

Amount of credit

(3) The amount of the credit is worked out using the formula:

$$\frac{\text{Leaving company's attribution account percentage in relation to the attribution account entity at the leaving time}}{\text{*Head company's attribution account percentage in relation to the attribution account entity just before the leaving time}} \times \text{Original credit}$$

Reduction in credit in relation to the head company

(4) The attribution credit that arises at the later time for the attribution account entity in relation to the *head company is reduced by the amount of the attribution credit that arises under subsection (2) in relation to the leaving company.

8 Subsection 717-265(5)

Repeal the subsection, substitute:

(5) That Part operates in relation to the leaving company, in relation to the *FIF in respect of the notional accounting period of that FIF that included the leaving time, as if any interest in the FIF of which the leaving company became the holder because subsection 701-1(1) (the single entity rule) ceased to apply at the leaving time had been acquired by the leaving company at that time.

(6) Paragraph 538(2)(d) of that Act operates in relation to the leaving company, in relation to the *FIF in respect of the notional accounting period of that FIF that included the leaving time, as if the amount or value of the consideration paid or given by the leaving company in respect of any acquisition mentioned in subsection (5) of this section was equal to the amount worked out under paragraph 538(2)(a) of that Act in relation to the transferor company in relation to the FIF in respect of the notional accounting period mentioned in subsection (2) of this section.

9 At the end of Division 717

Add:

Subdivision 717-F—Elections etc. relating to CFCs, FIFs and FLPs: entry rules

Guide to Subdivision 717-F

717-270 What this Subdivision is about

This Subdivision deals with the effect upon certain elections etc. relating to CFCs, FIFs and FLPs when an entity becomes a subsidiary member of a consolidated group.

Table of sections

Application and object

717-275 Application
717-280 Object of this Subdivision

Elections etc.

717-285 Pre-joining-time irrevocable elections etc. by joining entity not inherited by head company
717-290 Pre-joining-time actions of joining entity do not prevent head company from electing to apply the calculation method

[This is the end of the Guide.]

Application and object

717-275 Application

This Subdivision operates for the purposes of Part X and Part X1 of the *Income Tax Assessment Act 1936* if an entity (the ***joining entity***) becomes a *subsidiary member of a *consolidated group at a time (the ***joining time***).

717-280 Object of this Subdivision

The object of this Subdivision is to provide:

(a) that the *head company of the *consolidated group does not inherit the joining entity's irrevocable declarations, elections, choices or selections; and

(b) that pre-joining-time actions of the joining entity do not prevent the head company from electing to apply the calculation method to determine whether foreign investment fund income accrued from a FIF.

Elections etc.

717-285 Pre-joining-time irrevocable elections etc. by joining entity not inherited by head company

If at the joining time an irrevocable declaration, election, choice or selection made by the joining entity under Part X or XI of the *Income Tax Assessment Act 1936* is in force, then, for the head company core purposes, the *head company of the group is *not* taken to have made the declaration, election, choice or selection.

Note 1: The entry history rule in section 701-5 would otherwise have had the effect that the head company is taken to have made the declaration etc.

Note 2: Declarations etc. actually made by the head company would apply to interests in CFCs, FIFs or FLPs of which the head company becomes the holder under the single entity rule as a result of the joining entity becoming a subsidiary member.

717-290 Pre-joining-time actions of joining entity do not prevent head company from electing to apply the calculation method

Any entitlement of the *head company of the group to make an election under subsection 535(3) of the *Income Tax Assessment Act 1936* for the head company core purposes is not affected by anything done by the joining entity before the joining time.

Note: The entry history rule in section 701-5 would otherwise have had the effect that actions of the joining entity would be treated as those of the head company. Depending on the nature of the actions, this could have prevented the head company from making the election mentioned above.

Subdivision 717-G—Elections etc. relating to CFCs, FIFs and FLPs: exit rules

Guide to Subdivision 717-G

717-295 What this Subdivision is about

This Subdivision deals with the effect upon certain elections etc. relating to CFCs, FIFs and FLPs when an entity ceases to be a subsidiary member of a consolidated group.

Table of sections

Application and object

717-300 Application
717-305 Object of this Subdivision

Elections etc.

717-310 Pre-leaving-time irrevocable declarations, elections, choices and selections by head company not inherited by leaving entity
717-315 Pre-leaving-time actions of head company do not prevent leaving entity from electing to apply the calculation method

[This is the end of the Guide.]

Application and object

717-300 Application

This Subdivision operates for the purposes of Part X and Part X1 of the *Income Tax Assessment Act 1936* if an entity (the ***leaving entity***) ceases to be a *subsidiary member of a *consolidated group at a time (the ***leaving time***).

717-305 Object of this Subdivision

The object of this Subdivision is to provide:

(a) that the leaving entity does not inherit the *head company's irrevocable declarations, elections, choices or selections; and

(b) that pre-leaving-time actions of the head company do not prevent the leaving entity from electing to apply the calculation method to determine whether foreign investment fund income accrued from a FIF.

Elections etc.

717-310 Pre-leaving-time irrevocable declarations, elections, choices and selections by head company not inherited by leaving entity

If at the leaving time an irrevocable declaration, election, choice or selection made by the *head company of the group under Part X or XI of the *Income Tax Assessment Act 1936* is in force, then, for the entity core purposes, so far as they relate to the leaving entity after the leaving time, the leaving entity is *not* taken to have made the election.

Note: The exit history rule in section 701-40 would otherwise have had the effect that the leaving entity is taken to have made the declaration etc.

717-315 Pre-leaving-time actions of head company do not prevent leaving entity from electing to apply the calculation method

Any entitlement of the leaving entity to make an election under subsection 535(3) of the *Income Tax Assessment Act 1936* for the entity core purposes, so far as they relate to the leaving entity after the leaving time, is not affected by anything done by the *head company before that time.

Note: The exit history rule in section 701-40 would otherwise have had the effect that actions of the head company would be treated as those of the leaving entity. Depending on the nature of the actions, this could have prevented the leaving entity from making the election mentioned above.

Schedule 9—Consolidation: foreign dividend accounts

Part 1—Basic amendments

Income Tax Assessment Act 1997

1 At the end of Division 717

Add:

Subdivision 717-J—Foreign dividend accounts

Guide to Subdivision 717-J

717-500 What this Subdivision is about

Only the head company of a consolidated group has an operating foreign dividend account, so only the head company can make an FDA declaration to relieve from withholding tax a dividend paid by a member of the group to a foreign resident. The balance of the account reflects what has happened to all members of the group.

Table of sections

Object

717-505 Object of this Subdivision

Treatment of foreign dividend accounts around joining time

717-510 No FDA surplus for joining company

Single entity rule for foreign dividend accounts

717-515 Single entity rule for FDA credits and FDA debits

FDA declaration for dividend paid by subsidiary member

717-520 Head company may make FDA declaration

717-525 Multiple FDA declarations for dividends paid on same day
717-530 Extended operation of sections 717-520 and 717-525

[This is the end of the Guide.]

Object

717-505 Object of this Subdivision

(1) The object of this Subdivision is to affect the operation of Subdivision B of Division 11A of Part III of the *Income Tax Assessment Act 1936* so that each *consolidated group operates a single *foreign dividend account, by ensuring that:

(a) an *FDA credit and an *FDA debit arise so that:

(i) the balance of the foreign dividend account of the *head company of the group reflects the balance of the foreign dividend account of a company that becomes a *subsidiary member of the group; and

(ii) the balance of the foreign dividend account of the subsidiary member of the group is nil; and

(b) the head company is the only *member of the group that can have an *FDA surplus; and

(c) the head company can make an *FDA declaration relating to a dividend (within the meaning of that Subdivision) or *non-share dividend paid by any member of the group.

(2) In this Act:

FDA credit has the same meaning as in Subdivision B of Division 11A of Part III of the *Income Tax Assessment Act 1936*.

FDA debit has the same meaning as in Subdivision B of Division 11A of Part III of the *Income Tax Assessment Act 1936*.

FDA declaration has the same meaning as in Subdivision B of Division 11A of Part III of the *Income Tax Assessment Act 1936*.

FDA surplus has the same meaning as in Subdivision B of Division 11A of Part III of the *Income Tax Assessment Act 1936*.

foreign dividend account has the same meaning as in Subdivision B of Division 11A of Part III of the *Income Tax Assessment Act 1936*.

Treatment of foreign dividend accounts around joining time

717-510 No FDA surplus for joining company

(1) This section operates for the purposes of Subdivision B of Division 11A of Part III of the *Income Tax Assessment Act 1936* if a company (the ***joining company***) becomes a *subsidiary member of a *consolidated group at a time (the ***joining time***) just after another time (the ***balance time***).

(2) If the joining company has an *FDA surplus at the balance time:
  (a) an *FDA debit equal to the FDA surplus arises for the joining company at the balance time; and
  (b) an *FDA credit equal to the FDA surplus arises for the *head company of the group at the joining time.

(3) If the joining company's total *FDA debits arising before the balance time exceed its total *FDA credits arising before the balance time:
  (a) an FDA credit equal to the excess arises for the joining company at the balance time; and
  (b) an FDA debit equal to the excess arises for the *head company of the group at the joining time.

(4) For the purposes of subsections (2) and (3) of this section, work out whether, when, and how much (if any) of, an *FDA debit arises for the joining company under paragraph 128TB(1)(d) of the *Income Tax Assessment Act 1936* in relation to the income year that actually includes the balance time as if that income year:
  (a) started at:
    (i) the start of that income year; or
    (ii) if the joining company ceased to be a *subsidiary member of a *consolidated group after the start of that income year but before the balance time—the time the joining company last ceased to be a subsidiary member of a consolidated group before the balance time; and

(b) ended just before the balance time.

Note: This ensures that the FDA debit (if any) for the joining company under paragraph 128TB(1)(d) of the *Income Tax Assessment Act 1936* arises just before the balance time, so that it is taken into account for the purposes of subsections (2) and (3) of this section.

Single entity rule for foreign dividend accounts

717-515 Single entity rule for FDA credits and FDA debits

If a company is a *subsidiary member of a *consolidated group for any period, it and any other subsidiary member of the group are taken for the purposes of sections 128TA and 128TB of the *Income Tax Assessment Act 1936* to be parts of the *head company of the group, rather than separate entities, during that period.

Note 1: This has the effect that:

(a) FDA credits and FDA debits arise under sections 128TA and 128TB (respectively) of the *Income Tax Assessment Act 1936* for the head company of a consolidated group but not for a subsidiary member of the group; and

(b) the shareholdings of all members of a consolidated group are aggregated to work out whether dividends paid to a member are non-portfolio dividends for the purposes of those sections.

Note 2: Section 717-10 may also affect FDA credits and FDA debits for the head company of a consolidated group. It treats the head company as having paid and been personally liable for foreign tax on foreign income included in its assessable income if a subsidiary member of the group actually paid and was personally liable for the tax.

FDA declaration for dividend paid by subsidiary member

717-520 Head company may make FDA declaration

(1) This section operates if:

(a) on a day, a company that is a *subsidiary member of a *consolidated group pays dividends (within the meaning of Subdivision B of Division 11A of Part III of the *Income Tax Assessment Act 1936*) to shareholders (within the meaning of that Act) in respect of *shares in the company; and

(b) on the day, there is an *FDA surplus for the *head company of the consolidated group.

(2) The *head company may make an *FDA declaration specifying an *FDA declaration percentage under subsection 128TC(1) of the *Income Tax Assessment Act 1936* as if the head company were paying the dividends.

Note: If the head company makes an FDA declaration:

(a) an FDA debit equal to the sum of the FDA declaration amounts worked out for the dividends by reference to the FDA declaration percentage will arise for the head company just after the start of the day under section 128TB of the *Income Tax Assessment Act 1936*; and

(b) foreign resident shareholders in the subsidiary member will be relieved from withholding tax on amounts of the dividends not exceeding the FDA declaration amounts.

(3) In this Act:

FDA declaration percentage has the same meaning as in Subdivision B of Division 11A of Part III of the *Income Tax Assessment Act 1936*.

(4) However, subsection 128TC(2) of the *Income Tax Assessment Act 1936* operates in relation to the *FDA declaration percentage on the basis that:

(a) the company mentioned in that subsection is the *subsidiary member; and

(b) the dividends were paid to shareholders in respect of *shares in the subsidiary member.

(5) To avoid doubt, subsection 128TC(5) of the *Income Tax Assessment Act 1936* operates in relation to the *head company's *FDA declaration by reference to amounts worked out on the basis described in subsection (4) of this section.

(6) To avoid doubt, sections 128TD and 128TE of the *Income Tax Assessment Act 1936* apply to the *head company in relation to an *FDA declaration made because of subsection (2) of this section, even though the shareholders and dividends mentioned in those sections applying in relation to the declaration are shareholders in, and dividends paid by, the *subsidiary member.

717-525 Multiple FDA declarations for dividends paid on same day

(1) This section operates if the *head company of a *consolidated group makes 2 or more *FDA declarations relating to dividends (within the meaning of Subdivision B of Division 11A of Part III of the *Income Tax Assessment Act 1936*) paid by *members of the group on a single day.

Note: It does not matter whether all those FDA declarations are made under section 128TC of the *Income Tax Assessment Act 1936* as affected by section 717-520 of this Act or whether one of the declarations relates to dividends actually paid by the head company.

FDA declaration percentage in each FDA declaration

(2) The *FDA declaration percentage for each *FDA declaration must be such that the sum of the amounts worked out under subsection 128TC(2) of the *Income Tax Assessment Act 1936* in relation to the FDA declarations is not greater than the *head company's *FDA surplus at the beginning of the day.

(3) If (apart from this subsection) that sum *is* greater than the *head company's *FDA surplus at the beginning of the day, each of the *FDA declarations is valid but is taken always to have effect as if the *FDA declaration percentage specified in the declaration were the percentage worked out using the formula:

$$\text{*FDA declaration percentage actually specified in the declaration} \times \frac{\text{That *FDA surplus}}{\text{That sum}}$$

(4) Subsection 128TC(5) of the *Income Tax Assessment Act 1936* does not operate in relation to any of the *FDA declarations.

Penalty for statement reflecting wrong percentage

(5) Subsection 128TE(1) of the *Income Tax Assessment Act 1936* operates as if it referred to subsection (3) of this section instead of subsection 128TC(5) of that Act.

(6) To avoid doubt, subsection (3) of this section does not prevent subsection 128TE(1) of the *Income Tax Assessment Act 1936* from making the *head company liable to pay additional tax by way of penalty.

717-530 Extended operation of sections 717-520 and 717-525

Section 128AAA (the ***applied section***) of the *Income Tax Assessment Act 1936* applies to sections 717-520 and 717-525 of this Act in the same way as the applied section applies to Division 11A of Part III of that Act.

Note: Section 128AAA of the *Income Tax Assessment Act 1936* applies Division 11A of Part III of that Act to non-share dividends in the same way as that Division applies to dividends.

[The next Division is Division 719.]

2 At the end of Division 719

Add:

Subdivision 719-X—International tax rules

Table of sections

Foreign dividend accounts

719-900 General rules about foreign dividend accounts
719-905 Transfer of balance of foreign dividend accounts on change in identity of provisional head company

Foreign dividend accounts

719-900 General rules about foreign dividend accounts

(1) This section modifies the effect that Subdivision 717-J has in relation to a *MEC group because of section 719-2.

Note: Except as provided by this section, section 719-2 gives Subdivision 717-J effect in relation to a MEC group in a way corresponding to the way in which that Subdivision has effect in relation to a consolidated group.

(2) Subdivision 717-J has effect in relation to the *provisional head company of the *MEC group in a way corresponding to the way in which that Subdivision has effect in relation to the *head company of a *consolidated group.

(3) Subdivision 717-J has effect as if:

(a) the company that is the *provisional head company of the *MEC group at a time were not a *subsidiary member of the group at the time; and

(b) each company that is a *member of the MEC group at the time and is not the provisional head company at the time were a subsidiary member of the group at the time.

719-905 Transfer of balance of foreign dividend accounts on change in identity of provisional head company

(1) This section operates if:

(a) a *cessation event happens to the *provisional head company (the ***old company***) of a *MEC group; and

(b) another company (the ***new company***) is appointed as the provisional head company of the group under subsection 719-60(3).

Note: The appointment of the new company as the provisional head company of a MEC group under subsection 719-60(3) is taken to have come into force immediately after the cessation event.

(2) If there was an *FDA surplus for the old company at the time of the *cessation event:

(a) an *FDA debit equal to the FDA surplus arises for the old company at the time of the cessation event; and

(b) an *FDA credit equal to the FDA surplus arises for the new company when it is appointed.

(3) If the old company's total *FDA debits arising before the time of the *cessation event exceeded its total *FDA credits arising before that time:

(a) an FDA credit equal to the excess arises for the old company at the time of the cessation event; and

(b) an FDA debit equal to the excess arises for the new company when it is appointed.

[The next Division is Division 721.]

Part 2—Related amendments

Income Tax Assessment Act 1936

3 Paragraph 128TA(1)(b)

Omit "dividend; or", substitute "dividend.".

4 Paragraph 128TA(1)(c)

Repeal the paragraph.

5 Paragraph 128TA(2)(b)

Omit "23AK; or", substitute "23AK.".

6 Paragraph 128TA(2)(c)

Repeal the paragraph.

7 Subparagraph 128TB(1)(c)(ii)

Omit "or (c)".

8 Paragraph 128TB(3)(c)

Repeal the paragraph, substitute:

(c) in a paragraph (1)(c) case—the amount of the expenditure; or

9 Subsection 128TC(2) (definition of *total non-resident dividends*)

Omit "or companies that are related (within the meaning of subsection 51AE(16))".

10 Subsection 128TC(2) (definition of *maximum non-resident dividend percentage*)

Omit "or to a company that is related (within the meaning of subsection 51AE(16))".

11 Subsection 128TC(2) (definition of *total calculation value for dividend purposes of other shares*)

Omit "or to a company that is related (within the meaning of subsection 51AE(16))".

12 Application of amendments

(1) The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply in relation to a dividend or non-share dividend paid after 30 June 2003 by a company, except a company to which subitem (2) applies.

(2) This subitem and subitem (3) apply to a company if:

(a) the company becomes a member of a consolidated group or MEC group on the day (the ***consolidation day***) the group comes into existence; and

(b) the consolidation day either is before 1 July 2003 or is both:

(i) the first day of the first income year starting after 30 June 2003 of the group's head company (for a consolidated group) or provisional head company (for a MEC group) on the consolidation day; and

(ii) before 1 July 2004; and

(c) the company was not a member of a consolidated group or MEC group before the consolidation day.

(3) The amendments of the *Income Tax Assessment Act 1936* made by this Schedule apply in relation to a dividend or non-share dividend paid by a company on or after the consolidation day.

(4) A term used in subitem (2) and defined in the *Income Tax Assessment Act 1997* has the same meaning in that subitem as it has in that Act.

Income Tax Assessment Act 1997

13 At the end of subsection 703-75(3)

Add:

; and (d) for the purposes of determining the respective balances of the *FDA accounts of the original company and the interposed company at and after the completion time.

14 Section 717-265 (link note)

Repeal the link note.

15 Subsection 995-1(1)

Insert:

FDA credit has the meaning given by section 717-505.

16 Subsection 995-1(1)

Insert:

FDA debit has the meaning given by section 717-505.

17 Subsection 995-1(1)

Insert:

FDA declaration has the meaning given by section 717-505.

18 Subsection 995-1(1)

Insert:

FDA declaration percentage has the meaning given by section 717-520.

19 Subsection 995-1(1)

Insert:

FDA surplus has the meaning given by section 717-505.

20 Subsection 995-1(1)

Insert:

foreign dividend account has the meaning given by section 717-505.

21 Application of amendments of subsection 995-1(1)

The amendments of subsection 995-1(1) of the *Income Tax Assessment Act 1997* made by this Part apply on and after 1 July 2002.

Schedule 10—Consolidation: offshore banking units

Income Tax Assessment Act 1936

1 Section 121C (at the end of the definition of *OBU*)

Add:

Note: In this Division, the head company of a consolidated group or MEC group may be treated for certain purposes as an OBU at a time when a subsidiary member of the group is an OBU (see Subdivision 717-O of the *Income Tax Assessment Act 1997*).

Income Tax Assessment Act 1997

2 At the end of Division 717

Add:

Subdivision 717-O—Offshore banking units

Guide to Subdivision 717-O

717-700 What this Subdivision is about

The head company of a consolidated group is treated for certain purposes as an offshore banking unit at a time when a subsidiary member of the group is an offshore banking unit.

Table of sections

717-705 Object of this Subdivision
717-710 Head company treated as OBU

[This is the end of the Guide.]

717-705 Object of this Subdivision

The object of this Subdivision is to ensure that certain rules in the *Income Tax Assessment Act 1936* relating to offshore banking units interact properly with the consolidation regime in this Part.

717-710 Head company treated as OBU

(1) Division 9A of Part III of the *Income Tax Assessment Act 1936* applies to the *head company of a *consolidated group as if the head company were an OBU (within the meaning of that Division) at a time when a *subsidiary member of the group is an OBU (within the meaning of that Division).

(2) Subsection (1) operates for the head company core purposes mentioned in subsection 701-1(2).

Schedule 11—Consolidation: application of rules to MEC groups

Income Tax Assessment Act 1997

1 Before Subdivision 719-B

Insert:

Subdivision 719-A—Modified application of Part 3-90 to MEC groups

719-2 Modified application of Part 3-90 to MEC groups

(1) This Part (other than Division 703 and this Division) has effect in relation to a *MEC group in the same way in which it has effect in relation to a *consolidated group.

Note: A provision in this Part (other than in Division 703 or in this Division) mentioning 2 separate consolidated groups will, under subsection (1), have an additional operation when the groups are both MEC groups or when one is a MEC group and the other is a consolidated group.

(2) However, that effect is subject to the modifications set out in this Division.

(3) For the purposes of subsection (1), a reference in this Part (other than in Division 703 or this Division) to a provision in Division 703 applies as if it referred instead to that provision or the corresponding provision in Subdivision 719-B (as appropriate).

2 Subsection 995-1(1) (at the end of the definition of *consolidated group*)

Add:

Note 1: Part 3-90 contains rules relating to the tax treatment of consolidated groups. Division 719 (of that Part) applies those rules to MEC groups with modifications (see section 719-2).

Note 2: Provisions in the *Income Tax Assessment Act 1936* and in the *Income Tax Assessment Act 1997* (other than in Part 3-90) referring only to consolidated groups do *not* apply to MEC groups.

3 Subsection 995-1(1) (at the end of the definition of *MEC group*)

Add:

Note 1: Part 3-90 contains rules relating to the tax treatment of consolidated groups. Division 719 (of that Part) applies those rules to MEC groups with modifications (see section 719-2).

Note 2: Provisions in the *Income Tax Assessment Act 1936* and in the *Income Tax Assessment Act 1997* (other than in Part 3-90) referring only to consolidated groups do *not* apply to MEC groups.

Income Tax (Transitional Provisions) Act 1997

4 Before Subdivision 719-C

Insert:

Subdivision 719-A—Modified application of Part 3-90 to MEC groups

719-2 Modified application of Part 3-90 to MEC groups

(1) This Part (other than Division 703 and this Division) has effect in relation to a MEC group in the same way in which it has effect in relation to a consolidated group.

(2) However, that effect is subject to the modifications set out in this Division.

Subdivision 719-B—MEC groups and their members

719-5 Debt interests that are not membership interests

Section 703-30 of this Act has effect in relation to a MEC group in the same way in which it has effect in relation to a consolidated group.

Schedule 12—Consolidation: MEC group cost setting rules

Income Tax Assessment Act 1997

1 Section 719-155

Repeal the section, substitute:

719-155 Object of this Subdivision

The object of this Subdivision is to modify the tax cost setting rules in Divisions 701 and 705 so that they take account of the special characteristics of *MEC groups.

2 Before subsection 719-160(1)

Insert:

(1A) This section applies if an entity (the ***MEC joining entity***) becomes a *subsidiary member of a *MEC group at a time (the ***MEC joining time***).

3 Section 719-165

Repeal the section, substitute:

719-165 Trading stock value not set for assets of eligible tier-1 companies

(1) This section applies if an entity (the ***MEC joining entity***) becomes a *subsidiary member of a *MEC group at a time (the ***MEC joining time***).

(2) Subsection 701-35(4) (setting value of trading stock at tax-neutral amount) does not apply to the assets of the MEC joining entity if it is an *eligible tier-1 company at the MEC joining time.

4 At the end of Subdivision 719-C

Add:

719-170 Modified effect of subsections 705-175(1) and 705-185(1)

(1) This section applies if all of the *members of a *MEC group (the ***acquired group***) become members of another MEC group, or of a *consolidated group, at a particular time (the ***acquisition time***) as a result of the *acquisition of *membership interests in:

(a) the *head company of the acquired group; and

(b) other entities that were *eligible tier-1 companies of the acquired group just before the acquisition time.

(2) Subsections 705-175(1) and 705-185(1) have effect as if a *membership interest in an entity mentioned in paragraph (1)(b) of this section were a membership interest in the *head company of the acquired group.

Note 1: If the *acquiring* group is a MEC group, and the head company of the acquired group becomes an eligible tier-1 company of the *acquiring* group, the assets of the members of the acquired group do *not* have their tax cost reset at the acquisition time. This is because:

(a) section 719-160 treats an entity becoming an eligible tier-1 company of the *acquiring* group as if it were a part of the head company of that group; and

(b) section 705-185 treats the subsidiary members of the acquired group as part of the head company of the acquired group.

Note 2: If:

(a) the *acquiring* group is a MEC group, but the head company of the acquired group does *not* become an eligible tier-1 company of the *acquiring* group; or

(b) the *acquiring* group is a consolidated group and the acquired group is a MEC group;

the assets of the members of the acquired group have their tax cost reset at the acquisition time (section 719-160 does not preclude tax cost resetting in these cases). For the purposes of resetting the tax cost of those assets, section 705-185 treats the subsidiary members of the acquired group as part of the head company of the acquired group.

Schedule 13—Consolidation: MEC groups and losses

Part 1—Basic amendments

Income Tax Assessment Act 1997

1 Before section 719-300

Insert:

Guide to Subdivision 719-F

719-250 What this Subdivision is about

This Subdivision modifies the rules about transferring and utilising losses so the rules operate appropriately in relation to MEC groups, taking account of the special characteristics of those groups. The modifications mainly affect:

(a) rules about maintaining the same ownership to be able to utilise a loss; and

(b) rules for working out how much of a loss can be utilised by reference to bundles of losses and their available fractions.

Table of sections

Maintaining the same ownership to be able to utilise loss

719-255 Special rules
719-260 Special test for utilising a loss because a company maintains the same owners
719-265 What is the test company?
719-270 Assumptions about the test company having made the loss for an income year
719-275 Assumptions about nothing happening to affect direct and indirect ownership of the test company

719-280 Assumptions about the test company failing to meet the conditions in section 165-12

Same business test and change of head company

719-285 Same business test and change of head company

Bundles of losses and their available fractions

719-300 Application
719-305 Subdivision 707-C affects utilisation of losses made by ongoing head company while it was head company
719-310 Adjustment of available fractions for bundles of losses previously transferred to ongoing head company
719-315 Further adjustment of available fractions for all bundles
719-320 Limit on utilising losses other than the prior group losses
719-325 Cancellation of all losses in a bundle

[This is the end of the Guide.]

Maintaining the same ownership to be able to utilise loss

719-255 Special rules

(1) This section and section 719-260 have effect for the purposes of working out whether a loss can be *utilised for an income year (the ***claim year***) by a company (the ***focal company***) that made the loss if:

(a) section 165-12 is relevant to the question whether the focal company can utilise the loss; and

(b) the focal company is the *head company of a *MEC group at any time in its *ownership test period for the loss (as affected by section 707-205, if relevant).

Note: If the focal company made the loss because of a transfer under Subdivision 707-A, section 707-205 has the effect that the ownership test period starts for the focal company at the time of the transfer.

Section 707-210 does not have effect

(2) Section 707-210 does not have effect for the purposes of working out whether the focal company can *utilise the loss for the claim year.

Note: Section 707-210 is about whether a company can utilise a loss it made because the loss was transferred to it under Subdivision 707-A because the transferor met the conditions in section 165-12.

719-260 Special test for utilising a loss because a company maintains the same owners

Meeting the conditions in section 165-12

(1) The focal company is taken to meet the conditions in section 165-12 for the claim year and the loss if and only if the company (the ***test company***) identified in relation to the focal company in accordance with section 719-265 would have met those conditions for that year on the relevant assumptions in:

(a) section 719-270 (which is about assuming the test company made the loss for a particular income year); and

(b) section 719-275 (which is about assuming that nothing happened in relation to certain things that would affect whether the test company would meet those conditions); and

(c) section 719-280 (which is about assuming that the test company would have failed to meet those conditions in certain circumstances).

Focal company's failure to meet conditions in section 165-12

(2) The focal company is taken to fail to meet a condition in section 165-12 only at:

(a) the first time the test company would have failed to meet the condition on the relevant assumptions mentioned in subsection (1); or

(b) the *test time described in subsection 166-5(5) for the test company, if:

(i) Division 166 is relevant to working out whether the test company could have *utilised the loss for the claim year on the relevant assumptions mentioned in paragraphs (1)(a) and (b); and

(ii) the test company is not assumed under section 719-280 to fail to meet the condition before the test time.

Note: If the focal company is taken to fail to meet a condition in section 165-12, the focal company will not be able to utilise the loss for the claim year unless the focal company meets the conditions in

section 165-13 by satisfying the same business test. That test applies to the focal company (and not the test company).

Same business test for focal company under Division 166

(3) If subsection 166-5(4) affects whether the focal company can *utilise the loss for the claim year because the focal company is a *listed public company or a *100% subsidiary of one for the year, subsection 166-5(5) operates as if it required the *same business test to be applied to the *business the focal company carried on just before the time described in subsection (2) of this section.

Same business test for focal company to transfer loss

(4) If subsection 707-125(4) is relevant to working out whether the focal company can transfer the loss to a company under Subdivision 707-A, that subsection:

(a) has effect as if subsection 707-125(5) described the focal company's income year containing the time at which the focal company is taken under subsection (2) of this section to fail to meet a condition in section 165-12; and

(b) has effect despite subsection (3) of this section.

Note: For working out whether certain losses can be transferred under Subdivision 707-A, subsection 707-125(4) modifies the operation of subsection 166-5(5) by extending the same business test period to include the income year described in subsection 707-125(5).

719-265 What is the test company?

(1) To identify for the purposes of section 719-260 the company that is the test company for the focal company for the loss:

(a) first, identify the test company for the focal company by applying whichever one of subsections (2), (3), (4) and (6) is relevant; and

(b) then, if the condition in column 1 of an item of the table is met, apply this section again to identify the test company as if the company described in column 2 of the item were the focal company, taking account only of things that happened before the event described in column 3 of the item.

Repeated application of this section			
	Column 1 **If the test company for the focal company is identified:**	**Column 2** **Apply this section again as if this company were the focal company:**	**Column 3** **Take account only of things that happened before this event:**
1	Under subsection (2) as the company that is the test company for the transferor	The transferor mentioned in subsection (2)	The transfer mentioned in subsection (2)
2	Under subsection (6) as the company that is the test company for the first head company	The first head company mentioned in subsection (6)	The first head company ceasing to be the *head company of the *MEC group mentioned in subsection (6)

Note: More than 2 applications of this section may be needed to identify the test company for the focal company.

COT transfer of loss to focal company

(2) The test company for the focal company is the company described in column 2 of the relevant item of the table if the focal company made the loss because of a *COT transfer to the focal company.

Test company for the focal company		
	Column 1 **If:**	**Column 2** **The test company for the focal company is:**
1	The focal company and the transferor are the same company	The focal company
2	The focal company and the transferor are different companies	The company that is the test company for the transferor

Loss transferred because same business test satisfied

(3) The test company for the focal company is the company described in column 2 of the relevant item of the table if the focal company made the loss because the loss was transferred under Subdivision 707-A to the focal company from a company because it satisfied the *same business test for:

(a) the *same business test period; and

(b) the *test time specified in Division 165 or 166 or section 707-125.

Test company for the focal company		
	Column 1 **If:**	**Column 2** **The test company for the focal company is:**
1	The focal company was the *head company of a *MEC group at the time of the transfer	The company that was the *top company for the MEC group at the time of the transfer
2	The focal company was *not* the *head company of a *MEC group at the time of the transfer	The focal company

Loss not transferred from a company

(4) The test company for the focal company is the company described in column 2 of the relevant item of the table if the focal company made the loss *apart from* a transfer of the loss under Subdivision 707-A from a company.

Test company for the focal company		
	Column 1 **If:**	**Column 2** **The test company for the focal company is:**
1	The focal company made the loss apart from Subdivision 707-A and was the *head company of a *MEC group at the start of the income year for which it made the loss	The company that was the *top company for the MEC group at the start of the income year
2	The focal company made the loss because it was transferred under Subdivision 707-A to the focal company as the *head company of a *MEC group from an entity other than a company	The company that was the *top company for the MEC group at the time of the transfer
3	Neither item 1 nor item 2 applies	The focal company

Relationship between subsections (2), (3) and (4)

(5) Subsection (2) or (3), and *not* subsection (4), is relevant for identifying the test company for the focal company if the focal company made the loss apart from a transfer under Subdivision 707-A, and later transferred the loss to itself under that Subdivision.

Change of head company

(6) If, under section 719-90, the focal company is taken to have made the loss because:

(a) a company (the ***first head company***) other than the focal company made the loss apart from that section and either:

(i) was the *head company of a *MEC group at any time during the income year for which it made the loss; or

(ii) became the head company of a MEC group after that income year (without having been a *subsidiary member of the group before becoming the head company); and

(b) the focal company was later the head company of the MEC group;

the test company for the focal company is the company that is the test company for the first head company.

Note: Section 719-90 applies if there is a change in the head company of a MEC group, treating the later head company as if what had happened to the earlier head company had happened to the later head company.

(7) Subsections (2), (3) and (4) and section 719-90 have effect subject to subsection (6) of this section.

719-270 Assumptions about the test company having made the loss for an income year

If test company was top company for focal company's MEC group

(1) If the test company was the *top company for a *MEC group and the focal company is or was the *head company of that MEC group, assume that the test company made the loss for an income year starting at the relevant time shown in the table.

Start of income year for which test company is assumed to have made loss		
	If:	**The relevant time is:**
1	The focal company made the loss apart from Subdivision 707-A	The start of the income year for which the focal company made the loss
2	The focal company made the loss because it was transferred to the focal company under Subdivision 707-A	The time of the transfer

Note: Subsection (1) applies even if the test company is still the top company for the MEC group at the end of the claim year.

If test company is focal company or first head company

(2) If the test company is:

(a) the focal company; or

(b) the first head company identified in subsection 719-265(6) by reference to the focal company;

assume that the test company made the loss for an income year starting at the relevant time shown in the table.

Start of income year for which test company is assumed to have made loss		
	If:	**The relevant time is:**
1	The test company made the loss apart from Subdivision 707-A (even if the test company later transferred the loss to itself in a *COT transfer)	The start of the income year for which the test company made the loss
2	The test company made the loss because it was transferred to the test company under Subdivision 707-A in a transfer other than a *COT transfer (even if the test company first made the loss apart from that Subdivision)	The time of the transfer

(3) If the test company is the first head company, disregard section 719-90 for the purposes of working out the relevant time using the table in subsection (2) of this section.

Note: This ensures that section 719-90 does not make the items in the table inapplicable by treating the test company as if another company had made the loss instead of the test company.

If subsections (1) and (2) do not apply

(4) If neither subsection (1) nor subsection (2) applies, assume that the test company made the loss for an income year starting at the relevant time shown in the table.

Start of income year for which test company is assumed to have made loss

	If:	The relevant time is:
1	The test company made the loss apart from Subdivision 707-A (even if the test company later transferred the loss to itself in a *COT transfer)	The start of the income year for which the test company made the loss
2	The test company made the loss because it was transferred to the test company under Subdivision 707-A in a transfer other than a *COT transfer (even if the test company first made the loss apart from that Subdivision)	The time of the transfer
3	The test company is the test company for the focal company for the loss because the test company was the *top company for a *MEC group whose *head company made the loss before it was transferred to the focal company under Subdivision 707-A	The time that was the relevant time under subsection (1) for the test company as the test company for the *first* company for which the test company was the test company for the loss

Note: Subsection (4) applies if the focal company made the loss because of a COT transfer of the loss to the focal company from another company.

(5) Disregard section 719-90 for the purposes of items 1 and 2 of the table in subsection (4) of this section if the test company was identified using subsection 719-265(6).

Note: This ensures that section 719-90 does not make those items inapplicable by treating the test company as if another company had made the loss instead of the test company.

Other events do not override assumption

(6) If the test company transferred the loss to itself or another company under Subdivision 707-A, assume that the transfer did not affect, for income years ending after the transfer:

(a) the fact that the test company made the loss; or

(b) the income year for which the test company is assumed (under subsection (1), (2) or (4)) to have made the loss.

719-275 Assumptions about nothing happening to affect direct and indirect ownership of the test company

(1) This section sets out an assumption that must be made whenever an event described in subsection (2) occurs:

(a) after the time assumed under section 719-270 to be the start of the income year for which the test company made the loss; and

(b) before the end of the claim year;

(whether or not the test company or the focal company is one of the companies mentioned in the description of the event).

(2) Assume that, after an event described in an item of the table, nothing happens in relation to *membership interests or voting power in an entity described in the item that would affect whether the test company would meet the conditions in section 165-12 for the claim year and the loss.

Assumption about nothing happening to membership interests or voting power

	If this event occurs:	Assume that nothing happens in relation to membership interests or voting power in:
1	There is a *COT transfer of the loss to the *head company of a *MEC group (but not from a company that was the head company of another MEC group just before the transfer)	The transferor or an entity that was at the time of the transfer interposed between the transferor and the *top company for the MEC group
2	There is a *COT transfer of the loss to the *head company of a *MEC group from a company that was the head company of another MEC group just before the transfer	The company that was just before the transfer the *top company for the other MEC group, or an entity that was at the time of the transfer interposed between that company and the top company of the MEC group to whose head company the loss was transferred

Assumption about nothing happening to membership interests or voting power		
	If this event occurs:	**Assume that nothing happens in relation to membership interests or voting power in:**
3	There is a change in the identity of the *top company for a *MEC group whose *head company has made the loss	The company that ceased to be the top company for the MEC group as part of the change or an entity that was at the time of the change interposed between that company and the company that became the top company for the MEC group as part of the change
4	A company that has made the loss becomes at a time the *head company of a *MEC group (as the first company to be the head company of the group) and has not before that time transferred the loss to another company under Subdivision 707-A	The company or an entity that was at the time interposed between the company and the *top company for the MEC group
5	There is a *COT transfer of the loss to the *head company of a *consolidated group from another company	The other company or an entity that was at the time of the transfer interposed between the other company and the head company

(3) For the purposes of this section, a company is taken to make a loss:

(a) at the *start* of the income year for which the company makes the loss, if it makes the loss apart from a transfer under Subdivision 707-A (even if the company later transfers the loss to itself under that Subdivision); or

(b) at the time the loss is transferred to the company under that Subdivision, if the company makes the loss because of that transfer.

(4) Disregard section 719-90 for the purposes of making an assumption on the basis of item 1 of the table in subsection (2) of this section if (apart from that section):

(a) the *COT transfer mentioned in that item was from the *head company of the *MEC group to itself; and

(b) for an income year starting after the transfer, another company was the head company of the group.

719-280 Assumptions about the test company failing to meet the conditions in section 165-12

(1) Assume that the test company fails to meet the conditions in section 165-12 at the time an event described in subsection (2), (3) or (4) happens after the start of the *ownership test period for the focal company in relation to:

(a) the *MEC group whose *head company was the focal company; or

(b) the *potential MEC group whose membership was the same as the membership of that MEC group.

Note: If the test company is assumed to fail to meet the conditions in section 165-12 for the claim year and the loss, the focal company is taken (under section 719-260) to have failed to meet those conditions.

(2) One event is the *potential MEC group ceasing to exist.

(3) Another event is something happening that meets these conditions:

(a) the thing happens at a time in relation to *membership interests in one or more of these entities:

(i) a company that was just before that time a *member of the *MEC group and an *eligible tier-1 company of the *top company for the MEC group;

(ii) an entity interposed between a company described in subparagraph (i) and the company that was the top company for the group just before that time;

(b) the thing does not cause the *potential MEC group to cease to exist but does cause a change in the identity of the top company for the potential MEC group.

(4) Another event is the *MEC group ceasing to exist because there ceases to be a *provisional head company of the group.

Other causes of failure to meet conditions in section 165-12

(5) To avoid doubt, this section does not limit the circumstances in which the test company would have failed to meet the conditions in section 165-12 on the relevant assumptions set out in sections 719-270 and 719-275.

Same business test and change of head company

719-285 Same business test and change of head company

In working out whether the *same business test is satisfied by a company that, after the *test time, became the *head company of a *MEC group that existed before that time, disregard what happened in relation to the company before it became a *member of the group. Section 719-90 has effect subject to this section.

Note 1: The same business test is to be applied on the basis that the company's business at the test time was the business that section 719-90 treats the company as having carried on at that time, except to the extent that section 719-90 attributes to the company its actual history before it became a member of the MEC group.

Note 2: Section 719-90 applies if there is a change in the head company of a MEC group, treating the later head company as if what had happened to the earlier head company had happened to the later head company.

[The next section is section 719-300.]

Bundles of losses and their available fractions

Part 2—Related amendments

Income Tax Assessment Act 1997

2 Subsection 707-210(1)

Repeal the subsection, substitute:

(1) This section has effect for the purposes of working out whether a company (the ***latest transferee***) can *utilise for an income year a loss it made because of a *COT transfer from a company (the ***latest transferor***).

(1A) A transfer of a loss under Subdivision 707-A from a company to a company is a ***COT transfer*** of the loss if the transfer occurs because:

(a) the transferor meets the conditions in section 165-12; and

(b) the conditions in one or more of paragraphs 165-15(1)(a), (b) and (c) do not exist in relation to the transferor.

3 Paragraph 707-210(3)(b)

Repeal the paragraph, substitute:

(b) one or more of those earlier transfers was *not* a *COT transfer;

4 Subsection 995-1(1)

Insert:

COT transfer of a loss has the meaning given by section 707-210.

5 Application of amendment of subsection 995-1(1)

The amendment of subsection 995-1(1) of the *Income Tax Assessment Act 1997* made by this Schedule applies on and after 1 July 2002.

Schedule 14—Consolidation: liability rules

Income Tax Assessment Act 1997

1 At the end of Subdivision 709-A

Add:

Payment of group liability by former subsidiary member

709-95 Payment of group liability by former subsidiary member

(1) This section operates if:

(a) an entity (the ***former subsidiary***) ceases to be a *subsidiary member of a *consolidated group (the ***old group***) at a particular time (the ***leaving time***); and

(b) at or after the leaving time, the former subsidiary:

(i) *pays a PAYG instalment for which it was jointly and severally liable under subsection 721-15(1) because it was a subsidiary member of the old group; or

(ii) *pays income tax for which it was jointly and severally liable under that subsection because it was a subsidiary member of the old group; and

(c) apart from this section, a *franking credit would arise under section 205-15 in the *franking account of the former subsidiary at a time (the ***crediting time***) because of that payment.

(2) The credit:

(a) does not arise at the crediting time in the *franking account of the former subsidiary; and

(b) instead, arises at the crediting time in the franking account of the entity that was the *head company of the old group at the leaving time.

709-100 Refund of income tax to former subsidiary member

(1) This section operates if:

(a) an entity (the ***former subsidiary***) ceases to be a *subsidiary member of a *consolidated group (the ***old group***) at a particular time (the ***leaving time***); and

(b) at or after the leaving time, the former subsidiary *receives a refund of income tax for which it was jointly and severally liable under subsection 721-15(1) because it was a subsidiary member of the old group; and

(c) apart from this section, a *franking debit would arise under section 205-30 in the *franking account of the former subsidiary at a time (the ***debiting time***) because of that payment.

(2) The debit:

(a) does not arise at the debiting time in the *franking account of the former subsidiary; and

(b) instead, arises at the debiting time in the franking account of the entity that was the *head company of the old group at the leaving time.

2 Subsection 721-10(2) (at the end of the table)

Add:

60	subsection 45-875(2) in Schedule 1 to the *Taxation Administration Act 1953* (head company's liability to GIC on shortfall in quarterly instalment)	the *instalment quarter to which the general interest charge relates
65	if an administrative penalty of a kind mentioned in section 284-75, 284-145, 286-75 or 288-25 in Schedule 1 to the *Taxation Administration Act 1953* relates only to another *tax-related liability mentioned in this table—section 298-15 in that Schedule	the period provided for in this table for the *tax-related liability to which the penalty relates

3 After subsection 721-15(5)

Insert:

(5A) Despite subsection (5), if the group liability is *general interest charge for a day, the joint and several liability of a particular contributing member under subsection (1) becomes due and payable by the member at the end of the day on which the Commissioner gives the member written notice of the liability under subsection (5).

4 After section 721-15

Insert:

721-17 Notice of joint and several liability for general interest charge

(1) This section operates if:

(a) the group liability is *general interest charge for a day in relation to another liability (the ***primary liability***); and

(b) the Commissioner gives a particular contributing member written notice under subsection 721-15(5) of the group liability; and

(c) general interest charge arises for a subsequent day in relation to the primary liability; and

(d) the general interest charge for the subsequent day has not been paid or otherwise discharged in full by the time it became due and payable.

(2) The Commissioner is taken to have given the contributing member written notice under subsection 721-15(5) of the *general interest charge for the subsequent day. The notice is taken to have been given on that day.

5 After subsection 721-30(5)

Insert:

(5A) Despite subsection (5), if the group liability is *general interest charge for a day, the liability of a TSA contributing member under subsection (2) becomes due and payable by the member at the end of the day on which the Commissioner gives the member written notice of the liability under subsection (5).

6 After section 721-30

Insert:

721-32 Notice of general interest charge liability under TSA

(1) This section operates if:

(a) the group liability is *general interest charge for a day in relation to another liability (the ***primary liability***); and

(b) the Commissioner gives a particular TSA contributing member written notice under subsection 721-30(5) of its liability under subsection 721-30(2) in relation to the general interest charge for that day; and

(c) general interest charge arises for a subsequent day in relation to the primary liability; and

(d) the TSA contributing member is liable under subsection 721-30(2) for an amount in relation to the general interest charge for the subsequent day.

(2) The Commissioner is taken to have given the TSA contributing member written notice under subsection 721-30(5) of the amount in relation to the *general interest charge for the subsequent day. The notice is taken to have been given on that day.

7 After section 721-35

Insert:

721-40 TSA liability and group liability are linked

(1) The liability of a TSA contributing member under subsection 721-30(2) (the ***TSA liability***) is separate and distinct for all purposes from the group liability to which it relates (the ***linked group liability***). For example, the Commissioner may take proceedings to recover the unpaid amount of the TSA liability, proceedings to recover the unpaid amount of the linked group liability, or both.

Note: The TSA contributing member will not be jointly and severally liable for the linked group liability under section 721-15 (see subsection 721-15(3)). However, the head company of the group remains liable for the linked group liability.

Payment or discharge of TSA liability

(2) If an amount is paid or applied at a particular time towards discharging the TSA liability, the linked group liability is discharged at that time to the extent of the same amount.

Payment or discharge of linked group liability

(3) If:

(a) an amount is paid or applied at a particular time towards discharging the linked group liability; and

(b) as a result, the amount unpaid on the TSA liability at that time (apart from this section) exceeds the amount unpaid on the linked group liability at that time;

the TSA liability is discharged at that time to the extent of the excess.

(4) Subsections (2) and (3) operate in relation to a liability under a judgment (the ***judgment liability***):

(a) if the judgment liability is for the entire amount unpaid on the TSA liability—as if the judgment liability were the TSA liability; and

(b) if the judgment liability is for the entire amount unpaid on the linked group liability—as if the judgment liability were the linked group liability.

(5) This section does not discharge a liability to a greater extent than the amount of the liability.

Taxation Administration Act 1953

8 Subsection 250-10(1) in Schedule 1 (note)

Omit "Note", substitute "Note 1".

9 At the end of subsection 250-10(1) in Schedule 1 (after the note)

Add:

Note 2: Members and former members of consolidated groups and MEC groups may be jointly and severally liable to pay certain tax-related liabilities related to the group's activities (see Division 721 of the *Income Tax Assessment Act 1997*).

10 Subsection 250-10(2) (after table item 37)

Insert:

39	TSA liability	721-30	*Income Tax Assessment Act 1997*

11 Subsection 250-10(2) in Schedule 1 (note)

Omit "Note", substitute "Note 1".

12 At the end of subsection 250-10(2) in Schedule 1 (after the note)

Add:

Note 2: Members and former members of consolidated groups and MEC groups may be jointly and severally liable to pay certain tax-related liabilities related to the group's activities (see Division 721 of the *Income Tax Assessment Act 1997*).

Schedule 15—Consolidation: general application provision

Income Tax (Transitional Provisions) Act 1997

1 Subsection 700-1(1)

Repeal the subsection, substitute:

(1) Part 3-90 of the *Income Tax Assessment Act 1997*, as inserted by the *New Business Tax System (Consolidation) Act (No. 1) 2002* and amended by:

(a) the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002*; and

(b) the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002*; and

(c) the *New Business Tax System (Consolidation and Other Measures) Act 2003*;

applies on and after 1 July 2002.

Schedule 16—Consolidation: transitional foreign-held membership structures

Part 1—Amendment of the Income Tax Assessment Act 1997

1 Subsection 703-15(2) (cell at table item 2, column 4)

Omit "requirement in subsection 703-45(1)", substitute "set of requirements in section 703-45, section 701C-10 of the *Income Tax (Transitional Provisions) Act 1997* or section 701C-15 of that Act".

2 Section 703-45

Repeal the section, substitute:

703-45 Subsidiary members or nominees interposed between the head company and a subsidiary member of a consolidated group or a consolidatable group

(1) This section describes, for the purposes of item 2, column 4 of the table in subsection 703-15(2), a set of requirements that must be met for an entity (the ***test entity***) to be a *subsidiary member of a *consolidated group or a *consolidatable group at a particular time (the ***test time***).

(2) At the test time, each of the interposed entities must either:

(a) be a *subsidiary member of the group; or

(b) hold *membership interests in:

(i) the test entity; or

(ii) a subsidiary member of the group interposed between the *head company of the group and the test entity;

only as a nominee of one or more entities each of which is a *member of the group.

3 Paragraph 705-15(d)

Repeal the paragraph.

Part 2—Amendment of the Income Tax (Transitional Provisions) Act 1997

4 Division 701B (heading)

Repeal the heading, substitute:

Division 701B—Modified application of provisions of Income Tax Assessment Act 1997 relating to CGT event L1

5 After Division 701B

Insert:

Division 701C—Modified application etc. of provisions of Income Tax Assessment Act 1997: transitional foreign-held membership structures

Table of Subdivisions

701C-A Overview

701C-B Membership rules allowing foreign holding

701C-C Modifications of tax cost setting rules

Subdivision 701C-A—Overview

Table of sections

701C-1 Overview

701C-1 Overview

This Division:

(a) sets out, for the purposes of item 2, column 4 of the table in subsection 703-15(2) of the *Income Tax Assessment Act 1997*, rules that allow certain entities to be subsidiary members of consolidatable groups or consolidated groups

where other entities are interposed between them and the head company of the group (see Subdivision 701C-B); and

(b) modifies certain rules in Part 3-90 of the *Income Tax Assessment Act 1997* relating to setting the tax cost of assets to take account of those membership rules (see Subdivision 701C-C).

[The next section is 701C-10.]

Subdivision 701C-B—Membership rules allowing foreign holding

Table of sections

701C-10 Additional membership rules where entities are interposed between the head company and a subsidiary member—case where an interposed entity is a non-resident and the subsidiary member is a company
701C-15 Additional membership rules where entities are interposed between the head company and a subsidiary member—case where an interposed entity is a non-resident and the subsidiary member is a trust or partnership
701C-20 Transitional foreign-held subsidiaries and transitional foreign-held indirect subsidiaries

701C-10 Additional membership rules where entities are interposed between the head company and a subsidiary member—case where an interposed entity is a non-resident and the subsidiary member is a company

(1) This section describes, for the purposes of item 2, column 4 of the table in subsection 703-15(2) of the *Income Tax Assessment Act 1997*, a set of requirements that must be met for an entity (the ***test entity***) to be a subsidiary member of a consolidated group or a consolidatable group at a particular time (the ***test time***).

Test entity must be company

(2) At the test time, the test entity must be a company.

At least one interposed entity must be a non-resident company or non-resident trust

(3) At the test time, at least one of the interposed entities must be:

(a) a company (a ***non-resident company***) that is a foreign resident; or

(b) a trust (a ***non-resident trust***) that does not meet the requirements in any item of the table in section 703-25 of the *Income Tax Assessment Act 1997*.

The interposed entities must all be of a particular kind

(4) At the test time, each of the interposed entities must be:

(a) a subsidiary member of the group; or

(b) a non-resident company; or

(c) a non-resident trust; or

(d) an entity that holds membership interests in an entity interposed between it and the test entity, or in the test entity, only as a nominee of one or more entities each of which is a member of the group, a non-resident company or a non-resident trust; or

(e) a partnership, each of the partners in which is a non-resident company or a non-resident trust.

Test entity must be a subsidiary member on assumption that non-resident companies and non-resident trusts were subsidiary members

(5) At the test time, it must be the case that the test entity would be a subsidiary member of the group if each interposed entity that is a non-resident company or non-resident trust were a subsidiary member of the group.

Additional requirement for consolidatable groups

(6) If the group is a consolidatable group, the test time must be before 1 July 2004.

Additional requirement for consolidated groups at formation

(7) If the group is a consolidated group and the test time is the time at which the group comes into existence as a consolidated group, the test time must be before 1 July 2004.

Additional requirement for consolidated groups after formation

(8) If:

(a) the group is a consolidated group; and

(b) the test time is after the group comes into existence; and

(c) at the test time, one or more of the membership interests in the test entity are held by:

(i) a non-resident company; or

(ii) a non-resident trust; or

(iii) an entity that holds the membership interests only as a nominee of one or more entities each of which is a non-resident company or a non-resident trust; or

(iv) a partnership, each of the partners in which is a non-resident company or a non-resident trust;

then:

(d) from the time the group came into existence as a consolidated group until the test time, the test entity must have been a subsidiary member of the group; and

(e) at the time the group came into existence as a consolidated group, one or more of the membership interests in the test entity must have been held by an entity of a kind mentioned in subparagraph (c)(i), (ii), (iii) or (iv).

701C-15 Additional membership rules where entities are interposed between the head company and a subsidiary member—case where an interposed entity is a non-resident and the subsidiary member is a trust or partnership

(1) This section describes, for the purposes of item 2, column 4 of the table in subsection 703-15(2) of the *Income Tax Assessment Act 1997*, a set of requirements that must be met for an entity (the ***test entity***) to be a subsidiary member of a consolidated group or a consolidatable group at a particular time (the ***test time***).

Test entity must be a trust or partnership

(2) At the test time, the test entity must be a trust or partnership.

At least one interposed entity must be a company that is a subsidiary member because of section 701C-10

(3) At the test time, one or more of the interposed entities must be companies that are subsidiary members of the group because the set of requirements in section 701C-10 are met.

Test entity must be a subsidiary member on assumption that head company beneficially owned all membership interests beneficially owned by subsection (3) companies

(4) At the test time, it must be the case that the test entity would be a subsidiary member of the group if the head company beneficially owned all the membership interests beneficially owned by each company described in subsection (3).

701C-20 Transitional foreign-held subsidiaries and transitional foreign-held indirect subsidiaries

If:

(a) an entity is a subsidiary member of a consolidated group in a case where the set of requirements described in section 701C-10 are met; and

(b) one or more of the membership interests in the entity are held by:

(i) a non-resident company; or

(ii) a non-resident trust; or

(iii) an entity that holds the membership interests only as a nominee of one or more entities each of which is a non-resident company or a non-resident trust; or

(iv) a partnership, each of the partners in which is a non-resident company or a non-resident trust;

then:

(c) the entity is a ***transitional foreign-held subsidiary*** of the group; and

(d) if:

(i) the transitional foreign-held subsidiary; or

(ii) an entity that is a transitional foreign-held indirect subsidiary of the group because of another application of this paragraph;

holds one or more membership interests in another entity that:

(iii) is a subsidiary member of the group; and

(iv) is not a transitional foreign-held subsidiary of the group;

that other member is a ***transitional foreign-held indirect subsidiary*** of the group.

Note: In order to be a subsidiary member of the group as required by subparagraph (d)(iii), the transitional foreign-held indirect subsidiary would need to have satisfied the set of requirements in either section 701C-10 or 701C-15

Subdivision 701C-C—Modifications of tax cost setting rules

Table of sections

Application and object

701C-25 Application and object of this Subdivision

Basic modification

701C-30 Transitional foreign-held subsidiary to be treated as part of head company

Other modifications

701C-35 Trading stock value not set for assets of transitional foreign-held subsidiaries
701C-40 Cost setting rules for exit cases—modification of core rules
701C-50 Cost setting rules for exit cases—reference to modification of core rule

Application and object

701C-25 Application and object of this Subdivision

Application

(1) This Subdivision applies if an entity (the ***transitional foreign-held joining entity***) that is a transitional foreign-held subsidiary or a transitional foreign-held indirect subsidiary becomes a subsidiary member of a consolidated group at the time (the ***formation time***) the group comes into existence.

Object

(2) The object of this Subdivision is to ensure that, on becoming a subsidiary member at the formation time, the tax cost of the assets of any transitional foreign-held subsidiary is not set and that the tax cost setting amount for assets of any transitional foreign-held indirect subsidiary that becomes a subsidiary member at that time takes account of this.

Basic modification

701C-30 Transitional foreign-held subsidiary to be treated as part of head company

The following provisions:

(a) section 701-10 of the *Income Tax Assessment Act 1997* (about setting the tax cost of assets that an entity brings into the group);

(b) Subdivision 705-A of that Act, in its application in accordance with Subdivision 705-B of that Act;

apply, for the purposes of setting the tax cost of an asset of the transitional foreign-held entity at the formation time, as if each subsidiary member of the group that is a transitional foreign-held subsidiary at the formation time were a part of the head company of the group, rather than a separate entity.

Note 1: This section means that references in those provisions to matters internal to the group operate as if transitional foreign-held subsidiaries in the group were parts of the head company of the group. For example:

(a) provisions operating if the head company holds (whether directly or indirectly) membership interests in another entity operate even if a transitional foreign-held subsidiary actually holds those interests; and

(b) provisions operating if the head company owns or controls another entity operate even if one or more transitional foreign-held subsidiaries actually own or control that other entity; and

(c) provisions operating if an entity is interposed between the head company and another entity operate even if the first entity is actually interposed between a transitional foreign-held subsidiary and the other entity.

Note 2: If the transitional foreign-held entity is a transitional foreign-held subsidiary, this section means the assets of the entity do not have their tax cost reset at the formation time. This is because Subdivision 705-A of the *Income Tax Assessment Act 1997*, in its application in accordance with Subdivision 705-B of that Act, resets the tax cost of assets of *subsidiary* members of a group, but not assets of the head company.

Other modifications

701C-35 Trading stock value not set for assets of transitional foreign-held subsidiaries

Subsection 701-35(4) of the *Income Tax Assessment Act 1997* (setting value of trading stock at tax-neutral amount) does not apply to the assets of the transitional foreign-held entity if it is a transitional foreign-held subsidiary.

701C-40 Cost setting rules for exit cases—modification of core rules

Section 701-15 of the *Income Tax Assessment Act 1997* applies as if the following subsection were added at the end of the section:

Application to transitional foreign-held subsidiaries

(4) If an entity that ceases to be a subsidiary member is a transitional foreign-held subsidiary when it does so:

(a) this section applies to each membership interest in the transitional foreign-held subsidiary that is held by an entity (an ***eligible non-resident***) of a kind mentioned in subparagraph 701C-20(b)(i), (ii), (iii) or (iv) of the *Income Tax (Transitional Provisions) Act 1997* in the same way as it applies to a membership interest in the transitional foreign-held subsidiary that is held by the head company; and

(b) for that purpose, the definition of ***head company core purposes*** in subsection 701-1(2) of the *Income Tax Assessment Act 1997* applies to the eligible non-resident in the same way as it applies to the head company.

701C-50 Cost setting rules for exit cases—reference to modification of core rule

Section 711-5 of the *Income Tax Assessment Act 1997* applies as if the following note were added at the end of the section:

Note: If the leaving entity is a transitional foreign-held subsidiary (within the meaning of section 701C-20 of the *Income Tax (Transitional Provisions) Act 1997)*, this Division will, in accordance with subsection 701-15(4) of this Act (see section 701C-40 of the first-mentioned Act), apply to membership interests that an eligible non-resident mentioned in that subsection holds in the entity in the same way as it applies to membership interests that the head company holds in the entity.

Schedule 17—Consolidation: transitional cost setting rule relating to roll-overs

Income Tax (Transitional Provisions) Act 1997

1 Section 701-35

Omit "Part 3-90 of the *Income Tax Assessment 1997* applies", substitute "the provisions mentioned in subsection (2) apply".

2 At the end of section 701-35

Add:

(2) The provisions are:

(a) Division 705 of the *Income Tax Assessment Act 1997*; and

(b) provisions of this Act modifying the effect of that Division.

(3) Subsection (1) does not apply if:

(a) the asset mentioned in subsection (1) is a membership interest in an entity (the ***test entity***); and

(b) when the CGT event happened:

(i) the originating company in relation to the roll-over, or the transferor in relation to the roll-over relief, was a foreign resident; and

(ii) the recipient company, or the transferee in relation to the roll-over relief, was an Australian resident; and

(c) when the transitional group came into existence, the test entity was a subsidiary member of the group, other than as a transitional foreign-held subsidiary of the group.

3 After section 719-160

Insert:

719-163 Modified effect of section 701-35

(1) This section applies if the transitional group mentioned in section 701-35 of this Act is a MEC group.

(2) That section has effect as if paragraph 701-35(3)(c) were repealed and the following paragraph were substituted:

(c) when the transitional group came into existence, the test entity was a subsidiary member of the group, other than as:

(i) a transitional foreign-held subsidiary of the group (see section 701C-20); or

(ii) an eligible tier-1 company of the group.

Schedule 18—Consolidation: extra transitional provision for foreign tax credits

New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002

1 At the end of Schedule 10

Add:

11 Transitional provision for section 160AF

(1) This item applies if:

(a) because of item 5, 6 or 7, old section 160AFE applies to a taxpayer as if a period were an income year (the ***notional income year***); and

(b) the taxpayer has an initial excess credit (within the meaning of old section 160AFE) in relation to the notional income year; and

(c) the taxpayer transfers all or part (the extent of the transfer being the ***transfer amount***) of that initial excess credit under old section 160AFE for utilisation by another company in the notional income year.

(2) Section 160AF of the *Income Tax Assessment Act 1936* applies to the taxpayer for the year of income in which the notional income year ends as if the amount of foreign tax paid by the taxpayer mentioned in paragraph 160AF(1)(b) of that Act were reduced by the transfer amount.

(3) This item operates separately in relation to each class of foreign income identified in subsection 160AF(7) of the *Income Tax Assessment Act 1936*, as if the taxpayer's foreign income of that class for a year of income were the whole of the taxpayer's foreign income for that year.

Schedule 19—Consolidation: amendment of losses rules

Income Tax Assessment Act 1997

1 After subsection 701-30(3)

Insert:

(3A) For the purposes of working out the entity's taxable income (if any) for the non-membership period, determine:

(a) whether the entity can *utilise a loss of any *sort transferred to the entity in the period; and

(b) if the period started at the start of the income year—whether the entity can utilise a loss of any sort:

(i) made by the entity, without a transfer, for an earlier income year; or

(ii) transferred to the entity in an earlier income year;

as if the time just after the end of the period were the end of the income year and the entity carried on at that time the same business that it carried on just before that time. Paragraph (3)(a) has effect subject to this subsection.

Note: This means that things that happen in relation to the entity at the time it becomes a subsidiary member of the group are taken into account in determining whether the entity can utilise such a loss to affect its taxable income for the non-membership period.

2 At the end of section 701-30

Add:

Utilisation and transfer of non-membership period loss

(8) However, the provisions of this Act relating to transfer or *utilisation of a loss of any *sort have effect in relation to a non-membership period loss of that sort for any non-membership period as if the non-membership period loss were the entity's loss for an income year that:

(a) started at the start of the period; and

(b) ended at the end of the period.

(9) Subsection (8) has effect not only for the entity core purposes, but also (despite subsection (2)) for other purposes.

3 Section 707-405

Repeal the section.

Income Tax (Transitional Provisions) Act 1997

4 After section 707-325

Insert:

707-326 Events involving only value donor and real loss-maker not covered by rule against inflation of modified market value

(1) This section affects the calculation of the modified market value of the real loss-maker mentioned in subsection 707-315(1) of the *Income Tax Assessment Act 1997* for a bundle of losses. This section affects the calculation:

(a) only if section 707-325 of this Act applies for the purposes of working out the available fraction for the bundle; and

(b) only for the purposes of working out the available fraction for the bundle to affect the utilisation of tax losses, film losses and net capital losses in the bundle (and not any overall foreign losses, as defined in section 160AFD of the *Income Tax Assessment Act 1936*, in the bundle).

Note: This section does not affect the calculation of the real loss-maker's modified market value for other purposes (such as the real loss-maker being a value donor for the purposes of another application of section 707-325 of this Act).

(2) Disregard for the purposes of subsection 707-325(2) of the *Income Tax Assessment Act 1997* an event:

(a) that is described in subsection 707-325(4) of that Act; and

(b) that meets the condition in subsection (3) or (4) of this section.

(3) One condition is that the event was an injection of capital directly into the real loss-maker by the value donor mentioned in section 707-325 of this Act.

(4) The other condition is that the event was a transaction:

(a) that did not take place at arm's length; and

(b) that involved only the real loss-maker and the value donor mentioned in section 707-325 of this Act; and

(c) that would have caused subsection 707-325(2) of the *Income Tax Assessment Act 1997* to operate in working out the real loss-maker's modified market value (even if no other events described in subsection 707-325(4) of that Act had occurred), apart from this section.

(5) Subsection (2) of this section does not apply if subsection 707-325(2) of the *Income Tax Assessment Act 1997*:

(a) operates for the purposes of working out the value donor's modified market value because of an event that involved an entity other than the value donor and the real loss-maker (whether or not the event also involved either the value donor or the real loss-maker); or

(b) would operate for those purposes because of such an event apart from another application of this section.

5 After section 707-328

Insert:

707-328A Some events involving only group members not covered by rule against inflation of modified market value

Overview

(1) Subsection (3) of this section affects the calculation, under section 707-325 of the *Income Tax Assessment Act 1997* and section 707-325 of this Act, of the modified market value of the real loss-maker mentioned in subsection 707-315(1) of that Act for a bundle of losses, but only if:

(a) the requirement in subsection (2) of this section is met in relation to each other company that became a member of the group mentioned in subsection 707-315(1) of that Act in

connection with the bundle at the time (the ***formation time***) the group became a consolidated group; and

(b) the provisions described in subsection 707-327(4) of this Act operate (because of that subsection) in relation to each loss of such a company that is covered by paragraphs 707-327(1)(b) and (c) of this Act as if the bundle included the loss; and

(c) all members of the group at the formation time were companies; and

(d) subsection 707-325(2) of that Act does not operate, for the purposes of working out the modified market value of an entity that became a member of the group at the formation time, because of an event that involved an entity that did not become a member of the group then; and

(e) the transferee mentioned in subsection 707-325(1) of this Act chooses that this section apply in relation to the real loss-maker.

(2) Section 707-325 of this Act must apply in relation to the other company (as value donor) so that the available fraction for the bundle is to be worked out as if there were added to the real loss-maker's modified market value an amount worked out by reference to the other company's modified market value at the initial transfer time.

Disregarding events for purposes of anti-inflation rule

(3) Disregard for the purposes of subsection 707-325(2) of the *Income Tax Assessment Act 1997* an event that is described in subsection 707-325(4) of that Act and was either:

(a) an injection of capital into an entity that became a member of the group at the formation time by another such entity; or

(b) a transaction that involved only entities that became members of the group at the formation time.

Note: Disregarding such an event could have a direct or indirect effect on the real loss-maker's modified market value for the purposes of working out the available fraction for the bundle in one of these ways:

(a) it could directly affect the real loss-maker's modified market value calculated under section 707-325 of the *Income Tax Assessment Act 1997*, if the real loss-maker was involved in the event;

(b) it could have an indirect effect by affecting the value donor's modified market value calculated under that section and used under section 707-325 of this Act to add an amount to the real loss-maker's modified market value for those purposes.

Choice

(4) A choice for the purposes of paragraph (1)(e):

(a) may be made only by the day on which the transferee lodges its income tax return for the first income year for which it utilises (except in accordance with section 707-350) losses transferred to it under Subdivision 707-A of the *Income Tax Assessment Act 1997*; and

(b) cannot be amended or revoked.

Scope of this section

(5) This section affects the modified market value of an entity that became a member of the group at the formation time only for the purposes of calculating the real loss-maker's modified market value for the purposes of working out the available fraction for the bundle.

(6) This section has effect for working out the available fraction of the bundle only so far as it affects the utilisation of a tax loss, film loss or net capital loss. It does not affect the utilisation of an overall foreign loss (as defined in section 160AFD of the *Income Tax Assessment Act 1936*) that:

(a) is included in the bundle; or

(b) was transferred under Subdivision 707-A of the *Income Tax Assessment Act 1997* from an entity other than the real loss-maker.

Note: If the bundle includes an overall foreign loss and a loss of another sort:

(a) utilisation of the overall foreign loss is limited by the available fraction for the bundle worked out apart from this section; and

(b) utilisation of the loss of the other sort is limited by the available fraction for the bundle as affected by this section, if applicable.

(7) This section can operate in relation to only one bundle of losses transferred to the transferee under Subdivision 707-A of the *Income Tax Assessment Act 1997*.

New Business Tax System (Consolidation) Act (No. 1) 2002

6 At the end of item 39 of Schedule 3

Add:

(10) To avoid doubt, section 701-30 of the *Income Tax Assessment Act 1997* does not prevent a company from transferring under Subdivision 170-A or 170-B of that Act (applying as described in subitem (9)) a non-membership period loss described in that section for the non-membership period mentioned in that subitem.

7 Item 34 of Schedule 5

Omit "166-86", substitute "166-85".

Schedule 20—Consolidation: transfers of losses involving financial corporations

Financial Corporations (Transfer of Assets and Liabilities) Act 1993

1 Subsection 20(1A)

After "provisions in", insert "Part 1 of".

2 At the end of subsection 20(1A)

Add "and the provisions in Part 2 of that Schedule were added at the end of Subdivision 170-B of that Act".

3 At the end of section 26C

Add:

(2) Subsection (1) operates on the basis described in subsection (3) if:

(a) the head company of a consolidated group or MEC group incurred a tax loss because of Subdivision 707-A of the *Income Tax Assessment Act 1997*; and

(b) the company (the ***real loss-maker***) that incurred the tax loss apart from that Subdivision is a member of the group in the deduction year; and

(c) disregarding section 701-1 (the single entity rule) of that Act, this Act applies to one or more transfers by the real loss-maker to the receiving corporation.

Note: In certain cases, Subdivision 707-A of the *Income Tax Assessment Act 1997* treats the head company of a consolidated group or MEC as incurring a tax loss actually incurred by an entity that becomes a member of the group.

(3) Subsection (1) operates as if:

(a) the head company were the transferring corporation in relation to each transfer described in paragraph (1)(a) and this Act applied to each of those transfers; and

(b) the head company incurred the tax loss for the income year for which the real loss-maker incurred it (apart from

Subdivision 707-A of the *Income Tax Assessment Act 1997*); and

(c) each reference in that subsection to Subdivision 165-A of that Act were a reference to that Subdivision as its operation is affected by Subdivision 707-B of that Act, and by Subdivision 719-F of that Act (if relevant).

Note 1: Subdivision 707-B of the *Income Tax Assessment Act 1997* affects the operation of Subdivision 165-A of that Act in relation to the deduction of a tax loss incurred by the head company of a consolidated group or MEC group because of Subdivision 707-A of that Act.

Note 2: Subdivision 719-F of the *Income Tax Assessment Act 1997* affects the operation of Subdivision 165-A of that Act in relation to the deduction of a tax loss incurred by the head company of a MEC group because of Subdivision 707-A of that Act.

(4) An expression used in this section and in the *Income Tax Assessment Act 1997* has the same meaning in this section as it has in that Act. This subsection does not apply to the expressions ***deduction year***, ***loss year***, ***this Act*** and ***transfer***.

4 At the end of section 170-5 in Schedule 1

Add:

(5) Special rules extend the scope of this Subdivision to let the head company of a consolidated group or MEC group transfer in some cases a tax loss the company incurred because of Subdivision 707-A. The rules do this by modifying the basis on which other provisions of this Subdivision operate.

5 At the end of Subdivision 170-A in Schedule 1

Add:

Special rules for transfer from head company of consolidated group or MEC group

170-75 Transfer of a tax loss incurred by the head company because of Subdivision 707-A

(1) The other sections of this Subdivision operate in relation to the actual or proposed transfer of a *tax loss on the basis described in this section if:

(a) the *head company of a *consolidated group or *MEC group incurred the tax loss because of Subdivision 707-A; and

(b) the company (the ***real loss-maker***) that incurred the tax loss apart from Subdivision 707-A is a *member of the group at the end of the income year for which it is proposed to transfer the loss under this Subdivision.

(2) The other sections of this Subdivision, except section 170-28, operate as if:

(a) the *head company were a transferring corporation within the meaning of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*; and

(b) the head company had incurred the *tax loss for the income year for which the real loss-maker incurred the tax loss (apart from Subdivision 707-A).

Note: This has the effect that (because of subsection 170-10(1)) those sections operate as if the head company were the loss company and the loss year were the income year for which the real loss-maker incurred the loss.

(3) Section 170-28 operates as if:

(a) the real loss-maker were the *loss company; and

(b) section 701-1 (the single entity rule) could not affect whether the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* would have applied to the transfer described in section 170-28.

6 Schedule 2 (after the heading)

Insert:

Part 1—Replacement of sections 170-110 to 170-145

7 At the end of Schedule 2

Add:

Part 2—Addition of provisions at the end of Subdivision 170-B

Special rules for transfer from head company of consolidated group or MEC group

170-175 Transfer of a net capital loss made by the head company because of Subdivision 707-A

(1) The other sections of this Subdivision operate in relation to the actual or proposed transfer of a *net capital loss on the basis described in this section if:

(a) the *head company of a *consolidated group or *MEC group made the net capital loss because of Subdivision 707-A; and

(b) the company (the ***real loss-maker***) that made the net capital loss apart from Subdivision 707-A is a *member of the group at the end of the income year for which it is proposed to transfer the loss under this Subdivision.

(2) The other sections of this Subdivision, except section 170-128, operate as if:

(a) the *head company were a transferring corporation within the meaning of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*; and

(b) the head company had made the *net capital loss for the income year for which the real loss-maker made the net capital loss (apart from Subdivision 707-A).

Note: This has the effect that (because of subsection 170-110(1)) those sections operate as if the head company were the loss company and the capital loss year were the income year for which the real loss-maker made the loss.

(3) Section 170-128 operates as if:

(a) the real loss-maker were the *loss company; and

(b) section 701-1 (the single entity rule) could not affect whether the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* would have applied to the transfer described in section 170-28.

(4) Subsection 170-135(2) operates as if the reference in it to Subdivision 165-CA were a reference to that Subdivision as it operates given the effect of Subdivision 707-B, and Subdivision 719-F if relevant, on the operation of Subdivision 165-A.

Note: Subdivision 165-CA determines whether a net capital loss can be applied by reference to whether Subdivision 165-A would permit the deduction of a tax loss for the same income year as the net capital loss. Subdivisions 707-B and 719-F affect the operation of Subdivision 165-A in relation to losses made by a company because of Subdivision 707-A.

8 Application

(1) The amendments of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* made by this Schedule apply to assessments for the income year including 1 July 2002 and later income years.

(2) In this item:

income year has the same meaning as in the *Income Tax Assessment Act 1997*.

Schedule 21—Consolidation: CGT events relating to various cost base provisions

Income Tax Assessment Act 1997

1 Section 100-15 (note)

Omit "CGT event K7 or CGT event L1", substitute "some CGT events, for example CGT event K7 or any of the CGT events created by Subdivision 104-L".

2 Section 104-5 (after table row relating to event number L1)

Insert:

L2 Amount remaining after step 3A etc. of joining allocable cost amount is negative *[See section 104-505]*	Just after entity becomes subsidiary member	amount remaining	*no capital loss*
L3 Tax cost setting amounts for retained cost base assets exceed joining allocable cost amount *[See section 104-510]*	Just after entity becomes subsidiary member	amount of excess	*no capital loss*
L4 No reset cost base assets against which to apply excess of net allocable cost amount on joining *[See section 104-515]*	Just after entity becomes subsidiary member	*no capital gain*	amount of excess
L5 Amount remaining after step 4 of leaving allocable cost amount is negative *[See section 104-520]*	When entity ceases to be subsidiary member	amount remaining	*no capital loss*

3 After section 104-500

Insert:

104-505 Where pre-formation intra-group roll-over reduction results in negative allocable cost amount: CGT event L2

(1) ***CGT event L2*** happens if:

(a) an entity becomes a *subsidiary member of a *consolidated group; and

(b) in working out the group's *allocable cost amount for the entity, the amount remaining after applying step 3A of the table in section 705-60 (after any application of section 705-150) is negative.

(2) The time of the event is just after the entity becomes a *subsidiary member of the group.

(3) For the head company core purposes mentioned in subsection 701-1(2), the *head company makes a ***capital gain*** equal to the amount remaining.

104-510 Where tax cost setting amounts for retained cost base assets exceeds joining allocable cost amount: CGT event L3

(1) ***CGT event L3*** happens if:

(a) an entity becomes a *subsidiary member of a *consolidated group; and

(a) the sum of:

(i) the *tax cost setting amounts for all of the *retained cost base assets that become those of the *head company of the group because subsection 701-1(1) (the single entity rule) applies;

exceeds:

(ii) the group's *allocable cost amount for the entity.

(2) The time of the event is just after the entity becomes a *subsidiary member of the group.

(3) For the head company core purposes mentioned in subsection 701-1(2), the *head company makes a ***capital gain*** equal to the excess.

104-515 Where no reset cost base assets and excess of net allocable cost amount on joining: CGT event L4

(1) ***CGT event L4*** happens if:

(a) an entity becomes a *subsidiary member of a *consolidated group; and

(b) in working out the *tax cost setting amount for assets of the entity in accordance with section 705-35 (including in its application in accordance with Subdivisions 705-B to 705-D), there is an amount that results after applying paragraphs 705-35(1)(b) and (c) (including in their application in accordance with those Subdivisions); and

Note: Section 705-35 is about the tax cost setting amount for reset cost base assets.

(c) it is not possible to allocate, in accordance with the latter paragraph, the amount that results because there are no reset cost base assets of the kind mentioned in that paragraph.

(2) The time of the event is just after the entity becomes a *subsidiary member of the group.

(3) For the head company core purposes mentioned in subsection 701-1(2), the *head company makes a ***capital loss*** equal to the amount that results.

104-520 Where amount remaining after step 4 of leaving allocable cost amount is negative: CGT event L5

(1) ***CGT event L5*** happens if:

(a) an entity ceases to be a *subsidiary member of a *consolidated group; and

(b) in working out the group's *allocable cost amount for the entity, the amount remaining after applying step 4 of the table in section 711-20 is negative.

(2) The time of the event is when the entity ceases to be a *subsidiary member of the group.

(3) For the head company core purposes mentioned in subsection 701-1(2), the *head company makes a ***capital gain*** equal to the amount remaining.

4 Section 110-10 (after table row relating to event number L1)

Insert:

L2	Amount remaining after step 3A etc. of joining allocable cost amount is negative	104-505
L3	Tax cost setting amounts for retained cost base assets exceed joining allocable cost amount	104-510
L4	No reset cost base assets against which to apply excess of net allocable cost amount on joining	104-515
L5	Amount remaining after step 4 of leaving allocable cost amount is negative	104-520

5 Subsection 705-25(4) (at the end of the note)

Add ": see CGT event L3".

6 Subsection 705-35 (at the end of note 2)

Add ": see CGT event L4".

7 Subsection 711-20(1) (at the end of the note)

Add ": see CGT event L5".

Schedule 22—Consolidation: thin capitalisation

Income Tax Assessment Act 1997

1 Subparagraph 820-599(2)(c)(iv)

Repeal the subparagraph, substitute:

(iv) was *not* a member of a *consolidated group; and

(v) was *not* a member of a *MEC group; and

Schedule 23—Consolidation: research and development

Income Tax Assessment Act 1936

1 At the end of subsection 73B(23)

Add:

Note: This subsection does not apply to an asset whose tax cost is set under Division 701 of the *Income Tax Assessment Act 1997*: see section 73BAG of this Act.

2 At the end of subsection 73B(24B)

Add:

Note: This subsection does not apply to an asset whose tax cost is set under Division 701 of the *Income Tax Assessment Act 1997*: see section 73BAG of this Act.

3 After section 73BAF

Insert:

73BAG Balancing adjustments for certain assets of consolidated groups

(1) Subsections 73(23) and (24B) do not apply to an asset held by the head company of a consolidated group or MEC group where the tax cost of the asset is set under Division 701 of the *Income Tax Assessment Act 1997*. Instead, any balancing adjustment for the asset is worked out under section 73BF of this Act or section 40-292 of the *Income Tax Assessment Act 1997*.

(2) In working out the amount of a balancing adjustment under section 73BF of this Act or section 40-292 of the *Income Tax Assessment Act 1997* for the asset, the asset's adjustable value (see section 40-85 of that Act) is reduced by so much of a reduction amount (see section 73BAF of this Act) for the asset that has not been applied in reducing a notional Division 40 deduction for the head company.

4 Paragraph 73BF(1)(b)

Repeal the paragraph, substitute:

(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:

(i) the company had not chosen a tax offset under section 73I; or

(ii) section 73BAF had not been enacted; and

5 Subsection 73BF(1) (note)

Omit "Note", substitute "Note 1".

6 At the end of subsection 73BF(1)

Add:

Note 2: An asset whose tax cost is set under Division 701 of the *Income Tax Assessment Act 1997* may have its adjustable value reduced in applying this section: see section 73BAG of this Act.

7 Subsection 73BF(2)

After "1.25", insert "(or would have been so worked out had section 73BAF not been enacted)".

8 After subsection 73BF(3)

Insert:

(3A) Subsection (3B) has effect if:

(a) the head company of a consolidated group or MEC group can *deduct* an amount under subsection (1) for a section 73BA depreciating asset for a year of income; and

(b) the head company's aggregate research and development amount for the year of income exceeds $20,000; and

(c) the asset was used exclusively for research and development activities since its tax cost was set under Division 701 of the *Income Tax Assessment Act 1997*.

(3B) The numerator in the formula in subsection (3) is increased by any expenditure on the asset that the head company can deduct under section 73B after the asset's tax cost was set.

9 Subsection 73BF(7)

Insert:

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

Income Tax Assessment Act 1997

10 Paragraph 40-292(1)(b)

Repeal the paragraph, substitute:

(b) for any income year in which you held the asset, you also deducted an amount for it under section 73BA or 73BH of the *Income Tax Assessment Act 1936*, or could have done so if:

(i) you had not chosen a tax offset under section 73I of that Act; or

(ii) section 73BAF of that Act had not been enacted.

11 Paragraph 40-292(3)(b)

After "1.25", insert "(or would have been so worked out had section 73BAF of the *Income Tax Assessment Act 1936* not been enacted)".

12 At the end of section 40-292

Add:

Note: An asset whose tax cost is set under Division 701 of this Act may have its adjustable value reduced in applying this section: see section 73BAG of the *Income Tax Assessment Act 1936*.

13 Subsection 701-55(2)

After "Subdivision 328-D", insert ", and sections 73BA and 73BF of the *Income Tax Assessment Act 1936*,".

Taxation Administration Act 1953

14 Paragraph 286-80(2)(b) in Schedule 1

After "you give the details", insert "(up to a maximum of 5 penalty units)".

Schedule 24—Consolidation: pay as you go (PAYG) instalments

Part 1—Amendment of the Taxation Administration Act 1953

1 Subsection 45-120(2A) in Schedule 1

Repeal the subsection, substitute:

(2A) The instalment income of a *life insurance company for a period also includes any part of its *statutory income that:

(a) is reasonably attributable to that period; and

(b) is included in the *complying superannuation class of its taxable income for the income year that is or includes that period.

2 After section 45-155 in Schedule 1

Insert:

45-160 Head company of a consolidated group stops being annual payer

(1) You stop being an *annual payer at the start of an *instalment quarter if Subdivision 45-Q starts applying to you as the *head company of a *consolidated group during that quarter.

(2) You must pay an instalment for that *instalment quarter and later instalment quarters in accordance with Subdivision 45-B.

(3) You may again become an *annual payer if:

(a) you again satisfy the conditions in section 45-140; and

(b) you again choose under that section to pay instalments annually.

Note: You cannot choose to be an annual payer while you are the head company of a consolidated group to which Subdivision 45-Q applies: see section 45-720.

3 At the end of section 45-330 in Schedule 1

Add:

Special rule for a life insurance company that is, or has been, the head company of a consolidated group

(4) A company's ***adjusted taxable income*** for the *base year is worked out under subsection (3) with the modification set out in subsection (5) if the company:

(a) is a *life insurance company for the base year; and

(b) has *tax losses transferred to it under Subdivision 707-A of the *Income Tax Assessment Act 1997*.

(5) Subsection (3) applies to the company as if step 4 of the method statement in that subsection were replaced by the following step:

Step 4.	Reduce the step 3 result by the lesser of the following amounts: (a) the amount of any *tax loss, to the extent that the company can carry it forward to the next income year; (b) the amount of the deductions for tax losses used in making the *base assessment.

Note: Subsections (3), (4) and (5) also apply to the head company of a consolidated group, or the head company of a MEC group, that is treated as a life insurance company: see section 713-505 of the *Income Tax Assessment Act 1997*.

4 Section 45-700 in Schedule 1 (notes)

Repeal the notes, substitute:

Note 1: Subdivision 45-R contains special rules that apply to members of a consolidated group before they are treated as a single entity for the purposes of this Part. It also contains special rules that affect the operation of this Subdivision (see sections 45-880 and 45-885).

Note 2: Subdivision 45-S extends the operation of this Subdivision so that it can apply to members of a MEC group. It contains modifications of this Subdivision for the purposes of that extended operation.

5 Section 45-705 in Schedule 1

Repeal the section, substitute:

45-705 Application of Subdivision to head company

Period during which Subdivision applies to head company

(1) Subject to sections 45-880 and 45-885, this Subdivision applies to a company as the *head company of a *consolidated group during the period:

(a) starting at the start of the *instalment quarter of the company determined under subsection (2), (3) or (4); and

(b) ending:

(i) at the end of the instalment quarter of the company determined under paragraph (5)(a) or (b); or

(ii) just before the instalment quarter of the company determined under paragraph (5)(c) or (d).

When the period begins—initial head company instalment rate

(2) This Subdivision starts to apply to a company as the *head company of a *consolidated group at the start of an *instalment quarter under this subsection if, during that quarter, the Commissioner gives the company (as that head company) the *initial head company instalment rate.

Note: The operation of this subsection may be affected by section 45-885.

When the period begins—group created from MEC group

(3) This Subdivision starts to apply to a company as the *head company of a *consolidated group at the start of an *instalment quarter (the ***starting quarter***) under this subsection if all of the following conditions are satisfied:

(a) the consolidated group is *created from a *MEC group during the starting quarter;

(b) the company is the head company of the consolidated group when the consolidated group is created from the MEC group;

(c) either of the following applies:

(i) this Subdivision applied, in accordance with Subdivision 45-S, to the *provisional head company of

the MEC group at the end of the previous instalment quarter;

(ii) the Commissioner gives the *initial head company instalment rate to the provisional head company of the MEC group during the starting quarter.

Note: For the application of this Subdivision to a provisional head company of a MEC group: see section 45-915.

When the period begins—new head company

(4) This Subdivision starts to apply to a company as the *head company of a *consolidated group at the start of an *instalment quarter (the ***starting quarter***) under this subsection if all of the following conditions are satisfied:

(a) the company is an interposed company mentioned in subsection 124-380(5) of the *Income Tax Assessment Act 1997*;

(b) the company chooses under that subsection that the consolidated group is to continue in existence at and after the completion time mentioned in that subsection;

(c) the completion time occurs during the starting quarter;

(d) one of the following subparagraphs applies:

(i) this Subdivision applied to the original company mentioned in that subsection (as the head company of the consolidated group) at the end of the previous instalment quarter;

(ii) the Commissioner gives the *initial head company instalment rate to the original company mentioned in that subsection (as the head company of the consolidated group) during the starting quarter;

(iii) the consolidated group is *created from a *MEC group during the starting quarter and this Subdivision applied to the *provisional head company of the MEC group at the end of the previous instalment quarter;

(iv) the consolidated group is created from a MEC group during the starting quarter and the Commissioner gives the initial head company instalment rate to the provisional head company of the MEC group during the starting quarter.

When the period ends

(5) This Subdivision stops applying to a company as the *head company of a *consolidated group at the earliest of the following times after the company becomes the head company:

(a) the end of the *instalment quarter during which the consolidated group ceases to exist (other than because a *MEC group is *created from the consolidated group);

(b) the end of the instalment quarter during which the Commissioner is notified of the creation of a MEC group from the consolidated group if the MEC group is created during that instalment quarter;

(c) just before the instalment quarter during which the Commissioner is notified of the creation of a MEC group from the consolidated group if the MEC group was created before that instalment quarter;

(d) just before the instalment quarter that includes the completion time mentioned in subsection 124-380(5) of the *Income Tax Assessment Act 1997* where an interposed company mentioned in that subsection chooses under that subsection that the consolidated group is to continue in existence.

Note: The operation of this subsection because of paragraph (a) may be affected by section 45-880.

(6) For the purposes of subsection (5), the Commissioner is notified of the creation of a *MEC group from a *consolidated group when the Commissioner receives a notice of the consolidation of the MEC group under subsection 719-40(1) of the *Income Tax Assessment Act 1997*.

(7) If this Subdivision stops applying to a company as the *head company of a *consolidated group just before an *instalment quarter under paragraph (5)(c), then, for the purposes of this Part, this Act has effect for the company and other *members of the group as if:

(a) the consolidated group had continued to exist until just before the start of that quarter; and

(b) the company were the head company of the group until just before the start of that quarter.

(8) To avoid doubt, this Subdivision does not apply to a company as the *head company of a *consolidated group for any time at all if:

(a) subsection (2), (3) or (4), and subsection (5), would, apart from this subsection, apply to the company; but

(b) the time at which this Subdivision would stop applying to the company under subsection (5) is before the time at which this Subdivision would start to apply to the company under subsection (2), (3) or (4).

(9) To avoid doubt, and apart from the operation of subsection (7), this Subdivision may apply to a company as the *head company of a *consolidated group at a time when the company is not in fact the head company of the group.

Note: An example of this is when an interposed company becomes the new head company of a consolidated group. Under this section and section 45-740, this Subdivision may start applying to the company as if it had already become the head company when it is not yet such a company.

6 Section 45-720 in Schedule 1 (link note)

Repeal the link note, substitute:

Note: You stop being an annual payer when this Subdivision starts applying to you as the head company of a consolidated group: see section 45-160.

7 Before section 45-755 in Schedule 1

Insert (after the group heading):

45-740 Change of head company

Object

(1) The object of this section (except subsection (8)) is to ensure that, for the purposes of this Part, when a company becomes the new *head company of a *consolidated group:

(a) the company inherits the history of the former head company of the group; and

(b) the history of the new head company is effectively ignored.

(2) This section applies to a *head company of a *consolidated group if:

(a) the company is an interposed company mentioned in subsection 45-705(4) (an interposed company that chooses under subsection 124-380(5) of the *Income Tax Assessment Act 1997* that the consolidated group is to continue in existence at and after the completion time mentioned in that subsection); and

(b) the conditions in subsection 45-705(4) are satisfied in relation to the interposed company (whether or not this Subdivision applies to the company as the head company of the group for any period of time).

(3) Everything that happened before the completion time in relation to the company (the ***original company***) that was the *head company of the *consolidated group immediately before the completion time:

(a) is taken to have happened in relation to the interposed company instead of in relation to the original company; and

(b) is taken to have happened in relation to the interposed company instead of what would (apart from this section) be taken to have happened in relation to the interposed company before the completion time;

just as if, at all times before the completion time:

(c) the interposed company had been the original company; and

(d) the original company had been the interposed company.

(4) To avoid doubt, subsection (3) also covers everything that, immediately before the completion time, was taken to have happened in relation to the original company because of:

(a) section 701-1 of the *Income Tax Assessment Act 1997* (single entity rule); or

(b) section 701-5 of that Act (entry history rule); or

(c) section 703-75 of that Act (effects of an interposed company becoming the *head company of a *consolidated group); or

(d) section 719-90 of that Act (effects of a change of head company of a *MEC group); or

(e) section 45-710 in this Schedule (single entity rule for the purposes of this Part), including an application of that section under Subdivision 45-S in this Schedule; or

(f) this section; or

(g) section 45-920 in this Schedule (effects of a change of *provisional head company of a MEC group for the purposes of this Part); or

(h) one or more previous applications of any of the provisions covered by paragraphs (a) to (g).

(5) In addition, and without affecting subsection (3):

(a) an assessment of the original company for an income year that ends before the income year that includes the completion time; or

(b) an amendment of the assessment;

is taken to be something that had happened to the interposed company, whether or not the assessment or amendment is made before the completion time.

(6) This section has effect for the purposes of applying this Part to *members of the *consolidated group in relation to an *instalment quarter of the interposed company that ends after the completion time.

Note: An assessment mentioned in subsection (5) may therefore be taken to be the base assessment of the interposed company for the purposes of this Part.

(7) Subsections (1) to (6) are to be disregarded in applying section 45-705 (about the application of this Subdivision to a company as the *head company of a *consolidated group).

Note: For example, if the Commissioner has given an initial head company instalment rate to the original company during an earlier instalment quarter, the rate is not, despite this section, treated as if it had been given to the interposed company for the purposes of section 45-705. Subject to the other provisions in that section, this Subdivision therefore starts applying to the interposed company under subsection 45-705(4).

Special rule for the original company

(8) A provision of this Part that applies on an entity becoming a *subsidiary member of a *consolidated group does not apply to the original company when it is taken to have become such a member at the completion time as a result of section 703-70 of the *Income Tax Assessment Act 1997*.

Note: Section 45-755 (the entry rule) therefore does not apply to the original company on the company becoming a subsidiary member of the consolidated group.

8 Subsection 45-760(1) in Schedule 1

Repeal the subsection, substitute:

(1) This section applies to an entity if all of the following conditions are satisfied:

(a) the entity ceases to be a *subsidiary member of a *consolidated group during an *instalment quarter of the *head company of the group;

(b) this Subdivision applies to the head company of the group during that instalment quarter;

(c) the entity does not, at the time it ceases to be a subsidiary member of the group, become:

(i) a subsidiary member of another consolidated group the head company of which is one to which this Subdivision applies at that time; or

(ii) a member (other than the *provisional head company) of a *MEC group the provisional head company of which is one to which this Subdivision applies, in accordance with Subdivision 45-S, at that time;

(d) this Part applies to the entity under section 45-10.

9 At the end of section 45-775 in Schedule 1

Add:

Additional applications of subsection (2)

(4) If, after exercising the power in relation to the membership change under subsection (2) for the first time, and on the basis of an assessment (including an amendment) of the *head company for the income year in which the change occurs, or for an earlier year, the Commissioner has worked out:

(a) another instalment rate under section 45-320 for the company (whether or not the Commissioner has given that rate to the company); or

(b) another amount of *GDP-adjusted notional tax under section 45-405 for the company (whether or not the

Commissioner has notified the company an amount of instalment based on that other amount);

the Commissioner may again exercise the power under subsection (2) in relation to the membership change, as if:

(c) the rate mentioned in paragraph (a) were the most recent instalment rate mentioned in paragraph (2)(a); and

(d) the amount of GDP-adjusted notional tax mentioned in paragraph (b) were the amount of GDP-adjusted notional tax worked out for the purposes of the most recent amount of instalment that is mentioned in paragraph (2)(b).

(5) To avoid doubt, in relation to the membership change, the Commissioner:

(a) may exercise the power under subsection (2) by applying subsection (4) more than once; but

(b) must not exercise that power more than once in relation to a particular instalment rate mentioned in paragraph (4)(a) or a particular amount of *GDP-adjusted notional tax mentioned in paragraph (4)(b).

10 Subdivision 45-R in Schedule 1 (heading)

Repeal the heading, substitute:

Subdivision 45-R—Special rules for consolidated groups

11 Section 45-850 in Schedule 1

Repeal the section, substitute:

45-850 What this Subdivision is about

This Subdivision deals with the application of this Part to members of a consolidated group after the group has come into existence but before the members are treated as a single entity for the purposes of this Part.

This Subdivision also contains special rules in relation to the application of Subdivision 45-Q to members of a consolidated group in these circumstances:

(a) a group whose members were treated as a single entity under that Subdivision (a ***mature group***) is acquired by another group (see section 45-880); or

(b) a member of a mature group ceases to be such a member and becomes the head company of a new group (see section 45-885).

Note: Subdivision 45-S extends the operation of this Subdivision so that it can apply to members of a MEC group. It contains modifications of this Subdivision for the purposes of that extended operation.

12 Paragraph 45-855(b) in Schedule 1

Repeal the paragraph, substitute:

(b) the period ends before Subdivision 45-Q starts to apply, because of subsection 45-705(2) or subparagraph 45-705(3)(c)(ii), (4)(d)(ii) or (iv), to the *head company of the group;

13 Paragraphs 45-860(1)(a) and (2)(a) in Schedule 1

Omit "during which Subdivision 45-Q starts to apply to the *head company of the group", substitute "that includes the starting time".

14 Paragraphs 45-860(1)(b) and (2)(b) in Schedule 1

Omit "the head company during which that Subdivision starts to apply to the head company", substitute "the *head company of the group that includes the starting time".

15 Paragraph 45-860(3)(a) in Schedule 1

Omit "Subdivision 45-Q starts to apply to the *head company of the group", substitute "the starting time".

16 At the end of section 45-860 in Schedule 1

Add:

(4) For the purposes of this section, the ***starting time*** is the time at which Subdivision 45-Q starts to apply to the *head company of the group because of subsection 45-705(2) or subparagraph 45-705(3)(c)(ii), (4)(d)(ii) or (iv).

17 At the end of section 45-865 in Schedule 1

Add:

(3) To avoid doubt, if:

(a) during the *instalment quarter or the *consolidation transitional year mentioned in paragraph (2)(a), the entity is a *subsidiary member of:

(i) 2 or more *consolidated groups; or

(ii) one or more consolidated groups and one or more *MEC groups; and

(b) an amount is taken into account under that paragraph or paragraph (2)(b) in working out the credit to which the *head company of one of the groups is entitled under subsection (1);

that amount is not to be taken into account in working out the credit to which the head company of another of those groups is entitled under that subsection.

(4) A reference in subsection (3) to subsection (1) or paragraph (2)(a) or (b) includes a reference to that provision in its extended operation in relation to a *MEC group under Subdivision 45-S.

Note: This section applies to members of a MEC group with the modifications set out in section 45-930.

18 At the end of Subdivision 45-R in Schedule 1

Add:

45-880 Continued application of Subdivision 45-Q to the head company of an acquired group

(1) This section applies to a company for which all of the following conditions are satisfied in relation to a particular time (the ***takeover time***):

(a) just before the takeover time, Subdivision 45-Q applied to the company as the *head company of a *consolidated group;

(b) at the takeover time, the company becomes a *wholly-owned subsidiary of a *member of another consolidated group or *MEC group;

(c) that other group is consolidated at or before the takeover time under section 703-50 or 719-50 of the *Income Tax Assessment Act 1997*;

(d) the Commissioner receives the choice (or notice) under that section for the consolidation of that other group not later than 28 days after the takeover time, or within such further period (if any) as the Commissioner allows;

(e) at the takeover time, Subdivision 45-Q (including that Subdivision as applied under Subdivision 45-S) does not apply to the head company or the *provisional head company of that other group.

(2) For the purposes of this Part only, this Act has effect in relation to the company and the other *members of the *consolidated group mentioned in paragraph (1)(a) (the ***preserved group***) as if, during the period covered by subsection (5):

(a) the preserved group had continued to exist as a consolidated group; and

(b) the company were still the *head company of the preserved group; and

(c) Subdivision 45-Q had continued to apply to the company as the head company of the preserved group; and

(d) an entity, while being a *subsidiary member of the preserved group, were not treated as a member of the group mentioned in paragraph (1)(b) (the ***new group***).

(3) Subsection (2) does not stop the company from being a member of the new group for the purposes of this Part during the period covered by subsection (5).

Note: This means, for example, sections 45-855 and 45-860 apply to the head company as a member of the new group.

(4) However, for the purposes of applying section 45-855 to the company, a reference in that section to an application of section 701-1 of the *Income Tax Assessment Act 1997* to the company in relation to the period mentioned in section 45-855 is taken to be:

(a) a reference only to an application of section 701-1 of that Act to the company as a member of the new group during that period; and

(b) not a reference to an application (because of subsection (2) of this section) of section 701-1 of that Act to the company as the *head company of the preserved group during that period.

(5) This subsection covers the period that starts from the start of the *instalment quarter of the company that includes the takeover time and ends at the earlier of the following times:

(a) the end of the instalment quarter of the company during which the company ceases to be a member of the new group;

(b) just before the instalment quarter of the company during which the Commissioner gives the *initial head company instalment rate to the *head company, or the *provisional head company, of the new group.

(6) The Commissioner may, on the application of the company made not later than 28 days after the takeover time, allow such extension of time for the purposes of paragraph (1)(d) as he or she considers appropriate.

(7) To avoid doubt, nothing in this section prevents the operation of section 45-755 or 45-760 to *members of the preserved group while it continues to exist under subsection (2).

45-885 Early application of Subdivision 45-Q to the head company of a new group

(1) This section applies to a company for which all of the following conditions are satisfied in relation to a particular time (the ***starting time***):

(a) just before the starting time, the company was a *subsidiary member of a *consolidated group, or a member of a *MEC group;

(b) just before the starting time, the consolidated group or MEC group was a mature group (see subsection (4));

(c) at the starting time, either of the following applies:

(i) the company ceases to be a subsidiary member of the consolidated group, or a member of the MEC group;

(ii) the group ceases to exist (otherwise than because a MEC group or consolidated group is *created from the group, or because its *head company or *provisional

head company becomes a *wholly-owned subsidiary of a member of another mature group);

(d) at the starting time, the company is the head company of another consolidated group;

(e) within 28 days after the starting time, or within such further period (if any) as the Commissioner allows, the Commissioner receives the choice to consolidate, at and after the starting time, that other consolidated group under section 703-50 of the *Income Tax Assessment Act 1997*.

(2) For the purposes of this Part:

(a) the instalment rate that the Commissioner is taken to have given to the company under paragraph 45-760(2)(a) has effect as if it were the *initial head company instalment rate for the company as the *head company of the *consolidated group mentioned in paragraph (1)(d); and

(b) an instalment rate that would otherwise be the initial head company instalment rate for the company as the head company of that consolidated group is not to be treated as that initial head company instalment rate.

Note: This means, subject to the provisions in section 45-705, Subdivision 45-Q starts applying to the company as the head company of the consolidated group at the start of the instalment quarter that includes the starting time: see subsection (2) of that section and paragraph 45-760(2)(a).

(3) The Commissioner may, on the application of the company made within 28 days after the starting time, allow such extension of time for the purposes of paragraph (1)(e) as he or she considers appropriate.

Mature group

(4) For the purposes of this section, a *consolidated group or a *MEC group is a ***mature group*** at a particular time if:

(a) for a consolidated group—Subdivision 45-Q applies to its *head company at that time; or

(b) for a MEC group—Subdivision 45-Q, as applied under Subdivision 45-S, applies to its *provisional head company at that time.

Subdivision 45-S—MEC groups

Guide to Subdivision 45-S

45-900 What this Subdivision is about

This Subdivision sets out how this Part applies in relation to MEC groups and their members.

Table of sections

Preliminary

45-905 Objects of Subdivision

General modification rules

45-910 Extended operation of Part to cover MEC groups

Extended operation of Subdivision 45-Q

45-913 Sections 45-705 and 45-740 do not apply to members of MEC groups
45-915 Application of Subdivision 45-Q to provisional head company
45-917 Assumption for applying section 45-710 (single entity rule)
45-920 Change of provisional head company
45-922 Life insurance company

Extended operation of Subdivision 45-R

45-925 Additional modifications of sections 45-855 and 45-860
45-930 Modifications of sections 45-865 and 45-870 and a related provision
45-935 Additional modifications of section 45-885

[This is the end of the Guide.]

Preliminary

45-905 Objects of Subdivision

The objects of this Subdivision are to:

(a) extend the operation of this Part (except sections 45-705 and 45-740 and this Subdivision) so that it can apply in relation to *MEC groups and their members; and

(b) modify the rules in this Part for that extended operation so that they take account of the special characteristics of MEC groups.

General modification rules

45-910 Extended operation of Part to cover MEC groups

(1) This Part (except sections 45-705 and 45-740 and this Subdivision) has effect in relation to members of a *MEC group in the same way in which it has effect in relation to *members of a *consolidated group.

(2) However, that effect is subject to the modifications set out in the following table and elsewhere in this Subdivision.

Modifications of this Part

Item	A reference in this Part to:	Is taken to be a reference to:
1	a *consolidated group	a *MEC group
2	the *head company of a *consolidated group	the *provisional head company of a *MEC group
3	a *subsidiary member of a *consolidated group	a member (other than the *provisional head company) of a *MEC group

Exceptions

(3) The modifications set out in the table do not apply to the following provisions:

(a) this Subdivision;

(b) subsection 45-30(4) (see section 45-930);

(c) the note at the end of subsection 45-330(5);

(d) note 2 at the end of section 45-700;

(e) sections 45-705 and 45-740 (see sections 45-913, 45-915 and 45-920);

(f) subparagraphs 45-760(1)(c)(i) and (ii);

(g) the note at the end of section 45-850;
(h) sections 45-865 and 45-870 (see section 45-930);
(i) paragraphs (1)(b), (c), (d) and (e), and subsection (5), of section 45-880;
(j) paragraphs (1)(a), (b) and (c), and subsection (4), of section 45-885.

Note: The provisions covered by paragraphs (c), (d), (f), (g), (i) and (j) apply to members of a MEC group without any modifications.

Extended operation of Subdivision 45-Q

45-913 Sections 45-705 and 45-740 do not apply to members of MEC groups

In applying Subdivision 45-Q to members of a *MEC group, the Subdivision has effect as if:

(a) section 45-705 had no effect and section 45-915 had effect instead; and
(b) section 45-740 had no effect and section 45-920 had effect instead.

45-915 Application of Subdivision 45-Q to provisional head company

Period during which Subdivision applies to provisional head company

(1) Subject to sections 45-880 and 45-885 (as applied under this Subdivision), Subdivision 45-Q applies to a company as the *provisional head company of a *MEC group during the period:

(a) starting at the start of the *instalment quarter of the company determined under subsection (2), (3) or (4); and
(b) ending:
(i) at the end of the instalment quarter of the company determined under paragraph (6)(a) or (b); or
(ii) just before the instalment quarter of the company determined under paragraph (6)(c).

Note: The application of Subdivision 45-Q to the provisional head company is subject to the modifications set out in this section and elsewhere in this Subdivision.

When the period begins—initial head company instalment rate

(2) Subdivision 45-Q starts to apply to a company as the *provisional head company of a *MEC group at the start of an *instalment quarter under this subsection if, during that quarter, the Commissioner gives the company (as that provisional head company) the *initial head company instalment rate.

Note: The operation of this subsection may be affected by section 45-885 (as applied under this Subdivision).

When the period begins—group created from consolidated group

(3) Subdivision 45-Q starts to apply to a company as the *provisional head company of a *MEC group at the start of an *instalment quarter (the ***starting quarter***) under this subsection if all of the following conditions are satisfied:

(a) during the starting quarter, the Commissioner is notified of the creation of the MEC group from a *consolidated group (see subsection (5));

(b) the company is the provisional head company of the MEC group when the Commissioner is so notified;

(c) either of the following applies:

(i) Subdivision 45-Q applied to the *head company of the consolidated group at the end of the previous instalment quarter;

(ii) the Commissioner gives the *initial head company instalment rate to the head company of the consolidated group during the starting quarter.

Note: For the application of Subdivision 45-Q to a head company of a consolidated group: see section 45-705.

When the period begins—new provisional head company

(4) Subdivision 45-Q starts to apply to a company as the *provisional head company of a *MEC group at the start of an *instalment quarter (the ***starting quarter***) under this subsection if both of the following conditions are satisfied:

(a) the company is appointed as the provisional head company of the MEC group under subsection 719-60(3) of the *Income Tax Assessment Act 1997* during the starting quarter;

(b) one of the following applies:

(i) Subdivision 45-Q applied to the former provisional head company of the MEC group at the end of the previous instalment quarter;

(ii) the Commissioner gives the *initial head company instalment rate to the former provisional head company of the MEC group during the starting quarter;

(iii) the Commissioner is notified during the starting quarter of the creation of the MEC group from a *consolidated group and Subdivision 45-Q applied to the *head company of the consolidated group at the end of the previous instalment quarter;

(iv) the Commissioner is notified during the starting quarter of the creation of the MEC group from a consolidated group and the Commissioner gives the initial head company instalment rate to the head company of the consolidated group during the starting quarter.

Notification of creation of MEC group from consolidated group

(5) For the purposes of subsections (3) and (4), the Commissioner is notified of the creation of a *MEC group from a *consolidated group when the Commissioner receives a notice of the consolidation of the MEC group under subsection 719-40(1) of the *Income Tax Assessment Act 1997*.

When the period ends

(6) Subdivision 45-Q stops applying to a company as the *provisional head company of a *MEC group at the earliest of the following times after the company becomes the provisional head company:

(a) the end of the *instalment quarter during which the MEC group ceases to exist (other than because a *consolidated group is *created from the MEC group);

(b) the end of the instalment quarter during which a consolidated group is created from the MEC group;

(c) just before the instalment quarter during which another company is appointed as the provisional head company of the MEC group under subsection 719-60(3) of the *Income Tax Assessment Act 1997*.

Note: The operation of this subsection because of paragraph (a) may be affected by section 45-880 (as applied under this Subdivision).

(7) To avoid doubt, Subdivision 45-Q does not apply to a company as the *provisional head company of a *MEC group for any time at all if:

(a) subsection (2), (3) or (4), and subsection (6), would, apart from this subsection, apply to the company; but

(b) the time at which Subdivision 45-Q would stop applying to the company under subsection (6) is before the time at which that Subdivision would start to apply to the company under subsection (2), (3) or (4).

(8) To avoid doubt, Subdivision 45-Q may apply to a company as the *provisional head company of a *MEC group at a time when the company is not in fact the provisional head company of the group.

Note: An example of this is when a company replaces another company as the provisional head company of a MEC group. Under this section and section 45-920, Subdivision 45-Q may start applying to the company as if it had already become the provisional head company when it is not yet such a company.

45-917 Assumption for applying section 45-710 (single entity rule)

In applying section 45-710 to members of a *MEC group at a particular time, the company that is the *provisional head company of the group at that time must be assumed to be the *head company of the group at all times during the period:

(a) throughout which the group is in existence; and

(b) that is all or a part of the income year of the company that includes that particular time.

45-920 Change of provisional head company

Object

(1) The object of this section (except subsection (9)) is to ensure that, for the purposes of this Part, when a company becomes the new *provisional head company of a *MEC group:

(a) the company inherits the history of the former provisional head company; and

(b) the history of the new provisional head company is effectively ignored.

(2) This section applies to a *provisional head company of a *MEC group (the ***new provisional head company***) that is appointed under subsection 719-60(3) of the *Income Tax Assessment Act 1997* if one of the following conditions is satisfied:

(a) the conditions in subsection 45-915(4) are satisfied in relation to the new provisional head company (whether or not Subdivision 45-Q applies to the company as the provisional head company of the group for any period of time);

(b) the new provisional head company is so appointed during the *instalment quarter of the company in which the MEC group is *created from a *consolidated group and either:

(i) the Commissioner gives the *initial head company instalment rate to the *head company of the consolidated group during that instalment quarter; or

(ii) Subdivision 45-Q applied to the head company of the consolidated group at the end of the previous instalment quarter.

(3) Everything that happened before the starting time in relation to the company (the ***former company***) that was the *provisional head company of the *MEC group immediately before the starting time:

(a) is taken to have happened in relation to the new provisional head company instead of in relation to the former company; and

(b) is taken to have happened in relation to the new provisional head company instead of what would (apart from this section) be taken to have happened in relation to the new provisional head company before the starting time;

just as if, at all times before the starting time:

(c) the new provisional head company had been the former company; and

(d) the former company had been the new provisional head company.

(4) For the purposes of this section, the ***starting time*** is the time at which the *cessation event happened to the former company (the event that results in the appointment of the new provisional head company).

(5) To avoid doubt, subsection (3) also covers everything that, immediately before the starting time, was taken to have happened in relation to the former company because of:

(a) section 701-1 of the *Income Tax Assessment Act 1997* (single entity rule); or

(b) section 701-5 of that Act (entry history rule); or

(c) section 703-75 of that Act (effects of an interposed company becoming the *head company of a *consolidated group); or

(d) section 719-90 of that Act (effects of a change of head company of a *MEC group); or

(e) section 45-710 in this Schedule (single entity rule for the purposes of this Part), including an application of that section under this Subdivision; or

(f) section 45-740 in this Schedule (effects of an interposed company becoming the head company of a consolidated group for the purposes of this Part); or

(g) this section; or

(h) one or more previous applications of any of the provisions covered by paragraphs (a) to (g).

(6) In addition, and without affecting subsection (3):

(a) an assessment of the former company for an income year that ends before the income year that includes the starting time; or

(b) an amendment of the assessment;

is taken to be something that had happened to the new provisional head company, whether or not the assessment or amendment is made before the starting time.

(7) This section has effect for the purposes of applying this Part to members of the *MEC group in relation to an *instalment quarter of the new provisional head company that ends after the starting time.

Note: An assessment mentioned in subsection (6) may therefore be taken to be the base assessment of the new provisional head company for the purposes of this Part.

(8) Subsections (1) to (7) are to be disregarded in applying section 45-915 (about the application of Subdivision 45-Q to a company as the *provisional head company of a *MEC group).

Note: For example, if the Commissioner has given an initial head company instalment rate to the former company during an earlier instalment quarter, the rate is not, despite this section, treated as if it had been given to the new provisional head company for the purposes of section 45-915. Subject to the other provisions in that section, Subdivision 45-Q therefore starts applying to the new provisional head company under subsection 45-915(4).

Special rule for the former company

(9) A provision of this Part that applies on an entity becoming a member (other than the *provisional head company) of a *MEC group does not apply to the former company when it becomes such a member at the starting time.

Note: Section 45-755 (the entry rule, as applied under this Subdivision) therefore does not apply to the former company on the company becoming such a member of the MEC group.

45-922 Life insurance company

In applying Subdivision 45-Q to members of a *MEC group for an *instalment quarter of the *provisional head company of the group in an income year of the provisional head company, the company is taken to be a *life insurance company for that quarter if:

(a) one or more life insurance companies are members of the group at any time during that quarter; or

(b) one or more life insurance companies were members of the group at any time during a previous instalment quarter of the company in that year.

Extended operation of Subdivision 45-R

45-925 Additional modifications of sections 45-855 and 45-860

In applying sections 45-855 and 45-860 to members of a *MEC group, those sections have effect as if, in addition to the modifications set out in the table in section 45-910:

(a) a reference in those sections to subsection 45-705(2) were a reference to subsection 45-915(2); and

(b) a reference in those sections to subparagraph 45-705(3)(c)(ii), (4)(d)(ii) or (iv) were a reference to subparagraph 45-915(3)(c)(ii), (4)(b)(ii) or (iv).

45-930 Modifications of sections 45-865 and 45-870 and a related provision

(1) In applying sections 45-865 and 45-870, and subsection 45-30(4) (which is related to section 45-865), to members of a *MEC group, those provisions have effect as if:

(a) a reference in those provisions to a *consolidated group were a reference to a *MEC group; and

(b) a reference in those provisions to a MEC group were a reference to a consolidated group.

Note: This means a reference in those provisions to the head company of a consolidated group has effect as if it were a reference to the head company of a MEC group. Similarly, a reference in those provisions to a subsidiary member of a consolidated group has effect as if it were a reference to a subsidiary member of a MEC group.

(2) However, the modifications in subsection (1) do not apply to subsection 45-865(4) and the note at the end of section 45-865.

Note: This means subsection 45-865(4) and the note apply to members of a MEC group without any modifications.

45-935 Additional modifications of section 45-885

In applying section 45-885 to members of a *MEC group, that section has effect as if, in addition to the modifications set out in the table in section 45-910, it had been modified as set out in the following table:

Modifications of section 45-885		
Item	**Provision:**	**Modification:**
1	Paragraph 45-885(1)(e)	The paragraph is taken to have been replaced by the following paragraph: (e) within 28 days after the starting time, or within such further period (if any) as the Commissioner allows, the Commissioner receives a notice of the consolidation of that other MEC group, at and after the starting time, under section 719-50 of the *Income Tax Assessment Act 1997*.
2	Subsection 45-885(2) (including the note at the end of the subsection)	A reference to paragraph 45-760(2)(a) is taken to be a reference to that paragraph as applied under this Subdivision
3	The note at the end of subsection 45-885(2)	The reference to section 45-705 is taken to be a reference to section 45-915

19 Application of amendments

(1) The amendment made by item 1 applies only in relation to an income year that begins on or after 1 July 2003.

(2) The amendments made by items 2 to 18 apply on and after 1 July 2002.

Part 2—Amendment of the Income Tax Assessment Act 1997

20 Subsection 995-1(1) (definition of *consolidation transitional year*)

Repeal the definition, substitute:

consolidation transitional year for a *member of a *consolidated group or a member of a *MEC group, is an income year for that member that satisfies both of the following conditions:

(a) the group is in existence during all or any part of that year;

(b) Subdivision 45-Q in Schedule 1 to the *Taxation Administration Act 1953* (including that Subdivision as applied under Subdivision 45-S in that Schedule):

(i) does not apply at all to the *head company or the *provisional head company of the group during that year; or

(ii) starts to apply at any time during that year to the head company or the provisional head company of the group because of subsection 45-705(2) or subparagraph 45-705(3)(c)(ii), (4)(d)(ii) or (iv), or subsection 45-915(2) or subparagraph 45-915(3)(c)(ii), (4)(b)(ii) or (iv), in that Schedule.

21 Subsection 995-1(1)

Insert:

created:

(a) a *consolidated group is ***created*** from a *MEC group if the consolidated group comes into existence under section 703-55 at the time the MEC group ceases to exist (as mentioned in that section); and

(b) a MEC group is ***created*** from a consolidated group if:

(i) the MEC group comes into existence under section 719-40 when a *special conversion event happens to a *potential MEC group derived from an *eligible tier-1 company of a *top company; and

(ii) the eligible tier-1 company was the *head company of the consolidated group (as mentioned in paragraph 719-40(1)(b)).

22 Subsection 995-1(1) (definition of *initial head company instalment rate*)

Repeal the definition, substitute:

initial head company instalment rate, for a *head company of a *consolidated group, or a *provisional head company of a *MEC group, is an *instalment rate worked out on the basis of:

(a) for a group that comes into existence in an income year under section 703-50 or 719-50—the first *base assessment of a company as the head company of that group for which the *base year is that income year; and

(b) for a group (the ***later group***) for which either of the following conditions is satisfied:

(i) the later group is *created from a group (the ***first group***) that comes into existence under section 703-50 or 719-50;

(ii) starting from the first group, consolidated groups or MEC groups are successively created, ending in the creation of the later group;

the first base assessment of a company as the head company of the first group, the later group or any other group covered by subparagraph (ii), for which the base year is the income year in which the first group comes into existence.

Note: For example, subparagraph (b)(ii) covers a consolidated group that is created from a MEC group, which was in turn created from a consolidated group that came into existence under section 703-50.

23 Application of amendments

The amendments made by items 20 to 22 apply on and after 1 July 2002.

Schedule 25—Value shifting

Income Tax Assessment Act 1997

1 Section 104-5 (table row relating to event number K8)

Omit "104-240", substitute "104-250".

2 Section 136-10 (table row relating to event number G2)

Repeal the row.

3 Section 136-10 (after table row relating to event number K7)

Insert:

K8	Direct value shifts affecting equity or loan interests in a company or trust	the *down interest	3-9

4 Subsection 725-240(1) (note)

Omit "104-240", substitute "104-250".

5 Section 725-245 (note)

Omit "104-240" (twice occurring), substitute "104-250".

6 Paragraph 727-355(1)(c)

Omit "for".

7 Paragraph 727-520(4)(a)

Omit "*loan", substitute "loan".

8 After subsection 727-715(3)

Insert:

(3A) If at the time referred to in subsection (3) a *primary interest covered by that subsection was *trading stock or a *revenue asset, its *adjustable value taken into account under that subsection is the

greater of its adjustable value as a *CGT asset and its adjustable value as trading stock or a revenue asset.

9 Paragraph 727-715(4)(b)

Repeal the paragraph, substitute:

(b) the start of the most recent period (if any):

(i) that ended before or at the time of the *realisation event; and

(ii) throughout which at least one of the group entities had the same *ultimate controller as the losing entity or the gaining entity; and

10 After subsection 727-800(6)

Insert:

(6A) The reduction of *adjustable value that is to be taken into account under subparagraph (6)(a)(i) for an *equity or loan interest in the *losing entity is:

(a) if the interest is *trading stock immediately before the *IVS time—the one worked out on the basis of the interest's adjustable value under subsection 727-835(2); or

(b) otherwise—the greater or greatest of these:

(i) the reduction of the interest's *cost base;

(ii) the reduction of the interest's *reduced cost base;

(iii) the reduction (if any) worked out on the basis of the interest's adjustable value under subsection 727-840(2) (about revenue assets).

Income Tax (Transitional Provisions) Act 1997

11 Subsection 723-1(1)

Repeal the subsection, substitute:

(1) Division 723 applies to a realisation event happening on or after 1 July 2002 to a CGT asset that, at the time of the event:

(a) is not a depreciating asset; or

(b) is an item of trading stock; or

(c) is a revenue asset.

12 Subsection 727-1(1)

After "Division 727", insert ", as inserted by the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002* and amended by the *New Business Tax System (Consolidation and Other Measures) Act 2003*,".

Schedule 26—Loss integrity rules: global method of valuing assets

Income Tax Assessment Act 1997

1 Subsection 165-115ZD(1)

After ", a loss", insert "(the ***realised loss***)".

2 Subsection 165-115ZD(4)

Repeal the subsection, substitute:

Adjusted unrealised loss worked out under this section

(4) The adjusted unrealised loss referred to in paragraph (2)(a) is worked out using this method statement:

Method statement	
Step 1.	Add up the amount or value of each thing covered by subsection (5). (If the total exceeds the realised loss, reduce the total by the excess.)
Step 2.	Reduce the step 1 amount by so much of the realised loss as it is reasonable to conclude is attributable to *none* of these: (a) a notional capital loss, or a notional revenue loss, that the company has at that last alteration time in respect of a *CGT asset; (b) a trading stock decrease in relation to that time for a CGT asset that was *trading stock of the company at that time.

Note: If the equity or debt is a revenue asset, the realised loss is different from the loss referred to in subsection (1): see subsection (9).

3 Paragraph 165-115ZD(5)(a)

Repeal the paragraph, substitute:

(a) it is reasonable to conclude that the thing was *not* attributable to value that is reflected in what would, if that last alteration time had been a *changeover time for the company, be a notional capital gain or notional revenue gain that the company had under section 165-115F at that changeover time in respect of a *CGT asset; or

4 At the end of section 165-115ZD

Add:

If equity or debt is a revenue asset

(9) If the equity or debt is a *revenue asset at the time of the *realisation event, subsection (4) applies on the basis that the realised loss is the total of:

(a) the loss (if any) *realised for income tax purposes by the realisation event happening to the equity or debt in its character as a *CGT asset; and

(b) the loss (if any) realised for income tax purposes by the realisation event happening to the equity or debt in its character as a revenue asset.

Income Tax (Transitional Provisions) Act 1997

5 Subsection 165-115ZD(1)

After ", a loss", insert "(the ***realised loss***)".

6 Paragraph 165-115ZD(2)(a)

Omit "loss referred to in paragraph (1)(a)", substitute "realised loss (see subsection (1) or (5), as appropriate, of this section)".

7 At the end of section 165-115ZD

Add:

(5) If the equity or debt is a *revenue asset at the time of the *realisation event, subsection (2) applies on the basis that the realised loss is the total of:

(a) the loss (if any) *realised for income tax purposes by the realisation event happening to the equity or debt in its character as a *CGT asset; and

(b) the loss (if any) realised for income tax purposes by the realisation event happening to the equity or debt in its character as a revenue asset.

8 Application

The amendments made by this Schedule apply to a time at or after 1 pm (by legal time in the Australian Capital Territory) on 11 November 1999.

Schedule 27—Venture capital franking

Income Tax Assessment Act 1997

1 At the end of subsection 204-30(6)

Add:

; or (f) the member is entitled to a *tax offset under section 210-170 as a result of the distribution.

2 At the end of section 204-30

Add:

(10) A *member of an entity derives a ***greater benefit from franking credits*** than another member if the first member is entitled to a *tax offset under section 210-170 as a result of the *distribution, and the other member is not.

3 After Division 208

Insert:

Division 210—Venture capital franking

Table of Subdivisions

Guide to Division 210

210-A Franking a distribution with a venture capital credit

210-B Participating PDFs

210-C Distributions that are frankable with a venture capital credit

210-D Amount of the venture capital credit on a distribution

210-E Distribution statements

210-F Rules affecting the allocation of venture capital credits

210-G Venture capital sub-account

210-H Effect of receiving a distribution franked with a venture capital credit

Guide to Division 210

Table of sections

210-1 Purpose of venture capital franking
210-5 How is this achieved?
210-10 What is a venture capital credit?
210-15 What does the PDF have to do to distribute the credits?
210-20 Limits on venture capital franking

210-1 Purpose of venture capital franking

The purpose of these rules is to encourage venture capital investment by superannuation funds and other entities that deal with superannuation.

210-5 How is this achieved?

This is done by giving tax benefits to those entities when they invest in PDFs, which are the vehicles for venture capital investment. If the PDF makes a distribution franked with a venture capital credit, the relevant venture capital investor receives a certain part of a distribution from the PDF as exempt income and, in addition, is entitled to a tax offset equal to the venture capital credit.

210-10 What is a venture capital credit?

(1) There is a venture capital franking sub-account in the franking account of each PDF.

(2) Venture capital credits arise in the sub-account if the PDF pays income tax that is reasonably attributable to capital gains from venture capital investments.

210-15 What does the PDF have to do to distribute the credits?

Only a participating PDF can distribute venture capital credits. A PDF elects to participate by keeping a record of its venture capital sub-account.

210-20 Limits on venture capital franking

(1) The venture capital credit on a distribution cannot exceed the franking credit on the distribution. It is, in this sense, a species of franking credit.

(2) A PDF can only distribute venture capital credits if it does it so that all members of the PDF receive venture capital credits in proportion to their holdings.

(3) If a PDF has a venture capital surplus when it makes a distribution, it must frank the distribution with venture capital credits.

(4) There are measures to ensure that a PDF does not maintain a venture capital deficit over a prolonged period.

Subdivision 210-A—Franking a distribution with a venture capital credit

Guide to Subdivision 210-A

210-25 What this Subdivision is about

A PDF can only frank a distribution with a venture capital credit if certain conditions are met. These conditions are set out in this Subdivision.

Table of sections

Operative provisions

210-30 Franking a distribution with a venture capital credit

[This is the end of the Guide.]

Operative provisions

210-30 Franking a distribution with a venture capital credit

An entity ***franks*** a *distribution ***with a venture capital credit*** if:

(a) the entity is a *participating PDF at the time the distribution is made; and

(b) the distribution is *frankable with a venture capital credit; and

(c) the entity allocates a *venture capital credit to the distribution.

Subdivision 210-B—Participating PDFs

Guide to Subdivision 210-B

210-35 What this Subdivision is about

A PDF may participate if it elects to keep a record of its venture capital sub-account.

Table of sections

Operative provisions

210-40 What is a participating PDF

[This is the end of the Guide.]

Operative provisions

210-40 What is a participating PDF

A *PDF is a ***participating PDF*** at a particular time if it keeps a record of its *venture capital sub-account at that time.

Subdivision 210-C—Distributions that are frankable with a venture capital credit

Guide to Subdivision 210-C

210-45 What this Subdivision is about

A distribution can only be franked with a venture capital credit if all members of the PDF receive distributions in proportion to their holdings.

Table of sections

Operative provisions

210-50 Which distributions can be franked with a venture capital credit?

[This is the end of the Guide.]

Operative provisions

210-50 Which distributions can be franked with a venture capital credit?

A *distribution by a *participating PDF is ***frankable with a venture capital credit*** if:

(a) the distribution is a *franked distribution; and

(b) the distribution is made under a resolution under which:

(i) distributions are made to all members of the PDF; and

(ii) the amount of the distribution per *membership interest is the same for each of those distributions.

Subdivision 210-D—Amount of the venture capital credit on a distribution

Guide to Subdivision 210-D

210-55 What this Subdivision is about

The amount of the venture capital credit on a distribution is that stated in the distribution statement, unless the amount exceeds the franking credit on the distribution.

In that case, the amount of the venture capital credit on the distribution is taken to be the same as the franking credit.

Table of sections

Operative provisions

210-60 Amount of the venture capital credit on a distribution

[This is the end of the Guide.]

Operative provisions

210-60 Amount of the venture capital credit on a distribution

(1) The amount of the *venture capital credit on a *distribution is that stated in the *distribution statement for the distribution, unless that amount exceeds the *franking credit on the distribution.

(2) If the amount of the *venture capital credit stated in the *distribution statement for a *distribution exceeds the *franking credit on the distribution, the amount of the venture capital credit is taken to be the same as the amount of the franking credit, and not the amount stated in the distribution statement.

Subdivision 210-E—Distribution statements

Guide to Subdivision 210-E

210-65 What this Subdivision is about

A participating PDF that makes a distribution franked with a venture capital credit must provide additional information in the distribution statement given to the recipient.

Table of sections

Operative provisions

210-70 Additional information to be included when a distribution is franked with a venture capital credit

[This is the end of the Guide.]

Operative provisions

210-70 Additional information to be included when a distribution is franked with a venture capital credit

(1) A *participating PDF that makes a *distribution *franked with a venture capital credit must include in the *distribution statement given to the recipient:

(a) a statement that there is a *venture capital credit of a specified amount on the distribution; and

(b) a statement to the effect that the venture capital credit is only relevant for a taxpayer who is:

(i) the trustee of a fund that is a *complying superannuation fund in relation to the income year in which the distribution is made and is not a self managed superannuation fund (within the meaning of the *Superannuation Industry Supervision Act 1993*); or

(ii) the trustee of a fund that is a *complying approved deposit fund in relation to the income year in which the distribution is made and is not a self managed superannuation fund (within the meaning of the *Superannuation Industry Supervision Act 1993*); or

(iii) the trustee of a unit trust that is a *pooled superannuation trust in relation to the income year in which the distribution is made; or

(iv) a *life insurance company.

(2) If, under subsection (1), a statement must be included in a *distribution statement, the distribution statement is taken not to have been given unless the statement is included.

Subdivision 210-F—Rules affecting the allocation of venture capital credits

Guide to Subdivision 210-F

210-75 What this Subdivision is about

If a PDF has a venture capital surplus when it makes a distribution frankable with venture capital credits, it must frank the distribution with venture capital credits.

Table of sections

Operative provisions

210-80 Draining the venture capital surplus when a distribution frankable with venture capital credits is made
210-81 Distributions to be franked with venture capital credits to the same extent
210-82 Consequences of breaching the rule in section 210-81

[This is the end of the Guide.]

Operative provisions

210-80 Draining the venture capital surplus when a distribution frankable with venture capital credits is made

(1) If a *participating PDF would otherwise have a *venture capital surplus at the time a *distribution that is *frankable with a venture capital credit is made, the PDF must either:

(a) allocate a *venture capital credit to the distribution that is equal to the *franking credit on the distribution; or

(b) allocate a venture capital credit to the distribution that either alone or when added to venture capital credits allocated to other distributions made under the resolution of the PDF under which the distribution in question is made, reduces the surplus to nil, or creates a *venture capital deficit.

(2) A *venture capital debit arises for a *participating PDF when a *distribution is made if the PDF does not allocate a *venture capital credit in accordance with subsection (1). The amount of the debit is:

Subsection (1) franked amount – Actual franked amount

where:

actual franked amount is the amount of the *venture capital credit that is allocated to the *distribution by the PDF (this may be nil).

subsection (1) franked amount is the amount of the *venture capital credit that would have been allocated to the *distribution if the PDF had made the smallest allocation needed to satisfy subsection (1).

210-81 Distributions to be franked with venture capital credits to the same extent

(1) If a *PDF *franks a *distribution with a venture capital credit, it must frank each other distribution made under the same resolution with a venture capital credit worked out using the same venture capital percentage.

(2) The ***venture capital percentage*** for a *distribution is worked out using the formula:

$$\frac{\text{Amount of the *venture capital credit on the distribution}}{\text{Maximum franking credit for the distribution}} \times 100$$

210-82 Consequences of breaching the rule in section 210-81

If a *PDF *franks a *distribution with a venture capital credit in breach of section 210-81:

(a) the distribution is taken not to have been franked with a venture capital credit; and

(b) each other distribution made under the same resolution is taken not to have been franked with a venture capital credit.

Subdivision 210-G—Venture capital sub-account

Guide to Subdivision 210-G

210-85 What this Subdivision is about

This Subdivision:

- creates a venture capital sub-account for each PDF; and
- identifies when venture capital credits and debits arise in the sub-account and the amount of those credits and debits; and
- identifies when there is a venture capital surplus or deficit in the sub-account; and
- creates a liability to pay venture capital deficit tax if the account is in deficit at certain times.

Table of sections

210-90 The venture capital sub-account
210-95 Venture capital deficit tax

Operative provisions

210-100 Venture capital sub-account
210-105 Venture capital credits
210-110 Determining the extent to which a franking credit is reasonably attributable to a particular payment of tax
210-115 Participating PDF may elect to have venture capital credits arise on its assessment day
210-120 Venture capital debits
210-125 Venture capital debit where CGT limit is exceeded
210-130 Venture capital surplus and deficit
210-135 Venture capital deficit tax
210-140 Effect of a liability to pay venture capital deficit tax on franking deficit tax
210-145 Effect of a liability to pay venture capital deficit tax on the franking account
210-150 Deferring venture capital deficit

210-90 The venture capital sub-account

(1) Each PDF has a venture capital sub-account in its franking account. The sub-account exists even if the PDF does not elect to become a participating PDF by keeping a record of it.

(2) To the extent that income tax is reasonably attributable to capital gains from venture capital investments, it generates a venture capital credit in the sub-account. There are other circumstances in which a venture capital credit arises.

(3) If a PDF receives a refund of that tax, a venture capital debit will arise for the PDF. There are other circumstances in which a venture capital debit will arise, such as on the payment of a distribution franked with a venture capital credit.

210-95 Venture capital deficit tax

(1) Venture capital deficit tax is payable if a PDF's venture capital sub-account is in deficit at the end of the PDF's income year, or immediately before it ceases to be a PDF.

(2) A PDF's venture capital sub-account may be in deficit, even if its franking account is not. This can happen because only income tax on income of a particular kind (capital gains on venture capital investments) gives rise to venture capital credits. This means that when a PDF anticipates a venture capital credit, it is not only anticipating that income tax will be paid, but that income tax on income of that kind will be paid. Although income tax may, in fact, later be paid, it will not necessarily be income of the kind that would give rise to a venture capital credit. This results in franking credits arising even while the venture capital sub-account remains in deficit.

(3) The discrepancy between the franking account balance and the venture capital sub-account balance can also arise because venture capital credits do not necessarily arise at the same time as the relevant franking credits and debits (see item 1 of the table in section 210-105 and item 2 of the table in section 210-120).

[This is the end of the Guide.]

Operative provisions

210-100 Venture capital sub-account

Each *PDF has a ***venture capital sub-account*** within its *franking account.

Note: The balance in the venture capital sub-account on 1 July 2002 will be either nil or, if the entity has a venture capital surplus or deficit immediately before 1 July 2002 under the imputation scheme existing at that time, an amount calculated under the *Income Tax (Transitional Provisions) Act 1997*.

210-105 Venture capital credits

The table sets out when a credit arises in the *venture capital sub-account of a *PDF. A credit in a PDF's venture capital sub-account is called a ***venture capital credit***.

Credits in the venture capital sub-account

Item	If:	A credit of:	Arises on:
1	the *PDF has a *franking credit because it has *paid a PAYG instalment; and the whole or part of the instalment is reasonably attributable to a *CGT event in relation to a *qualifying SME investment of the PDF	that part of the franking credit that is reasonably attributable to the CGT event	the day on which the franking credit arises; or if the PDF elects to have the *venture capital credit arise on the assessment day under section 210-115—on that day
2	the *PDF has a *franking credit because it has *paid income tax; and the whole or part of the payment is reasonably attributable to a *CGT event in relation to a *qualifying SME investment of the PDF	that part of the franking credit that is reasonably attributable to the CGT event	the day on which the franking credit arises; or if the PDF elects to have the *venture capital credit arise on the assessment day under section 210-115—on that day
3	the *PDF incurs a liability to pay *venture capital deficit tax	the amount of the liability	immediately after the liability is incurred

210-110 Determining the extent to which a franking credit is reasonably attributable to a particular payment of tax

In determining the extent to which a *franking credit is reasonably attributable to a *CGT event in relation to a *qualifying SME investment of the *PDF, have regard to:

(a) the extent to which the credit can reasonably be attributed to the *payment of a PAYG instalment or the payment of income tax by the PDF in relation to its *section 124ZZB SME assessable income for an income year; and

(b) the extent to which the section 124ZZB SME assessable income can reasonably be attributed to the CGT event.

210-115 Participating PDF may elect to have venture capital credits arise on its assessment day

(1) Before a *PDF's assessment day for an income year, the PDF may elect to have the *venture capital credits that arise because of the *payment of PAYG instalments and income tax during that income year arise on the assessment day.

(2) The *PDF's ***assessment day*** for an income year is the earlier of:

(a) the day on which the PDF furnishes its return of income for the income year; or

(b) the day on which the Commissioner makes an assessment of the amount of the PDF's taxable income for that year under section 166 of the *Income Tax Assessment Act 1936*.

210-120 Venture capital debits

The table sets out when a debit arises in the *venture capital sub-account of a *PDF. A debit in a PDF's venture capital sub-account is called a ***venture capital debit***.

Debits in the venture capital sub-account

Item	If:	A debit of:	Arises on:
1	the *PDF makes a *distribution *franked with a venture capital credit	the amount of the *venture capital credit	the day on which the distribution is made

Debits in the venture capital sub-account			
Item	**If:**	**A debit of:**	**Arises on:**
2	the *PDF receives a *franking debit as a result of a *refund of income tax; and all or part of the refund is attributable to a *payment of a PAYG instalment or a payment of income tax that gave rise to a *venture capital credit of the PDF	that part of the refund that is attributable to a payment of a PAYG instalment or a payment of income tax that gave rise to a venture capital credit of the PDF	the day on which the franking debit arises; or if the venture capital credit did not arise until a later day—that later day
3	a *venture capital debit arises for the *PDF under subsection 210-80(2)	the amount of the venture capital debit arising under that subsection	the day on which the *distribution giving rise to the venture capital debit is made
4	the Commissioner makes a determination under paragraph 204-30(3)(a) giving rise to a *franking debit for the *PDF (streaming distributions); and the *imputation benefit underlying the determination is a *tax offset under section 210-170	the amount of the tax offset	on the day on which the franking debit arises
5	a *venture capital debit arises for the *PDF under section 210-125 because its net venture capital credits for an income year exceed certain limits	the amount of the excess	the last day of the income year

210-125 Venture capital debit where CGT limit is exceeded

(1) A *venture capital debit arises for a *PDF where the PDF's net venture capital credits for the income year exceed whichever is the lesser of:

(a) the PDF's CGT limit for that income year; and
(b) the tax paid by the PDF on its *SME income component for that income year.

Net venture capital credits

(2) The *PDF's ***net venture capital credits*** for the income year is:

Venture capital credits – Venture capital debits

where:

venture capital credits is the total *venture capital credits of the *PDF that relate to tax in relation to taxable income of that income year.

venture capital debits is the total *venture capital debits of the *PDF that relate to tax in relation to taxable income of that income year.

CGT limit

(3) The *PDF's ***CGT limit*** for the income year is worked out using the formula:

$$\frac{\text{Ordinary capital gains from venture capital CGT events}}{\text{Ordinary capital gains from all SME CGT events}} \times \text{*Section 124ZZB SME assessable income} \times \text{SME tax rate}$$

where:

ordinary capital gains from all SME CGT events means the total of the *ordinary capital gains for the income year for *CGT events in relation to *SME investments of the *PDF.

ordinary capital gains from venture capital CGT events means the total of *ordinary capital gains for the income year for *CGT events in relation to shares in companies that are *qualifying SME investments.

SME tax rate is the tax rate applicable to the *SME income component of the *PDF for the income year.

Tax paid by the PDF on its SME income component

(4) The ***tax paid by the PDF on its SME income component*** for the income year is the tax paid by the *PDF on its *SME income component after allowing *tax offsets referred to in section 4-10.

210-130 Venture capital surplus and deficit

(1) A *PDF's *venture capital sub-account is in ***surplus*** at a particular time if, at that time, the sum of the *venture capital credits in the account exceeds the sum of the *venture capital debits in the account. The amount of the ***venture capital surplus*** is the amount of the excess.

(2) A *PDF's *venture capital sub-account is in ***deficit*** at a particular time if, at that time, the sum of the *venture capital debits in the account exceeds the sum of the *venture capital credits in the account. The amount of the ***venture capital deficit*** is the amount of the excess.

(3) A *PDF's *venture capital sub-account may be in *deficit even though its *franking account as a whole is in *surplus. Similarly, a PDF's venture capital sub-account may be in surplus even though its franking account as a whole is in deficit.

210-135 Venture capital deficit tax

(1) While recognising that an entity may anticipate *venture capital credits when *franking *distributions, the object of this section is to prevent those credits from being anticipated indefinitely by requiring the entity to reconcile its *venture capital sub-account at certain times and levying tax if the account is in *deficit.

(2) An entity is liable to pay *venture capital deficit tax imposed by the *New Business Tax System (Venture Capital Deficit Tax) Act 2003* if its *venture capital sub-account is in *deficit at the end of an income year.

(3) An entity is liable to pay *venture capital deficit tax imposed by the *New Business Tax System (Venture Capital Deficit Tax) Act 2003* if:

(a) it ceases to be a *PDF; and

(b) immediately before it ceases to be a PDF, its *venture capital sub-account is in *deficit.

210-140 Effect of a liability to pay venture capital deficit tax on franking deficit tax

(1) If an entity is liable to pay *venture capital deficit tax under subsection 210-135(2) because its *venture capital sub-account is in *deficit at the end of an income year, the amount (if any) of *franking deficit tax that the entity would otherwise be liable to pay under subsection 205-45(2) because its *franking account is in *deficit at that time is reduced by the amount of the liability for venture capital deficit tax.

(2) If an entity is liable to pay *venture capital deficit tax under subsection 210-135(3) because it ceases to be a *PDF during an income year, the amount (if any) of *franking deficit tax that the entity would otherwise be liable to pay under subsection 205-45(3) because it ceases to be a *franking entity at that time is reduced by the amount of the liability for *venture capital deficit tax.

210-145 Effect of a liability to pay venture capital deficit tax on the franking account

(1) If an entity incurs a liability to pay *venture capital deficit tax, a *franking credit arises for the entity immediately after the liability arises (the ***relevant day***).

(2) The amount of the *franking credit is equal to:

(a) if no liability to pay *franking deficit tax arises on the relevant day—the amount of the *venture capital deficit tax; or

(b) if a liability to pay franking deficit tax also arises on the relevant day—the amount of the venture capital deficit tax reduced by the amount of the franking deficit tax.

210-150 Deferring venture capital deficit

(1) The object of this section is to ensure that an entity does not avoid *venture capital deficit tax by deferring the time at which a *venture capital debit occurs.

(2) A *refund of income tax for an income year is taken to have been paid to an entity immediately before the end of that year for the purposes of subsection 210-135(2), if:

(a) the refund is paid within 3 months after the end of that year; and

(b) the entity's *venture capital sub-account would have been in *deficit, or in deficit to a greater extent, at the end of the previous income year if the refund had been received in the previous income year.

(3) If an entity ceases to be a *PDF during an income year, a *refund of income tax is taken to have been paid to it immediately before it ceased to be a PDF, for the purposes of subsection 210-135(3), if:

(a) the refund is attributable to a period in the year during which the entity was a PDF; and

(b) the refund is paid within 3 months after the entity ceases to be a PDF; and

(c) the *venture capital sub-account of the entity would have been in *deficit, or in deficit to a greater extent, immediately before it ceased to be a PDF if the refund had been received before it ceased to be a PDF.

Subdivision 210-H—Effect of receiving a distribution franked with a venture capital credit

Guide to Subdivision 210-H

210-155 What this Subdivision is about

A superannuation fund or other entity that deals with superannuation that receives a distribution franked with a venture capital credit is entitled to a tax offset equal to the credit.

Table of sections

210-160 The significance of a venture capital credit
210-165 Recipients for whom the venture capital credit is not significant

Operative provisions

210-170 Tax offset for certain recipients of distributions franked with venture capital credits
210-175 Amount of the tax offset
210-180 Application of Division 207 where the recipient is entitled to a tax offset under section 210-170

210-160 The significance of a venture capital credit

(1) The venture capital credit on a distribution is only significant in the hands of a relevant venture capital investor (basically a superannuation fund or other entity that deals with superannuation).

(2) That investor receives a tax offset. In most cases, this will be equal to the venture capital credit.

(3) Under section 124ZM of the *Income Tax Assessment Act 1936*, that part of the distribution that is franked with a venture capital credit is also treated as exempt income in the hands of the entity.

210-165 Recipients for whom the venture capital credit is not significant

(1) For other entities, the fact that all or part of the franking credit on a distribution is also a venture capital credit can be ignored.

(2) The franking credit will either generate a gross-up of the entity's assessable income and a corresponding tax offset under Division 207 or, if the right to make an election under section 124ZM of the *Income Tax Assessment 1936* is exercised, the franked part of the distribution will be treated as exempt income.

(3) The unfranked part of the distribution is treated as exempt income under section 124ZM of the *Income Tax Assessment Act 1936*.

[This is the end of the Guide.]

Operative provisions

210-170 Tax offset for certain recipients of distributions franked with venture capital credits

(1) The recipient of a *distribution *franked with a venture capital credit is entitled to a *tax offset for the income year in which the distribution is made if:

(a) the recipient is a relevant venture capital investor; and

(b) the recipient is not:

(i) a *partnership; or

(ii) a trustee (other than the trustee of an eligible entity within the meaning of Part IX of the *Income Tax Assessment Act 1936*); and

(c) the recipient satisfies the *residency requirement for an entity receiving a distribution; and

(d) the distribution is not *exempt income of the recipient (ignoring section 124ZM of the *Income Tax Assessment Act 1936*); and

(e) the recipient is not a qualified person in relation to the distribution for the purposes of Division 1A of Part IIIAA of the *Income Tax Assessment Act 1936*; and

(f) the distribution is not part of a *dividend stripping operation; and

(g) the Commissioner has not made a determination under paragraph 204-30(3)(c) that no *imputation benefit is to arise for the receiving entity in respect of the distribution; and

(h) the Commissioner has not made a determination under paragraph 177EA(5)(b) that no imputation benefit is to arise in respect of the distribution to the recipient.

Relevant venture capital investors

(2) The following entities are ***relevant venture capital investors***:

(a) the trustee of a fund that is a *complying superannuation fund in relation to the income year in which the *distribution is made and is not a self managed superannuation fund (within the meaning of the *Superannuation Industry Supervision Act 1993*);

(b) the trustee of a fund that is a *complying approved deposit fund in relation to the income year in which the distribution is made and is not a self managed superannuation fund (within the meaning of the *Superannuation Industry Supervision Act 1993*);

(c) the trustee of a unit trust that is a *pooled superannuation trust in relation to the income year in which the distribution is made;

(d) a *life insurance company.

210-175 Amount of the tax offset

Where the recipient is not a life insurance company

(1) If the entity receiving the *distribution is not a *life insurance company, the *tax offset is equal to the *venture capital credit on the distribution.

Where the recipient is a life insurance company

(2) If the entity receiving the *distribution is a *life insurance company, the *tax offset is worked out using the formula:

$$\text{Tax offset to which the entity would otherwise be entitled} \times \frac{\text{*Complying superannuation class of taxable income}}{\text{Total income}}$$

where:

complying superannuation class of taxable income means the *complying superannuation class of taxable income of the company for the income year in which the *distribution is made.

tax offset to which the entity would otherwise be entitled is the *tax offset that the company would be entitled to under subsection (1) if the entity were not a life insurance company.

total income is the company's assessable income for the income year.

210-180 Application of Division 207 where the recipient is entitled to a tax offset under section 210-170

If the recipient of a *distribution *franked with a venture capital credit is entitled to a *tax offset under section 210-170, Division 207 does not apply to that *part of the distribution that is venture capital franked.

4 Subsection 995-1(1) (definition of *deficit*)

Repeal the definition, substitute:

deficit:

(a) section 205-40 sets out when a *franking account is in deficit; and

(b) section 208-125 sets out when an *exempting account is in deficit; and

(c) section 210-130 sets out when a *venture capital sub-account is in deficit.

5 Subsection 995-1(1)

Insert:

frank with a venture capital credit has the meaning given by section 210-30.

6 Subsection 995-1(1)

Insert:

frankable with a venture capital credit has the meaning given by section 210-50.

7 Subsection 995-1(1)

Insert:

ordinary capital gain has the meaning given by section 124ZW of the *Income Tax Assessment Act 1936*.

8 Subsection 995-1

Insert:

participating PDF has the meaning given by section 210-40.

9 Subsection 995-1(1)

qualifying SME investment means an *SME investment that is made in accordance with Division 1 of Part 4 of the *Pooled Development Funds Act 1997*.

10 Subsection 995-1(1)

section 124ZZB SME assessable income for a *PDF for an income year is the assessable income allocated to the PDF's SME assessable income for the income year under section 124ZZB of the *Income Tax Assessment Act 1936*.

11 Subsection 995-1(1)

Insert:

SME income component has the same meaning as in section 124ZU of the *Income Tax Assessment Act 1936*.

12 Subsection 995-1(1)

Insert:

SME investment has the meaning given by section 124ZW of the *Income Tax Assessment Act 1936*.

13 Subsection 995-1(1) (definition of *surplus*)

Repeal the definition, substitute:

surplus:

(a) section 205-40 sets out when a *franking account is in surplus; and

(b) section 208-125 sets out when an *exempting account is in surplus; and

(c) section 210-130 sets out when a *venture capital sub-account is in surplus.

14 Subsection 995-1(1)

Insert:

venture capital credit has the meaning given by section 210-105.

15 Subsection 995-1(1)

Insert:

venture capital debit has the meaning given by section 210-120.

16 Subsection 995-1(1)

Insert:

venture capital deficit has the meaning given by section 210-130.

17 Subsection 995-1(1)

Insert:

venture capital deficit tax means tax imposed under the *New Business Tax System (Venture Capital Deficit Tax) Act 2003*.

18 Subsection 995-1(1)

Insert:

venture capital sub-account means a sub-account that arises under section 210-100.

19 Subsection 995-1(1)

Insert:

venture capital surplus has the meaning given by section 210-130.

Income Tax (Transitional Provisions) Act 1997

20 After Division 205

Insert:

Division 210—Venture capital franking

210-1 Order of events provision

The venture capital sub-account of a PDF under Part IIIAA of the *Income Tax Assessment Act 1936* (the ***old sub-account***) is closed off at the end of 30 June 2002 and an opening balance is created in

the PDF's venture capital sub-account under section 210-100 of the *Income Tax Assessment Act 1997* as follows:

(a) any estimated venture capital debits in the old sub-account at the end of 30 June 2002 are washed out of the account under section 210-5; and

(b) then:

(i) in the case of a PDF whose 2001-02 franking year ends on 30 June 2002 under Part IIIAA of the *Income Tax Assessment Act 1936*—the PDF's venture capital sub-account balance is converted under section 210-10 to a tax paid basis; and

(ii) in the case of a PDF whose 2001-02 franking year ends before 30 June 2002 under Part IIIAA of the *Income Tax Assessment Act 1936*—the PDF's venture capital sub-account balance is converted under section 210-15 to a tax paid basis.

210-5 Washing estimated venture capital debits out of the old sub-account before conversion

If, under Part IIIAA of the *Income Tax Assessment act 1936*, the termination time in relation to an estimated venture capital debit of a PDF would, but for this section, occur after the end of 30 June 2002, it is taken to have occurred at the end of 30 June 2002.

210-10 Converting the venture capital sub-account balance to a tax paid basis—PDFs whose 2001-02 franking year ends on 30 June 2002

(1) This section applies to PDFs whose 2001-02 franking year ends on 30 June 2002 under Part IIIAA of the *Income Tax Assessment Act 1936* (the ***1936 Act***).

(2) If the PDF has a venture capital surplus under Part IIIAA of the 1936 Act at the end of 30 June 2002:

(a) no venture capital credit arises under section 160ASEE of that Act because of the surplus; and

(b) a venture capital credit arises on 1 July 2002 in the venture capital sub-account established under section 210-100 of the *Income Tax Assessment Act 1997* for the PDF.

(3) The amount of the venture capital credit is worked out using the following formula:

$$\text{Amount of the venture capital surplus at the end of 30 June 2002 under the 1936 Act} \times \frac{30}{70}$$

210-15 Converting the venture capital sub-account balance to a tax paid basis—PDFs whose 2001-02 franking year ends before 30 June 2002

(1) This section applies to PDFs whose 2001-02 franking year ends before 20 June 2002 under Part IIIAA of the *Income Tax Assessment 1936* (the ***1936 Act***).

(2) If, but for this subsection, the PDF would have a venture capital surplus under Part IIIAA of the 1936 Act at the end of 30 June 2002 (the ***original surplus***):

(a) a venture capital debit equal to the original surplus is taken to arise for the PDF under Part IIIAA of the 1936 Act at the end of 30 June 2002; and

(b) a venture capital credit arises on 1 July 2002 in the venture capital sub-account established under section 210-100 of the *Income Tax Assessment Act 1997* (the ***1997 Act***) for the PDF.

(3) The amount of the venture capital credit is worked out using the formula:

$$\text{Amount of the original surplus} \times \frac{30}{70}$$

(4) If, but for this subsection, the PDF would have a venture capital deficit under Part IIIAA of the 1936 Act at the end of 30 June 2002 (the ***original deficit***):

(a) a venture capital credit equal to the original deficit is taken to arise for the PDF under Part IIIAA of the 1936 Act at the end of 30 June 2002; and

(b) a venture capital debit arises on 1 July 2002 in the venture capital sub-account established under section 210-100 of the 1997 Act for the PDF.

(5) The amount of the venture capital debit is worked out using the formula:

$$\text{Amount of the original deficit} \times \frac{30}{70}$$

21 Application

(1) The amendments made by items 1 and 2 of this Schedule apply to distributions made after 30 June 2002.

(2) The amendments made by items 3 to 19 of this Schedule apply to events that occur after 30 June 2002.

Schedule 28—Machinery provisions for simplified imputation system

Income Tax Assessment Act 1997

1 Subsections 202-75(2) and (3)

Repeal the subsections, substitute:

(2) The statement must be given on or before the day on which the *distribution is made, unless the entity is allowed to give the statement at a later time under subsection (3).

(3) If the entity is a *private company for the income year in which the *distribution is made, the statement must be given:

(a) before the end of 4 months after the end of the income year in which the distribution is made; or

(b) before the time determined by the Commissioner under subsection (5);

whichever is later.

(4) However, the entity is not allowed to give the statement at a later time under subsection (3) if the statement indicates that a *franking credit has been allocated to the *distribution and the franking credit would, either alone or when added to other franking credits allocated to other distributions made by the entity during the income year, result in the entity having a liability for *franking deficit tax, or an increased liability for franking deficit tax, at the end of the income year.

Note: The combined effect of subsections (3) and (4) is that a private company can retrospectively frank a distribution, but not so as to create or increase a liability for franking deficit tax.

(5) The Commissioner may determine in writing that a *private company may give the statement before a time specified in the determination.

2 At the end of subsection 204-75(4)

Add:

and must be given to the Commissioner:

(a) if the entity is required to give the Commissioner a *franking return for the income year in which the current franking period occurs—with that return; or

(b) otherwise—within one month after the end of the income year in which the current franking period occurs.

Note: See Subdivision 214-A for requirements to give the Commissioner franking returns.

3 After Division 210

Insert:

Division 214—Administering the imputation system

Table of Subdivisions

Guide to Division 214

214-A Franking returns

214-B Franking assessments

214-C Amending franking assessments

214-D Collection and recovery

214-E Records, information and tax agents

Guide to Division 214

Table of sections

214-1 Purpose of the system

214-5 Key features

214-1 Purpose of the system

These provisions:

(a) allow the Commissioner to gather sufficient information to determine whether tax is payable by a corporate tax entity under the imputation system; and

(b) provide for the Commissioner to assess the amount of tax that is payable; and

(c) specify when the tax is payable; and

(d) establish systems to support the assessment and collection of the tax.

214-5 Key features

(1) Initial information about a corporate tax entity's franking activities is provided by means of a return, called a franking return, given by the entity to the Commissioner.

(2) The Commissioner is able to require corporate tax entities to give a franking return for an income year by publishing a notice in the *Gazette*.

(3) The Commissioner is also able to require a particular corporate tax entity to give a franking return for one or more income years. The Commissioner might do this, for example, if the Commissioner wishes to audit the corporate tax entity's franking activities over a number of years.

(4) The Commissioner may assess whether tax is payable under the imputation system and the amount of that tax.

(5) In most cases, this is done by treating the first return of a corporate tax entity for an income year as an assessment by the Commissioner. To this extent, there is self-assessment.

(6) An assessment by the Commissioner is conclusive evidence of a corporate tax entity's tax liabilities under the imputation system, except for the purposes of objection, review and appeal processes under Part IVC of the *Tax Administration Act 1953* (see section 177 of the *Income Tax Assessment Act 1936* and sections 214-50 and 214-85 of this Act).

(7) Assessments can be amended by the Commissioner within certain time limits.

Subdivision 214-A—Franking returns

Guide to Subdivision 214-A

214-10 What this Subdivision is about

A franking return for an income year provides the Commissioner with information about a corporate tax entity's franking activities during that year.

Table of sections

Operative provisions

214-15 Notice to give a franking return—general notice
214-20 Notice to a specific corporate tax entity
214-25 Content and form of a franking return
214-30 Franking account balance
214-35 Venture capital sub-account balance
214-40 Meaning of ***franking tax***
214-45 Effect of a refund on franking returns
214-50 Evidence

[This is the end of the Guide.]

Operative provisions

214-15 Notice to give a franking return—general notice

(1) The Commissioner may publish a notice in the *Gazette* requiring each *corporate tax entity to which the notice applies to give the Commissioner a *franking return for an income year specified in the notice.

(2) An entity to which the notice applies must comply with the requirement within the time specified in the notice, or within any further time allowed by the Commissioner.

214-20 Notice to a specific corporate tax entity

(1) The Commissioner may give a *corporate tax entity a written notice requiring the entity to give the Commissioner a *franking return for an income year specified in the notice.

(2) The entity must comply with the requirement within the time specified in the notice, or within any further time allowed by the Commissioner.

(3) The entity must comply with the requirement regardless of whether the entity has given, or has been required to give, the Commissioner a return under section 214-15.

214-25 Content and form of a franking return

(1) A *corporate tax entity must include the following information in its *franking return for an income year:

(a) if the entity is a *franking entity at the end of the income year—its *franking account balance at the end of the income year; and

(b) if the entity ceased to be a franking entity during the income year—its franking account balance immediately before it ceased to be a franking entity; and

(c) if the entity is a *PDF at the end of the income year—its *venture capital sub-account balance at the end of the income year; and

(d) if the entity ceased to be a PDF during the income year—its venture capital sub-account balance immediately before it ceased to be a PDF; and

(e) the amounts (if any) of *franking tax which the entity is liable to pay because of events that have occurred, or are taken to have occurred, during the income year; and

(f) any other information required by the Commissioner for the purposes of administering this Part.

(2) The return must be in writing in the approved form.

214-30 Franking account balance

A *corporate tax entity's ***franking account balance*** at a particular time is:

(a) if the entity has a *franking surplus or a *franking deficit at that time—the amount of the surplus or deficit; or

(b) if the entity does not have a franking surplus or a franking deficit at that time—nil.

214-35 Venture capital sub-account balance

A *PDF's ***venture capital sub-account balance*** at a particular time is:

(a) if the PDF has a *venture capital surplus or a *venture capital deficit at that time—the amount of the surplus or deficit; or

(b) if the entity does not have a venture capital surplus or a venture capital deficit at that time—nil.

214-40 Meaning of *franking tax*

Each of the following is a ***franking tax***:

(a) *franking deficit tax;

(b) *over-franking tax;

(c) *venture capital deficit tax.

214-45 Effect of a refund on franking returns

If no franking return is outstanding

(1) If:

(a) a *corporate tax entity receives a *refund of income tax; and

(b) the receipt of the refund gives rise to a liability, or an increased liability, to pay *franking deficit tax because of the operation of subsection 205-50(2) or (3); and

(c) when the refund is received, the entity does not have a *franking return that is *outstanding for the income year in which the liability arose;

the entity must give the Commissioner a franking return for the income year within 14 days after the refund is received.

Refund received within 14 days before an outstanding franking return is due

(2) If:

(a) an entity receives a *refund of income tax; and

(b) the receipt of the refund gives rise to a liability, or an increased liability, to pay *franking deficit tax because of the operation of subsection 205-50(2) or (3); and

(c) when the refund is received, the entity has a *franking return that is *outstanding for the income year in which the liability arose; and

(d) the entity receives the refund within the period of 14 days ending on the day by which the outstanding return must be given to the Commissioner;

the entity may, instead of accounting for the liability, or increased liability, in the outstanding return, account for it in a further return given to the Commissioner within 14 days after the refund is received.

*Meaning of **outstanding***

(3) A *franking return for an income year is ***outstanding*** at a particular time if each of the following is true at that time:

(a) the *corporate tax entity has been required to give a *franking return for the income year;

(b) the time within which the franking return must be given has not yet passed;

(c) the franking return has not yet been given.

214-50 Evidence

Section 177 of the *Income Tax Assessment Act 1936* applies as if a reference in that section to a return included a reference to a *franking return.

Subdivision 214-B—Franking assessments

Guide to Subdivision 214-B

214-55 What this Subdivision is about

The Commissioner may make an assessment of a corporate tax entity's liability to pay franking tax, and the franking account balance and the venture capital sub-account balance on which that liability is based. An entity's first return for an income year is treated as an assessment by the Commissioner. To this extent, there is self-assessment.

Table of sections

Operative provisions

214-60 Commissioner may make a franking assessment
214-65 Commissioner taken to have made a franking assessment on first return
214-70 Part-year assessment
214-75 Validity of assessment
214-80 Objections
214-85 Evidence

[This is the end of the Guide.]

Operative provisions

214-60 Commissioner may make a franking assessment

(1) The Commissioner may make an assessment of:

(a) if a *corporate tax entity is a *franking entity at the end of the income year—its *franking account balance at the end of the income year; and

(b) if a corporate tax entity ceased to be a franking entity during the income year—its franking account balance immediately before it ceased to be a franking entity; and

(c) if a corporate tax entity is a *PDF at the end of the income year—its *venture capital sub-account balance at the end of the income year; and

(d) if a corporate tax entity ceased to be a PDF during the income year—its venture capital sub-account balance immediately before it ceased to be a PDF; and

(e) the amounts (if any) of *franking tax which the entity is liable to pay because of events that have occurred, or are taken to have occurred, during the income year.

This is a ***franking assessment*** for the entity for the income year.

(2) The Commissioner must give the entity notice of the assessment as soon as practicable after making the assessment.

(3) The notice may be included in a notice of any other assessment under this Act.

214-65 Commissioner taken to have made a franking assessment on first return

(1) If:

(a) a *corporate tax entity gives the Commissioner a *franking return for an income year on a particular day (the ***return day***); and

(b) the return is the first franking return given by the entity for the year; and

(c) the Commissioner has not already made a *franking assessment for the entity for the year;

the Commissioner is taken to have made a franking assessment for the entity for the year on the return day, and to have assessed:

(d) the entity's *franking account balance at a particular time as that stated in the return as the balance at that time; and

(e) the entity's *venture capital sub-account balance (if any) at a particular time as that stated in the return as the balance at that time; and

(f) the amounts (if any) of *franking tax payable by the entity because of events that have occurred, or are taken to have occurred, during that income year as those stated in the return.

(2) The return is taken to be notice of the assessment signed by the Commissioner and given to the entity on the return day.

214-70 Part-year assessment

(1) The Commissioner may, at any time during an income year, make a *franking assessment for a *corporate tax entity for a particular period within that year as if the beginning and end of that period were the beginning and end of an income year.

(2) This Part applies, for the purposes of that assessment, as if the beginning and end of the period were the beginning and end of an income year.

214-75 Validity of assessment

The validity of a *franking assessment is not affected because any of the provisions of this Act have not been complied with.

214-80 Objections

If a *corporate tax entity is dissatisfied with a *franking assessment made in relation to the entity, the entity may object against the assessment in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

214-85 Evidence

Section 177 of the *Income Tax Assessment Act 1936* applies as if a reference in that section to an assessment or a notice of assessment included a reference to a *franking assessment or a notice of a franking assessment, as required.

Subdivision 214-C—Amending franking assessments

Guide to Subdivision 214-C

214-90 What this Subdivision is about

The Commissioner may amend franking assessments within certain time limits.

Table of sections

Operative provisions

214-95 Amendments within 3 years of the original assessment
214-100 Amended assessments are treated as franking assessments
214-105 Further return as a result of a refund affecting a franking deficit tax liability
214-110 Later amendments—on request
214-115 Later amendments—failure to make proper disclosure
214-120 Later amendments—fraud or evasion
214-125 Further amendment of an amended particular
214-130 Other later amendments
214-135 Amendment on review etc.
214-140 Notice of amendments

[This is the end of the Guide.]

Operative provisions

214-95 Amendments within 3 years of the original assessment

(1) The Commissioner may amend a *franking assessment for a *corporate tax entity for an income year at any time during the period of 3 years after the *original franking assessment day for the entity for that year.

(2) The ***original franking assessment day*** for a *corporate tax entity for an income year is the day on which the first *franking assessment for the entity for the income year is made.

214-100 Amended assessments are treated as franking assessments

Once an amended *franking assessment for a corporate tax entity for an income year is made, it is taken to be a ***franking assessment*** for the entity for the year.

214-105 Further return as a result of a refund affecting a franking deficit tax liability

(1) If:

(a) a *franking assessment for a *corporate tax entity for an income year has been made; and

(b) on a particular day (the ***further return day***) the entity gives the Commissioner a further return for the income year under subsection 214-45(1) (because the entity has received a *refund of income tax that affects its liability to pay *franking deficit tax);

the Commissioner is taken to have amended the entity's franking assessment on the further return day, and to have assessed:

(c) the entity's *franking account balance at a particular time as that stated in the further return as the balance at that time; and

(d) the entity's *venture capital sub-account balance (if any) at a particular time as that stated in the further return as the balance at that time; and

(e) the amounts (if any) of *franking tax payable by the entity because of events that have occurred, or are taken to have occurred, during that income year as those stated in the further return.

(2) The further return is taken to be notice of the amended assessment signed by the Commissioner and given to the entity on the further return day.

214-110 Later amendments—on request

The Commissioner may amend a *franking assessment for a *corporate tax entity for an income year after the end of the period of 3 years after the *original franking assessment day for the entity for the year if, within that 3 year period:

(a) the entity applies for the amendment; and

(b) the entity gives the Commissioner all the information necessary for making the amendment.

214-115 Later amendments—failure to make proper disclosure

(1) If:

(a) a *corporate tax entity does not make a full and true disclosure to the Commissioner of the information necessary for a *franking assessment for the entity for an income year; and

(b) in making the assessment, the Commissioner makes an *under-assessment; and

(c) the Commissioner is not of the opinion that the under-assessment is due to fraud or evasion;

the Commissioner may amend the assessment at any time during the period of 6 years after the *original franking assessment day for the entity for the year.

(2) The Commissioner makes an ***under-assessment*** in a *franking assessment (the ***earlier assessment***) if, in amending the earlier assessment, the Commissioner would have to do one or more of the following for the amended assessment to be correct:

(a) reduce the *franking surplus (including to a nil balance);

(b) increase the *franking deficit (including from a nil balance);

(c) increase *franking tax payable.

214-120 Later amendments—fraud or evasion

If:

(a) a *corporate tax entity does not make a full and true disclosure to the Commissioner of the information necessary for a *franking assessment for the entity for an income year; and

(b) in making the assessment, the Commissioner makes an *under-assessment; and

(c) the Commissioner is of the opinion that the under-assessment is due to fraud or evasion;

the Commissioner may amend the assessment at any time.

214-125 Further amendment of an amended particular

(1) If:

(a) a *franking assessment has been amended (the ***first amendment***) in any particular; and

(b) the Commissioner is of the opinion that it would be just to further amend the assessment in that particular so as to *reduce the assessment;

the Commissioner may do so within a period of 3 years after the first amendment.

(2) The Commissioner ***reduces a franking assessment*** if the Commissioner amends the assessment by doing one or more of the following:

(a) increasing the *franking surplus (including from a nil balance);

(b) decreasing the *franking deficit (including to a nil balance);

(c) decreasing *franking tax payable.

214-130 Other later amendments

In a case not covered by section 214-110, 214-115, 214-120 or 214-125, the Commissioner may amend the *franking assessment for a *corporate tax entity for an income year after the period of 3 years after the *original assessment day has expired, but not so as to *reduce the assessment.

214-135 Amendment on review etc.

Nothing in this Subdivision prevents the amendment of a *franking assessment:

(a) to give effect to a decision on a review or appeal; or

(b) to *reduce the assessment as a result of an objection made under this Act or pending an appeal or review.

214-140 Notice of amendments

(1) If the Commissioner amends an entity's *franking assessment, the Commissioner must give the entity notice of the amendment as soon as practicable after making the amendment.

(2) The notice may be included in a notice of any other assessment under this Act.

Subdivision 214-D—Collection and recovery

Guide to Subdivision 214-D

214-145 What this Subdivision is about

Franking tax is due and payable at certain times and the general interest charge applies to unpaid amounts.

Table of sections

Operative provisions

214-150 Due date for payment of franking tax
214-155 General interest charge
214-160 Refunds of amounts overpaid
214-165 Security for payment of tax

[This is the end of the Guide.]

Operative provisions

214-150 Due date for payment of franking tax

General rule

(1) Unless this section provides otherwise, *franking tax assessed for a *corporate tax entity because of events that have occurred, or are taken to have occurred, during an income year is due and payable on the last day of the month immediately following the end of the income year.

Part-year assessments

(2) *Franking tax payable because of an assessment under section 214-70 (a part-year assessment) is due and payable on the

day specified in the notice of assessment as the day on which it is due and payable.

Amended assessments—other than because of deficit deferral

(3) If:

(a) the Commissioner amends a *franking assessment (the ***earlier assessment***) other than because of the operation of section 214-105 (an amendment because of a refund of tax that affects *franking deficit tax liability); and

(b) the amount of *franking tax of a particular type payable under the amended assessment exceeds the amount of franking tax of that type payable under the earlier assessment;

the excess amount is due and payable one month after the day on which the assessment was amended.

Tax payable because of deficit deferral

(4) If:

(a) a *corporate tax entity receives a *refund of income tax; and

(b) the receipt of the refund gives rise to a liability, or an increased liability, to pay *franking deficit tax because of the operation of subsection 205-50(2) or (3);

the franking deficit tax or, if there is an increase in an existing liability to pay franking deficit tax, the difference between the original liability and the increased liability, is due and payable on:

(c) if the entity accounts for the liability, or increased liability, in a *franking return that is *outstanding for the income year in which the liability arose—the day on which the outstanding return is required to be given to the Commissioner; or

(d) in any other case—14 days after the day on which the refund was received.

214-155 General interest charge

If:

(a) *franking tax of a particular type payable by a *corporate tax entity remains unpaid after the time by which it is due and payable; and

(b) the Commissioner has not allocated the unpaid amount to an *RBA;

the entity is liable to pay the *general interest charge on the unpaid amount for each day in the period that:

(c) starts at the beginning of the day on which the franking tax was due to be paid; and

(d) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:

(i) the franking tax;

(ii) general interest charge on any of the franking tax.

Note: The general interest charge is worked out under Division 1 of Part IIA of the *Taxation Administration Act 1953*.

214-160 Refunds of amounts overpaid

Section 172 of the *Income Tax Assessment Act 1936* applies for the purposes of this Part as if references in that section to tax included references to *franking tax.

214-165 Security for payment of tax

In section 213 of the *Income Tax Assessment Act 1936* (under which the Commissioner may require security for the payment of income tax), a reference to income tax includes a reference to *franking tax.

Subdivision 214-E—Records, information and tax agents

Guide to Subdivision 214-E

214-170 What this Subdivision is about

Generally applicable provisions to do with record keeping, information gathering and tax agents apply for the purposes of the imputation system.

Table of sections

Operative provisions

214-175 Record keeping
214-180 Power of Commissioner to obtain information
214-185 Tax agents

[This is the end of the Guide.]

Operative provisions

214-175 Record keeping

(1) Section 262A of the *Income Tax Assessment Act 1936* applies for the purposes of this Part as if:

(a) the reference in that section to a person carrying on a business were a reference to a *corporate tax entity; and

(b) the reference in paragraph (2)(a) of that section to the person's income and expenditure were a reference to:

(i) the entity's *franking account balance; and

(ii) the entity's liability to pay *franking tax; and

(c) paragraph (5)(a) of that section were omitted.

(2) A *PDF does not need to maintain records under section 262A of the *Income Tax Assessment Act 1936* in relation to a *venture capital sub-account if the *PDF does not elect to be a *participating PDF.

214-180 Power of Commissioner to obtain information

Section 264 of the *Income Tax Assessment Act 1936* applies for the purposes of this Part as if the reference in paragraph (1)(b) of that section to a person's income or assessment were a reference to a matter relevant to the administration or operation of this Part.

214-185 Tax agents

Part VIIA of the *Income Tax Assessment Act 1936* applies in relation to a return given, or objection made, for the purposes of this Part as it applies to an income tax return or objection.

4 Subsection 995-1(1)

Insert:

franking account balance has the meaning given by section 214-30.

5 Subsection 995-1(1)

Insert:

franking assessment has the meaning given by subsection 214-60(1) and affected by section 214-100.

6 Subsection 995-1(1)

Insert:

franking return means a return required under Subdivision 214-A.

7 Subsection 995-1(1)

Insert:

franking tax has the meaning given by section 214-40.

8 Subsection 995-1(1)

Insert:

original franking assessment day has the meaning given by subsection 214-95(2).

9 Subsection 995-1(1)

Insert:

outstanding, within the context of *franking returns, has the meaning given by subsection 214-45(3).

10 Subsection 995-1(1)

Insert:

reduce a franking assessment has the meaning given by subsection 214-125(2).

11 Subsection 995-1(1)

Insert:

under-assessment, in the context of a *franking assessment, has the meaning given by subsection 214-115(2).

12 Subsection 995-1(1)

Insert:

venture capital sub-account balance has the meaning given by section 214-35.

Income Tax (Transitional Provisions) Act 1997

13 After Division 210

Insert:

Division 214—Administering the imputation system

214-1 Application

This Division applies to a corporate tax entity if a liability to pay franking deficit tax arises for the entity under section 205-25 of this Act because of events that occur within a period of 12 months ending on 30 June in any year (the ***balancing period***).

214-5 Entity must give a franking return

(1) The entity must give the Commissioner a franking return for the balancing period setting out the following information before the end of the month immediately following the end of the period:

(a) if the entity is a franking entity at the end of the balancing period—its franking account balance at the end of the period; and

(b) if the entity ceases to be a franking entity during the balancing period—its franking account balance immediately before it ceased to be a franking entity; and

(c) the amount (if any) of franking deficit tax that the entity is liable to pay under section 205-25 of this Act because of

events that have occurred, or are taken to have occurred, during the balancing period.

(2) The return must be in writing in the approved form.

214-10 Notice to a specific corporate tax entity

(1) The Commissioner may give the entity a written notice requiring the entity to give the Commissioner a franking return for the balancing period.

(2) The entity must comply with the requirement within the time specified in the notice, or within any further time allowed by the Commissioner.

(3) The entity must comply with the requirement regardless of whether the entity has given, or has been required to give, the Commissioner a return under section 214-5.

214-15 Effect of a refund on franking returns

If no franking return is outstanding

(1) If:

(a) the entity receives a refund of income tax; and

(b) the receipt of the refund gives rise to a liability, or an increased liability, to pay franking deficit tax because of the operation of subsection 205-30(2) or (3) of this Act; and

(c) when the refund is received, the entity does not have a franking return that is outstanding for the balancing period in which the liability arose;

the entity must give the Commissioner a franking return for the period within 14 days after the refund is received.

Refund received within 14 days before an outstanding franking return is due

(2) If:

(a) the entity receives a refund of income tax; and

(b) the receipt of the refund gives rise to a liability, or an increased liability, to pay franking deficit tax because of the operation of subsection 205-30(2) or (3) of this Act; and

(c) when the refund is received, the entity does not have a franking return that is outstanding for the balancing period in which the liability arose; and

(d) the entity receives the refund within the period of 14 days ending on the day by which the outstanding return must be given to the Commissioner;

the entity may, instead of accounting for the liability, or increased liability, in the outstanding return, account for it in a further return given to the Commissioner within 14 days after the refund is received.

Meaning of ***outstanding***

(3) A franking return for a balancing period is ***outstanding*** at a particular time if each of the following is true at that time:

(a) the entity has been required to give a franking return for the period;

(b) the time within which the franking return must be given has not yet passed;

(c) the franking return has not yet been given.

214-20 Franking returns for the income year

(1) A franking return for a balancing period is in addition to any franking return that the entity is required to give to the Commissioner under Subdivision 214-A of the *Income Tax Assessment Act 1997* for the income year in which the balancing period ends.

(2) However, if an entity is required to give a franking return for a balancing period, it is not required to include in its franking return for the income year in which that period ends anything that should have been included in the franking return for the balancing period.

214-25 Commissioner may make a franking assessment

(1) The Commissioner may make an assessment of:

(a) if the entity is a franking entity at the end of the balancing period—its franking account balance at the end of the period; and

(b) if the entity ceases to be a franking entity during the balancing period—its franking account balance immediately before it ceased to be a franking entity; and

(c) the amount (if any) of franking deficit tax that the entity is liable to pay under section 205-25 of this Act because of events that have occurred, or are taken to have occurred, during the balancing period.

This is a ***franking assessment*** for the entity for the balancing period.

(2) The Commissioner must give the entity notice of the assessment as soon as practicable after making the assessment.

(3) The notice may be included in a notice of any other assessment under this Act.

214-30 Commissioner taken to have made a franking assessment on first return

(1) If:

(a) the entity gives the Commissioner a franking return under section 214-5 or 214-10 of this Act on a particular day (the ***return day***); and

(b) the return is the first franking return given to the Commissioner by the entity for the balancing period; and

(c) the Commissioner has not already made a franking assessment for the entity for that period;

the Commissioner is taken to have made a franking assessment for the entity for the period on the return day, and to have assessed:

(d) the entity's franking account balance at a particular time as that stated in the return as the balance at that time; and

(e) the amount (if any) of franking deficit tax payable by the entity because of events that have occurred, or are taken to have occurred, during the period as those stated in the return.

(2) The return is taken to be notice of the assessment signed by the Commissioner and given to the entity on the return day.

214-35 Amendments within 3 years of the original assessment

(1) The Commissioner may amend a franking assessment for the entity for the balancing period at any time during the period of 3 years after the original assessment day for the entity for the period.

(2) The ***original assessment day*** for the entity for the balancing period is the day on which the first franking assessment for the entity for the period is made.

214-40 Amended assessments are treated as franking assessments

Once an amended franking assessment for the entity for the balancing period is made, it is taken to be a ***franking assessment*** for the entity for the period.

214-45 Further return as a result of a refund affecting a franking deficit tax liability

(1) If:

(a) a franking assessment for the entity for the balancing period has been made; and

(b) on a particular day (the ***further return day***) the entity gives the Commissioner a further return for the balancing period under subsection 214-15(1) of this Act (because the entity has received a refund of income tax that affects its liability to pay franking deficit tax);

the Commissioner is taken to have amended the entity's franking assessment on the further return day, and to have assessed:

(c) the entity's franking account balance at a particular time as that stated in the further return as the balance at that time; and

(d) the amount of franking deficit tax payable by the entity because of events that have occurred, or are taken to have occurred, during the period as those stated in the further return.

(2) The further return is taken to be notice of the amended assessment signed by the Commissioner and given to the entity on the further return day.

214-50 Later amendments—on request

The Commissioner may amend a franking assessment for the entity for the balancing period after the end of a period of 3 years after the original franking assessment day if, within that 3 year period:

(a) the entity applies for the amendment; and

(b) the entity gives the Commissioner all the information necessary for making the amendment.

214-55 Later amendments—failure to make proper disclosure

If:

(a) the entity does not make a full and true disclosure to the Commissioner of the information necessary for a franking assessment for the entity for the balancing period; and

(b) in making the assessment, the Commissioner makes an under-assessment; and

(c) the Commissioner is not of the opinion that the under-assessment is due to fraud or evasion;

the Commissioner may amend the assessment at any time during the period of 6 years after the original franking assessment day.

214-60 Later amendments—fraud or evasion

If:

(a) the entity does not make a full and true disclosure to the Commissioner of the information necessary for a franking assessment for the entity for the balancing period; and

(b) in making the assessment, the Commissioner makes an under-assessment; and

(c) the Commissioner is of the opinion that the under-assessment is due to fraud or evasion;

the Commissioner may amend the assessment at any time.

214-65 Further amendment of an amended particular

If:

(a) a franking assessment for the entity for the balancing period has been amended (the ***first amendment***) in any particular; and

(b) the Commissioner is of the opinion that it would be just to further amend the assessment in that particular so as to reduce the assessment;

the Commissioner may do so within a period of 3 years after the first amendment.

214-70 Other later amendments

In a case not covered by sections 214-50, 214-55, 214-60 or 214-65, the Commissioner may amend the franking assessment for the entity for the balancing period after the period of 3 years after the original assessment day has expired, but not so as to reduce the assessment.

214-75 Amendment on review etc.

Nothing in this Division prevents the amendment of a franking assessment for the entity for the balancing period:

(a) to give effect to a decision on a review or appeal; or

(b) to reduce the assessment as a result of an objection made under this Act or pending an appeal or review.

214-80 Notice of amendments

(1) If the Commissioner amends the entity's franking assessment for the balancing period, the Commissioner must give the entity notice of the amendment as soon as practicable after making the amendment.

(2) The notice may be included in a notice of any other assessment under this Act.

214-85 Validity of assessment

The validity of a franking assessment for the entity for the balancing period is not affected because any of the provisions of

this Act (as defined in the *Income Tax Assessment Act 1997*) have not been complied with.

214-90 Objections

If a corporate tax entity is dissatisfied with a franking assessment made in relation to the entity under this Division, the entity may object against the assessment in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

214-95 Evidence

Section 177 of the *Income Tax Assessment Act 1936* applies as if:

(a) a reference in that section to a return included a reference to a franking return under this Division; and

(b) a reference in that section to an assessment or a notice of assessment included a reference to a franking assessment or a notice of a franking assessment (as required) under this Division.

214-100 Due date for payment of franking tax

General rule

(1) Unless this section provides otherwise, franking deficit tax assessed for the entity because of events that have occurred, or are taken to have occurred, during the balancing period is due and payable on the last day of the month immediately following the end of the balancing period.

Amended assessments—other than because of deficit deferral

(2) If:

(a) the Commissioner amends a franking assessment for the entity for the balancing period (the ***earlier assessment***) other than because of the operation of section 214-30 (an amendment because of a refund of tax that affects franking deficit tax liability); and

(b) the amount of franking deficit tax payable under the amended assessment exceeds the amount of franking deficit tax payable under the earlier assessment;

the excess amount is due and payable one month after the day on which the assessment was amended.

Tax payable because of deficit deferral

(3) If:

(a) the entity receives a refund of income tax; and

(b) the receipt of the refund gives rise to a liability, or an increased liability, to pay franking deficit tax because of the operation of subsection 205-30(2) or (3);

the franking deficit tax or, if there is an increase in an existing liability to pay franking deficit tax, the difference between the original liability and the increased liability, is due and payable on:

(c) if the entity accounts for the liability, or increased liability, in a franking return that is outstanding for the balancing period in which the liability arose—the day on which the outstanding return is required to be given to the Commissioner; or

(d) in any other case—14 days after the day on which the refund was received.

214-105 General interest charge

If:

(a) franking deficit tax that is payable by the entity remains unpaid after the time by which it is due and payable; and

(b) the Commissioner has not allocated the unpaid amount to an RBA;

the entity is liable to pay the general interest charge on the unpaid amount for each day in the period that:

(c) starts at the beginning of the day on which the franking deficit tax was due to be paid; and

(d) ends at the end of the last day on which, at the end of the day, any of the following remains unpaid:

(i) the franking deficit tax;

(ii) general interest charge on any of the franking deficit tax.

Note: The general interest charge is worked out under Division 1 of Part IIA of the *Taxation Administration Act 1953*.

214-110 Refunds of amounts overpaid

Section 172 of the *Income Tax Assessment Act 1936* applies for the purposes of this Division as if references in that section to tax included references to franking deficit tax.

214-115 Security for payment of tax

In section 213 of the *Income Tax Assessment Act 1936* (under which the Commissioner may require security for the payment of income tax), a reference to income tax includes a reference to franking tax.

214-120 Record keeping

Section 262A of the *Income Tax Assessment Act 1936* applies for the purposes of this Division as if:

(a) the reference in that section to a person carrying on a business were a reference to a corporate tax entity; and

(b) the reference in paragraph (2)(a) of that section to the person's income and expenditure were a reference to:

(i) the entity's franking account balance; and

(ii) the entity's liability to pay franking tax; and

(c) paragraph (5)(a) of that section were omitted.

214-125 Power of Commissioner to obtain information

Section 264 of the *Income Tax Assessment Act 1936* applies for the purposes of this Division as if the reference in paragraph (1)(b) of that section to a person's income or assessment were a reference to a matter relevant to the administration or operation of this Division.

214-130 Tax agents

Part VIIA of the *Income Tax Assessment Act 1936* applies in relation to a return given, or objection made, for the purposes of this Division as it applies to an income tax return or objection.

214-135 Interpretation

If an expression is defined in this Division, it has the meaning given in that definition, and not the meaning given in the *Income Tax Assessment Act 1997*.

Taxation Administration Act 1953

14 Subsection 8AAB(4) (table items 2 to 5)

Repeal the items.

15 Subsection 8AAB(5) (after table item 2)

Insert:

2A	214-155	*Income Tax Assessment Act 1997*

16 Section 14ZQ (definition of *franking assessment*)

Repeal the definition, substitute:

franking assessment has the same meaning as in the *Income Tax Assessment Act 1997*.

17 Subsection 250-10(1) in Schedule 1 (table items 30, 35, 40 and 45)

Repeal the items.

18 Subsection 250-10(2) in Schedule 1 (after table item 37)

Insert:

38	franking tax	214-150(1), (2), (3) and (4)	*Income Tax Assessment Act 1997*

19 Application

(1) The amendment made by item 1 of this Schedule applies to distributions made after 30 June 2002.

(2) The amendment made by item 2 of this Schedule applies where the franking periods to which the notice relates occur after 30 June 2002.

(3) The amendments made by items 3 to 12 and item 16 of this Schedule apply to income years ending after 30 June 2002.

Schedule 29—Consequential amendments relating to the simplified imputation system

Income Tax Assessment Act 1936

1 Subsection 6(1)

Insert:

franked part of a distribution has the same meaning as in the *Income Tax Assessment Act 1997*.

2 Subsection 6(1)

Insert:

part of a distribution that is franked with an exempting credit has the same meaning as in the *Income Tax Assessment Act 1997*.

3 Subsection 6(1)

Insert:

part of a distribution that is franked with a venture capital credit has the same meaning as in the *Income Tax Assessment Act 1997*.

4 Subsection 6(1)

Insert:

unfranked part of a distribution has the same meaning as in the *Income Tax Assessment Act 1997*.

5 Subsection 46AA(2)

Repeal the subsection.

6 Section 46AD

Repeal the section.

7 Subsection 46F(1) (definition of *unfranked part*)

Repeal the definition, substitute:

unfranked part of a dividend includes a dividend that is unfrankable under the *Income Tax Assessment Act 1997*.

8 Paragraph 128B(3)(aaa)

Repeal the paragraph, substitute:

(aaa) income that consists of a non-share dividend that is unfrankable under section 215-10 of the *Income Tax Assessment Act 1997*; or

9 Paragraph 128B(3)(ga)

Repeal the paragraph, substitute:

(ga) income that consists of the franked part of a dividend, or the part of a dividend that is franked with an exempting credit (other than a dividend in respect of which a determination is made under paragraph 204-30(3)(c) of the *Income Tax Assessment Act 1997* or a dividend or a part of a dividend in respect of which a determination is made under paragraph 177EA(5)(b)); or

10 Paragraph 128B(3)(gaa)

Repeal the paragraph, substitute:

(gaa) income that consists of so much of the unfranked part of a dividend as does not exceed the foreign dividend account declaration amount (if any) in respect of the distribution under section 128TC; or

11 Section 177EA

Repeal the section, substitute:

177EA Creation of franking debit or cancellation of franking credits

(1) In this section, unless the contrary intention appears:

relevant circumstances has a meaning affected by subsection (17).

relevant taxpayer has the meaning given by subsection (3).

scheme for a disposition, in relation to membership interests or an interest in membership interests, has a meaning affected by subsection (14).

(2) An expression used in this section that is defined in the *Income Tax Assessment Act 1997* has the same meaning as in that Act, except to the extent that its meaning is extended by subsection (16), (18) or (19), or affected by subsection (15).

Application of section

(3) This section applies if:

(a) there is a scheme for a disposition of membership interests, or an interest in membership interests, in a corporate tax entity; and

(b) either:

(i) a frankable distribution has been paid, or is payable or expected to be payable, to a person in respect of the membership interests; or

(ii) a frankable distribution has flowed indirectly, or flows indirectly or is expected to flow indirectly, to a person in respect of the interest in membership interests, as the case may be; and

(c) the distribution was, or is expected to be, a franked distribution or a distribution franked with an exempting credit; and

(d) except for this section, the person (the ***relevant taxpayer***) would receive, or could reasonably be expected to receive, imputation benefits as a result of the distribution; and

(e) having regard to the relevant circumstances of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for a purpose (whether or not the dominant purpose but not including an incidental purpose) of enabling the relevant taxpayer to obtain an imputation benefit.

Bare acquisition of membership interests or interest in membership interests

(4) It is not to be concluded for the purposes of paragraph (3)(e) that a person entered into or carried out a scheme for a purpose

mentioned in that paragraph merely because the person acquired membership interests, or an interest in membership interests, in the entity.

Commissioner to determine franking debit or deny franking credit

(5) The Commissioner may make, in writing, either of the following determinations:

(a) if the corporate tax entity is a party to the scheme, a determination that a franking debit or exempting debit of the entity arises in respect of each distribution made to the relevant taxpayer or that flows indirectly to the relevant taxpayer;

(b) a determination that no imputation benefit is to arise in respect of a distribution or a specified part of a distribution that is made, or that flows indirectly, to the relevant taxpayer.

A determination does not form part of an assessment.

Notice of determination

(6) If the Commissioner makes a determination under subsection (5), the Commissioner must:

(a) in respect of a determination made under paragraph (5)(a)—serve notice in writing of the determination on the corporate tax entity; or

(b) in respect of a determination made under paragraph (5)(b)—serve notice in writing of the determination on the relevant taxpayer.

The notice may be included in a notice of assessment.

Publication in national newspaper of determination in relation to listed public company denying imputation benefit

(7) If the Commissioner makes a determination under paragraph (5)(b), in respect of a distribution made by a listed public company, the Commissioner is taken to have served notice in writing of the determination on the relevant taxpayer if the Commissioner causes the notice to be published in a daily newspaper that circulates generally in each State, the Australian Capital Territory and the Northern Territory. The notice is taken to have been served on the day on which the publication takes place.

Evidence of determination

(8) The production of:

(a) a notice of a determination; or

(b) a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a determination;

is conclusive evidence:

(c) of the due making of the determination; and

(d) except in proceedings under Part IVC of the *Taxation Administration Act 1953* on an appeal or review relating to the determination, that the determination is correct.

Objections

(9) If a taxpayer to whom a determination relates is dissatisfied with the determination, the taxpayer may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Effect of determination of franking debit or exempting debit

(10) If the Commissioner makes a determination under paragraph (5)(a):

(a) on the day on which notice in writing of the determination is served on the entity, a franking debit or exempting debit of the corporate tax entity arises in respect of the distribution; and

(b) the amount of the franking debit or exempting debit is such amount as is stated in the Commissioner's determination, being an amount that:

(i) the Commissioner considers reasonable in the circumstances; and

(ii) does not exceed the amount of the franking debit or exempting debit of the entity arising under item 1 of the table in section 205-30 of the *Income Tax Assessment 1997* or item 2 of the table in section 208-120 of that Act in respect of the distribution.

Effect of determination that no imputation benefit is to arise

(11) If the Commissioner makes a determination under paragraph (5)(b), the determination has effect according to its terms.

Application of section to non-share dividends

(12) This section:

(a) applies to a non-share equity interest in the same way as it applies to a membership interest; and

(b) applies to an equity holder in the same way as it applies to a member; and

(c) applies to a non-share dividend in the same way as it applies to a distribution.

*Meaning of **interest in membership interests***

(13) A person has an interest in membership interests if:

(a) the person has any legal or equitable interest in the membership interests; or

(b) the person is a partner in a partnership and:

(i) the assets of the partnership include, or will include, the membership interests; or

(ii) the partnership derives, or will derive, income indirectly through interposed companies, trusts or partnerships, from distributions made on the membership interests; or

(c) the person is a beneficiary of a trust (including a potential beneficiary of a discretionary trust) and:

(i) the membership interests form, or will form, part of the trust estate; or

(ii) the trust derives, or will derive, income indirectly through interposed companies, trusts or partnerships, from distributions made on the membership interests.

*Meaning of **scheme for a disposition***

(14) A scheme for a disposition of membership interests or an interest in membership interests includes, but is not limited to, a scheme that involves any of the following:

(a) issuing the membership interests or creating the interest in membership interests;

(b) entering into any contract, arrangement, transaction or dealing that changes or otherwise affects the legal or equitable ownership of the membership interests or interest in membership interests;

(c) creating, varying or revoking a trust in relation to the membership interests or interest in membership interests;

(d) creating, altering or extinguishing a right, power or liability attaching to, or otherwise relating to, the membership interests or interest in membership interests;

(e) substantially altering any of the risks of loss, or opportunities for profit or gain, involved in holding or owning the membership interests or having the interest in membership interests;

(f) the membership interests or interest in membership interests beginning to be included, or ceasing to be included, in any of the insurance funds of a life assurance company.

(15) In determining whether a distribution flows indirectly to a person, assume that the following provisions had not been enacted:

(a) section 282B, 283 or 297B of this Act (certain income derived by an eligible entity within the meaning of Part IX of that Act); or

(b) paragraph 320-35(1)(b) of the *Income Tax Assessment Act 1997* (segregated exempt assets) or subparagraph 320-35(1)(f)(ii) of that Act (income bonds, funeral policies and scholarship plans).

When imputation benefit is received

(16) A taxpayer to whom a distribution flows indirectly receives an ***imputation benefit*** as a result of the distribution if:

(a) the taxpayer is entitled to a tax offset under Division 207 of the *Income Tax Assessment Act 1997* as a result of the distribution; or

(b) where the taxpayer is a corporate tax entity—a franking credit would arise in the franking account of the taxpayer as a result of the distribution.

Note: Where the distribution is made directly to the taxpayer, see subsection 204-30(6) of the *Income Tax Assessment Act 1997* for a definition of ***imputation benefit***.

*Meaning of **relevant circumstances** of scheme*

(17) The ***relevant circumstances*** of a scheme include the following:

(a) the extent and duration of the risks of loss, and the opportunities for profit or gain, from holding membership interests, or having interests in membership interests, in the corporate tax entity that are respectively borne by or accrue to the parties to the scheme, and whether there has been any change in those risks and opportunities for the relevant taxpayer or any other party to the scheme (for example, a change resulting from the making of any contract, the granting of any option or the entering into of any arrangement with respect to any membership interests, or interests in membership interests, in the corporate tax entity);

(b) whether the relevant taxpayer would, in the year of income in which the distribution is made, or if the distribution flows indirectly to the relevant taxpayer, in the year in which the distribution flows indirectly to the relevant taxpayer, derive a greater benefit from franking credits than other entities who hold membership interests, or have interests in membership interests, in the corporate tax entity;

(c) whether, apart from the scheme, the corporate tax entity would have retained the franking credits or exempting credits or would have used the franking credits or exempting credits to pay a franked distribution to another entity referred to in paragraph (b);

(d) whether, apart from the scheme, a franked distribution would have flowed indirectly to another entity referred to in paragraph (b);

(e) if the scheme involves the issue of a non-share equity interest to which section 215-10 of the *Income Tax Assessment Act 1997* applies—whether the corporate tax entity has issued, or is likely to issue, equity interests in the corporate tax entity:

(i) that are similar, from a commercial point of view, to the non-share equity interest; and

(ii) distributions in respect of which are frankable;

(f) whether any consideration paid or given by or on behalf of, or received by or on behalf of, the relevant taxpayer in connection with the scheme (for example, the amount of any interest on a loan) was calculated by reference to the imputation benefits to be received by the relevant taxpayer;

(g) whether a deduction is allowable or a capital loss is incurred in connection with a distribution that is made or that flows indirectly under the scheme;

(h) whether a distribution that is made or that flows indirectly under the scheme to the relevant taxpayer is equivalent to the receipt by the relevant taxpayer of interest or of an amount in the nature of, or similar to, interest;

(i) the period for which the relevant taxpayer held membership interests, or had an interest in membership interests, in the corporate tax entity;

(j) any of the matters referred to in subparagraphs 177D(b)(i) to (viii).

Meaning of ***greater benefit from franking credits***

(18) The following subsection lists some of the cases in which a taxpayer to whom a distribution flows indirectly receives a ***greater benefit from franking credits*** than an entity referred to in paragraph (17)(b). It is not an exhaustive list.

(19) A taxpayer to whom a distribution flows indirectly receives a ***greater benefit from franking credits*** than an entity referred to in paragraph (17)(b) if any of the following circumstances exist in relation to that entity in the income year in which the distribution giving rise to the benefit is made, and not in relation to the taxpayer if:

(a) the entity is not an Australian resident; or

(b) the entity would not be entitled to any tax offset under Division 207 of the *Income Tax Assessment Act 1997* because of the distribution; or

(c) the amount of income tax that would be payable by the entity because of the distribution is less than the tax offset to which the entity would be entitled; or

(d) the entity is a corporate tax entity at the time the distribution is made, but no franking credit arises for the entity as a result of the distribution; or

(e) the entity is a corporate tax entity at the time the distribution is made, but cannot use franking credits received on the distribution to frank distributions to its own members because:

(i) it is not a franking entity; or

(ii) it is unable to make frankable distributions.

Note: Where the distribution is made directly to the taxpayer, see subsections 204-30(7), (8), (9) and (10) of the *Income Tax Assessment Act 1997* for a list of circumstances in which the taxpayer will be treated as deriving a greater benefit from franking credits than another entity.

Income Tax Assessment Act 1997

12 Section 975-505 (link note)

Repeal the link note.

13 After Division 975

Insert:

Division 976—Imputation

Table of sections

976-1 Franked part of a distribution
976-5 Unfranked part of a distribution
976-10 The part of a distribution that is franked with an exempting credit
976-15 The part of a distribution that is franked with a venture capital credit

976-1 Franked part of a distribution

The ***franked part*** of a *distribution is an amount worked out using the formula:

$$\text{*Franking credit on the distribution} \times \frac{1 - \text{*Corporate tax rate}}{\text{Corporate tax rate}}$$

976-5 Unfranked part of a distribution

The ***unfranked part*** of a *distribution is the amount that is left after deducting the *franked part of the distribution from the total distribution.

976-10 The part of a distribution that is franked with an exempting credit

The ***part of a distribution that is franked with an exempting credit*** is worked out using the formula:

$$\text{*Exempting credit on the distribution} \times \frac{1 - \text{*Corporate tax rate}}{\text{Corporate tax rate}}$$

976-15 The part of a distribution that is franked with a venture capital credit

The ***part of a distribution that is franked with a venture capital credit*** is worked out using the formula:

$$\text{*Venture capital credit on the distribution} \times \frac{1 - \text{*Corporate tax rate}}{\text{Corporate tax rate}}$$

[The next Part is Part 6-5.]

14 Application

(1) The amendments made by items 8 to 10 of this Schedule apply to income derived after 30 June 2002.

(2) The amendment made by item 11 of this Schedule applies to distributions that are made or that flow indirectly after 30 June 2002.

Schedule 30—The effect of a cum dividend sale or securities lending arrangement under the simplified imputation system

Income Tax Assessment Act 1997

1 After Division 215

Insert:

Division 216—Cum dividend sales and securities lending arrangements

Table of Subdivisions

216-A Circumstances where a distribution to a member of a corporate tax entity is treated as having been made to someone else

216-B Statements to be made where there is a cum dividend sale or securities lending arrangement

Subdivision 216-A—Circumstances where a distribution to a member of a corporate tax entity is treated as having been made to someone else

Table of sections

216-1 When a distribution made to a member of a corporate tax entity is treated as having been made to someone else

216-5 First situation (cum dividend sales)

216-10 Second situation (securities lending arrangements)

216-15 Distribution closing time

216-1 When a distribution made to a member of a corporate tax entity is treated as having been made to someone else

There are 2 situations in which a *franked distribution, or a distribution *franked with an exempting credit, that is made to a *member of a *corporate tax entity is taken to have been made to another entity.

216-5 First situation (cum dividend sales)

(1) The first situation is one in which:

(a) the *corporate tax entity makes a *franked distribution, or a *distribution franked with an exempting credit, to a *member of the entity in respect of a *membership interest in the entity; and

(b) at the *distribution closing time, the member is under an obligation to transfer the membership interest to another person under a contract for the sale of the membership interest; and

(c) the contract:

(i) requires that the distribution be paid on to the other person; and

(ii) is entered into in the ordinary course of trading on an *approved stock exchange in Australia or elsewhere.

(2) The *distribution is taken to have been made to the other person as a *member of the entity (and not to the member).

Note: As the other person is the entity receiving the distribution, there may be tax effects for the other person under Division 207 or 208.

(3) The *distribution referred to in paragraph (1)(a) includes a distribution that is taken to be made as a result of one or more previous applications of this section or section 216-10.

216-10 Second situation (securities lending arrangements)

(1) The second situation is one in which:

(a) the *corporate tax entity makes a *franked distribution, or a *distribution franked with an exempting credit, to a *member

of the entity in respect of a *membership interest in the entity; and

(b) at the time the distribution was made, the member was under an obligation to pay the distribution to another person under a *securities lending arrangement; and

(c) the obligation was incurred in the member's capacity as the borrower under the securities lending arrangement; and

(d) the *distribution closing time occurred during the borrowing period.

(2) The *distribution is taken to have been made to the other person as a *member of the entity (and not to the member).

Note: As the other person is the entity receiving the distribution, there may be tax effects for the other person under Division 207 or 208.

(3) The distribution referred to in paragraph (1)(a) includes a distribution that is taken to be made as a result of one or more previous applications of this section or section 216-5.

216-15 Distribution closing time

If *distributions by a *corporate tax entity are made to those *members who were members as at a particular time at or before the distribution is made, that time is the ***distribution closing time*** in relation to those distributions.

Subdivision 216-B—Statements to be made where there is a cum dividend sale or securities lending arrangement

Table of sections

216-20 Cum dividend sale—statement by securities dealer
216-25 Cum dividend sale—statement by party
216-30 Securities lending arrangements—statement by borrower

216-20 Cum dividend sale—statement by securities dealer

If:

(a) section 216-5 applies in relation to a *franked distribution or a *distribution franked with an exempting credit (cum dividend sales); and

(b) a *securities dealer has acted for a particular party to the contract concerned;

the securities dealer must, as soon as practicable after the making of the distribution, give to the other party to the contract a statement in the *approved form setting out such information in relation to the distribution as is required by the approved form.

216-25 Cum dividend sale—statement by party

If:

(a) section 216-5 applies in relation to a *franked distribution or a *distribution franked with an exempting credit (cum dividend sales); and

(b) a particular party to the contract concerned has not had a *securities dealer acting for him or her;

that party must, as soon as practicable after the making of the distribution, give to the other party to the contract a statement in the *approved form setting out such information in relation to the distribution as is required by the approved form.

216-30 Securities lending arrangements—statement by borrower

If section 216-10 (*securities lending arrangements) applies in relation to a *franked distribution, or a *distribution franked with an exempting credit, the borrower must, as soon as practicable after the making of the distribution, give to the lender a statement in the *approved form setting out such information in relation to the distribution as is required by the approved form.

2 Application

The amendments made by this Schedule apply to distributions made after 30 June 2002.

[*Minister's second reading speech made in—*
House of Representatives on 12 December 2002
Senate on 3 March 2003]

(290/02)