





# **Taxation Laws Amendment Act (No. 4) 2003**

**No. 66, 2003**

**An Act to amend the law relating to taxation, 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>)



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

[Assented to 30 June 2003]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Taxation Laws Amendment Act (No. 4) 2003*.

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## 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.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
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	30 June 2003
2. Schedule 1	The day on which this Act receives the Royal Assent	30 June 2003
3. Schedule 2	The day on which this Act receives the Royal Assent	30 June 2003
4. Schedule 3, items 1 to 45	The day on which this Act receives the Royal Assent	30 June 2003
5. Schedule 3, item 46	The later of: (a) immediately after the commencement of Schedule 3 to the <i>Taxation Laws Amendment Act (No. 2) 2003</i> ; and (b) the day on which this Act receives the Royal Assent	30 June 2003
5A. Schedule 3, item 46A	Immediately after the commencement of Schedule 27 to the <i>New Business Tax System (Consolidation and Other Measures) Act 2003</i>	29 June 2002
6. Schedule 3, items 47 to 57	The day on which this Act receives the Royal Assent	30 June 2003
7. Schedule 3, item 58	The later of: (a) immediately after the commencement of Schedule 3 to the <i>Taxation Laws Amendment Act (No. 2) 2003</i> ; and (b) the day on which this Act receives the Royal Assent	30 June 2003
8. Schedule 3, items 59 to 70	The day on which this Act receives the Royal Assent	30 June 2003

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
8A. Schedule 3, item 70A	Immediately after the commencement of Schedule 3 to the <i>Taxation Laws Amendment Act (No. 1) 2003</i>	2 April 2003
8B. Schedule 3, item 71	The day on which this Act receives the Royal Assent	30 June 2003
9. Schedule 3, items 72 and 73	The later of: (a) immediately after the commencement of Schedule 3 to the <i>Taxation Laws Amendment Act (No. 2) 2003</i> ; and (b) the day on which this Act receives the Royal Assent	30 June 2003
10. Schedule 3, items 74 to 89	The day on which this Act receives the Royal Assent	30 June 2003
11. Schedule 3, item 90	The later of: (a) immediately after the commencement of Schedule 3 to the <i>Taxation Laws Amendment Act (No. 2) 2003</i> ; and (b) the day on which this Act receives the Royal Assent	30 June 2003
12. Schedule 3, items 91 to 128	The day on which this Act receives the Royal Assent	30 June 2003
12A. Schedule 3, item 128A	Immediately after the commencement of Schedule 3 to the <i>Taxation Laws Amendment Act (No. 1) 2003</i>	2 April 2003
12B. Schedule 3, items 129 to 132	The day on which this Act receives the Royal Assent	30 June 2003
13. Schedule 3, item 133	The later of: (a) immediately after the commencement of Schedule 3 to the <i>Taxation Laws Amendment Act (No. 2) 2003</i> ; and (b) the day on which this Act receives the Royal Assent	30 June 2003
14. Schedule 3, items 134 to 141	The day on which this Act receives the Royal Assent	30 June 2003
15. Schedule 4	The day on which this Act receives the Royal Assent	30 June 2003

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
16. Schedule 5	The day on which this Act receives the Royal Assent	30 June 2003
17. Schedule 6	The day on which this Act receives the Royal Assent	30 June 2003
18. Schedule 7	The day on which this Act receives the Royal Assent	30 June 2003

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 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—Internal roll-overs**

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

#### **1 Subsection 27A(1) (paragraph (c) of the definition of eligible service period)**

Omit “(e)”, substitute “(daa), (e), (ea)”.

#### **2 Subsection 27A(1) (paragraph (d) of the definition of eligible service period)**

Omit “(h)”, substitute “(gaa), (h), (ha)”.

#### **3 Subsection 27A(1) (after paragraph (d) of the definition of eligible termination payment)**

Insert:

- (daa) an amount resulting from the commutation in whole or in part of a superannuation pension payable to the taxpayer from a superannuation fund, being an amount:
  - (i) that remains in the fund after the commutation, for the purpose of providing superannuation benefits to the taxpayer or to dependants of the taxpayer in the event of the death of the taxpayer; or
  - (ii) that is applied, immediately after the commutation, towards the provision of one or more other superannuation pensions payable to the taxpayer from that fund;

#### **4 Subsection 27A(1) (after paragraph (e) of the definition of eligible termination payment)**

Insert:

- (ea) the residual capital value of a superannuation pension payable to the taxpayer from a superannuation fund:
  - (i) that remains in the fund, after the residual capital value of the pension became payable, for the purpose of the provision of superannuation benefits to the taxpayer or

to dependants of the taxpayer in the event of the death of the taxpayer; or

- (ii) that is applied, immediately after the residual capital value of the pension became payable, towards the provision of one or more other superannuation pensions payable to the taxpayer from that fund;

**5 Subsection 27A(1) (after paragraph (g) of the definition of eligible termination payment)**

Insert:

- (gaa) an amount resulting from the commutation in whole or in part of a qualifying annuity (the *first annuity*) payable to the taxpayer, being an amount applied, immediately after the commutation, towards the provision of one or more other qualifying annuities payable to the taxpayer by the payer of the first annuity;

**6 Subsection 27A(1) (after paragraph (h) of the definition of eligible termination payment)**

Insert:

- (ha) the residual capital value of a qualifying annuity (the *first annuity*) payable to the taxpayer, that is applied, immediately after that residual capital value became payable, towards the provision of one or more other qualifying annuities payable to the taxpayer by the payer of the first annuity;

**7 Subsection 27A(1)**

Insert:

*internal roll-over amount*, in respect of a taxpayer, means an ETP covered by any of paragraphs (daa), (ea), (gaa) or (ha) of the definition of *eligible termination payment* in this subsection.

**8 Subsection 27A(1) (paragraph (a) of the definition of undeducted contributions)**

Omit “(e)”, substitute “(daa), (e), (ea)”.

**9 Subsection 27A(1) (paragraph (c) of the definition of undeducted contributions)**

Omit “(h)”, substitute “(gaa), (h), (ha)”.

**10 After subsection 27A(5C)**

Insert:

- (6) If the Commissioner specifies in writing guidelines or principles to be applied in calculating internal roll-over amounts, an internal roll-over amount is to be calculated in accordance with those guidelines or principles.

**11 Subsection 27A(12)**

After “qualifying eligible termination payment if”, insert “it is an internal roll-over amount in relation to the taxpayer or if”.

**12 Paragraph 27A(13)(a)**

After “if”, insert “the amount is an internal roll-over amount or if”.

**13 Subsection 27AAAA(2)**

Omit “(e), (f), (g), (h)”, substitute “(daa), (e), (ea), (f), (g), (gaa), (h), (ha)”.

**14 Paragraph 27AAAA(4)(b)**

After “payment of”, insert “, or represents,”.

**15 Subsection 27AB(1) (table item 5, column headed “ETP type”)**

Omit “(h)”, substitute “(gaa), (h), (ha)”.

**16 Subsection 27AB(1) (table item 7, column headed “ETP type”)**

Omit “(e)”, substitute “(daa), (e), (ea)”.

**17 After subparagraph 27D(1)(b)(i)**

Insert:

- and (ia) details of each internal roll-over amount (in this section referred to as a *qualifying roll-over payment*) in relation to the taxpayer; and

## **18 Application**

The amendments made by this Schedule apply to commutations occurring, and residual capital values becoming payable, on or after 1 July 2001.

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## Schedule 2—Mining

### *Income Tax Assessment Act 1997*

#### 1 At the end of section 40-30

Add:

- (6) This Division applies to a \*mining, quarrying or prospecting right (the *new right*) as if it were a continuation of another mining, quarrying or prospecting right you \*held if:
- (a) the other right ends; and
  - (b) the new right and the other right relate to the same area, or any difference in area is not significant.

#### 2 Paragraph 40-80(1)(b)

Before “you do not use it”, insert “when you first use the asset,”.

#### 3 Subsection 40-95(7) (at the end of the table)

Add:

11	A *mining, quarrying or prospecting right relating to *mining operations (except obtaining *petroleum or quarry materials)	The life of the mine or proposed mine or, if there is more than one, the life of the mine that has the longest estimated life
12	A *mining, quarrying or prospecting right relating to *mining operations to obtain *petroleum	The life of the petroleum field or proposed petroleum field
13	A *mining, quarrying or prospecting right relating to *mining operations to obtain quarry materials	The life of the quarry or proposed quarry or, if there is more than one, the life of the quarry that has the longest estimated life

#### 4 Subsection 40-95(8)

Omit “(for example, a \*mining, quarrying or prospecting right)”.

#### 5 Subsection 40-730(7)

Omit “for a \*taxable purpose”, substitute “for the \*purpose of producing assessable income”.

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

### **6 At the end of subsection 40-35(1)**

Add:

Note: Subsection (6) also applies to a case where you did not have unrecouped expenditure at 30 June 2001: see subsection (8).

### **7 At the end of section 40-35**

Add:

- (7) If section 40-115 of the new Act applies, or section 40-125 of the new Act would, apart from this subsection, apply, to the real asset referred to in subsection (5) of this section, then:
- (a) if the real asset is split into 2 or more depreciating assets and you stop holding, or stop using for a taxable purpose, one or more but not all of the assets into which it is split— subsection (5) does not apply to that asset or assets into which it is split that you continue to hold and continue to use for a taxable purpose; or
  - (b) if the real asset is merged into another depreciating asset— section 40-125 does not apply to the asset into which it is merged while you continue to hold it.
- (8) Subsection (6) also applies to a case where:
- (a) you did not have an amount of unrecouped expenditure under Division 330 of the former Act at the end of 30 June 2001, but you had an amount of unrecouped expenditure under that Division before 30 June 2001; and
  - (b) that expenditure relates to property that is not a depreciating asset (the *other property*); and
  - (c) after that day, the other property is disposed of, lost or destroyed, or you stop using it for a taxable purpose.

### **8 After section 40-35**

Insert:

#### **40-37 Post-30 June 2001 mining expenditure**

- (1) This section applies to you if:
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- 
- (a) you incur expenditure after 30 June 2001 under a contract entered into before that day; and
  - (b) the expenditure would have been allowable capital expenditure, and you could have deducted an amount for it, under Division 330 of the former Act if you had incurred it before 1 July 2001; and
  - (c) the expenditure does not relate to a depreciating asset.
- (2) Division 40 of the new Act applies to the expenditure as if it were a depreciating asset (the *notional asset*) you hold on this basis:
- (a) it has a cost at the time you incur the expenditure equal to the amount of the expenditure; and
  - (b) in applying the formula in section 40-75 of the new Act for the income year in which you incur the expenditure—you use the adjustments in subsection 40-75(3) of the new Act; and
  - (c) it is taken to be used for a taxable purpose when you incur the expenditure; and
  - (d) it has an effective life worked out under subsection (3); and
  - (e) you must use the prime cost method.

Note: There are special rules for entities that have substituted accounting periods: see section 40-65.

- (3) The effective life of the notional asset at the start of an income year (*present income year*) for which you are working out its decline in value is:
- (a) for an amount of expenditure incurred in carrying on eligible mining operations other than in the course of petroleum mining—the lesser of 10 and the number equal to the number of whole years in the estimated life of the mine, or proposed mine, on the mining property, or, if there is more than one such mine, of the mine that has the longest estimated life, as at the end of the present income year; or
  - (b) for an amount of expenditure incurred in carrying on eligible mining operations in the course of petroleum mining—the lesser of 10 and the number equal to the number of whole years in the estimated life of the petroleum field or proposed petroleum field as at the end of the present income year; or
  - (c) for an amount of expenditure incurred in carrying on eligible quarrying operations—the lesser of 20 and the number equal to the number of whole years in the estimated life of the

quarry, or proposed quarry, on the quarrying property, or, if there is more than one such quarry, of the quarry that has the longest estimated life, as at the end of the present income year.

- (4) Sections 40-95 and 40-110 of the new Act do not apply to the expenditure.
- (5) If both of these paragraphs apply:
- (a) any of the expenditure referred to in subsection (1) relates to property that is not a depreciating asset (the *other property*);
  - (b) in an income year (the *cessation year*), the other property is disposed of, lost or destroyed, or you stop using it for a taxable purpose;

there is an additional decline in value of the notional asset for the cessation year equal to so much of the notional asset's adjustable value as relates to the other property.

- (6) If the other property is disposed of, lost or destroyed, or you stop using it for a taxable purpose, you must include in your assessable income:
- (a) if the other property is sold for a price specific to that property—that price, less the expenses of the sale (to the extent the expenses are reasonably attributable to selling that particular property); or
  - (b) if the other property is sold with additional property without a specific price being allocated to it—the part of the total sale price, less the reasonably attributable expenses of the sale, that is reasonably attributable to selling the other property; or
  - (c) if the other property is lost or destroyed—the amount or value received or receivable under an insurance policy or otherwise for the loss or destruction; or
  - (d) if you own the other property and you stop using it for a taxable purpose—its market value at that time; or
  - (e) if you do not own the property and you stop using it for a taxable purpose—a reasonable amount.

However, the amount included is reduced to the extent (if any) that it is also included under subsection 40-830(6) of the new Act.

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**40-38 Mining cash bidding payments**

- (1) This section applies to expenditure you incur, under a contract entered into before 30 June 2001, if:
  - (a) the expenditure would have been a mining cash bidding payment under Subdivision 330-D of the former Act; and
  - (b) either:
    - (i) you incurred the expenditure before that day but the grant of the mining authority concerned occurred on a day (the *start day*) after 30 June 2001; or
    - (ii) the grant of the mining authority concerned occurred before 30 June 2001 but you incurred the expenditure on a day (also the *start day*) after 30 June 2001.
  
- (2) Division 40 of the new Act applies to the expenditure as if it were a depreciating asset (the *notional asset*) you hold on this basis:
  - (a) it has a cost at the start day equal to the amount of the expenditure; and
  - (b) in applying the formula in section 40-75 of the new Act for the income year in which the start day occurs—you use the adjustments in subsection 40-75(3) of the new Act; and
  - (c) it is taken to be used for a taxable purpose on the start day; and
  - (d) it has an effective life worked out under subsection (3); and
  - (e) you must use the prime cost method.

Note: There are special rules for entities that have substituted accounting periods: see section 40-65.
  
- (3) The effective life of the notional asset at the start of an income year (*present income year*) for which you are working out its decline in value is:
  - (a) for an amount of expenditure incurred in carrying on eligible mining operations other than in the course of petroleum mining—the lesser of 10 and the number equal to the number of whole years in the estimated life of the mine, or proposed mine, on the mining property, or, if there is more than one such mine, of the mine that has the longest estimated life, as at the end of the present income year; or
  - (b) for an amount of expenditure incurred in carrying on eligible mining operations in the course of petroleum mining—the

lesser of 10 and the number equal to the number of whole years in the estimated life of the petroleum field or proposed petroleum field as at the end of the present income year.

- (4) Sections 40-95 and 40-110 of the new Act do not apply to the expenditure.
- (5) If both of these paragraphs apply:
- (a) any of the expenditure referred to in subsection (1) relates to a depreciating asset (the *real asset*);
  - (b) in an income year (the *cessation year*) you stop holding the real asset, or stop using it for a taxable purpose;
- there is an additional decline in value of the notional asset for the cessation year equal to so much of the notional asset's adjustable value as relates to the real asset and has not been taken into account in working out the amount of a balancing adjustment in relation to the real asset.
- (6) If section 40-115 of the new Act applies, or section 40-125 of the new Act would, apart from this subsection, apply, to the real asset referred to in subsection (5) of this section, then:
- (a) if the real asset is split into 2 or more depreciating assets and you stop holding, or stop using for a taxable purpose, one or more but not all of the assets into which it is split— subsection (5) does not apply to that asset or assets into which it is split that you continue to hold and continue to use for a taxable purpose; or
  - (b) if the real asset is merged into another depreciating asset— section 40-125 does not apply to the asset into which it is merged while you continue to hold it.

## 9 At the end of section 40-40

Add:

- (6) If section 40-115 of the new Act applies, or section 40-125 of the new Act would, apart from this subsection, apply, to the real asset referred to in subsection (4) of this section, then:
- (a) if the real asset is split into 2 or more depreciating assets and you stop holding, or stop using for a taxable purpose, one or more but not all of the assets into which it is split— subsection (4) does not apply to that asset or assets into

which it is split that you continue to hold and continue to use for a taxable purpose; or

- (b) if the real asset is merged into another depreciating asset—section 40-125 does not apply to the asset into which it is merged while you continue to hold it.

## 10 After section 40-40

Insert:

### 40-43 Post-30 June 2001 transport expenditure

- (1) This section applies to you if:
  - (a) you incur expenditure after 30 June 2001 under a contract entered into before that day; and
  - (b) the expenditure would have been transport capital expenditure in respect of a transport facility, and you could have deducted an amount for it, under Subdivision 330-H of the former Act if you had incurred it before 1 July 2001 and you had started to use the facility for a qualifying purpose before 1 July 2001; and
  - (c) the expenditure does not relate to a depreciating asset.
- (2) Division 40 of the new Act applies to the expenditure as if it were a depreciating asset (the *notional asset*) you hold on this basis:
  - (a) it has a cost at the time you incur the expenditure equal to the amount of the expenditure; and
  - (b) in applying the formula in section 40-75 of the new Act for your income year in which you incur the expenditure—you use the adjustments in subsection 40-75(3) of the new Act; and
  - (c) it is taken to have been used for a taxable purpose when you incur the expenditure; and
  - (d) it has an effective life when you incur the expenditure equal to the years remaining for the expenditure under section 330-395 of the former Act; and
  - (e) you must use the prime cost method.

Note: There are special rules for entities that have substituted accounting periods: see section 40-65.

- (3) Sections 40-95 and 40-110 of the new Act do not apply to the expenditure.
- (4) If both of these paragraphs apply:
- (a) any of the expenditure referred to in subsection (1) relates to property that is not a depreciating asset (the *other property*);
  - (b) in an income year (the *cessation year*), the other property is disposed of, lost or destroyed, or you stop using it for a taxable purpose;
- there is an additional decline in value of the notional asset for the cessation year equal to so much of the notional asset's adjustable value as relates to the other property.

- (5) If the other property is disposed of, lost or destroyed, or you stop using it for a taxable purpose, you must include in your assessable income:
- (a) if the other property is sold for a price specific to that property—that price, less the expenses of the sale (to the extent the expenses are reasonably attributable to selling that particular property); or
  - (b) if the other property is sold with additional property without a specific price being allocated to it—the part of the total sale price, less the reasonably attributable expenses of the sale, that is reasonably attributable to selling the other property; or
  - (c) if the other property is lost or destroyed—the amount or value received or receivable under an insurance policy or otherwise for the loss or destruction; or
  - (d) if you own the other property and you stop using it for a taxable purpose—its market value at that time; or
  - (e) if you do not own the property and you stop using it for a taxable purpose—a reasonable amount.

However, the amount included is reduced to the extent (if any) that it is also included under subsection 40-830(6) of the new Act.

#### **40-44 No additional decline in certain cases**

- (1) Despite subsections 40-35(5), 40-38(5) and 40-40(4), there is no additional decline in the value of the notional asset referred to in those subsections if:

- 
- (a) apart from this section, subsection 40-35(5), 40-38(5) or 40-40(4) would apply because the real asset referred to in that subsection is disposed of; and
  - (b) roll-over relief is chosen under subsection 40-340(3) of the *Income Tax Assessment Act 1997* for the disposal.
- (2) Instead, the cost to the transferee of that real asset is the sum of:
- (a) the adjustable value of that real asset; and
  - (b) the adjustable value of the notional asset referred to in subsection 40-35(5), 40-38(5) or 40-40(4);
- just before the disposal.

## 11 After subsection 40-77(1)

Insert:

- (1A) Division 40 of the new Act does not apply to a renewal or extension of a mining, quarrying or prospecting right that you started to hold before 1 July 2001.
- (1B) Subsection (1) applies to a mining, quarrying or prospecting right (the ***new right***) that you start to hold on or after 1 July 2001 as if you had started to hold the new right before that day if:
  - (a) you started to hold another mining, quarrying or prospecting right before that day; and
  - (b) the other right ends on or after that day; and
  - (c) the new right and the other right relate to the same area, or any difference in area is not significant.
- (1C) Division 40 of the new Act does not apply to a mining, quarrying or prospecting right if:
  - (a) a company (the ***original holder***) started to hold the right before 1 July 2001; and
  - (b) the right is transferred after that day to another company where:
    - (i) the other company is a member of the same wholly-owned group as the original holder and was a member of that group just before that day; and
    - (ii) the right was held in the period between that day and the time of the transfer by a company or companies that

were members of that group on that day and at the time of the transfer.

**12 Paragraph 40-77(2)(a)**

After “associate of yours”, insert “(except a company that is a member of the same wholly-owned group)”.

**13 At the end of section 40-77**

Add:

- (4) Your assessable income includes an amount if:
- (a) after 1 July 2001, you stop holding a mining, quarrying or prospecting right that you started to hold before that day; and
  - (b) you have deducted or can deduct an amount for it under Subdivision 330-C in relation to Subdivision 330-D or 330-E of the former Act.

The amount included is the amount you have deducted or can deduct.

- (5) Your assessable income also includes an amount if:
- (a) after 1 July 2001, you stop holding a mining, quarrying or prospecting right that you started to hold before that day; and
  - (b) because of section 40-35 or 40-38 of this Act, you have deducted or can deduct an amount for a notional asset that relates to expenditure on the right under Division 40 of the new Act.

The amount included is the amount you have deducted or can deduct.

- (6) Division 110 of the new Act applies as if an amount included in assessable income under subsection (4) or (5) of this section were the reversal of a deduction under a provision of the new Act outside Parts 3-1 and 3-3 and Division 243.

- (7) An amount that would be included in your assessable income under subsection 40-285(1) of the new Act in respect of a mining, quarrying or prospecting right is reduced by an amount worked out under subsection (8) if:

- 
- (a) you acquired the right from an associate (except a company that is a member of the same wholly-owned group) on or after 1 July 2001; and
  - (b) the associate started to hold the right before that day.
- (8) The amount is reduced (but not below zero) by the difference between the capital cost that you incurred after that day and the amount to which the cost of the right is limited under subsection (2) of this section.

#### **14 At the end of Subdivision 40-B**

Add:

#### **40-95 Accelerated depreciation for split or merged plant**

- (1) This section applies to a depreciating asset that is plant if:
  - (a) you entered into a contract to acquire the plant, you otherwise acquired it or you started to construct it before 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999; and
  - (b) you held it at the end of 30 June 2001; and
  - (c) on or after 1 July 2001:
    - (i) the plant is split into 2 or more depreciating assets; or
    - (ii) the plant is merged into another depreciating asset.
- (2) For a case where the plant is split into 2 or more depreciating assets, the new Act applies as if you had acquired the assets into which it is split before the time mentioned in paragraph (1)(a) while you continue to hold those assets.
- (3) For a case where the plant is merged into another depreciating asset, section 40-125 of the new Act does not apply to the asset, or to your interest in the asset, into which it is merged while you continue to hold it.

#### **15 After section 40-285**

Insert:

**40-287 Disposal of pre-1 July 2001 mining depreciating asset to associate**

- (1) This section applies if:
  - (a) on or after 1 July 2001, a company (the *transferor*) disposes of a depreciating asset to another company; and
  - (b) the companies are members of the same linked group at the time of the disposal; and
  - (c) apart from this section, the disposal would have resulted in:
    - (i) an amount (the *included amount*) being included in the assessable income of the transferor under subsection 40-285(1) of the *Income Tax Assessment Act 1997*; and
    - (ii) the transferor having an additional decline in value (the *deductible amount*) under subsection 40-35(5), 40-38(5) or 40-40(4) of this Act; and
  - (d) the included amount is more than the deductible amount.
- (2) Subsection 40-35(5), 40-38(5) or 40-40(4) of this Act does not apply to the disposal.
- (3) The amount that is included in the transferor's assessable income under subsection 40-285(1) of the *Income Tax Assessment Act 1997* is the included amount reduced by the deductible amount.

**40-288 Disposal of pre-1 July 2001 mining non-depreciating asset to associate**

- (1) This section applies if:
  - (a) on or after 1 July 2001, a company (the *transferor*) disposes of property that is not a depreciating asset to another company; and
  - (b) the companies are members of the same linked group at the time of the disposal; and
  - (c) apart from this section, the disposal would have resulted in the transferor having an additional decline in value (the *deductible amount*) under subsection 40-35(5), 40-37(5), 40-40(4) or 40-43(4) of this Act; and
  - (d) the sum of:

- 
- (i) the money the transferor receives, or is entitled to receive, in respect of the disposal; and
  - (ii) the market value of any other property the transferor receives, or is entitled to receive, in respect of the disposal;
- is more than the deductible amount.
- (2) There is no additional decline in value of the notional asset referred to in subsection 40-35(5), 40-37(5), 40-40(4) or 40-43(4) as a result of the disposal.
  - (3) Any amount that would be included in the transferor's assessable income under subsection 40-35(6), 40-37(6), 40-38(6), 40-40(5) or 40-43(5) of this Act, or subsection 40-830(6) of the *Income Tax Assessment Act 1997*, as a result of the disposal is reduced by the deductible amount.

## 16 At the end of Subdivision 40-D

Add:

### 40-365 Involuntary disposals

Section 40-365 of the new Act applies to a case where:

- (a) a balancing adjustment event occurred for plant in the circumstances mentioned in subsection 42-293(2) of the former Act before 1 July 2001; and
- (b) you start to hold a replacement asset or assets after that day; and
- (c) the conditions in subsections 40-365(3) and (4) of the new Act are satisfied.

## 17 Application of amendments

The amendments made by this Schedule apply to assessments for the income year in which 1 July 2001 occurred and later income years.

## Schedule 3—Non-assessable non-exempt income

### *Income Tax Assessment Act 1936*

#### **1 Subsection 6(1)**

Insert:

*non-assessable non-exempt income* has the meaning given by the *Income Tax Assessment Act 1997*.

#### **2 Subparagraph 6AB(2)(b)(iv)**

Omit “23AI exempt part”, substitute “23AI non-assessable part”.

#### **3 Subparagraph 6AB(2)(b)(vi)**

Omit “23AK exempt part”, substitute “23AK non-assessable part”.

#### **4 Paragraph 6AB(3A)(b)**

Omit “23AI exempt part”, substitute “23AI non-assessable part”.

#### **5 Paragraph 6AB(3A)(c)**

Omit “23AK exempt part”, substitute “23AK non-assessable part”.

#### **6 Paragraph 23(jd)**

Repeal the paragraph.

#### **7 Subsection 23AE(1A) (note)**

Omit “51-25”, substitute “59-15”.

#### **8 Subsection 23AH(2)**

Repeal the subsection, substitute:

- (2) If the original taxpayer in relation to the foreign branch income is a company, so much of the foreign branch income as is attributable to a period when the company was a resident is not assessable income and is not exempt income of the company.

Note: The heading to section 23AH is replaced by the heading “**Foreign branch profits of Australian companies not assessable**”.

### **9 Paragraph 23AH(3)(d)**

Repeal the paragraph, substitute:

- (d) so much of the foreign branch income as is attributable to a period when the actual taxpayer was a resident is not assessable income and is not exempt income of the original taxpayer; and

### **10 Subsection 23AH(4)**

Repeal the subsection.

### **11 Paragraph 23AH(9)(d)**

Repeal the paragraph, substitute:

- (d) so much of the foreign branch capital gain as is attributable to a period when the actual taxpayer was a resident is not assessable income and is not exempt income of the original taxpayer; and

### **12 Paragraph 23AI(1)(c)**

Repeal the paragraph, substitute:

- (c) if the payment is of a kind referred to in paragraph 365(1)(a)—the payment is not assessable income, and is not exempt income, to the extent of the debit;

Note: The heading to section 23AI is replaced by the heading “**Amounts paid out of attributed income not assessable**”.

### **13 Paragraph 23AI(1)(d)**

Omit “that amount is not so included, to the extent of the debit”, substitute “that amount is not assessable income, and is not exempt income, to the extent of the debit”.

### **14 Paragraph 23AI(1)(e)**

Repeal the paragraph, substitute:

- (e) if the payment is of a kind referred to in paragraph 365(1)(c) and, apart from this section, an amount would be included in the taxpayer’s assessable income under section 97, 98A or 100 in respect of a share of the net income of the trust of the

year of income referred to in that paragraph—that amount is not assessable income and is not exempt income, to the extent of the debit;

- (ea) if the payment is of a kind referred to in paragraph 365(1)(c) and, apart from this section, an amount would be assessable to the trustee of the trust referred to in that paragraph under section 98 in respect of a share of the net income of the trust of the year of income referred to in that paragraph—that amount is not so assessable to the extent of the debit;

### 15 Paragraph 23AI(1)(g)

Omit “not so included”, substitute “not assessable income, and is not exempt income,”.

### 16 Subsection 23AJ(1)

Omit “exempt from income tax”, substitute “not assessable income, and is not exempt income,”.

Note: The heading to section 23AJ is replaced by the heading “**Certain non-portfolio dividends from foreign countries not assessable**”.

### 17 Paragraph 23AK(1)(c)

Omit “exempt from tax”, substitute “not assessable income, and is not exempt income,”.

Note: The heading to section 23AK is replaced by the heading “**Amounts paid out of attributed foreign investment fund income not assessable**”.

### 18 Paragraph 23AK(1)(d)

Omit “not so included,”, substitute “not assessable income, and is not exempt income,”.

### 19 Paragraph 23AK(1)(e)

Repeal the paragraph, substitute:

- (e) if the payment is of a kind referred to in paragraph 603(1)(d) and, apart from this section, an amount would be included in the taxpayer’s assessable income under section 97, 98A or 100 in respect of a share of the net income of the trust of the year of income referred to in that paragraph—that amount is not assessable income, and is not exempt income, to the extent of the debit;

- (ea) if the payment is of a kind referred to in paragraph 603(1)(d) and, apart from this section, an amount would be assessable to the trustee of the trust referred to in that paragraph under section 98 in respect of a share of the net income of the trust of the year of income referred to in that paragraph—that amount is not so assessable to the extent of the debit;

**20 Paragraph 23AK(1)(g)**

Omit “not so included”, substitute “not assessable income, and is not exempt income,”.

**21 Paragraph 23AK(1)(h)**

Omit “exempt from tax”, substitute “not assessable income, and is not exempt income,”.

**22 Paragraph 23AK(1)(i)**

Omit “exempt from tax”, substitute “not assessable income, and is not exempt income,”.

**23 Subsection 23E(1)**

Repeal the subsection, substitute:

- (1) An amount received by a person upon the redemption of a Special Bond, other than a part of that amount paid as accrued interest, is not assessable income and is not exempt income of the person.

**24 Subsection 23J(1)**

Repeal the subsection, substitute:

- (1) An amount received by a person upon the sale or redemption of eligible securities purchased or otherwise acquired at a discount on or before 30 June 1982, other than any part of that amount received as accrued interest, is not assessable income and is not exempt income of the person.

**25 Subsection 23L(1)**

Repeal the subsection, substitute:

- (1) Income derived by a taxpayer by way of the provision of a fringe benefit within the meaning of the *Fringe Benefits Tax Assessment*

*Act 1986* is not assessable income and is not exempt income of the taxpayer.

- (1A) Income derived by a taxpayer by way of the provision of a benefit (other than a benefit to which paragraph 26(eaa) of this Act applies) that, but for paragraph (g) of the definition of ***fringe benefit*** in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*, would be a fringe benefit within the meaning of that Act is exempt income of the taxpayer.

Note: The heading to section 23L is replaced by the heading “**Certain benefits in the nature of income not assessable**”.

## 26 Subparagraph 47A(7)(b)(i)

Repeal the subparagraph, substitute:

- (i) non-assessable non-exempt exempt income under section 23AJ (in whole or in part); or

## 27 Subsection 59(2AAA)

Repeal the subsection, substitute:

- (2AAA) For the purposes of the application of subsection (2), any amount by which consideration receivable under firearms surrender arrangements exceeds the depreciated value of a surrendered item of property is not assessable income and not exempt income of the taxpayer.

Note: ***Firearms surrender arrangements*** has the meaning given by subsection 6(1).

## 28 Section 90

Insert:

***non-assessable non-exempt income***, in relation to a partnership, means the non-assessable non-exempt income of the partnership calculated as if the partnership were a taxpayer who was a resident.

## 29 At the end of section 92

Add:

- (4) The non-assessable non-exempt income of a partner in a partnership shall include:

- (a) so much of the individual interest of the partner in the non-assessable non-exempt income of the partnership of the year of income as is attributable to a period when the partner was a resident; and
- (b) so much of the individual interest of the partner in the non-assessable non-exempt income of the partnership of the year of income as is attributable to a period when the partner was not a resident and is also attributable to sources in Australia.

### **30 Subsection 95(1)**

Insert:

*non-assessable non-exempt income*, in relation to a trust estate, means the non-assessable non-exempt income of the trust estate calculated as if the trustee were a taxpayer who was a resident.

### **31 At the end of subsection 97(1) (before the note)**

Add:

- ; and (c) the non-assessable non-exempt income of the beneficiary shall include:
  - (i) so much of the individual interest of the beneficiary in the non-assessable non-exempt income of the trust estate as is attributable to a period when the beneficiary was a resident; and
  - (ii) so much of the individual interest of the beneficiary in the non-assessable non-exempt income of the trust estate as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia.

### **32 After subsection 99B(2)**

Insert:

- (2A) An amount that is not included in a beneficiary's assessable income because of paragraph (2)(d) or (e) is not assessable income and is not exempt income.

### **33 Paragraph 102AAZB(a)**

Omit "exempt income", substitute "non-assessable income".

**34 Subsection 109ZC(3)**

Repeal the subsection, substitute:

- (3) An amount that is taken not to be a dividend under subsection (2) is not assessable income and is not exempt income.

**35 Section 128D**

Omit “shall not be included in the assessable income of a person”, substitute “is not assessable income and is not exempt income of a person”.

Note: The heading to section 128D is replaced by the heading “**Certain income not assessable**”.

**36 Paragraph 128TA(1)(a)**

Omit “exempt from income tax”, substitute “non-assessable non-exempt income”.

**37 Paragraph 128TA(2)(a)**

Omit “exempt”, substitute “non-assessable non-exempt income”.

**38 Paragraph 128TA(2)(b)**

Omit “exempt from income tax”, substitute “non-assessable non-exempt income”.

**39 Section 160AFCD**

Repeal the section, substitute:

**160AFCD Foreign tax in respect of amounts that are non-assessable non-exempt income under section 23AI**

- (1) If an attribution account payment made to a resident taxpayer by an attribution account entity in a year of income is, in whole or in part (the *section 23AI non-assessable part*), not assessable income and not exempt income under section 23AI, these provisions have effect:
- (a) the section 23AI non-assessable part is taken, for the purposes of paragraph 160AF(1)(a) but not (d), to be included in the assessable income of the taxpayer of the year of income;

(b) the taxpayer is taken for the purposes of this Division to have paid, and to have been personally liable for, in respect of the section 23AI non-assessable part, in the year of income, an amount of foreign tax calculated using the formula:

$$\frac{EP}{100} \times DT + \frac{AEP}{100} \times UT - AT$$

(2) In this section:

**AEP** or *adjusted exempt percentage* means the percentage that would be the exempt percentage if the attribution account payment were reduced by any part of that payment that is non-assessable non-exempt income under section 23AJ.

**AT** or *attributed tax* means the amount of any attributed tax account debit arising for the attribution account entity in relation to the taxpayer on the making of the attribution account payment, to the extent that the amount of the debit does not exceed the multiple of the adjusted exempt percentage and the underlying tax.

**DT** or *direct tax* means any foreign tax that, disregarding this section and section 160AFC, the taxpayer is taken for the purposes of this Division to have paid, and to have been personally liable for, in respect of the attribution account payment.

**EP** or *exempt percentage* means the percentage of the attribution account payment represented by the section 23AI non-assessable part.

**UT** or *underlying tax* means any foreign tax (other than CFC-type foreign tax) that, disregarding this section, the taxpayer is taken, for the purposes of this Division, to have paid, and to have been personally liable for, under section 160AFC in respect of the attribution account payment.

#### **40 Section 160AFCJ**

Repeal the section, substitute:

**160AFCJ Foreign tax in respect of amounts that are non-assessable non-exempt income under section 23AK**

- (1) If a FIF attribution account payment made to a resident taxpayer by a FIF attribution account entity in a year of income is, in whole or in part (the *section 23AK non-assessable part*), not assessable income and not exempt income under section 23AK, these provisions have effect.
- (2) The section 23AK non-assessable part is taken, for the purposes of paragraph 160AF(1)(a) but not (d), to be included in the taxpayer's assessable income of the year of income.
- (3) The taxpayer is taken for the purposes of this Division to have paid, and to have been personally liable for, in respect of the section 23AK non-assessable part, in the year of income, an amount of foreign tax worked out using the formula:

$$\frac{EP}{100} \times DT + \frac{AEP}{100} \times UT - AT$$

- (4) In this section:

*AEP* or *adjusted exempt percentage* means the percentage that would be the exempt percentage if the FIF attribution account payment were reduced by any part of that payment that is non-assessable non-exempt income under section 23AJ.

*AT* or *attributed tax* means the amount of any FIF attributed tax account debit arising for the FIF attribution account entity in relation to the taxpayer on the making of the FIF attribution account payment, to the extent that the amount of the debit does not exceed the multiple of the adjusted exempt percentage and the underlying tax.

*DT* or *direct tax* means any foreign tax that, disregarding this section and section 160AFC, the taxpayer is taken for the purposes of this Division to have paid, and to have been personally liable for, in respect of the FIF attribution account payment.

*EP* or *exempt percentage* means the percentage of the FIF attribution account payment represented by the section 23AK non-assessable part.

*UT* or *underlying tax* means any foreign tax that, disregarding this section, the taxpayer is taken, for the purposes of this Division, to have paid, and to have been personally liable for, under subparagraph 6AB(3)(a)(ii) or under section 160AFC in respect of the FIF attribution account payment.

**41 Paragraph 160AQT(4)(b)**

Repeal the paragraph, substitute:

(b) paragraphs 320-37(1)(a) and (d) of the *Income Tax Assessment Act 1997*.

**42 Paragraph 160AQU(2)(b)**

Repeal the paragraph, substitute:

(b) paragraphs 320-37(1)(a) and (d) of the *Income Tax Assessment Act 1997*.

**43 Paragraph 160AQWA(1)(b)**

Repeal the paragraph, substitute:

(b) paragraphs 320-37(1)(a) and (d) of the *Income Tax Assessment Act 1997*;

**44 Subparagraph 160AQZB(1)(c)(ii)**

Repeal the subparagraph, substitute:

(ii) would have been included in the assessable income of the holder of the interest if paragraphs 320-37(1)(a) and (d) of the *Income Tax Assessment Act 1997* had not been enacted;

**45 Subparagraph 160AQZC(1)(c)(ii)**

Repeal the subparagraph, substitute:

(ii) would have been included in the assessable income of the holder of the interest if paragraphs 320-37(1)(a) and (d) of the *Income Tax Assessment Act 1997* had not been enacted;

**46 Subsection 170(10AB)**

Omit "Division 22", substitute "section 59-30".

**46A Paragraph 177EA(15)(b)**

Repeal the paragraph, substitute:

- (b) paragraph 320-37(1)(a) of the *Income Tax Assessment Act 1997* (segregated exempt assets) or paragraph 320-37(1)(d) of that Act (income bonds, funeral policies and scholarship plans).

**47 Subparagraph 530(1)(d)(i)**

Omit “exempt from income tax”, substitute “non-assessable non-exempt income”.

**48 At the end of section 271-105 in Schedule 2F**

Add:

- (3) The amount of the reduction is not assessable income and is not exempt income.

Note: The heading to section 271-105 in Schedule 2F is replaced by the heading “**Amounts subject to family trust distribution tax not assessable**”.

***Income Tax Assessment Act 1997***

**49 Section 6-1**

Repeal the section, substitute:

**6-1 Diagram showing relationships among concepts in this Division**



- (1) Assessable income consists of ordinary income and statutory income.
- (2) Some ordinary income, and some statutory income, is exempt income.
- (3) Exempt income is not assessable income.
- (4) Some ordinary income, and some statutory income, is neither assessable income nor exempt income.

For the effect of the GST in working out assessable income, see Division 17.

- (5) An amount of ordinary income or statutory income can have only one status (that is, assessable income, exempt income or non-assessable non-exempt income) in the hands of a particular entity.

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

**50 Subsection 6-15(2) (note)**

Repeal the note, substitute:

### Schedule 3 Non-assessable non-exempt income

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Note: If an amount is exempt income, there are other consequences besides it being exempt from income tax. For example:

- the amount may be taken into account in working out the amount of a tax loss (see section 36-10);
- you cannot deduct as a general deduction a loss or outgoing incurred in deriving the amount (see Division 8);
- capital gains and losses on assets used solely to produce exempt income are disregarded (see section 118-12).

#### 51 At the end of section 6-15

Add:

- (3) If an amount is \*non-assessable non-exempt income, it is not *assessable income*.

Note 1: You cannot deduct as a general deduction a loss or outgoing incurred in deriving an amount of non-assessable non-exempt income (see Division 8).

Note 2: Capital gains and losses on assets used to produce *some* types of non-assessable non-exempt income are disregarded (see section 118-12).

#### 52 Subsection 6-20(1)

Omit “Commonwealth law”, substitute “\*Commonwealth law”.

#### 53 Subsection 6-20(2) (note)

Repeal the note.

#### 54 Subsection 6-20(3)

Omit “Commonwealth law”, substitute “\*Commonwealth law”.

#### 55 At the end of section 6-20

Add:

- (4) If an amount of \*ordinary income or \*statutory income is \*non-assessable non-exempt income, it is not *exempt income*.

Note: An amount of non-assessable non-exempt income is not taken into account in working out the amount of a tax loss.

#### 56 After section 6-20

Insert:

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**6-23 Non-assessable non-exempt income**

An amount of \*ordinary income or \*statutory income is ***non-assessable non-exempt income*** if a provision of this Act or of another \*Commonwealth law states that it is not assessable income and is not \*exempt income.

Note: Capital gains and losses on assets used to produce *some* types of non-assessable non-exempt income are disregarded (see section 118-12).

For a summary list of provisions about non-assessable non-exempt income, see Subdivision 11-B.

**57 Paragraph 8-1(2)(c)**

After “\*exempt income”, insert “or your \*non-assessable non-exempt income”.

**58 Section 10-5 (table item headed “repayments”)**

Repeal the item.

**59 Division 11 (heading)**

Repeal the heading, substitute:

**Division 11—Particular kinds of non-assessable income**

**Table of Subdivisions**

11-A	Lists of classes of exempt income
11-B	Particular kinds of non-assessable non-exempt income

**60 Before section 11-1A**

Insert:

**Subdivision 11-A—Lists of classes of exempt income**

**Table of sections**

11-1A	Effect of this Subdivision
11-1	Overview
11-5	Entities that are exempt, no matter what kind of ordinary or statutory income they have

- 11-10 Ordinary or statutory income which is exempt, no matter whose it is
- 11-15 Ordinary or statutory income which is exempt only if it is derived by certain entities

**61 Section 11-1A**

Repeal the section, substitute:

**11-1A Effect of this Subdivision**

This Subdivision is a \*Guide.

**62 Section 11-10 (table item dealing with Commonwealth places windfall tax)**

Repeal the item.

**63 Section 11-10 (table item dealing with foreign aspects of income taxation)**

Repeal the item, substitute:

**foreign aspects of income taxation**

Australian-American Education Foundation, grant from ... 51-10

**64 Section 11-10 (table item dealing with franchise fees windfall tax)**

Repeal the item.

**65 Section 11-10 (table item dealing with non-cash benefits)**

Repeal the item, substitute:

**non-cash benefits**

business benefit ..... 23L(2)  
exempt fringe benefit..... 23L(1A)

**66 Section 11-15 (table item dealing with foreign aspects of income taxation)**

Omit:

dividend from a foreign country, non-portfolio ..... 23AJ

**67 Section 11-15 (table item dealing with foreign aspects of income taxation)**

Omit:

foreign branch profits by an Australian company..... **23AH**

**68 Section 11-15 (table item dealing with mining)**

Repeal the item.

**69 Section 11-15 (table item dealing with social security or like payments)**

Omit:

bonus payments made to certain older Australians..... Subdivision 52-E

**70 At the end of Division 11**

Add:

**Subdivision 11-B—Particular kinds of non-assessable non-exempt income**

**Table of sections**

11-50	Effect of this Subdivision
11-55	List of non-assessable non-exempt income provisions

**11-50 Effect of this Subdivision**

This Subdivision is a \*Guide.

**11-55 List of non-assessable non-exempt income provisions**

The provisions set out in the list make amounts non-assessable non-exempt income.

Provisions of the *Income Tax Assessment Act 1997* are identified in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

### Schedule 3 Non-assessable non-exempt income

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<b>alienated personal services income</b>	
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entitlements to a share of net income that is personal services income already assessable to an individual .....	86-35(2)
payments by personal services entity or associate of personal services income already assessable to an individual .....	86-35(1)
personal services entity, amounts of personal services income assessable to an individual .....	86-30
<b>bonds</b>	
see <i>securities</i>	
<b>dividends</b>	
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later dividend set off against amount taken to be dividend.	109ZC(3)
<b>firearms surrender arrangements</b>	
compensation under.....	59-10
depreciated value, consideration exceeds .....	59(2AAA)
<b>foreign aspects of income taxation</b>	
attributed controlled foreign company income .....	23AI
attributed foreign investment fund income .....	23AK
dividend from a foreign country, non-portfolio.....	23AJ
branch profits of Australian companies .....	23AH
withholding tax, dividend royalty or interest subject to .....	128D
<b>GST</b>	
GST payable on a taxable supply .....	17-5(a)
increasing adjustments.....	17-5(b) and (c)
<b>life insurance companies</b> .....	Subdivision 3 20-B
<b>mining</b>	
withholding tax, payments to Aboriginals and distributing bodies subject to.....	59-15
<b>non-cash benefits</b>	
fringe benefits.....	23L(1)
<b>notional sale and loan</b>	
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luxury car leases, lease payments that the lessor receives or is entitled to receive .....	42A-40 in Schedule 2E

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<b>offshore banking units</b>	
assessable OB income other than eligible fraction .....	<b>121EG</b>
<b>related entities</b>	
amounts from, where deduction reduced for .....	26-35(4)
<b>repayable amounts</b>	
previously assessable amounts .....	59-30
<b>securities</b>	
securities acquired at a discount on or before 30 June 1982, amount received on sale or redemption of .....	<b>23J</b>
special bond, amount received on redemption of .....	<b>23E</b>
<b>small business assets</b>	
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<b>social security or like payments</b>	
older Australians, bonus payments made to .....	59-5
<b>tax loss transfers</b>	
consideration received by loss company from income company, generally .....	170-25(1)
consideration received by loss company from income company, net capital loss .....	170-125(1)
<b>trading stock</b>	
disposal outside ordinary course of business, amounts received upon .....	70-90(2)
<b>trusts</b>	
attributable income, amounts representing .....	<b>99B(2A)</b>
family trust distribution tax, amounts subject to .....	<b>271-105(3) in Schedule 2F</b>
<b>windfall amounts</b>	
business franchise fees, refund of when invalid .....	59-20
State tax on Commonwealth place, refund of when invalid	59-25

**70A Paragraph 15-60(3)(b)**

Omit “\*exempt income of the company under paragraph 320-35(1)(f)”, substitute “\*non-assessable non-exempt income of the company under paragraph 320-37(1)(d)”.

**71 Subparagraph 17-5(c)(ii)**

Omit “an \*assessable recoupment”, substitute “a \*recoupment that is included in assessable income”.

**72 Section 20-160 (link note)**

Repeal the link note, substitute:

*[The next Division is Division 25.]*

**73 Division 22**

Repeal the Division.

**74 Section 25-90 (heading)**

Repeal the heading, substitute:

**25-90 Deduction relating to foreign non-assessable non-exempt income**

**75 Paragraph 25-90(b)**

Omit “exempt income”, substitute “\*non-assessable non-exempt income”.

**76 Subsection 36-20(1)**

Omit “(except \*excluded exempt income)”.

**77 Paragraphs 36-20(2)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) your \*exempt income \*derived from sources in Australia; and
- (b) your exempt income to which section 26AG (Certain film proceeds included in assessable income) of the *Income Tax Assessment Act 1936* applies;

**78 Subsections 36-20(3), (3A) and (4)**

Repeal the subsections.

**79 Subsection 40-100(4)**

After “\*exempt income”, insert “or \*non-assessable non-exempt income”.

**80 Subsection 40-105(1)**

After “\*exempt income”, insert “or \*non-assessable non-exempt income”.

**81 Part 2-15 (heading)**

Repeal the heading, substitute:

**Part 2-15—Non-assessable income**

**82 Section 51-15 (link note)**

Omit “51-25”, substitute “51-30”.

**83 Section 51-25**

Repeal the section.

**84 Section 51-45**

Repeal the section.

**85 Section 51-48**

Repeal the section.

**86 Section 51-49**

Repeal the section.

**87 Subdivision 52-E**

Repeal the Subdivision.

**88 Section 58-90 (link note)**

Repeal the link note.

**89 At the end of Part 2-15**

Add:

## **Division 59—Particular amounts of non-assessable non-exempt income**

### **Guide to Division 59**

#### **59-1 What this Division is about**

This Division details particular amounts that are non-assessable non-exempt income.

#### **Table of sections**

##### **Operative provisions**

59-5	Bonus payments made to certain older Australians
59-10	Compensation under firearms surrender arrangements
59-15	Mining payments
59-20	Taxable amounts relating to franchise fees windfall tax
59-25	Taxable amounts relating to Commonwealth places windfall tax

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

#### **Operative provisions**

##### **59-5 Bonus payments made to certain older Australians**

A payment made to you under the *A New Tax System (Bonuses for Older Australians) Act 1999* is not assessable income and is not \*exempt income.

##### **59-10 Compensation under firearms surrender arrangements**

A payment made to you by way of compensation under \*firearms surrender arrangements for any loss of business is not assessable income and is not \*exempt income.

### **59-15 Mining payments**

- (1) These are not assessable income and are not \*exempt income:
  - (a) a \*mining payment made to a \*distributing body;
  - (b) a mining payment made to one or more \*Aboriginals, or applied for their benefit.
  
- (2) A payment:
  - (a) made to a \*distributing body; or
  - (b) made to one or more \*Aboriginals, or applied for their benefit;

is not assessable income and is not \*exempt income if the payment is made by a \*distributing body out of a \*mining payment that it has received.
  
- (3) A payment made to a \*distributing body by another distributing body, out of a \*mining payment received by the other distributing body, is taken to be a mining payment for the purposes of:
  - (a) any further applications of subsection (2); and
  - (b) any further applications of this subsection.
  
- (4) Subsection (2) does not apply to a payment by a \*distributing body for the purposes of meeting its administrative costs.
  
- (5) This section does not apply to an amount paid to or applied for the benefit of a person if it is remuneration or consideration for goods or services provided by that person.

### **59-20 Taxable amounts relating to franchise fees windfall tax**

Taxable amounts on which tax is imposed by the *Franchise Fees Windfall Tax (Imposition) Act 1997* are not assessable income and are not \*exempt income.

### **59-25 Taxable amounts relating to Commonwealth places windfall tax**

Taxable amounts on which tax is imposed by the *Commonwealth Places Windfall Tax (Imposition) Act 1998* are not assessable income and are not \*exempt income.

**90 At the end of Division 59**

Add:

**59-30 Amounts you must repay**

- (1) An amount you receive is not assessable income and is not \*exempt income for an income year if:
  - (a) you must repay it; and
  - (b) you repay it in a later income year; and
  - (c) you cannot deduct the repayment for any income year.
- (2) It does not matter if:
  - (a) you received the amount as part of a larger amount; or
  - (b) the obligation to repay existed when you received the amount or it came into existence later.
- (3) This section does not apply to an amount you must repay because you received a lump sum as compensation or damages for a wrong or injury you suffered in your occupation.

*[The next Division is Division 61.]*

**91 Section 65-30**

Omit “0.34”, substitute “0.3”.

**92 Subsection 65-35(3)**

Omit “\*exempt income”, substitute “\*net exempt income”.

**93 Subsection 65-35(3)**

Omit “reducing exempt income”, substitute “reducing net exempt income”.

**94 Subsection 65-35(3)**

Omit “34 cents”, substitute “30 cents”.

**95 Subsection 65-35(3)**

Omit “the exempt income”, substitute “the net exempt income”.

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**96 Paragraphs 104-71(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) \*non-assessable non-exempt income; or

**97 Paragraph 104-185(1)(e)**

After “\*exempt income”, insert “or \*non-assessable non-exempt income”.

**98 Section 118-12**

Repeal the section, substitute:

**118-12 Assets used to produce exempt income etc.**

- (1) A \*capital gain or \*capital loss you make from a \*CGT asset that you used solely to produce your \*exempt income or \*non-assessable non-exempt income is disregarded.
- (2) However, the exemption does not apply if the asset was used to gain or produce an amount that is \*non-assessable non-exempt income because of:
- (a) any of these provisions of this Act:
- (i) section 59-15 (mining payments);
  - (ii) subsection 70-90(2) (disposing of trading stock outside the ordinary course of business);
  - (iii) section 86-30 (income of a personal services entity);
  - (iv) subsection 86-35(1) (payment by a personal services entity);
  - (v) subsection 86-35(2) (share of personal services entity’s net income);
  - (vi) section 240-40 (treatment of arrangement payments); or
- (b) any of these provisions of the *Income Tax Assessment Act 1936*:
- (i) section 23AH (foreign branch profits of Australian companies);
  - (ii) section 23AI (amounts paid out of attributed income);
  - (iii) section 23AJ (foreign non-portfolio dividends);
  - (iv) section 23AK (attributed foreign investment fund income);

- (v) subsection 23L(1) (fringe benefits);
- (vi) subsection 99B(2A) (attributed trust income);
- (vii) section 128D (dividends, royalties and interest subject to withholding tax);
- (viii) section 42A-40 in Schedule 2E (luxury car lease payments);
- (ix) subsection 271-105(3) in Schedule 2F (amounts subject to family trust distribution tax).

Note: These provisions make amounts non-assessable non-exempt income to prevent them being double taxed rather than to remove them entirely from the taxation system. Therefore, the policy reason for disregarding gains and losses does not apply to assets used to produce those amounts.

### **99 Paragraphs 118-20(4)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) an amount of your \*ordinary income or \*statutory income from the event as being \*non-assessable non-exempt income; or
- (b) if you are a partner, your share of the ordinary income or \*statutory income of the partnership from the event (calculated according to your entitlement to share in the partnership net income or loss) as being non-assessable non-exempt income of the partnership.

### **100 Subsection 118-20(6)**

Omit “\*exempt income”, substitute “\*non-assessable non-exempt income”.

### **101 Subsection 152-110(2)**

Omit “Any income”, substitute “Any \*ordinary income or \*statutory income”.

### **102 Subsection 207-15(3) (note 2)**

After “exempt income”, insert “or non-assessable non-exempt income”.

### **103 Section 207-30 (note 2)**

After “exempt income”, insert “or non-assessable non-exempt income”.

**104 Section 207-110 (heading)**

Repeal the heading, substitute:

**207-110 Effect of non-assessable income on gross up and tax offset**

**105 Paragraph 207-110(1)(c)**

After “\*exempt income”, insert “or \*non-assessable non-exempt income”.

**106 Paragraph 207-110(2)(c)**

After “\*exempt income”, insert “or \*non-assessable non-exempt income”.

**107 Paragraph 207-110(3)(c)**

After “\*exempt income”, insert “or \*non-assessable non-exempt income”.

**108 Paragraph 207-110(4)(c)**

After “\*exempt income”, insert “or \*non-assessable non-exempt income”.

**109 Paragraph 207-120(1)(b)**

Repeal the paragraph, substitute:

(b) the distribution is:

- (i) \*exempt income of the recipient under section 282B, 283 or 297B of the *Income Tax Assessment Act 1936* (certain income derived by an eligible entity within the meaning of Part IX of that Act); or
- (ii) \*non-assessable non-exempt income of the recipient under paragraph 320-37(1)(a) (segregated exempt assets) or paragraph 320-37(1)(d) (certain amounts received by a friendly society) of this Act;

**110 Paragraph 207-120(2)(b)**

Repeal the paragraph, substitute:

(b) the distribution is:

- (i) \*exempt income of the entity under section 282B, 283 or 297B of the *Income Tax Assessment Act 1936*

(certain income derived by an eligible entity within the meaning of Part IX of that Act); or

- (ii) \*non-assessable non-exempt income of the entity under paragraph 320-37(1)(a) (segregated exempt assets) or paragraph 320-37(1)(d) (certain amounts received by a friendly society) of this Act;

**111 Subsection 208-5(1)**

After “exempt income”, insert “or non-assessable non-exempt income”.

**112 Paragraph 208-5(2)(b)**

After “exempt income”, insert “or non-assessable non-exempt income”.

**113 Paragraph 208-40(1)(b)**

After “\*exempt income”, insert “or \*non-assessable non-exempt income”.

**114 Paragraph 208-40(2)(b)**

After “\*exempt income”, insert “or \*non-assessable non-exempt income”.

**115 Paragraph 208-40(3)(b)**

After “\*exempt income”, insert “or \*non-assessable non-exempt income”.

**116 Paragraph 208-40(4)(b)**

After “\*exempt income”, insert “or \*non-assessable non-exempt income”.

**117 Section 208-115 (table item 2)**

Omit “the distribution is not wholly \*exempt income of the entity”, substitute “some part of the distribution is neither \*exempt income nor \*non-assessable non-exempt income of the entity”.

**118 Section 208-115 (table item 3)**

Omit “the distribution is not wholly \*exempt income of the entity”, substitute “some part of the distribution is neither \*exempt income nor \*non-assessable non-exempt income of the entity”.

**119 Section 208-130 (table item 2)**

Omit “the distribution is not wholly \*exempt income of the entity”, substitute “some part of the distribution is neither \*exempt income nor \*non-assessable non-exempt income of the entity”.

**120 Section 208-130 (table item 3)**

Omit “the distribution is not wholly \*exempt income of the entity”, substitute “some part of the distribution is neither \*exempt income nor \*non-assessable non-exempt income of the entity”.

**121 Section 208-130 (table item 5)**

Omit “the distribution is not wholly \*exempt income of the recipient”, substitute “some part of the distribution is neither \*exempt income nor \*non-assessable non-exempt income of the recipient”.

**122 Section 208-130 (table item 6)**

Omit “the distribution is not wholly \*exempt income of the recipient”, substitute “some part of the distribution is neither \*exempt income nor \*non-assessable non-exempt income of the recipient”.

**123 Section 320-1**

After “amounts of exempt income”, insert “and non-assessable non-exempt income”.

**124 Paragraph 320-5(2)(a)**

Omit “are exempt income”, substitute “are \*exempt income or \*non-assessable non-exempt income”.

**125 Section 320-10**

After “exempt income”, insert “or non-assessable non-exempt income”.

**126 Section 320-35**

Repeal the section, substitute:

**320-35 Exempt income**

These amounts derived by a \*life insurance company are exempt from income tax:

- (a) amounts of \*ordinary income and \*statutory income accrued before 1 July 1988 that were derived from assets that have become \*virtual PST assets;
- (b) if the company is an \*RSA provider—any amounts that, except for the operation of subsections 320-155(3) and (4), would have been taken into account under subsection 320-155(1) in calculating the \*RSA component of the \*complying superannuation class of the company's taxable income.

**320-37 Non-assessable non-exempt income**

- (1) These amounts derived by a \*life insurance company are not assessable income and are not \*exempt income:
  - (a) amounts of ordinary income and statutory income derived from \*segregated exempt assets, being income that relates to the period during which the assets were segregated exempt assets;
  - (b) amounts of ordinary income and statutory income derived from the \*disposal of units in a \*pooled superannuation trust;
  - (c) if an \*Australian/overseas fund or an \*overseas fund established by the company derived \*foreign establishment amounts—the non-resident proportion of the foreign establishment amounts;
  - (d) if the company is a \*friendly society:
    - (i) amounts derived before 1 July 2001 that are exempt from income tax under section 50-1; and
    - (ii) amounts derived on or after 1 July 2001 but before 1 January 2003, that are attributable to \*income bonds or \*funeral policies; and
    - (iii) amounts derived on or after 1 July 2001 but before 1 January 2003, that are attributable to \*scholarship plans and would have been exempt from income tax under section 50-1 if they had been received before 1 July 2001; and
    - (iv) amounts derived on or after 1 January 2003 that are attributable to income bonds or funeral policies issued before 1 January 2003; and

(v) amounts derived on or after 1 January 2003 that are attributable to scholarship plans issued before 1 January 2003 and that would have been exempt from income tax if they had been received before 1 July 2001.

(2) For the purposes of paragraph (1)(c), the *non-resident proportion* of the \*foreign establishment amounts is the amount worked out using the formula:

$$\text{Foreign establishment amounts} \times \frac{\text{Non - resident foreign establishment policy liabilities}}{\text{All foreign establishment policy liabilities}}$$

where:

*all foreign establishment policy liabilities* means the total of the policy liabilities (as defined in the \*Valuation Standard), calculated by an \*actuary, for all \*life insurance policies included in the class of \*life insurance business to which the company's \*Australian/overseas fund or \*overseas fund relates that were issued by the permanent establishment of the company in the foreign country.

*non-resident foreign establishment policy liabilities* means the total of the company's policy liabilities (as defined in the Valuation Standard), calculated by an actuary, for \*non-resident life insurance policies.

### **127 Subsection 320-40(1)**

Omit "exempt from income tax", substitute "not assessable income and are not \*exempt income".

### **128 Subsection 320-40(8)**

Omit "exempt from income tax", substitute "not assessable income and is not \*exempt income".

### **128A Paragraph 320-112(3)(b)**

Omit "\*exempt income of the company under paragraph 320-35(1)(f)", substitute "\*non-assessable non-exempt income of the company under paragraph 320-37(1)(d)".

**129 Subsection 995-1(1) (definition of excluded exempt income)**

Repeal the definition.

**130 Subsection 995-1(1) (definition of exempt income subject to withholding tax)**

Repeal the definition.

**131 Subsection 995-1(1)**

Insert:

*non-assessable non-exempt income* has the meaning given by section 6-23.

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

**132 Section 20-115 (link note)**

Omit “*Division 22*”, substitute “*Division 25*”.

**133 Division 22**

Repeal the Division.

***Taxation Administration Act 1953***

**134 After paragraph 360-65(1)(d) in Schedule 1**

Insert:

(da) your \*non-assessable non-exempt income (if any) for the inquiry period consisted only of one or more items covered by section 365-77; and

**135 Paragraph 360-75(a) in Schedule 1**

Repeal the paragraph, substitute:

(a) subsection 23L(1A) of the *Income Tax Assessment Act 1936* (about exempt fringe benefits); or

**136 Section 360-75 in Schedule 1 (table item 45)**

Repeal the item.

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**137 After section 360-75 in Schedule 1**

Insert:

**360-77 Basic categories of non-assessable non-exempt income**

This section covers \*ordinary income, or \*statutory income, to the extent that it is \*non-assessable non-exempt income because of:

- (a) subsection 23L(1) of the *Income Tax Assessment Act 1936* (about fringe benefits); or
- (b) section 59-5 of the *Income Tax Assessment Act 1997* (about bonus payments made to certain older Australians).

**138 After paragraph 360-100(1)(e) in Schedule 1**

Insert:

- (ea) he or she is satisfied that your \*non-assessable non-exempt income (if any) for the inquiry period consisted only of one or more items covered by section 365-77; and

**139 Paragraph 360-140(2)(a) in Schedule 1**

Omit “or \*exempt income”, substitute “, \*exempt income or \*non-assessable non-exempt income”.

**140 Application**

- (1) Subject to this item, the amendments made by this Schedule apply to assessments for the 2003-04 income year and later income years.
- (2) The amendment made by item 71 applies to things done on or after 1 July 2000.
- (3) The amendments made by items 92, 93 and 95 apply to assessments for the 1997-98 income year and later income years.
- (4) The amendments made by items 91 and 94 apply to assessments for the 2000-01 income year and later income years.
- (5) The amendments made by items 41, 42, 43, 44, 45, 126, 127 and 128 apply to amounts derived on or after 1 July 2000.
- (6) The amendments made by items 109 and 110 apply to events that occur on or after 1 July 2002.

- (7) The amendment made by item 46A applies to distributions that are made or that flow indirectly after 30 June 2002.
- (8) The amendments made by items 70A and 128A apply to an assessment for the income year including 1 January 2003 or a later income year.

**141 Transitional**

- (1) Subparagraphs 207-120(1)(b)(ii) and 207-120(2)(b)(ii) of the *Income Tax Assessment Act 1997* have effect during the period starting on 1 July 2002 and ending just before the start of the 2003-04 income year as if references in those subparagraphs to an amount being non-assessable non-exempt income were references to the amount being neither assessable income nor exempt income.
- (2) Paragraphs 15-60(3)(b) and 320-112(3)(b) of the *Income Tax Assessment Act 1997* have effect during any period starting before the start of the 2003-04 income year as if references in those paragraphs to an amount being non-assessable non-exempt income were references to the amount being neither assessable income nor exempt income.

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## Schedule 4—Refundable tax offset rules

### *Income Tax Assessment Act 1997*

#### **1 Subsection 65-25(2) (table item 1A)**

Repeal the item, substitute:

1A            \*tax offsets that are            Division 67  
                 subject to the refundable  
                 tax offset rules

#### **2 Subsections 67-25(1) to (1C)**

Repeal the subsections, substitute:

##### *Franked distributions*

- (1) \*Tax offsets available under Division 207 (which sets out the effects of receiving a \*franked distribution) or Subdivision 210-H (which sets out the effects of receiving a \*distribution \*franked with a venture capital credit) are subject to the refundable tax offset rules, unless otherwise stated in this section.
- (1A) Where the trustee of a \*non-complying superannuation fund or a \*non-complying ADF is entitled to a \*tax offset under Division 207 because a \*franked distribution is made to, or \*flows indirectly to, the trustee, the tax offset is not subject to the refundable tax offset rules.
- (1B) Where:
- (a) a trustee is entitled to a \*tax offset under Division 207 because a \*franked distribution \*flows indirectly to the trustee in circumstances described in subsection 207-35(4) (which deals with trustees who are liable to be assessed on the net income of a trust under section 98, 99 or 99A of the *Income Tax Assessment Act 1936*); and
  - (b) the trustee is liable to be assessed under section 98 or 99A of the *Income Tax Assessment Act 1936* on a share of the net income of the trust estate that is, in whole or in part, attributable to the distribution;

the tax offset is not subject to the refundable tax offset rules.

- (1C) Where a \*corporate tax entity is entitled to a \*tax offset under Division 207 because a \*franked distribution is made to the entity, the tax offset is not subject to the refundable tax offset rules unless:
- (a) the entity is an \*exempt institution that is eligible for a refund; or
  - (b) the entity is a \*life insurance company and the \*membership interest on which the distribution was made was not held by the company on behalf of its shareholders at any time during the period:
    - (i) starting at the beginning of the income year of the company in which the distribution is made; and
    - (ii) ending when the distribution is made.
- (1D) Where a \*corporate tax entity is entitled to a \*tax offset under Division 207 because a \*franked distribution \*flows indirectly to the entity, the tax offset is not subject to the refundable tax offset rules unless:
- (a) the entity is an \*exempt institution that is eligible for a refund; or
  - (b) the entity is a \*life insurance company and the company's interest in the \*membership interest on which the distribution was made was not held by the company on behalf of its shareholders at any time during the period:
    - (i) starting at the beginning of the income year of the company in which the distribution is made; and
    - (ii) ending when the distribution is made.
- (1E) Where a \*corporate tax entity is entitled to a \*tax offset under Subdivision 210-H because a \*distribution \*franked with a venture capital credit is made to the entity, the tax offset is not subject to the refundable tax offset rules unless:
- (a) the entity is a \*life insurance company; and
  - (b) the \*membership interest on which the distribution was made was not held by the company on behalf of its shareholders at any time during the period:
    - (i) starting at the beginning of the income year of the company in which the distribution is made; and
    - (ii) ending when the distribution is made.
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### **3 Subsection 67-25(2)**

After “under Subdivision 61-H”, insert “, except those arising under subsection 61-335(4),”.

### **4 At the end of subsection 67-25(2)**

Add:

Note: Subsection 61-335(4) deals with tax offsets for trustees who are assessed and liable to pay tax under section 98 of the *Income Tax Assessment Act 1936*.

### **5 Application**

- (1) The amendment made by item 1 of this Schedule applies to tax offsets arising because of events that occur on or after 1 July 2000.
- (2) The amendment made by item 2 of this Schedule applies to tax offsets arising because of events that occur on or after 1 July 2002.
- (3) The amendments made by items 3 and 4 of this Schedule apply to tax offsets arising because of premiums, or amounts in respect of premiums, paid on or after 1 July 2002.

## Schedule 5—Foreign resident etc. withholding

### *Taxation Administration Act 1953*

#### **1 Subsection 10-5(1) in Schedule 1 (after table item 22A)**

Insert:

22B	A payment (of a kind set out in the regulations) to a foreign resident	12-315
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22C	A payment (of a kind set out in the regulations) received for a foreign resident	12-317
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#### **2 Subsection 12-1(2) in Schedule 1**

Omit “or 12-120”, substitute “, 12-120, 12-315 or 12-317”.

#### **3 Subsection 12-1(3) in Schedule 1**

Omit “or 12-120”, substitute “, 12-120, 12-315 or 12-317”.

#### **4 Subsection 12-5(2) in Schedule 1**

Omit “the specific rules in the table”, substitute “the specific rules in the table, and the specific rule in subsection (3)”.

#### **5 At the end of section 12-5 in Schedule 1 (before the note)**

Add:

- (3) Apply a provision in this Division (apart from a provision in Subdivision 12-FB) that covers a payment in priority to a provision in Subdivision 12-FB that also covers the payment.

#### **6 After Subdivision 12-FA in Schedule 1**

Insert:

### **Subdivision 12-FB—Payments to foreign residents etc.**

#### **Table of sections**

12-315	Payment to foreign resident etc.
12-317	Payment received for foreign resident etc.

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12-319 Exemptions from withholding obligations under this Subdivision

**12-315 Payment to foreign resident etc.**

- (1) An entity (the *payer*) that carries on an \*enterprise must withhold an amount from a payment it makes to another entity, or to other entities jointly, in the course or furtherance of the enterprise if:
- (a) the entity receiving the payment, or any of the entities receiving the payment, is an entity covered by subsection (2); and
  - (b) the payment is of a kind set out in the regulations; and
  - (c) the payment is not:
    - (i) a \*dividend of a company; or
    - (ii) interest (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936*); or
    - (iii) a \*royalty; or
    - (iv) a departing Australia superannuation payment (within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*); or
    - (v) a payment worked out wholly or partly by reference to the value or quantity of \*natural resources produced or recovered in Australia; or
    - (vi) a \*mining payment; and
  - (d) the entity receiving the payment is not covered by an exemption in force under subsection 12-319(1), or at least one of the entities receiving the payment is not covered by an exemption in force under that subsection.
- (2) An entity is covered by this subsection if any of the following conditions is satisfied:
- (a) the entity is a foreign resident;
  - (b) the payer believes, or has reasonable grounds to believe, that the entity is a foreign resident;
  - (c) the payer has no reasonable grounds to believe that the entity is an Australian resident, and either:
    - (i) the entity has an address outside Australia (according to any record that is in the payer's possession, or is kept or maintained on the payer's behalf, about the transaction to which the payment relates); or

- (ii) the payer is authorised to make the payment at a place outside Australia (whether to the entity or to anyone else);
  - (d) the entity has a connection outside Australia of a kind set out in the regulations.
- (3) Before the Governor-General makes a regulation for the purposes of paragraph (1)(b), the Minister must be satisfied that each payment set out in the regulation is a payment of a kind that could reasonably be related to assessable income of foreign residents.

### **12-317 Payment received for foreign resident etc.**

- (1) An entity (the *intermediary*) that receives a payment meeting the requirements set out in paragraphs 12-315(1)(b) and (c) must withhold an amount from the payment if:
  - (a) the intermediary is a person in Australia or an \*Australian government agency; and
  - (b) another entity (the *likely foreign recipient*) is or becomes entitled:
    - (i) to receive the payment or part of it from the intermediary, or to receive the amount of the payment or of part of it from the intermediary; or
    - (ii) to have the intermediary credit to the likely foreign recipient, or otherwise deal with on the likely foreign recipient's behalf or as the likely foreign recipient directs, the payment or part of it, or the amount of the payment or of part of it; and
  - (c) the likely foreign recipient is covered by subsection (3); and
  - (d) the likely foreign recipient is not covered by an exemption in force under subsection 12-319(1).
- (2) The intermediary must withhold the amount:
  - (a) if the likely foreign recipient is so entitled when the intermediary receives the payment—just after the intermediary receives the payment; or
  - (b) if the likely foreign recipient becomes so entitled after the intermediary receives the payment—just after the likely foreign recipient becomes so entitled.

- (3) The likely foreign recipient is covered by this subsection if any of the following conditions is satisfied:
- (a) the likely foreign recipient is a foreign resident;
  - (b) the intermediary believes, or has reasonable grounds to believe, that the likely foreign recipient is a foreign resident;
  - (c) the intermediary has no reasonable grounds to believe that the likely foreign recipient is an Australian resident, and either:
    - (i) the likely foreign recipient has an address outside Australia (according to any record that is in the intermediary's possession, or is kept or maintained on the intermediary's behalf); or
    - (ii) the intermediary is authorised to forward the payment to a place outside Australia (whether to the likely foreign recipient or to anyone else);
  - (d) the likely foreign recipient has a connection outside Australia of a kind set out in the regulations.

**12-319 Exemptions from withholding obligations under this Subdivision**

- (1) The Commissioner may grant an entity an exemption in writing for the purposes of paragraphs 12-315(1)(d) and 12-317(1)(d) if the Commissioner is satisfied that:
- (a) the entity has an established history of compliance with its obligations under \*taxation laws; and
  - (b) the entity is likely to continue to comply with those obligations in the future.
- (2) The exemption is in force during the period:
- (a) beginning when the Commissioner grants the exemption; and
  - (b) ending at the time specified in the exemption.
- (3) Without limiting the matters to which the Commissioner may have regard in deciding whether to grant an entity an exemption, the Commissioner may have regard to the following:
- (a) whether the entity is or was liable to pay an instalment under Division 45 at any time in;

- (i) the income year in which the exemption is proposed to be granted; and
- (ii) the previous 2 income years;
- (b) the amount (if any) of the entity's \*tax-related liabilities that are currently due and payable;
- (c) the extent to which the entity and its \*associates (if any) have complied with their obligations under \*taxation laws during:
  - (i) the income year in which the exemption is proposed to be granted; and
  - (ii) the previous 2 income years.
- (4) The Commissioner must give a copy of the exemption to the entity to which it relates.
- (5) A failure to comply with subsection (4) does not affect the validity of the exemption.

**7 Subsection 15-10(2) in Schedule 1**

After "12-FA", insert ", 12-FB".

**8 Subsection 16-25(1) in Schedule 1 (note 2)**

Omit "and 16-40", substitute ", 16-40 and 16-43".

**9 Subsection 16-25(2) in Schedule 1 (note 2)**

Omit "and 16-40", substitute ", 16-40 and 16-43".

**10 At the end of subsection 16-35(4) in Schedule 1**

Add "or by Subdivision 12-FB (about payments to foreign residents)".

**11 Subsection 16-40(2) in Schedule 1**

Omit "entity", substitute "\*exempt Australian government agency".

**12 Subsection 16-40(2) in Schedule 1 (note)**

Omit "entity", substitute "exempt Australian government agency".

**13 After section 16-40 in Schedule 1**

Insert:

**16-43 Failure to withhold: civil penalty for exempt Australian government agency in relation to payment to foreign resident etc.**

- (1) An \*exempt Australian government agency that:
- (a) fails to withhold an amount as required by Division 12 from a \*withholding payment covered by Subdivision 12-FB (about payments to foreign residents); or
  - (b) fails to pay to the Commissioner an amount as required by Division 14 in respect of a withholding payment covered by that Subdivision;

is liable to pay to the Commissioner a penalty (the *penalty amount*) equal to that amount.

- (2) The penalty amount is due at the time when the \*exempt Australian government agency would have had to pay to the Commissioner the \*amount required to be withheld.

Note: Division 298 in this Schedule contains machinery provisions for civil penalties.

**14 Subsection 16-45(1) in Schedule 1**

Omit “or 16-40”, substitute “, 16-40 or 16-43”.

**15 Section 16-45 in Schedule 1 (heading)**

Repeal the heading, substitute:

**16-45 Remission of penalty under section 16-30, 16-40 or 16-43**

**16 Section 16-50 in Schedule 1**

Omit “or 16-40”, substitute “, 16-40 or 16-43”.

**17 Paragraph 16-153(1)(a) in Schedule 1**

After “Subdivision 12-FA”, insert “, section 12-315”.

**18 Paragraph 16-153(1)(b) in Schedule 1**

After “Subdivision 12-FA”, insert “, section 12-315”.

**19 Paragraph 16-153(1)(c) in Schedule 1**

Omit “or 12-285”, substitute “, 12-285 or 12-317”.

**20 Paragraph 16-153(1)(d) in Schedule 1**

Omit “or 12-285”, substitute “, 12-285 or 12-317”.

**21 Paragraph 16-155(1)(a) in Schedule 1**

Omit “or 12-285”, substitute “, 12-285 or 12-317”.

**22 After paragraph 16-155(1)(b) in Schedule 1**

Insert:

- (baa) during the year the payer received one or more withholding payments covered by section 12-317 and, in relation to each of them, the recipient is the likely foreign recipient mentioned in the section; or

**23 Paragraph 16-160(1)(a) in Schedule 1**

Omit “or 12-285”, substitute “, 12-285 or 12-317”.

**24 After paragraph 16-160(1)(b) in Schedule 1**

Insert:

- (ba) one or more withholding payments covered by section 12-317, or a part of each such payment, that the payer received during the year for the recipient, if the recipient is the likely foreign recipient mentioned in that section; or

**25 At the end of section 18-10 in Schedule 1**

Add:

- (2) If an entity withholds an amount from a \*withholding payment as required by section 12-317, apply sections 18-15, 18-20 and 18-25 in relation to the payment as if the payment had been made to the likely foreign recipient mentioned in section 12-317 (instead of to the intermediary mentioned in that section).

**26 Paragraph 20-35(2)(a) in Schedule 1**

Omit “or 12-285”, substitute “, 12-285 or 12-317”.

**27 Paragraph 20-35(2)(b) in Schedule 1**

Omit “or 12-285”, substitute “, 12-285 or 12-317”.

**28 Section 20-80 in Schedule 1 (before table item 1)**

Insert:

- 1A Decision not to grant an exemption under subsection 12-319(1) from withholding obligations in relation to sections 12-315 and 12-317

**29 Subsection 250-10(2) in Schedule 1 (table item 100, column 3)**

Omit “and 16-40(2)”, substitute “, 16-40(2) and 16-43(2)”.

**30 Application of amendments**

The amendments of the *Taxation Administration Act 1953* made by this Schedule apply to payments made, and non-cash benefits provided, on or after 1 July 2003.

## **Schedule 6—PAYG withholding where no ABN is quoted**

### *Income Tax Assessment Act 1997*

#### **1 Subsection 995-1(1) (definition of carried on in Australia)**

Repeal the definition.

### *Taxation Administration Act 1953*

#### **2 At the end of section 12-190 in Schedule 1**

Add:

- (7) In working out, for the purposes of this section, whether an enterprise is \*carried on in Australia:
- (a) ignore the external Territories; and
  - (b) treat an installation (within the meaning of the *Customs Act 1901*) that is deemed by section 5C of the *Customs Act 1901* to be part of Australia, as part of Australia.

Note: The effect of this subsection is to treat an enterprise as carried on in Australia only where it would be treated as carried on in Australia under the *A New Tax System (Australian Business Number) Act 1999*.

#### **3 Application**

The amendments made by this Schedule apply to payments made after the commencement of this Schedule.

## **Schedule 7—FBT exemption for worker entitlements**

### ***Fringe Benefits Tax Assessment Act 1986***

#### **1 After section 58P**

Insert:

#### **58PA Exempt benefits—worker entitlement contributions**

If:

- (a) a person makes a contribution to an approved worker entitlement fund; and
  - (b) the person is required to make the contribution under an industrial instrument; and
  - (c) the contribution is either:
    - (i) required for the purposes of ensuring that an obligation under the industrial instrument to make leave payments (including payments in lieu of leave) or payments when an employee ceases employment is met; or
    - (ii) for the reasonable administrative costs of the fund;
- the contribution is an exempt benefit.

#### **58PB Meaning of approved worker entitlement funds**

- (1) A fund is an ***approved worker entitlement fund*** if the fund:
  - (a) is established by or under a law of the Commonwealth, a State or a Territory for the purpose of ensuring that long service leave is paid; and
  - (b) is operating under that law.
- (2) A fund is also an ***approved worker entitlement fund*** if:
  - (a) the fund is prescribed for the purposes of this paragraph; and
  - (b) a declaration under subsection (3) is not in force in relation to the fund.

- (3) The Treasurer may declare, in writing, that a fund is not an approved worker entitlement fund. The declaration is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) Before the Governor-General makes a regulation under paragraph (2)(a) prescribing a fund for the purposes of that paragraph, the Commissioner must be satisfied that:
- (a) the management of the fund (including the management of the investments of the fund) is carried out at arm's length from the contributors to the fund and their associates; and
  - (b) under the fund's constituting documents:
    - (i) no more than 5% of the total assets of the fund are to be invested in an entity controlled by a contributor or an associate of a contributor; and
    - (ii) the assets of the fund are not to be used to provide or facilitate any form of financial assistance, including a loan, to a contributor, a person in respect of whom contributions are made or an associate of a contributor or an associate of a person in respect of whom contributions are made; and
  - (c) under the fund's constituting documents, payments from contributions to the fund are to be made only for the following purposes:
    - (i) to pay worker entitlements to persons in respect of whom contributions are made;
    - (ii) to make investments to generate income from the assets of the fund;
    - (iii) to reimburse contributors who have paid entitlements directly to persons in respect of whom contributions are made;
    - (iv) to return contributions to contributors;
    - (v) to pay, for the benefit of a person in respect of whom contributions are made, an eligible termination payment (within the meaning of section 27A of the *Income Tax Assessment Act 1936*) into a complying superannuation fund (within the meaning of section 45 of the *Superannuation Industry (Supervision) Act 1993*), a complying approved deposit fund (within the meaning

- of section 47 of the *Superannuation Industry (Supervision) Act 1993*) or a retirement savings account (within the meaning of the *Retirement Savings Account Act 1997*);
- (vi) to transfer contributions to another approved worker entitlement fund;
  - (vii) to pay the reasonable administrative expenses of the fund;
  - (viii) to pay amounts to a contributor's external administrator that would otherwise be payable as mentioned in subparagraph (iii) or (iv) to the contributor;
  - (ix) to pay interest on, or to repay, money lent to the fund; and
- (d) under the fund's constituting documents, payments from the income of the fund are to be made only for the following purposes:
- (i) a purpose mentioned in subparagraphs (c)(ii) to (ix);
  - (ii) to make payments to contributors to the fund;
  - (iii) to make payments to other persons where the payment is specified in subsection (5); and
- (e) under the fund's constituting documents:
- (i) an account must be kept for each person in respect of whom contributions to the fund are made; and
  - (ii) the account must be kept in a manner that enables entitlements in respect of the person to be calculated.
- (5) A payment made by a fund to a person in the following circumstances is specified for the purposes of subparagraph (4)(d)(iii):
- (a) a contribution has been made to the fund in respect of the person; and
  - (b) the contribution would be an exempt benefit under section 58PA if the fund were an approved worker entitlement fund; and
  - (c) either:
    - (i) the payment is of a worker entitlement the contribution for which would be an exempt benefit under section 58PA if the fund were an approved worker entitlement fund; or
-

- (ii) the payment is of some kind other than a worker entitlement.

### **58PC Exempt benefits—existing worker entitlement funds**

- (1) If:
  - (a) a person makes a contribution to an existing worker entitlement fund; and
  - (b) the contribution is made in accordance with existing industrial practice; and
  - (c) the contribution is either:
    - (i) made for the purposes of ensuring that an obligation to make leave payments (including payments in lieu of leave) or payments when an employee ceases employment is met; or
    - (ii) for the reasonable administrative costs of the fund; and
  - (d) the contribution is made during the FBT year beginning on 1 April 2003;the contribution is an exempt benefit.
- (2) A fund is an *existing worker entitlement fund* if the fund accepted contributions during the FBT year beginning on 1 April 2002 for the purposes of ensuring that obligations to make leave payments (including payments in lieu of leave) or payments when an employee ceases employment are met.
- (3) A contribution is made in accordance with *existing industrial practice* if the taxpayer or another person in the taxpayer's industry made payments in the FBT year beginning on 1 April 2002 to an existing worker entitlement fund for the purposes of ensuring that an obligation to make leave payments (including payments in lieu of leave) or payments when an employee ceases employment is met.

### **2 Subsection 136(1)**

Insert:

*approved worker entitlement fund* has the meaning given by subsections 58PB(1) and (2).

### **3 Subsection 136(1)**

Insert:

*entity* has the same meaning as in the *Income Tax Assessment Act 1997*.

### **4 Subsection 136(1)**

Insert:

*external administrator* has the same meaning as in the *Payment Systems and Netting Act 1998*.

### **5 Application**

The amendments made by items 1 to 4 of this Schedule apply to benefits provided in a year of tax that begins on or after 1 April 2003.

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

### **6 Section 112-150 (table item 6)**

Omit “or complying superannuation fund”, substitute “, a complying superannuation fund or a fund that accepts worker entitlement contributions”.

### **7 Section 126-125**

Omit “or complying superannuation fund”, substitute “, a complying superannuation fund or a fund that accepts worker entitlement contributions”.

### **8 At the end of section 126-130**

Add:

- (2) There is a roll-over if:
  - (a) \*CGT event E1 or E2 happens in relation to a \*CGT asset because the trust deed of a fund is amended or replaced; and

- (b) the amendment or replacement is done for the purpose of having the fund approved as an approved worker entitlement fund under subsection 58PB(2) of the *Fringe Benefits Tax Assessment Act 1986*; and
- (c) the assets and members of the fund do not change as a consequence of the amendment or replacement.

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

## **9 Application**

The amendments made by items 6 to 8 of this Schedule apply to CGT events that happen on or after 1 April 2003.

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*[Minister's second reading speech made in—  
House of Representatives on 13 February 2003  
Senate on 19 March 2003]*