Taxation Laws Amendment Act (No. 6) 2003

No. 67, 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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Taxation Laws Amendment Act (No. 6) 2003

No. 67, 2003

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. 6) 2003*.

2 Commencement

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

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	30 June 2003
2. Schedule 1	The day on which this Act receives the Royal Assent	30 June 2003
3. Schedules 3 to 7	Immediately after the commencement of Schedule 1 to the *New Business Tax System (Consolidation and Other Measures) Act 2003*	24 October 2002
4. Schedule 8	The day on which this Act receives the Royal Assent	30 June 2003
5. Schedule 9	The later of: (a) 1 September 2003; and (b) the day on which this Act receives the Royal Assent	1 September 2003
6. Schedule 10, Part 1	The day on which this Act receives the Royal Assent	30 June 2003
7. Schedule 10, Part 2, Division 1	The day on which this Act receives the Royal Assent	30 June 2003
8. Schedule 10, Part 2, Division 2	At the start of the day on which the *Taxation Laws Amendment Act (No. 3) 2003* receives the Royal Assent, subject to subsection (3)	
9. Schedule 10, Part 2, Division 3	The later of: (a) immediately after the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of the *New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003*	
10. Schedule 10, Part 2, Division 4	The day on which this Act receives the Royal Assent	30 June 2003
11. Schedule 11	The day on which this Act receives the Royal Assent	30 June 2003

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
12. Schedule 12	30 June 2003	30 June 2003

Note 1: 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.

Note 2: The Bill for the *Taxation Laws Amendment Act (No. 3) 2003* originated as the Taxation Laws Amendment Bill (No. 8) 2002.

(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) If the day on which this Act receives the Royal Assent is after the day on which the *Taxation Laws Amendment Act (No. 3) 2003* receives the Royal Assent, the provision covered by item 8 of the table does not commence at all.

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—Medicare levy and Medicare levy surcharge low income thresholds

Medicare Levy Act 1986

1 Subsection 3(1) (paragraph (b) of the definition of *phase-in limit*)

Omit "$17,913", substitute "$18,555".

2 Subsection 3(1) (paragraph (c) of the definition of phase-in limit)

Omit "$15,717", substitute "$16,283".

3 Subsection 3(1) (paragraph (b) of the definition of threshold amount)

Omit "$16,570", substitute "$17,164".

4 Subsection 3(1) (paragraph (c) of the definition of threshold amount)

Omit "$14,539", substitute "$15,062".

5 Subsection 8(5) (definition of family income threshold)

Omit "$24,534", substitute "$25,417".

6 Subsection 8(5) (definition of family income threshold)

Omit "$2,253", substitute "$2,334".

7 Subsection 8(6)

Omit "$24,534", substitute "$25,417".

8 Subsection 8(7)

Omit "$24,534", substitute "$25,417".

9 Paragraph 8D(3)(c)

Omit "$14,539", substitute "$15,062".

10 Subparagraph 8D(4)(a)(ii)

Omit “$14,539”, substitute “$15,062”.

11 Paragraph 8G(2)(c)

Omit “$14,539”, substitute “$15,062”.

12 Subparagraph 8G(3)(a)(ii)

Omit “$14,539”, substitute “$15,062”.

A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999

13 Paragraph 15(1)(c)

Omit “$14,539”, substitute “$15,062”.

14 Paragraph 16(2)(c)

Omit “$14,539”, substitute “$15,062”.

15 Application of amendments

The amendments made by this Schedule apply to assessments for the 2002-2003 year of income and later years of income.

Schedule 3—Consolidation: treatment of linked assets and liabilities

Income Tax Assessment Act 1997

1 Paragraph 104-510(1)(a) (second occurring)

Repeal the paragraph, substitute:

(b) the sum of the *tax cost setting amounts for all *retained cost base assets that:

(i) become assets of the *head company of the group because subsection 701-1(1) (the single entity rule) applies; and

(ii) are taken into account under paragraph 705-35(1)(b) in working out the tax cost setting amount of each reset cost base asset of the entity;

exceeds the group's *allocable cost amount for the entity.

2 Subsection 705-35(1) (after note 1)

Insert:

Note 1A: If a set of linked assets and liabilities includes one or more reset cost base assets, section 705-59 may affect how this section applies. In particular, that section may exclude the application of paragraph 705-35(1)(b) to retained cost base assets in the set; this in turn may affect the application of CGT event L3.

3 After section 705-57

Insert:

705-58 Assets and liabilities not set off against each other

(1) This Part applies separately to each asset and liability even if *accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, require them to be set off against each other.

(2) This section has effect subject to section 705-59.

705-59 Exception: treatment of linked assets and liabilities

(1) This section applies to each set of *linked assets and liabilities that the joining entity has immediately before the joining time.

(2) One or more assets, and one or more liabilities, that an entity has constitute a set of ***linked assets and liabilities*** of the entity if, and only if, in accordance with *accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board:

(a) the total of the one or more assets is to be set off against the total of the one or more liabilities in preparing statements of the entity's financial position; and

(b) the net amount after the set-off is to be recognised in those statements.

(3) If the set consists only of one reset cost base asset for the purposes of section 705-35, and one or more liabilities:

(a) first, work out the total (the ***available amount***) that, apart from this section and the accounting requirement referred to in subsection (2) of this section, would be taken into account under subsection 705-70(1) (about step 2 in working out the allocable cost amount) for the one or more liabilities; and

(b) next, work out the consequences under this table.

Treatment of linked assets and liabilities: single reset cost base asset case

Item	If the asset's *market value at the joining time:	This is the result for the asset:	This is the result for the one or more liabilities:
1	is less than or equal to the available amount	its *tax cost setting amount is that market value (and the asset is *not* taken into account under paragraph 705-35(1)(c))	only the difference (if any) is taken into account under subsection 705-70(1) for the one or more liabilities

Treatment of linked assets and liabilities: single reset cost base asset case			
Item	**If the asset's *market value at the joining time:**	**This is the result for the asset:**	**This is the result for the one or more liabilities:**
2	is greater than the available amount	its *tax cost setting amount is: (a) the available amount; plus (b) the amount worked out for the asset under section 705-35 on the basis that the asset's *market value is reduced by the available amount	the one or more liabilities are *not* taken into account under subsection 705-70(1)

Note: Paragraph 705-35(1)(c) allocates the allocable cost amount (as reduced by the tax cost setting amounts of retained cost base assets) among the joining entity's reset cost base assets.

(4) If the set consists only of one or more *retained cost base assets and one or more liabilities, this section does not affect their treatment.

Note: This is because the tax cost setting amount for a retained cost base asset is worked out without regard to the allocable cost amount.

(5) In any other case:

(a) first, work out the available amount under paragraph (3)(a); and

(b) next, work out the consequences under this table.

Treatment of linked assets and liabilities: all other cases			
Item	**In this case:**	**This is the result for the one or more assets in the set:**	**This is the result for the one or more liabilities in the set:**
1	there is no *retained cost base asset in the set, and the total of the respective *market values (at the joining time) of the assets in the set is less than or equal to the available amount	the *tax cost setting amount of each of the assets is that asset's market value at the joining time (and *none* of them is taken into account under paragraph 705-35(1)(c))	only the difference (if any) is taken into account under subsection 705-70(1)
2	there is no *retained cost base asset in the set, and the total of the respective *market values (at the joining time) of the assets in the set is greater than the available amount	the *tax cost setting amount of each of the assets is the sum of: (a) a share of the available amount that is proportionate to that asset's market value at the joining time; and (b) the amount worked out for the asset under section 705-35 on the basis that the asset's market value at the joining time is reduced by the share referred to in paragraph (a)	*none* is taken into account under subsection 705-70(1)
3	there are one or more *retained cost base assets in the set, and the total of their respective *tax cost setting amounts is greater than or equal to the available amount	this section does not affect the treatment of the one or more assets in the set	this section does not affect the treatment of the one or more liabilities in the set

Treatment of linked assets and liabilities: all other cases			
Item	**In this case:**	**This is the result for the one or more assets in the set:**	**This is the result for the one or more liabilities in the set:**
4	there are one or more *retained cost base assets in the set, and the total (the ***retained cost base total***) of their respective *tax cost setting amounts is less than the available amount	the one or more retained cost base assets are *not* taken into account under paragraph 705-35(1)(b); the *tax cost setting amount of each remaining asset in the set is worked out by applying item 1 or 2, as appropriate, of this table on the basis that: (a) the available amount is reduced by the retained cost base total; and (b) the one or more retained cost base assets are otherwise ignored	the available amount is reduced by the retained cost base total

Note 1: Paragraph 705-35(1)(b) reduces the allocable cost amount by the tax cost setting amounts of retained cost base assets. Item 4 of the table in this subsection excludes the application of paragraph 705-35(1)(b) to retained cost base assets in the set; this in turn may affect the application of CGT event L3.

Note 2: Paragraph 705-35(1)(c) then allocates the reduced allocable cost amount among the joining entity's reset cost base assets.

(6) In applying subsections (3), (4) and (5) of this section, disregard an asset covered by subsection 705-35(2) (assets that do not have a tax cost setting amount).

(7) This section does not affect the application of sections 705-40, 705-45 and 705-50 (which adjust the tax cost setting amount for a reset cost base asset).

4 Subsection 995-1(1)

Insert:

linked assets and liabilities has the meaning given by subsection 705-59(2).

Schedule 4—Consolidation: partnerships

Income Tax Assessment Act 1997

1 After Subdivision 713-A

Insert:

Subdivision 713-E—Partnerships

Guide to Subdivision 713-E

713-200 What this Subdivision is about

This Subdivision modifies tax cost setting rules in Divisions 701 and 705 so that they take account of the special characteristics of partnerships. The modifications apply in these situations:

(a) an entity that is a partner in a partnership becomes a subsidiary member of a consolidated group;

(b) a partnership becomes a subsidiary member of a consolidated group.

Table of sections

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[This is the end of the Guide.]

Objects

713-205 Objects of this Subdivision

(1) The first object of this Subdivision is to ensure that if:

(a) an entity that is a partner in a partnership becomes a *subsidiary member of a *consolidated group; and

(b) the partnership does not become a *subsidiary member of the group;

the provisions mentioned in subsection (3) operate as if the *partnership cost setting interests of the entity in the partnership were the entity's only assets relating to the partnership.

Note: In general, the head company of the consolidated group is treated as a partner in the partnership, in accordance with section 701-1 (the single entity rule).

(2) The second object of this Subdivision is to ensure that where a partnership becomes a *subsidiary member of a *consolidated group, the provisions mentioned in subsection (3) operate:

(a) as if the group became the holder of the assets of the partnership; and

(b) to set the *tax cost of the assets of the partnership at an appropriate amount, taking into account the taxation treatment of partnerships.

Note: While the partnership is a subsidiary member of the group, it loses its separate tax identity (under the single entity rule in subsection 701-1(1)). Therefore, in general, the assets of the partnership are treated as assets of the head company of the group and partnership cost setting interests in the partnership are ignored.

(3) The provisions are:

(a) section 701-10 (about setting the tax cost of assets that an entity brings into the group); and

(b) Subdivision 705-A; and

(c) any other provision of this Act giving Subdivision 705-A a modified effect in circumstances other than those covered by that Subdivision.

Note: An example of provisions covered by paragraph (c) are the provisions of Subdivision 705-B giving Subdivision 705-A a modified effect when a consolidated group is formed.

Partnership cost setting interests etc.

713-210 Partnership cost setting interests

A ***partnership cost setting interest*** in a partnership is the asset that is comprised of:

(a) an interest in an asset of the partnership; or

(b) an interest in the partnership that is not covered by paragraph (a);

but does not include an asset that is comprised of a *membership interest in the partnership.

Note 1: A partner may have more than one partnership cost setting interest that relates to an asset of the partnership (see section 106-5).

Note 2: A partnership cost setting interest may relate to an asset of the partnership, but the asset of the partnership is not a partnership cost setting interest in the partnership.

713-215 Terminating value for partnership cost setting interest

(1) This section modifies the way in which the *terminating value of a *partnership cost setting interest in a partnership is worked out under section 705-30.

(2) For the purposes of this Subdivision, the *terminating value of the *partnership cost setting interest at a time is:

(a) if the interest relates to an asset of the partnership—the interest's individual share of the terminating value of that asset (worked out in accordance with subsection (3)) at that time; or

(b) otherwise—the terminating value of the interest at that time worked out under section 705-30.

(3) To work out the amount of the *terminating value of the asset of the partnership mentioned in paragraph (2)(a), apply section 705-30 as if:

(a) the time mentioned in subsection (2) were the joining time mentioned in that section; and

(b) the partnership were, at the time mentioned in subsection (2), the joining entity mentioned in that section.

Setting tax cost of partnership cost setting interests

713-220 Set tax cost of partnership cost setting interests if partner joins consolidated group

(1) This section applies if an entity (the ***joining entity***) that is a partner in a partnership becomes a *subsidiary member of a *consolidated group at a time (the ***joining time***).

Note: If the partnership becomes a subsidiary member of the group at the joining time, the application of this section is affected by section 713-235.

(2) In applying the provisions mentioned in subsection 713-205(3) in relation to the joining entity:

(a) work out the *tax cost setting amount for each *partnership cost setting interest in the partnership that the joining entity holds at the joining time, in accordance with section 713-225; and

(b) except for the purposes of section 713-235 (which applies only if the partnership joins the group), do not work out tax cost setting amounts for the assets of the partnership; and

(c) do not work out tax cost setting amounts for the *membership interests in the partnership held by the joining entity.

Note 1: Because of paragraphs (b) and (c), no amount of allocable cost amount for the joining entity is allocated to the assets of the partnership, or to membership interests in the partnership held by the joining entity.

Note 2: If assets of the partnership are held on revenue account, the related partnership cost setting interests held by the joining entity have their tax cost set at the joining time. However, that tax cost does not alter calculations of the net income or exempt income of the partnership, or

of a partnership loss, for the purposes of section 92 of the *Income Tax Assessment Act 1936*.

713-225 Tax cost setting amount for partnership cost setting interest

(1) This section modifies the way in which the *tax cost setting amounts are worked out under Division 705 for the *partnership cost setting interests mentioned in paragraph 713-220(2)(a).

Partnership cost setting interest takes character of partnership asset—general

(2) Work out the *tax cost setting amounts for those *partnership cost setting interests as if any partnership cost setting interest that relates to an asset (the ***underlying partnership asset***) of the partnership were an asset of the same kind as the underlying partnership asset.

Note: The kinds of assets mentioned in subsection (2) include the following:

(a) retained cost base assets;

(b) reset cost base assets that are held on revenue account (however, if such assets are trading stock or depreciating assets, the special rule in subsection (4) will apply) or on capital account;

(c) excluded assets (see subsection (3));

(d) current assets (within the meaning of subsection 705-125(2)).

Example: The partnership has an asset that is Australian currency (which is a retained cost base asset). A partnership cost setting interest of the joining entity in that asset is treated as a retained cost base asset for the purpose of working out the tax cost setting amounts for the joining entity's partnership cost setting interests in the partnership.

Partnership cost setting interest takes character of partnership asset—excluded assets

(3) If:

(a) tax cost setting amounts were to be worked out for the assets of the partnership under Division 705; and

(b) in working out those amounts, the underlying partnership asset mentioned in subsection (2) would be an excluded asset for the purposes of section 705-35;

then subsection (2) operates so that the *tax cost setting amounts for those *partnership cost setting interests are worked out as if any

partnership cost setting interest that relates to the underlying partnership asset were an excluded asset for the purposes of section 705-35.

Special character of partnership cost setting interest in partnership asset that is trading stock or depreciating asset

(4) Despite subsection (2), if an asset of the partnership is *trading stock or a *depreciating asset, work out the *tax cost setting amounts for those *partnership cost setting interests as if:

(a) a partnership cost setting interest relating to that asset were a *retained cost base asset; and

(b) the tax cost setting amount for that partnership cost setting interest were equal to its *terminating value (worked out in accordance with section 713-215).

Reduction in allocable cost amount for over-depreciated partnership assets

(5) If one or more assets of the partnership are *over-depreciated at the joining time, reduce the group's allocable cost amount for the joining entity in accordance with section 713-230.

Partnership liabilities—working out allocable cost amount

(6) If:

(a) according to *accounting standards, or statements of accounting concepts made by the Australian Accounting Standards Board, a thing (the ***partnership liability***) is a liability of the partnership at the joining time that can or must be recognised in the partnership's statement of financial position; and

(b) for that reason, the partnership liability is not an accounting liability of the joining entity at the joining time for the purposes of section 705-70;

then sections 705-70, 705-75 and 705-80 operate as if the partnership liability were an accounting liability of the joining entity at the joining time, to the extent of the joining entity's individual share of the partnership liability.

Partnership deductions—working out allocable cost amount

(7) Section 705-115 operates as if:

(a) a deduction to which the partnership is entitled (the ***partnership deduction***) were a deduction to which the joining entity was entitled, to the extent of the joining entity's individual share of the partnership deduction; and

(b) the deduction to which the joining entity was entitled were of the same kind as the partnership deduction.

Note: These kinds of deductions include acquired deductions and owned deductions (within the meaning of section 705-115).

713-230 Reduction in allocable cost amount if partnership asset is over-depreciated

(1) The object of this section is to reduce the group's allocable cost amount for the joining entity, if one or more assets of the partnership are *over-depreciated at the joining time. The amount of the reduction is calculated under section 705-50 in relation to the joining entity's *partnership cost setting interests (the ***reduction interests***) relating to those assets.

(2) Reduce the allocable cost amount mentioned in subsection 713-225(5) by the reduction amount worked out under subsection (3).

(3) The reduction amount is the total of the amounts that would be reduced under section 705-50 for all the reduction interests if:

(a) this Subdivision did not include subsection 713-225(5) or this section; and

(b) subsection 713-225(4) did not apply to any of the reduction interests; and

Note: This means that the reduction interests would be treated as over-depreciated assets, in accordance with subsection 713-225(2).

(c) the *adjustable value of a particular reduction interest were equal to its individual share of the adjustable value of the asset of the partnership to which it relates; and

(d) the *cost of the interest were equal to its individual share of the cost of the asset of the partnership to which it relates; and

(e) section 705-50 did not include subsection 705-50(4).

Special rules where partnership joins consolidated group

713-235 Partnership joins group—set tax cost of partnership assets

(1) This section applies if a partnership becomes a *subsidiary member of a *consolidated group at a time (the ***joining time***).

(2) In applying the provisions mentioned in subsection 713-205(3) in relation to the partnership:

(a) do not work out an allocable cost amount for the partnership; and

(b) work out the *tax cost setting amount for each asset of the partnership covered by subsection (3), in accordance with section 713-240.

Note: If a partner in the partnership becomes a subsidiary member of the group at the joining time, tax cost setting amounts are worked out for the assets of the partner (including partnership cost setting interests) before tax cost setting amounts are worked out for the assets of the partnership.

(3) An asset of the partnership at the joining time is covered by this subsection, unless it would be an excluded asset for the purposes of section 705-35 on the assumption that tax cost setting amounts were worked out for the assets of the partnership under Division 705 (instead of section 713-240).

713-240 Partnership joins group—tax cost setting amount for partnership asset

(1) Work out the *tax cost setting amounts for the assets covered by subsection 713-235(3) as follows:

(a) firstly, add up the subsection (2) amounts for all the partnership cost setting interests in the partnership at the joining time (the result is the ***partnership cost pool***);

Note 1: Partnership cost setting interests held by a partner that becomes a subsidiary member of the group at the joining time are included in the calculation in paragraph (a). The operation of the cost setting rules in relation to that partner at the joining time may affect the subsection (2) amounts for those interests.

Note 2: Partnership cost setting interests are included in the calculation in paragraph (a), even if the cost setting rules have not applied in

relation to the interests (for example, if the interests were acquired directly by the head company).

(b) secondly, work out the tax cost setting amounts for the assets covered by subsection 713-235(3) that are *retained cost base assets, in accordance with section 705-25;

(c) thirdly, work out the tax cost setting amounts for the rest of the assets covered by subsection 713-235(3), in accordance with subsection (3).

Subsection (2) amount for a partnership cost setting interest

(2) For the purposes of paragraph (1)(a), the subsection (2) amount for a *partnership cost setting interest is the amount specified in the following table:

Working out the subsection (2) amount

Item	If the market value of the partnership cost setting interest is ...	the subsection (2) amount for the partnership cost setting interest is ...
1	equal to or greater than its *cost base	its cost base
2	less than its *cost base but greater than its *reduced cost base	its *market value
3	less than or equal to its *reduced cost base	its reduced cost base

Allocating partnership cost pool to partnership assets that are not retained cost base assets

(3) Work out the *tax cost setting amounts for the assets mentioned in paragraph (1)(c) by applying sections 705-35, 705-40 and 705-45 to those assets, as if:

(a) the partnership were, at the joining time, the joining entity mentioned in those sections; and

(b) the assets of the partnership were the assets covered by subsection 713-235(3); and

(c) the allocable cost amount mentioned in paragraph 705-35(1)(a) were the partnership cost pool.

(4) For the purposes of this section, section 104-510 (CGT event L3) applies as if the group's allocable cost amount for the entity mentioned in that section were the partnership cost pool.

713-245 Partnership joins group—pre-CGT factor for partnership asset

(1) The *pre-CGT factor for each asset covered by subsection 713-235(3) is worked out under subsections (2) and (3) (instead of subsection 705-125(3)).

(2) Firstly, identify the *partnership cost setting interests (the ***pre-CGT interests***) in the partnership, relating to assets of the partnership, for which there is a *pre-CGT factor at the joining time.

Note: The pre-CGT factor for such a partnership cost setting interest is worked out at the time the partner holding the interest became a subsidiary member of the group (whether that time is the joining time or was an earlier time).

(3) Secondly, work out the *pre-CGT factor for each asset covered by subsection 713-235(3) in this way:

Partnership assets' pre-CGT factor

Step 1. For each pre-CGT interest, multiply its *market value at the joining time by its *pre-CGT factor.

Step 2. Add up all the results of step 1.

Step 3. Add up the *market values of all the assets of the partnership at the joining time.

Step 4. Divide the result of step 2 by the result of step 3.

[The next Subdivision is Subdivision 713-L.]

2 Subsection 995-1(1)

Insert:

partnership cost setting interest, in a partnership, has the meaning given by section 713-210.

Schedule 5—Consolidation: transitional foreign-held membership structures

Income Tax Assessment Act 1997

1 Subparagraphs 719-10(1)(b)(ii) and (iii)

Repeal the subparagraphs, substitute:

(ii) are entities for which the requirements in section 701C-10 of the *Income Tax (Transitional Provisions) Act 1997* are met; or

(iii) are entities for which the requirements in section 701C-15 of the *Income Tax (Transitional Provisions) Act 1997* are met.

2 Subsections 719-10(4) and (5)

Repeal the subsections.

3 Paragraph 719-10(6)(c)

Repeal the paragraph, substitute:

(c) there are no entities for which the requirements mentioned in subparagraph (1)(b)(ii) are met; and

(d) there are no entities for which the requirements mentioned in subparagraph (1)(b)(iii) are met;

Income Tax (Transitional Provisions) Act 1997

4 At the end of section 701C-1

Add:

Note: This Division has effect in relation to a MEC group in the same way in which it has effect in relation to a consolidated group (see sections 719-2 and 719-10 of this Act).

5 At the end of subsection 701C-10(1)

Add:

Note: This subsection applies in relation to a MEC group as if the reference to item 2, column 4 of the table in subsection 703-15(2) of the *Income Tax Assessment Act 1997* were a reference to subparagraph 719-10(1)(b)(ii) of that Act (see subsection 719-2(3) of this Act).

6 At the end of subsection 701C-15(1)

Add:

Note: This subsection applies in relation to a MEC group as if the reference to item 2, column 4 of the table in subsection 703-15(2) of the *Income Tax Assessment Act 1997* were a reference to subparagraph 719-10(1)(b)(iii) of that Act (see subsection 719-2(3) of this Act).

7 Section 701C-30

Omit "transitional foreign-held entity", substitute "transitional foreign-held joining entity".

8 Section 701C-30 (note 2)

Omit "transitional foreign-held entity", substitute "transitional foreign-held joining entity".

9 Section 701C-35

Omit "transitional foreign-held entity", substitute "transitional foreign-held joining entity".

10 At the end of Subdivision 719-B

Add:

719-10 Effect of Division 701C

(1) This section applies if the consolidated group mentioned in section 701C-10 or 701C-15 is a MEC group.

(2) To avoid doubt, for the purposes of those sections, the test entity cannot be a subsidiary member of the group if the group came into existence on or after 1 July 2004.

Schedule 6—Consolidation: application of rules to MEC groups

Income Tax (Transitional Provisions) Act 1997

1 At the end of section 719-2

Add:

(3) For the purposes of subsection (1), a reference in this Part (other than in Division 703 and this Division) to a provision in:

(a) Division 703 of this Act; or

(b) Division 703 of the *Income Tax Assessment Act 1997*;

applies as if it referred instead to the corresponding provision in:

(c) Division 719 of this Act; or

(d) Division 719 of the *Income Tax Assessment Act 1997*.

Schedule 7—Consolidation: general application provision

Income Tax (Transitional Provisions) Act 1997

1 Subsection 700-1(1)

Repeal the subsection, substitute:

(1) Part 3-90 of the *Income Tax Assessment Act 1997*, as inserted by the *New Business Tax System (Consolidation) Act (No. 1) 2002* and amended by:

(a) the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002*; and

(b) the *New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002*; and

(c) the *New Business Tax System (Consolidation and Other Measures) Act 2003*; and

(d) the *Taxation Laws Amendment Act (No. 6) 2003*;

applies on and after 1 July 2002.

Schedule 8—Technical corrections

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

1 Item 1 of Schedule 15

Omit “Part 3-45”, substitute “Part 3-90”.

2 Item 2 of Schedule 15

Omit “Part 3-45”, substitute “Part 3-90”.

3 Application

Items 1 and 2 of Schedule 15 to the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002* are taken always to have had effect as amended by this Schedule.

Schedule 9—Release from particular liabilities in cases of serious hardship

Part 1—Main amendments

Taxation Administration Act 1953

1 After Division 298 in Schedule 1 (before the link note)

Insert:

[The next Division is Division 340.]

Part 4-50—Release from particular liabilities

Division 340—Commissioner's power to provide release from particular liabilities

Guide to Division 340

340-1 What this Division is about

> The Commissioner may release you from a particular liability that you have incurred if you are an individual, or a trustee of the estate of a deceased person, and satisfying the liability would cause serious hardship.

Table of sections

Operative provisions

340-5 Release from particular liabilities in cases of serious hardship
340-10 Liabilities to which this section applies
340-15 Commissioner may take action to give effect to a release decision
340-20 Extinguishing your liability to pay a fringe benefits tax instalment if you are released

340-25 Extinguishing your liability to pay a PAYG instalment if you are released

[This is the end of the Guide.]

Operative provisions

340-5 Release from particular liabilities in cases of serious hardship

Applying for release

(1) You may apply to the Commissioner to release you, in whole or in part, from a liability of yours if section 340-10 applies to the liability.

(2) The application must be in the approved form.

Release by the Commissioner

(3) The Commissioner may release you, in whole or in part, from the liability if you are a person specified in the column headed "Person" of the following table and the condition specified in the column headed "Condition" of the table is satisfied:

Person and condition

Item	Person	Condition
1	an *individual	you would suffer serious hardship if you were required to satisfy the liability
2	a *trustee of the estate of a deceased person	the dependants of the deceased person would suffer serious hardship if you were required to satisfy the liability

Effect of the Commissioner's decision

(4) If the Commissioner:
  (a) refuses to release you in whole from the liability; or
  (b) releases you in part from the liability;

nothing in this section prevents you from making a further application or applications under subsection (1) in relation to the liability.

Notification of the Commissioner's decision

(5) The Commissioner must notify you in writing of the Commissioner's decision within 28 days after making the decision.

(6) A failure to comply with subsection (5) does not affect the validity of the Commissioner's decision.

Objections against the Commissioner's decision

(7) If you are dissatisfied with the Commissioner's decision, you may object against the decision in the manner set out in Part IVC.

340-10 Liabilities to which this section applies

(1) This section applies to a liability if it is a liability of the following kind:
  (a) fringe benefits tax;
  (b) an instalment of fringe benefits tax;
  (c) Medicare levy;
  (d) Medicare levy surcharge;
  (e) a *PAYG instalment.

(2) This section also applies to a liability if it is a liability that is specified in the column headed "Liabilities" of the following table and the liability is a liability under a provision or provisions of an Act specified in the column headed "Provision(s)" of the table:

Liabilities and provision(s)

Item	Liabilities	Provision(s)
1	additional tax	(a) section 93 or 112B or Part VIII of the *Fringe Benefits Tax Assessment Act 1986*; or (b) section 163B or subsection 221YDB(1), (1AAA), (1AA) or (1ABA) or Part VII of the *Income Tax Assessment Act 1936*

Liabilities and provision(s)		
Item	**Liabilities**	**Provision(s)**
2	administrative penalty in relation to fringe benefits tax or *tax	Part 4-25 in this Schedule
3	general interest charge	(a) section 163AA or 170AA or subsections 204(3), 221AZMAA(1), 221AZP(1), 221YD(3) or 221YDB(3) of the *Income Tax Assessment Act 1936*; or (b) section 45-80 or 45-620 or subsection 45-230(2), 45-232(2), 45-235(2) or 45-235(3) in this Schedule
4	interest	section 102AAM of the *Income Tax Assessment Act 1936*
5	penalty	section 163A of the *Income Tax Assessment Act 1936*
6	*tax	(a) section 128B of the *Income Tax Assessment Act 1936*; or (b) section 128V of the *Income Tax Assessment Act 1936*; or (c) section 4-1 of the *Income Tax Assessment Act 1997*

340-15 Commissioner may take action to give effect to a release decision

(1) If the Commissioner decides to release you from a liability to which section 340-10 applies, the Commissioner may take such action as is necessary to give effect to the decision.

(2) Without limiting subsection (1), the Commissioner may amend an assessment within the meaning of the following provisions:
   (a) subsection 6(1) of the *Income Tax Assessment Act 1936*;
   (b) subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*;

by making such alterations or additions to the assessment as the Commissioner thinks necessary.

(3) Subsection (2) does not limit the power of the Commissioner to amend the assessment in accordance with any other provision of the *Income Tax Assessment Act 1936* or the *Fringe Benefits Tax Assessment Act 1986*.

340-20 Extinguishing your liability to pay a fringe benefits tax instalment if you are released

(1) This section applies if the Commissioner releases you from a liability to pay an instalment of fringe benefits tax.

(2) If your liability to pay the instalment is released in whole, you are taken, for the purposes of Division 2 of Part VII of the *Fringe Benefits Tax Assessment Act 1986*, not to be liable to pay the instalment.

Note: This means that for the purposes of section 105 of that Act you are not entitled to a credit for the instalment.

(3) If your liability to pay the instalment is released in part, you are taken, for the purposes of Division 2 of Part VII of the *Fringe Benefits Tax Assessment Act 1986*, to be liable to pay the instalment to the extent to which your liability has not been released.

Note: This means that for the purposes of section 105 of that Act you are entitled to a credit for the instalment to the extent to which your liability to pay the instalment has not been released.

340-25 Extinguishing your liability to pay a PAYG instalment if you are released

(1) This section applies if the Commissioner releases you from a liability to pay a *PAYG instalment.

(2) If your liability to pay the instalment is released in whole, you are taken, for the purposes of Division 45 of Part 2-10, not to be liable to pay the instalment.

Note: This means that for the purposes of section 45-30 you are not entitled to a credit for the instalment.

(3) If your liability to pay the instalment is released in part, you are taken, for the purposes of Division 45 of Part 2-10, to be liable to pay the instalment to the extent to which your liability has not been released.

Note: This means that for the purposes of section 45-30 you are entitled to a credit for the instalment to the extent to which your liability to pay the instalment has not been released.

2 Paragraphs 353-10(1)(a) and (b) in Schedule 1

After “this Schedule”, insert “(other than Division 340)”.

Part 2—Consequential amendments

Administrative Appeals Tribunal Act 1975

3 After paragraph 24AC(1)(a)

Insert:

(aa) the decision relates to an application made by the applicant under section 340-5 in Schedule 1 to the *Taxation Administration Act 1953*; or

4 Subparagraph 34A(1A)(a)(i)

Omit "paragraph 24AC(1)(b)", substitute "paragraph 24AC(1)(aa) or (b)".

Fringe Benefits Tax Assessment Act 1986

5 Section 133

Repeal the section.

Income Tax Assessment Act 1936

6 Subsection 102AAM(14)

Omit ", 259 and 265", substitute "and 259".

7 Subsection 102AH(2)

Omit "section 102AJ", substitute "Division 340 in Schedule 1 to the *Taxation Administration Act 1953*".

8 Section 102AJ

Repeal the section.

9 Subsection 128A(4)

Omit ", 261 and 265", substitute "and 261".

10 Subsection 128U(2)

Omit “, 260 and 265”, substitute “and 260”.

11 Subsection 159GZZZZH(4)

Omit “, 259 and 265”, substitute “and 259”.

12 Subsection 163A(8)

Omit “, 259 and 265”, substitute “and 259”.

13 Subsection 163B(8)

Omit “, 259 and 265”, substitute “and 259”.

14 Subsection 170AA(9)

Omit “, 259 and 265”, substitute “and 259”.

15 Section 265

Repeal the section.

Income Tax Assessment Act 1997

16 Section 12-5 (table item headed “children’s income”)

Omit “**102AA to 102AJ**”, substitute “**102AA to 102AH**”.

17 Section 13-1 (table item headed “child”)

Omit:

hardship..... **102AJ**

Part 3—Transitional and application provisions

18 Transitional provision

(1) This item applies to an application made under:

(a) section 133 of the *Fringe Benefits Tax Assessment Act 1986* before its repeal by item 5 of this Schedule; or

(b) section 265 of the *Income Tax Assessment Act 1936* before its repeal by item 15 of this Schedule.

(2) If the application has not been finally determined before the commencement of this Schedule, Division 340 in Schedule 1 to the *Taxation Administration Act 1953* applies as if the application had been made under section 340-5 in Schedule 1 to that Act.

19 Application provision

A person may be released, under Division 340 in Schedule 1 to the *Taxation Administration Act 1953*, from a liability that the person has incurred even if the liability was incurred before the commencement of this Schedule.

Schedule 10—Trans-Tasman triangular imputation

Part 1—Main amendment

Income Tax Assessment Act 1997

1 At the end of Part 3-6

Add:

[The next Division is Division 220.]

Division 220—Imputation for NZ resident companies and related companies

Table of Subdivisions

Guide to Division 220

220-A Objects of this Division

220-B NZ company treated as Australian resident for imputation system if company chooses

220-C Modifications of other Divisions of this Part

Guide to Division 220

220-1 What this Division is about

A company resident in New Zealand may choose that the imputation system apply in relation to it. If it does, the rest of this Part applies in relation to it as if it were an Australian resident company, but with modifications. Some of the modifications also affect:

(a) other companies that are members of the same wholly-owned group; or

(b) entities that receive distributions from the company resident in New Zealand.

Subdivision 220-A—Objects of this Division

Table of sections

220-15 Objects
220-20 What is an ***NZ resident***?

220-15 Objects

(1) The main objects of this Division are:
  (a) to allow a company that is an *NZ resident to choose that the *imputation system apply in relation to it; and
  (b) if the company makes that choice, to apply the rest of this Part in relation to the company generally as if it were an Australian resident.

(2) Another object of this Division is to prevent the benefits of the *imputation system from being inappropriately made available to or through a *member of a company that is a foreign resident, by modifying the way in which the rest of this Part applies to:
  (a) a company that has chosen that the system apply in relation to it; and
  (b) other companies that are members of the same *wholly-owned group as that company; and
  (c) other entities that receive (directly or indirectly) *distributions from that company.

220-20 What is an NZ resident?

Company

(1) A company is an ***NZ resident*** if:
  (a) the company is incorporated in New Zealand; or

(b) the company is not incorporated in New Zealand but carries on business there and either:
  (i) has its central management and control there; or
  (ii) has its voting power controlled by *members who are NZ residents.

Natural person

(2) A natural person is an ***NZ resident*** if he or she resides in New Zealand.

(3) A natural person is also an ***NZ resident*** if his or her domicile is in New Zealand, unless the Commissioner is satisfied that the person's permanent place of abode is outside New Zealand.

(4) A natural person is also an ***NZ resident*** if he or she has actually been in New Zealand, continuously or intermittently, during more than half of the income year, unless the Commissioner is satisfied that:
  (a) the person's usual place of abode is outside New Zealand; and
  (b) the person does not intend to take up residence in New Zealand.

Not an NZ resident if an Australian resident

(5) A person is *not* an ***NZ resident*** if the person is an Australian resident. This has effect despite subsections (1), (2), (3) and (4).

Subdivision 220-B—NZ company treated as Australian resident for imputation system if company chooses

Table of sections

220-25 Application of provisions of Part 3-6 outside this Division
220-30 What is an ***NZ franking company***?
220-35 Making an NZ franking choice
220-40 When is an NZ franking choice in force?
220-45 Revoking an NZ franking choice
220-50 Cancelling an NZ franking choice

220-25 Application of provisions of Part 3-6 outside this Division

(1) The provisions of Part 3-6 outside this Division apply in relation to a company that is an *NZ franking company at a time as if it were an Australian resident at that time.

(2) They apply with the modifications made by the other sections of this Division.

220-30 What is an NZ franking company?

A company is an ***NZ franking company*** at a time if, at the time, the company is an *NZ resident and has an *NZ franking choice in force.

220-35 Making an NZ franking choice

A company that is an *NZ resident may, by notice in the *approved form given to the Commissioner, choose that the *imputation system is to apply in relation to the company. The choice is an ***NZ franking choice***.

220-40 When is an NZ franking choice in force?

(1) A company's *NZ franking choice comes into force:
  (a) at the start of the company's income year in which the notice was given to the Commissioner; or
  (b) at the start of a later income year specified in the notice.

(2) The *NZ franking choice continues in force until it is revoked by the company or cancelled by the Commissioner.

220-45 Revoking an NZ franking choice

(1) A company may revoke its *NZ franking choice by notice in the *approved form given to the Commissioner.

(2) To avoid doubt, the revocation takes effect when the notice is given to the Commissioner.

220-50 Cancelling an NZ franking choice

(1) The Commissioner may cancel a company's *NZ franking choice by written notice given to the company, but only if the Commissioner is satisfied that either:

(a) the company was liable to pay *franking deficit tax or *over-franking tax (whether or not because of section 220-800 (about joint and several liability for the tax)) and the company did not pay the tax by the day on which it was due and payable; or

(b) the company has not complied with subsection 214-15(2) or 214-20(2) (about giving the Commissioner a *franking return).

(2) To avoid doubt, the cancellation takes effect when the notice is given to the company.

Review of cancellation

(3) If the company is dissatisfied with the cancellation of the choice, it may object against the cancellation in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Note: That Part provides for review of the cancellation objected against.

Effect of cancelling a choice on making another choice in future

(4) If the company makes another *NZ franking choice, it does not come into force unless the Commissioner consents in writing to the choice coming into force.

(5) In consenting, the Commissioner may specify when the choice is to come into force. The consent has effect according to its terms, despite section 220-40.

(6) The Commissioner must give a copy of the consent to the company.

Subdivision 220-C—Modifications of other Divisions of this Part

Table of sections

Franking NZ franking companies' distributions

220-100 Residency requirement for franking
220-105 Unfrankable distributions by NZ franking companies
220-110 Maximum franking credit under section 202-60

NZ franking companies' franking accounts etc.

220-200 Keeping franking accounts in Australian currency
220-205 Franking credit for payment of NZ franking company's withholding tax liability
220-210 Effect of franked distribution to NZ franking company or flowing indirectly to NZ franking company
220-215 Effect on franking account if NZ franking choice ceases to be in force

Franking accounts of NZ franking company and some of its 100% subsidiaries

220-300 NZ franking company's franking account affected by franking accounts of some of its 100% subsidiaries

Effects of supplementary dividend from NZ franking company

220-400 Gross-up and tax offset for distribution from NZ franking company reduced by supplementary dividend
220-405 Deduction and reduced tax offset for franked distribution and supplementary dividend flowing indirectly
220-410 Franking credit reduced if tax offset reduced

Rules about exempting entities

220-500 Publicly listed post-choice NZ franking company and its 100% subsidiaries are not exempting entities
220-505 Post-choice NZ franking company is not automatically prescribed person
220-510 Parent company's status as prescribed person sets status of all other members of same wholly-owned group

NZ franking companies' exempting accounts

220-600 Keeping exempting accounts in Australian currency
220-605 Effect on exempting account if NZ franking choice ceases to be in force

Tax effect of distribution franked by NZ franking company with an exempting credit

220-700 Tax effect of distribution franked by NZ franking company with an exempting credit

Joint and several liability for NZ resident company's unmet franking liabilities

220-800 Joint and several liability for NZ resident company's franking tax etc.

Franking NZ franking companies' distributions

220-100 Residency requirement for franking

(1) An *NZ franking company satisfies the ***residency requirement*** when making a *distribution only if the distribution is made at least one month after the notice constituting the company's *NZ franking choice was given to the Commissioner.

Note: This section is relevant to both section 202-5 and section 208-60, which let a company frank a distribution, or frank a distribution with an exempting credit, only if the company satisfies the residency requirement when making the distribution.

(2) Section 202-20, as applying because of section 220-25, has effect subject to this section.

Note: Section 202-20 sets out how a company satisfies the residency requirement when making a distribution.

220-105 Unfrankable distributions by NZ franking companies

(1) These *distributions by an *NZ franking company are *unfrankable:

(a) a conduit tax relief additional dividend (as defined in section OB1 of the Income Tax Act 1994 of New Zealand);

(b) a supplementary dividend (as defined in that section).

(2) This section does not limit section 202-45 (about *unfrankable distributions).

220-110 Maximum franking credit under section 202-60

For the purposes of working out the *maximum franking credit for a *frankable distribution made by an *NZ franking company in a currency other than Australian currency, translate the amount of the distribution into Australian currency at the exchange rate applicable at the time of the decision to make the *distribution.

[The next section is section 220-200.]

NZ franking companies' franking accounts etc.

220-200 Keeping franking accounts in Australian currency

A *franking account of an *NZ franking company must be kept in Australian currency.

220-205 Franking credit for payment of NZ franking company's withholding tax liability

(1) A *franking credit arises in the *franking account of a company on the day a payment is made of *withholding tax that the company is liable under section 128B of the *Income Tax Assessment Act 1936* to pay, if:

(a) because of section 220-25, the company satisfies the *residency requirement for the income year in which it derived the income on which it was liable to pay the withholding tax; and

(b) the company is a *franking entity for the whole or part of that income year.

The amount of the credit equals the amount of the payment.

(2) For the purposes of determining whether the company satisfies the *residency requirement for the income year described in paragraph (1)(a), section 205-25 has effect as if the derivation of the income described in that paragraph were an event specified in a relevant table for the purposes of that section.

220-210 Effect of franked distribution to NZ franking company or flowing indirectly to NZ franking company

No tax offset for NZ franking company

(1) An *NZ franking company to which a *franked distribution is made or *flows indirectly is not entitled under Division 207 to a *tax offset for the *distribution. That Division has effect subject to this section.

Denial of tax offset does not stop franking credit or debit arising

(2) However, subsection (1) does not prevent a *franking credit or *franking debit from arising in the *NZ franking company's *franking account under Division 205 or 208. To avoid doubt, the amount of the credit or debit, and the time at which it arises, are the same as they would be apart from subsection (1).

Note: This has the effect that the amount and timing of the credit or debit are worked out as if the NZ franking company had been entitled to the tax offset that subsection (1) prevents the company from being entitled to.

220-215 Effect on franking account if NZ franking choice ceases to be in force

(1) This section has effect if:
  (a) a company has made an *NZ franking choice; and
  (b) the choice is revoked or cancelled at a time (the ***end time***); and
  (c) immediately before the end time the company is not an Australian resident.

Franking debit if franking surplus just before end time

(2) A *franking debit arises in the company's *franking account on the day during which the end time occurs if the account was in *surplus immediately before that time. The amount of the debit equals the *franking surplus.

Franking deficit tax if franking deficit just before end time

(3) If the company's *franking account was in *deficit immediately before the end time, subsection 205-45(3) applies in relation to the company as if it ceased to be a *franking entity at the end time.

Note: Subsection 205-45(3) makes an entity liable to pay franking deficit tax if the entity ceases to be a franking entity and had a franking deficit immediately before ceasing to be a franking entity.

(4) Subsection (3) does not limit the effect of subsection 205-45(3).

Take account of franking debit arising under section 220-605

(5) Take account of any *franking debit arising under section 220-605 because of the revocation or cancellation in working out for the purposes of this section whether the company's *franking account is in *surplus or *deficit immediately before the end time.

Note: Section 220-605 provides for a franking debit to arise in the company's franking account immediately before the end time if, immediately before the end time, the company was a former exempting entity and its exempting account was in deficit.

[The next section is section 220-300.]

Franking accounts of NZ franking company and some of its 100% subsidiaries

220-300 NZ franking company's franking account affected by franking accounts of some of its 100% subsidiaries

(1) This section has effect if all these conditions are met in relation to a company (the ***franking donor company***) at a time:

(a) the franking donor company is at the time:

(i) an Australian resident or a *post-choice NZ franking company; and

(ii) a *100% subsidiary of a post-choice NZ franking company (the ***parent company***) that is not a 100% subsidiary of another company that is a member of the same *wholly-owned group as the parent company;

(b) the franking donor company is at the time a 100% subsidiary of a post-choice NZ franking company (the ***NZ recipient company***) in relation to which these requirements are met:

(i) there must be no companies that are *NZ residents and 100% subsidiaries of the NZ recipient company interposed between it and the franking donor company;

(ii) the NZ recipient company must be either the parent company or a 100% subsidiary of the parent company;

(c) there are interposed between the NZ recipient company and the franking donor company at the time one or more companies, each of which:

(i) is a 100% subsidiary of the NZ recipient company; and
(ii) is neither an Australian resident nor an NZ resident.

*What is a **post-choice NZ franking company**?*

(2) A company is a ***post-choice NZ franking company*** at a time if:
(a) at the time, the company is an *NZ franking company; and
(b) the notice constituting the *NZ franking choice that makes the company an NZ franking company at the time was given to the Commissioner at or before the time.

Franking donor company's franking surplus when conditions met

(3) If the franking donor company's *franking account is in *surplus at the first time all the conditions in subsection (1) are met:
(a) a *franking debit equal to the surplus arises in the franking donor company's franking account immediately after that time; and
(b) a *franking credit equal to the surplus arises in the NZ recipient company's franking account immediately after that time.

Franking donor company's franking deficit when conditions met

(4) If the franking donor company's *franking account is in *deficit at the first time all the conditions in subsection (1) are met, subsection 205-45(3) applies in relation to the franking donor company as if:
(a) it ceased to be a *franking entity at that time; and
(b) its franking account had been in deficit to the same extent immediately before that cessation.

Note: Subsection 205-45(3) makes an entity liable to pay franking deficit tax if the entity ceases to be a franking entity and had a franking deficit immediately before ceasing to be a franking entity.

NZ recipient company's franking account after conditions are met

(5) If, apart from paragraph (a), a *franking credit or *franking debit would arise in the franking donor company's *franking account at a time (the ***accounting time***) that is a time when all the conditions in

subsection (1) are met but after the first time at which all those conditions are met in relation to the franking donor company:

(a) the credit or debit does not arise in the franking donor company's franking account; and

(b) a credit or debit of the same amount arises at the accounting time in the NZ recipient company's franking account instead.

(6) However, subsection (5) does not apply in relation to:

(a) a *franking debit arising in the franking donor company's *franking account under subsection (3); or

(b) a *franking credit arising in that account because of item 5 of the table in section 205-15 in conjunction with subsection (4) of this section; or

(c) a franking debit arising in that account under paragraph 220-605(3)(a).

Note 1: Item 5 of the table in section 205-15 gives rise to a franking credit immediately after a liability to franking deficit tax arises. Subsection (4) of this section causes such a liability to arise under section 205-45.

Note 2: Paragraph 220-605(3)(a) gives rise to a franking debit if the NZ franking choice of a company that is a former exempting entity is revoked or cancelled and the company's exempting account is in deficit immediately before the revocation or cancellation.

Franking donor company's benchmark franking percentage

(7) Subsection (5) does not affect the franking donor company's *benchmark franking percentage.

Special rules if franking donor company is former exempting entity

(8) If the franking donor company becomes a *former exempting entity at the first time all the conditions in subsection (1) are met:

(a) subsections (3) and (4) do not apply; and

(b) subsection (5) does not apply in relation to:

(i) a *franking credit arising in the franking donor company's *franking account under item 1 of the table in section 208-130 immediately after that time; or

(ii) a *franking debit arising in the franking donor company's franking account under item 1 of the table in section 208-145 immediately after that time.

Note: Subsection (8) ensures that the franking donor company's franking account has a nil balance immediately after the company becomes a former exempting entity and that there is an appropriate balance in the company's exempting account that is not made available for use by the NZ recipient company in franking distributions.

[The next section is section 220-400.]

Effects of supplementary dividend from NZ franking company

220-400 Gross-up and tax offset for distribution from NZ franking company reduced by supplementary dividend

(1) This section has effect if:

(a) an *NZ franking company:

(i) makes a *franked distribution to an entity (the ***recipient***) in an income year; and

(ii) pays a supplementary dividend (as defined in section OB1 of the Income Tax Act 1994 of New Zealand) to the recipient in connection with the franked distribution; and

(b) under section 207-20:

(i) an amount is included in the recipient's assessable income for the income year; and

(ii) the recipient is entitled to a *tax offset for the income year; and

(c) the recipient is entitled under section 160AF (Credits in respect of foreign tax) of the *Income Tax Assessment Act 1936* to a credit because of the inclusion of the *distribution in the recipient's assessable income for the income year; and

(d) the recipient's income tax for the income year is reduced to some extent on account of the credit.

Reduced gross-up

(2) The amount included in the recipient's assessable income is reduced by the amount of the supplementary dividend (but not below zero).

Reduced tax offset

(3) The amount of the *tax offset is reduced by the amount of the supplementary dividend (but not below zero).

Amount of gross-up and tax offset in case of manipulation

(4) If subsection 207-145(2) applies in relation to the recipient as the entity mentioned in that subsection, it has effect as if the amount of the *franking credit were equal to the amount of the *tax offset after reduction under subsection (3) of this section.

Note: Subsection 207-145(2) reduces the amount included in an entity's assessable income, and the amount of the tax offset to which the entity is entitled, under section 207-20 if the Commissioner determines that no franking credit benefit is to arise for part of a franked distribution to the entity.

Relationship with sections 207-20 and 207-145

(5) Sections 207-20 and 207-145 have effect subject to this section.

220-405 Deduction and reduced tax offset for franked distribution and supplementary dividend flowing indirectly

(1) This section has effect if:

(a) an *NZ franking company:

(i) makes a *franked distribution; and

(ii) pays a supplementary dividend (as defined in section OB1 of the Income Tax Act 1994 of New Zealand) in connection with the franked distribution; and

(b) the franked distribution and the supplementary dividend *flow indirectly to an entity (the ***recipient***) in an income year because the recipient is a partner in a partnership or a beneficiary or trustee of a trust; and

(c) the recipient is entitled under section 207-50 to a *tax offset in connection with the *distribution; and

(d) the recipient is entitled under section 160AF (Credits in respect of foreign tax) of the *Income Tax Assessment Act 1936* to a credit for the income year because of the distribution; and

(e) the recipient's income tax for the income year is reduced to some extent on account of the credit.

(2) The supplementary dividend ***flows indirectly*** to an entity if, had the supplementary dividend been a *franked distribution, it would have *flowed indirectly to the entity under section 207-35.

Deduction for recipient

(3) The recipient can deduct for the income year the amount worked out using the formula:

$$\text{Amount of the supplementary dividend} \times \frac{\text{Recipient's share of the *net income of the partnership or trust}}{\text{*Net income of the partnership or trust}}$$

Amount of recipient's tax offset

(4) Work out the amount of the recipient's *tax offset using the formula:

$$\left(\text{Amount of the *franking credit on the *franked distribution} - \text{Amount of the supplementary dividend}\right) \times \frac{\text{Recipient's share of the *net income of the partnership or trust}}{\text{*Net income of the partnership or trust}}$$

However, the amount of the tax offset is nil if the amount of the supplementary dividend is greater than the amount of the franking credit on the franked distribution.

Reduction of amount on which trustee recipient is assessed

(5) If the recipient:

(a) is the trustee of a trust; and

(b) is liable under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* to be assessed on a share of the *net income, the net income or a part of the net income, of the trust;

the amount on which the recipient is liable to be assessed is reduced by the amount worked out using the formula:

$$\text{Amount of the supplementary dividend} \times \frac{\text{Amount on which the recipient would be assessed apart from this section}}{\text{*Net income of the trust}}$$

Tax offset if recipient is trustee who is assessed

(6) Despite subsection (4), work out the amount of the recipient's *tax offset using the formula if the recipient:

(a) is the trustee of a trust; and

(b) is liable under section 98, 99 or 99A of the *Income Tax Assessment Act 1936* to be assessed on a share of the *net income, the net income or a part of the net income, of the trust;

$$\left(\text{Amount of the *franking credit on the *franked distribution} - \text{Amount of the supplementary dividend}\right) \times \frac{\text{Amount on which the recipient would be assessed apart from this section}}{\text{*Net income of the trust}}$$

However, the amount of the tax offset is nil if the amount of the supplementary dividend is greater than the amount of the franking credit on the franked distribution.

Amount of tax offset in case of manipulation

(7) If paragraph 207-150(2)(b) applies in relation to the recipient as the entity mentioned in that paragraph, it has effect as if the amount of the entity's *share of the *franking credit on the distribution were equal to the amount of the *tax offset worked out for the recipient under this section.

Note: Paragraph 207-150(2)(b) reduces the amount of a tax offset an entity is entitled to under section 207-50 for a franked distribution flowing indirectly to the entity if the Commissioner determines that no franking credit benefit is to arise for part of the distribution.

Relationship with Subdivisions 207-B and 207-F

(8) Subdivisions 207-B and 207-F have effect subject to this section.

Note: Subdivision 207-B provides for an entitlement to a tax offset for a franked distribution flowing indirectly to an entity. Subdivision 207-F provides for reducing the amount of the offset if the Commissioner

determines that no franking credit benefit is to arise for part of the distribution.

220-410 Franking credit reduced if tax offset reduced

(1) If, under section 220-400 or 220-405, a *corporate tax entity's *tax offset (the ***reduced tax offset***) for the *franked distribution described in that section is less than it would be apart from that section, the *franking credit arising in that entity's *franking account because of the *distribution is equal to the reduced tax offset.

(2) Items 3 and 4 of the table in section 205-15 have effect subject to this section.

Note: Items 3 and 4 of the table in section 205-15 give rise to a franking credit for a franked distribution if the recipient is entitled under Division 207 to a tax offset for the distribution. Those items provide that the amount of the credit equals the amount of that offset.

[The next section is section 220-500.]

Rules about exempting entities

220-500 Publicly listed post-choice NZ franking company and its 100% subsidiaries are not exempting entities

(1) A company is not an *exempting entity at a particular time if:
  (a) it is a *post-choice NZ franking company at the time; and
  (b) the company is a *listed public company at the time.

(2) A company (the ***non-exempting company***) is not an *exempting entity at a particular time if at the time:
  (a) the non-exempting company is a *100% subsidiary of a company (the ***listed company***) that is not an exempting entity because of subsection (1); and
  (b) the non-exempting company is an Australian resident or a *post-choice NZ franking company; and
  (c) if:
    (i) there are one or more companies interposed between the non-exempting company and the listed company; and

(ii) one or more of the interposed companies are *NZ residents;

all of the interposed companies that are NZ residents are post-choice NZ franking companies.

(3) This section has effect despite section 208-20 (about an entity being an *exempting entity).

220-505 Post-choice NZ franking company is not automatically prescribed person

(1) A *post-choice NZ franking company is not a prescribed person under section 208-40 for the purposes of working out whether another *corporate tax entity is an *exempting entity at a particular time because it is effectively owned by prescribed persons within the meaning of section 208-25.

(2) However, this section does not prevent the company from being taken under section 208-45 to be a prescribed person for those purposes.

220-510 Parent company's status as prescribed person sets status of all other members of same wholly-owned group

(1) This section has effect for the purposes of working out whether a company is an *exempting entity at a particular time because it is effectively owned by prescribed persons within the meaning of section 208-25, if:

(a) at the time the company is a *100% subsidiary of another company (the ***parent company***) that is not a 100% subsidiary of another member of the same *wholly-owned group; and

(b) at the time the parent company is a *post-choice NZ franking company; and

(c) there is at least one company (the ***non-Tasman company***) that meets all these conditions:

(i) the non-Tasman company is neither an Australian resident nor an *NZ resident at the time;

(ii) the non-Tasman company is a member of the same wholly-owned group at the time;

(iii) the non-Tasman company is interposed between the parent company and a company that, at the time, is an Australian resident or a post-choice NZ franking company.

(2) At the time, each company that is a *100% subsidiary of the parent company is a prescribed person if the parent company is a prescribed person at the time for those purposes because of section 208-40 or 208-45 (taking account of section 220-505, if relevant).

(3) At the time, each company that is a *100% subsidiary of the parent company is *not* a prescribed person if the parent company is *not* a prescribed person for those purposes because of section 208-40 or 208-45 (taking account of section 220-505, if relevant).

(4) This section has effect despite sections 208-40, 208-45 and 220-505 so far as those sections apply in relation to a *100% subsidiary of the parent company.

[The next section is section 220-600.]

NZ franking companies' exempting accounts

220-600 Keeping exempting accounts in Australian currency

An *exempting account of an *NZ franking company must be kept in Australian currency.

220-605 Effect on exempting account if NZ franking choice ceases to be in force

(1) This section has effect if:
  (a) a company has made an *NZ franking choice; and
  (b) the choice is revoked or cancelled at a time (the ***end time***); and
  (c) immediately before the end time:
    (i) the company is not an Australian resident; and
    (ii) the company is a *former exempting entity.

Exempting debit if exempting surplus just before end time

(2) An *exempting debit arises in the company's *exempting account at the end time if the account was in *surplus immediately before that time. The amount of the debit equals the *exempting surplus.

If exempting deficit just before end time

(3) If the company's *exempting account was in *deficit immediately before the end time:

(a) a *franking debit equal to that deficit arises in the company's *franking account immediately before the end time; and

(b) an *exempting credit equal to that deficit arises in the company's exempting account at the end time.

[The next section is section 220-700.]

Tax effect of distribution franked by NZ franking company with an exempting credit

220-700 Tax effect of distribution franked by NZ franking company with an exempting credit

(1) This section has effect if an *NZ franking company *franks with an exempting credit a *distribution the company makes when it is a *former exempting entity.

(2) If, under Subdivision 208-H, Division 207 applies in relation to the *distribution, it applies subject to the provisions of this Division that modify the effect of that Division.

Note 1: Subdivision 208-H provides in some cases for the tax effect of a distribution franked with an exempting credit by applying Division 207 as if the distribution were a franked distribution.

Note 2: Sections 220-400 and 220-405 modify the effect of Division 207 so far as it relates to the tax effect of distributions by NZ franking companies that pay supplementary dividends in connection with the distributions.

(3) Subdivision 208-H has effect subject to this section.

[The next section is section 220-800.]

Joint and several liability for NZ resident company's unmet franking liabilities

220-800 Joint and several liability for NZ resident company's franking tax etc.

(1) This section has effect if:

(a) a company (the ***defaulter***) became liable under another section to pay an amount described in subsection (2) because the company was an *NZ franking company; and

(b) the amount was unpaid by the time (the ***defaulter's due time***) it was due and payable by the defaulter; and

(c) at any time during the period for the amount (see subsection (2)), the defaulter was a member of the same *wholly-owned group as one or more other companies (each of which is a ***contributor***).

(2) For the purposes of subsection (1), the amount and period are shown in the table:

Amount and period

Item	For an amount of this kind:	The period is:
1	*Franking deficit tax	Whichever of these periods is relevant: (a) if the defaulter was liable to pay the tax because its franking account was in deficit at the end of an income year—that income year; (b) if the defaulter was liable to pay the tax because of another event—the period starting at the start of the income year in which the event occurred and ending when the event occurred
2	*Over-franking tax	The income year in which the defaulter made the *frankable distribution that made the defaulter liable to pay the tax
3	*General interest charge on *franking deficit tax or *over-franking tax	The period identified under item 1 or 2 for the tax

Amount and period		
Item	**For an amount of this kind:**	**The period is:**
4	Administrative penalty that: (a) is mentioned in section 284-75, 284-145, 286-75 or 288-25 in Schedule 1 to the *Taxation Administration Act 1953*; and (b) relates entirely to *franking deficit tax or *over-franking tax	The period identified under item 1 or 2 for the tax

(3) Just after the defaulter's due time, these companies become jointly and severally liable to pay the unpaid amount:

(a) the defaulter;

(b) each contributor, other than one that, at that time:

(i) is neither an Australian resident nor an *NZ resident; or

(ii) is prohibited by an *Australian law or a law of New Zealand from entering into an *arrangement that would make the contributor jointly or severally liable for the unpaid amount.

(4) The joint and several liability of a particular contributor becomes due and payable by the contributor 14 days after the Commissioner gives it written notice of the liability.

Note 1: Two or more contributors will have different due and payable dates for the same liability if the Commissioner gives them notice of their liability on different days.

Note 2: This section does not affect the time at which the liability for the unpaid amount arose for, or became due and payable by, the defaulter.

(5) If:

(a) the unpaid amount (the ***first interest amount***) is *general interest charge for a day in relation to another unpaid amount (the ***primary liability***) that consists of *franking deficit tax or *over-franking tax; and

(b) on a day the Commissioner gives a particular contributor written notice under subsection (4) of the contributor's liability for the first interest amount; and

(c) general interest charge arises:

(i) for a day (the ***later day***) after the days mentioned in paragraphs (a) and (b); and

(ii) in relation to the primary liability; and

(d) the general interest charge for the later day has not been paid or otherwise discharged in full by the time it became due and payable;

the Commissioner is taken to have given the contributor written notice under subsection (4) of the general interest charge for the later day on that later day.

(6) Section 254 of the *Income Tax Assessment Act 1936* applies in relation to the contributors' liability as if it were a liability for tax.

Note: Section 254 of the *Income Tax Assessment Act 1936* deals with the payment of tax by agents and trustees.

[The next Division is Division 240.]

Part 2—Related amendments

Division 1—Consequential amendments

Income Tax Assessment Act 1997

2 At the end of section 200-45

Add:

; and (e) franking by companies that are NZ residents or members of the same wholly-owned group as one or more companies that are NZ residents.

3 At the end of section 202-45

Add:

; (j) a distribution that section 220-105 says is unfrankable.

4 Subsection 995-1(1) (at the end of the definition of exempting entity)

Add “and affected by section 220-500 if relevant”.

5 Subsection 995-1(1) (at the end of the definition of flows indirectly)

Add:

; and (d) section 220-405 sets out the circumstances in which a supplementary dividend (as defined in section OB1 of the Income Tax Act 1994 of New Zealand) flows indirectly to an entity.

6 Subsection 995-1(1)

Insert:

NZ franking choice has the meaning given by section 220-35.

7 Subsection 995-1(1)

Insert:

NZ franking company has the meaning given by section 220-30.

8 Subsection 995-1(1)

Insert:

NZ resident has the meaning given by section 220-20.

9 Subsection 995-1(1)

Insert:

post-choice NZ franking company has the meaning given by section 220-300.

10 Subsection 995-1(1) (paragraph (a) of the definition of residency requirement)

After "section 202-20", insert "(as affected by section 220-100, if relevant)".

11 Subsection 995-1(1) (paragraph (b) of the definition of residency requirement)

Repeal the paragraph, substitute:

(b) for an income year that is one in which, or in relation to which, an event specified in a table in one of the following sections occurs:

(i) section 205-15 (general table of *franking credits);

(ii) section 205-30 (general table of *franking debits);

(iii) section 208-115 (table of *exempting credits);

(iv) section 208-120 (table of *exempting debits);

(v) section 208-130 (table of franking credits that arise because of an entity's status as a *former exempting entity or *exempting entity);

(vi) section 208-145 (table of franking debits that arise because of an entity's status as a former exempting entity or exempting entity);

or an income year that is described in section 220-205—has the meaning given by section 205-25; and

Taxation Administration Act 1953

12 Subsection 250-10(2) in Schedule 1 (after note 2)

Insert:

Note 3: Companies that are or were members of the same wholly-owned group as an NZ franking company may be jointly and severally liable to pay certain tax-related liabilities of the NZ franking company (see Division 220 of the *Income Tax Assessment Act 1997*).

Division 2—Amendments contingent on imputation for co-operative companies

Taxation Laws Amendment Act (No. 3) 2003

Note: The Bill for the *Taxation Laws Amendment Act (No. 3) 2003* originated as the Taxation Laws Amendment Bill (No. 8) 2002.

13 Subsection 2(1) (table item 5)

Repeal the item, substitute:

5.	Schedule 3	The later of: (a) immediately after the commencement of Part 1 of Schedule 10 to the *Taxation Laws Amendment Act (No. 6) 2003*; and (b) the start of the day on which this Act receives the Royal Assent

Note: If the day on which this Act receives the Royal Assent is after the day on which the *Taxation Laws Amendment Act (No. 3) 2003* receives the Royal Assent, this item does not commence at all. See subsection 2(3) of this Act.

14 Item 2 of Schedule 3

Repeal the item, substitute:

2 After paragraph 200-45(c)

Insert:

(d) franking by co-operative companies; and

Note: If the day on which this Act receives the Royal Assent is after the day on which the *Taxation Laws Amendment Act (No. 3) 2003* receives the Royal Assent, this item does not commence at all. See subsection 2(3) of this Act.

15 Item 4 of Schedule 3 (heading)

Repeal the heading, substitute:

4 After Division 216

Note: If the day on which this Act receives the Royal Assent is after the day on which the *Taxation Laws Amendment Act (No. 3) 2003* receives the Royal Assent, this item does not commence at all. See subsection 2(3) of this Act.

16 Item 4 of Schedule 3

Omit "Add:", substitute "Insert:".

Note: If the day on which this Act receives the Royal Assent is after the day on which the *Taxation Laws Amendment Act (No. 3) 2003* receives the Royal Assent, this item does not commence at all. See subsection 2(3) of this Act.

Division 3—Amendments contingent on taxation of financial arrangements

Income Tax Assessment Act 1997

17 Section 220-110

Omit "currency other than Australian currency", substitute "*foreign currency".

18 Section 220-110 (link note)

Repeal the link note, substitute:

[The next section is section 220-205.]

19 Section 220-200

Repeal the section.

20 Section 220-510 (link note)

Repeal the link note, substitute:

[The next section is section 220-605.]

21 Section 220-600

Repeal the section.

22 Before paragraph 960-50(10)(a)

Insert:

(aa) section 220-110 (*maximum franking credit);

23 Application

The amendments made by this Division apply to transactions, events and things in relation to which section 960-50 of the *Income Tax Assessment Act 1997* applies, or would apply apart from subsection (10) of that section, because of paragraph 960-55(1)(a) of that Act.

Division 4—Application and transitional provisions

Income Tax (Transitional Provisions) Act 1997

24 At the end of Part 3-6

Add:

Division 220—Imputation for NZ resident companies and related companies

Table of sections

220-1	Application to things happening on or after 1 April 2003
220-5	Residency requirement for income year including 1 April 2003
220-10	NZ franking company cannot frank before 1 October 2003
220-35	Extended time to make NZ franking choice
220-501	Franking and exempting accounts of new former exempting entities

220-1 Application to things happening on or after 1 April 2003

The following apply in relation to things happening on or after 1 April 2003, subject to this Division:

(a) Division 220 of the *Income Tax Assessment Act 1997*;

(b) the amendments of that Act made by Division 1 of Part 2 of Schedule 10 to the *Taxation Laws Amendment Act (No. 6) 2003* relating to Division 220 of the *Income Tax Assessment Act 1997*.

220-5 Residency requirement for income year including 1 April 2003

In determining whether an NZ franking company meets the residency requirement for the income year including 1 April 2003 regard may be had to things that happened in relation to the company before 1 April 2003.

220-10 NZ franking company cannot frank before 1 October 2003

An NZ franking company cannot:

(a) frank a distribution made before 1 October 2003; or

(b) frank with an exempting credit a distribution made before 1 October 2003.

[The next section is section 220-35.]

220-35 Extended time to make NZ franking choice

(1) A company that is an NZ resident may make an NZ franking choice that comes into force at the start of the company's income year including 1 April 2003 by giving notice in the approved form to the Commissioner before the end of the next income year.

(2) Subsection (1) has effect despite paragraph 220-40(1)(a) of the *Income Tax Assessment Act 1997*.

[The next section is section 220-501.]

220-501 Franking and exempting accounts of new former exempting entities

(1) This section has effect if:

(a) a company (the ***Australian company***) that is an Australian resident becomes a former exempting entity at a time (the ***switch time***) because of:

(i) an NZ franking choice by a company (the ***NZ company***); and

(ii) Division 220 of the *Income Tax Assessment Act 1997*; and

(b) the NZ franking choice comes into force at the start of the NZ company's income year including 1 April 2003; and

(c) at the switch time there is a franking surplus in the Australian company's franking account; and

(d) at the switch time the Australian company is a 100% subsidiary of a company (the ***NZ parent company***) that:

(i) is not a 100% subsidiary of another company that is a member of the same wholly-owned group; and

(ii) is a post-choice NZ franking company; and

(e) there is a period for which all these requirements are met:

(i) the period must start as soon as possible after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997 and end immediately before the switch time;

(ii) the Australian company must have been a 100% subsidiary of the NZ parent company for the whole of the period;

(iii) the Australian company must meet either or both of the conditions in subsections (2) and (3) for the whole of the period;

(iv) the NZ parent company must meet the condition in subsection (4) for the whole of the period.

Conditions relating to the Australian company

(2) One condition relating to the Australian company is that the company would not have been effectively owned by prescribed persons as described in sections 208-25 to 208-45 of the *Income Tax Assessment Act 1997* if:

(a) those sections and sections 220-505 and 220-510 of that Act had applied throughout the period; and

(b) an accountable membership interest or accountable partial interest in the Australian company had, at a time in the period, been held by, or indirectly for the benefit of, a post-choice NZ franking company if, at that time:

(i) the interest was held by, or indirectly for the benefit of, a company (the ***interest holder***); and

(ii) the interest holder was an NZ resident or would have been one had section 220-20 of the *Income Tax*

Assessment Act 1997, and section 995-1 of that Act so far as it relates to section 220-20 of that Act, applied throughout the period.

(3) The other condition relating to the Australian company is that the company was a 100% subsidiary of a company that:

(a) was a listed public company; and

(b) was an NZ resident or would have been one had section 220-20 of the *Income Tax Assessment Act 1997*, and section 995-1 of that Act so far as it relates to section 220-20 of that Act, applied throughout the period.

Condition relating to the NZ parent company

(4) The condition relating to the NZ parent company is that it:

(a) was not a 100% subsidiary of another company that was a member of the same wholly-owned group; and

(b) was an NZ resident or would have been one had section 220-20 of the *Income Tax Assessment Act 1997*, and section 995-1 of that Act so far as it relates to section 220-20 of that Act, applied throughout the period.

Franking credits for the period remain franking credits

(5) A franking credit arises in the Australian company's franking account immediately after the switch time.

Note: This franking credit will partly or fully offset the franking debit that arises under item 1 of the table in section 208-145 of the *Income Tax Assessment Act 1997* because the Australian company becomes a former exempting entity at the switch time.

Franking credits for the period do not become exempting credits

(6) An exempting debit arises in the Australian company's exempting account immediately after the switch time.

Note: This exempting debit will partly or fully offset the exempting credit that arises under item 1 of the table in section 208-115 of the *Income Tax Assessment Act 1997* because the Australian company becomes a former exempting entity at the switch time.

Amount of franking credit and exempting debit

(7) Work out the amount of the franking credit arising under subsection (5) and the exempting debit arising under subsection (6) using the table:

Amount of the franking credit and the exempting debit

Item	If:	The amount of the credit and debit is:
1	The period starts immediately after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997	The franking surplus in the Australian company's franking account at the switch time
2	Both these conditions are met: (a) item 1 does not apply; (b) the Australian company's franking account was not in surplus at the start of the period	The franking surplus in the Australian company's franking account at the switch time
3	All these conditions are met: (a) item 1 does not apply; (b) the Australian company's franking account was in surplus at the start of the period; (c) the surplus in the account at the switch time is greater than the surplus at the start of the period	The difference between: (a) the franking surplus in the Australian company's franking account at the switch time; and (b) the franking surplus in the Australian company's franking account at the start of the period

No franking credit or exempting debit in some cases

(8) Subsections (5) and (6) do not have effect if:

(a) the start of the period is not immediately after 7.30 pm by legal time in the Australian Capital Territory on 13 May 1997; and

(b) the franking surplus in the Australian company's franking account at the switch time is not greater than the franking surplus in the Australian company's franking account at the start of the period.

Schedule 11—GST amendments relating to compulsory third party schemes

A New Tax System (Goods and Services Tax) Act 1999

1 Section 9-39 (after table item 3)

Insert:

3A	Compulsory third party schemes	Division 79

2 Section 9-39 (after table item 8A)

Insert:

8B	Settlement sharing arrangements	Division 80

3 Section 9-99 (after table item 2)

Insert:

2A	Compulsory third party schemes	Division 79

4 Section 11-99 (after table item 2)

Insert:

2A	Compulsory third party schemes	Division 79

5 Section 11-99 (after table item 14)

Insert:

15	Settlement sharing arrangements	Division 80

6 Section 17-99 (after table item 4)

Insert:

4AA	Compulsory third party schemes	Division 79

7 Section 17-99 (after table item 12)

Insert:

12AA	Settlement sharing arrangements	Division 80

8 Section 19-99 (before table item 1A)

Insert:

1AA	Compulsory third party schemes	Division 79

9 Section 19-99 (after table item 2)

Insert:

3	Settlement sharing arrangements	Division 80

10 Section 37-1 (after table item 8)

Insert:

8A	Compulsory third party schemes	Division 79

11 Section 37-1 (after table item 29)

Insert:

29AA	Settlement sharing arrangements	Division 80

12 At the end of subsection 72-5(3)

Add "or by an entity (other than an *operator) settling a claim under a *compulsory third party scheme".

13 At the end of subsection 72-40(3)

Add "or by an *operator settling a claim under a *compulsory third party scheme".

14 At the end of section 78-1

Add:

Note: Payments and supplies under compulsory third party schemes are dealt with in some cases under this Division and in others under Division 79 or 80.

15 After paragraph 78-50(1)(c)

Insert:

; and (d) the insurance policy was not issued under a *compulsory third party scheme.

16 At the end of section 78-105

Add:

; but does not include a *compulsory third party scheme.

Note: Divisions 79 and 80 deal with compulsory third party schemes.

17 Saving of existing regulations

The amendment of section 78-105 of the *A New Tax System (Goods and Services Tax) Act 1999* by this Schedule does not affect the validity of regulations made for the purposes of that section, to the extent that the regulations do not relate to compulsory third party schemes.

18 After Division 78

Insert:

Division 79—Compulsory third party schemes

79-1 What this Division is about

Operators of compulsory third party schemes have adjustments which enable the net GST on the schemes to reflect correctly their margins after settlements of claims and other payments and supplies under the schemes are taken into account.

The normal application of Division 78 to some insurance policy payments and supplies under the schemes is modified (see Subdivision 79-A). That Division is also extended so that it applies in a modified form to payments and supplies connected with, but not under, insurance policies (see Subdivision 79-B). For other settlements, and payments, provisions similar to Division 78 apply (see Subdivision 79-C). Certain adjustments are worked out using an “applicable average input tax credit fraction” (see Subdivision 79-D).

Note: Division 80 deals with use of settlement sharing arrangements by the operators of compulsory third party schemes.

Table of Subdivisions

79-A Modified application of Division 78 to certain compulsory third party scheme payments and supplies under insurance policies

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79-C Other payments and supplies under compulsory third party schemes

79-D Compulsory third party scheme decreasing adjustments worked out using applicable average input tax credit fraction

Subdivision 79-A—Modified application of Division 78 to certain compulsory third party scheme payments and supplies under insurance policies

79-5 Application of sections 78-10 and 78-15 (about decreasing adjustments) where premium selection test is satisfied

(1) This section applies to a payment or supply if:

(a) it is a payment or supply made under a *compulsory third party scheme; and

(b) the payment or supply is made in settlement of a claim under an *insurance policy; and

(c) the *premium selection test is satisfied; and

(d) the payment or supply is not a payment or supply to which section 79-15 (about sole operator elections) applies.

Premium selection test

(2) The ***premium selection test is satisfied*** if the amount of the premium or premiums for the policy resulted from:

(a) an *operator of the *compulsory third party scheme offering a number of different premium amounts to the entity liable to pay the premium or premiums; and

(b) that entity selecting a premium amount:

(i) that was offered on the basis that there would be an entitlement to an input tax credit for some or all of the amount; or

(ii) that was offered on the basis that there would be no entitlement to an input tax credit for any of the amount.

Input tax credit entitlement

(3) If subparagraph (2)(b)(i) applies, then, for the purposes of sections 78-10 and 78-15:

(a) there is taken to be an entitlement to an input tax credit for the premium paid in relation to the period during which the event giving rise to the claim happened; and

(b) if the supply of the insurance policy was solely or partly a *taxable supply—the amount of the input tax credit is taken to equal the GST payable by the *operator for the taxable supply.

No input tax credit entitlement

(4) If subparagraph (2)(b)(ii) applies, then, for the purposes of sections 78-10 and 78-15, there is taken to be no entitlement to an input tax credit for the premium paid in relation to the period during which the event giving rise to the claim happened.

79-10 Adjustment where operator becomes aware that correct input tax credit situation differs from basis on which premium selection test was satisfied

Decreasing adjustment

(1) If:

(a) subsection 79-5(3) applies to a payment or supply; and

(b) after the *premium selection test was satisfied, the *operator became or becomes aware that there was actually no entitlement to an input tax credit for any of the amount of the

premium or premiums paid in relation to the period during which the event giving rise to the claim happened; and

(c) if subsection 79-5(4) had applied, the operator would have been entitled to a *decreasing adjustment (the ***notional decreasing adjustment***);

then:

(d) the operator has a ***decreasing adjustment*** whose amount is, subject to paragraph (e), equal to the notional decreasing adjustment; and

(e) if one or more *increasing adjustments (each being a ***notional section 78-40 increasing adjustment***) would have arisen, before the decreasing adjustment under paragraph (d) arose, under Division 19 because of section 78-40 applying in relation to the notional decreasing adjustment, the amount of the decreasing adjustment under paragraph (d) is reduced by the sum of the notional section 78-40 increasing adjustments; and

(f) for the purposes of applying section 78-40 after the decreasing adjustment arises under this subsection, that decreasing adjustment is taken to arise under Division 78.

Increasing adjustment

(2) If:

(a) subsection 79-5(4) applies to a payment or supply; and

(b) as a result, the *operator has a *decreasing adjustment (the original decreasing adjustment); and

(c) after the *premium selection test was satisfied, the operator becomes aware that there actually was an entitlement to an input tax credit for some or all of the amount of the premium or premiums paid in relation to the period during which the event giving rise to the claim happened;

then:

(d) the operator has an ***increasing adjustment*** whose amount is, subject to paragraph (e), equal to the original decreasing adjustment; and

(e) if one or more *increasing adjustments (each being a ***section 78-40 increasing adjustment***) arose, before the increasing adjustment under paragraph (d) arose, under

Division 19 because of section 78-40 applying in relation to the original decreasing adjustment, the amount of the increasing adjustment under paragraph (d) is reduced by the sum of the section 78-40 increasing adjustments; and

(f) after the increasing adjustment arises under paragraph (d), no adjustment arises under Division 19 because of section 78-40 applying in relation to the original decreasing adjustment.

79-15 Application of sections 78-10 and 78-15 (about decreasing adjustments) where sole operator election to use average input tax credit entitlement

(1) This section applies to a payment or supply if:

(a) it is a payment or supply made under a *compulsory third party scheme; and

(b) the payment or supply is made in settlement of a claim under an *insurance policy; and

(c) there is only one *operator who issues insurance policies under the scheme; and

(d) assuming the requirements of paragraph 78-10(2)(b) were satisfied, the operator would have a *decreasing adjustment under section 78-10 in respect of the payment or supply; and

(e) an election under subsection (4) is in force during the *financial year in which the payment or supply is made.

(2) For the purposes of section 78-10, the *operator has a *decreasing adjustment under that section in relation to the payment or supply.

(3) Section 78-15 does not apply to the *decreasing adjustment, but its amount is instead worked out using the applicable *average input tax credit fraction (see section 79-95).

(4) The *operator may, in writing, elect that, from the start of a specified *financial year, any *decreasing adjustment in relation to the payment or supply is to be worked out using the applicable *average input tax credit fraction.

(5) Subject to subsection (6), the election must be made before the start of the specified *financial year.

(6) Subsection (5) does not apply if the election specifies the *financial year beginning on 1 July 2003 and is made before the end of 30 days after the day on which this section commences.

(7) The election is in force during the specified *financial year and every later financial year, other than one that begins after a financial year in which the election is revoked.

79-20 Extension of various references in Division 78 to rights of subrogation to cover other rights of recovery

Payments or supplies in settlement of claims

(1) For the purposes of sections 78-35, 78-40 and 78-75, a reference in those sections to a payment or supply made by an entity in settlement of a claim by an insurer in exercising the insurer's rights of subrogation in respect of an *insurance policy includes a reference to a payment or supply that satisfies the following requirements:

(a) the payment or supply is made by an entity in settlement of a claim by an *operator of a *compulsory third party scheme;

(b) the claim was made by the operator in exercise of the operator's rights to recover in respect of a payment or supply made under the compulsory third party scheme;

(c) the claim was not made under an *insurance policy that is a policy of reinsurance.

Payments or supplies in compliance with court judgments etc. relating to claims

(2) For the purposes of section 78-110, a reference in that section to a payment or supply made by an entity in compliance with a judgment or order of a court relating to a claim made by an insurer in exercising the insurer's rights of subrogation in respect of an *insurance policy includes a reference to a payment or supply that satisfies the following requirements:

(a) the payment or supply is made by an entity in compliance with a judgment or order of a court relating to a claim made by an *operator of a *compulsory third party scheme;

(b) the claim was made by the *operator in exercise of the operator's rights to recover a payment or supply made under the *compulsory third party scheme;

(c) the claim was not made under an insurance policy that is a policy of reinsurance.

Subdivision 79-B—Extension of Division 78 to cover certain compulsory third party scheme payments and supplies connected with, but not under, insurance policies

79-25 Meaning of CTP hybrid payment or supply

(1) Subject to this section, a payment or supply is a ***CTP hybrid payment or supply*** if:

(a) it is made in settlement of a claim for compensation under a *compulsory third party scheme; and

(b) the claim would not have been made but for an *insurance policy issued under the scheme; and

(c) the claim was not made under the insurance policy.

(2) A payment or supply is not a ***CTP hybrid payment or supply*** if:

(a) when the payment or supply is made, the entity that paid the premium for the *insurance policy cannot be located; and

(b) that entity did not, at or before the time the *operator making the payment or supply was first made aware of the circumstances to which the payment or supply relates, inform the operator of the entitlement to an input tax credit for the CTP premium it paid; and

(c) the *premium selection test was not satisfied in relation to the insurance policy.

(3) A payment or supply is not a ***CTP hybrid payment or supply*** if the *operator making the payment or supply was required to do so by law because of the bankruptcy or insolvency of another operator who is an insurer.

79-30 Application of Division 78

(1) Division 78 (other than section 78-100), as modified by Subdivision 79-A, applies in relation to a *CTP hybrid payment or supply as if it were a payment or supply made in settlement of a claim under the *insurance policy mentioned in paragraph 79-25(1)(b).

(2) This section does not prevent Division 78 applying to a payment or supply under a *compulsory third party scheme if the payment or supply is made in settlement of a claim under an *insurance policy.

Subdivision 79-C—Other payments and supplies under compulsory third party schemes

79-35 Meaning of CTP compensation or ancillary payment or supply etc.

Meaning of ***CTP compensation or ancillary payment or supply***

(1) A payment or supply is a ***CTP compensation or ancillary payment or supply*** if it is a *CTP compensation payment or supply or a *CTP ancillary payment or supply.

Meaning of ***CTP compensation payment or supply***

(2) A payment or supply is a ***CTP compensation payment or supply*** if
  (a) it is a payment or supply made under a *compulsory third party scheme; and
  (b) it is a payment or supply made in settlement of a claim for compensation under the scheme; and
  (c) it is not the case that the *operator making the payment or supply was required to do so by law because of the bankruptcy or insolvency of another operator who is an insurer; and
  (d) Division 78 does not apply in relation to the payment or supply; and
  (e) the payment or supply is not a *CTP dual premium or election payment or supply or a *CTP hybrid payment or supply.

Meaning of ***CTP ancillary payment or supply***

(3) A payment or supply is a ***CTP ancillary payment or supply*** if:

(a) the payment or supply is made under a *compulsory third party scheme; and

(b) the payment or supply is of a kind specified in the regulations; and

(c) it is not the case that the *operator making the payment or supply was required to do so by law because of the bankruptcy or insolvency of another operator who is an insurer; and

(d) Division 78 does not apply in relation to the payment or supply; and

(e) the payment or supply is not a*CTP dual premium or election payment or supply or a *CTP hybrid payment or supply; and

(f) the payment or supply is not made in settlement of a claim for compensation under the scheme; and

(g) the payment or supply is not *consideration for a *creditable acquisition.

79-40 GST on CTP premiums is exclusive of stamp duty

(1) The *value of a *taxable supply for which the *consideration includes an amount of *CTP premium is worked out as if the *price of the supply were reduced by the amount of any stamp duty payable under a *State law or *Territory law in respect of the supply.

(2) This section has effect despite section 9-75 (which is about the value of taxable supplies).

79-45 Exclusion of certain compulsory third party schemes

This Subdivision (other than section 79-40) does not apply to a *compulsory third party scheme under which *CTP compensation or ancillary payments or supplies are made, or to a *CTP compensation or ancillary payment or supply, if the compulsory third party scheme is of a kind specified in the regulations.

79-50 Decreasing adjustments for CTP compensation or ancillary payments or supplies

(1) An *operator of a *compulsory third party scheme has a ***decreasing adjustment*** if the operator makes a *CTP compensation or ancillary payment or supply under the scheme.

(2) However, this section only applies if:

(a) the payments of *CTP premium that have been or are required to be made under the scheme are, or would be, *consideration for a *taxable supply; and

(b) the *operator is *registered or *required to be registered.

(3) The *decreasing adjustment in relation to the payment or supply is worked out using the applicable *average input tax credit fraction (see section 79-95).

79-55 Increasing adjustments for payments of excess etc. under compulsory third party schemes

(1) An *operator of a *compulsory third party scheme has an ***increasing adjustment*** if:

(a) there is a payment of an excess to the operator under the scheme; and

(b) the payment relates to a *CTP compensation payment or supply that the operator makes or has made; and

(c) the operator makes, or has made, *creditable acquisitions or *creditable importations directly for the purpose of making the CTP compensation payment or supply.

(2) The amount of the increasing adjustment is 1/11 of the amount that represents the extent to which the payment of excess relates to *creditable acquisitions or *creditable importations made by the *operator directly for the purpose of making the *CTP compensation payment or supply.

(3) An *operator of a *compulsory third party scheme has an ***increasing adjustment*** if:

(a) there is a payment of an excess to the operator under the scheme; and

(b) the operator makes, or has made, *creditable acquisitions or *creditable importations directly for the purpose of making a *CTP compensation payment or supply to which the payment of excess would relate; and

(c) the operator has not made any CTP compensation payment or supply to which the payment of excess relates.

The amount of the increasing adjustment is 1/11 of the amount of the payment of excess.

79-60 Effect of settlements and payments under compulsory third party schemes

(1) If an *operator of a *compulsory third party scheme makes a payment under the scheme, it is *not* treated as *consideration:

(a) for an acquisition made by the operator; or

(b) for a supply made to the operator by the entity to whom the payment was made;

to the extent that the payment is a *CTP compensation or ancillary payment or supply.

(2) If an *operator of a *compulsory third party scheme makes a supply under the scheme:

(a) it is not a *taxable supply; and

(b) it is *not* treated as *consideration for an acquisition made by the operator; and

(c) it is *not* treated as *consideration for a supply made to the operator by the entity to whom the supply was made;

to the extent that the supply is a *CTP compensation or ancillary payment or supply.

(3) This section has effect despite section 9-5 (which is about what are taxable supplies), section 9-15 (which is about consideration) and section 11-5 (which is about what is a creditable acquisition).

79-65 Taxable supplies relating to recovery by operators of compulsory third party schemes

(1) If:

(a) an *operator of a *compulsory third party scheme has made a claim in relation to a *CTP compensation or ancillary payment or supply; and

(b) the operator's claim is made in exercising rights to recover in respect of that payment or supply; and

(c) an entity:

(i) makes a payment of *money; or

(ii) makes a supply; or

(iii) makes both a payment of money and a supply;

in settlement of the operator's claim;

the payment or supply mentioned in paragraph (c) is *not* treated as *consideration for a supply made by the operator (whether or not the payment or supply is made to the operator), or for an acquisition made by the entity making the payment or supply (or payment and supply).

(2) This section has effect despite section 9-15 (which is about consideration) and section 11-5 (which is about what is a creditable acquisition).

79-70 Adjustment events relating to decreasing adjustments for operators of compulsory third party schemes

Division 19 applies in relation to a *decreasing adjustment that an *operator of a *compulsory third party scheme has under section 79-50 as if:

(a) the adjustment were an input tax credit; and

(b) either:

(i) if the adjustment relates to a *CTP compensation payment or supply—the settlement of the claim to which the adjustment relates were a *creditable acquisition that the operator made; or

(ii) if the adjustment relates to a *CTP ancillary payment or supply—the operator had made a creditable acquisition for which the payment or supply was the *consideration; and

(c) any payment or supply made by another entity, in settlement of a claim made by the operator in exercising rights to recover from the other entity in respect of the settlement

mentioned in subparagraph (b)(i) or the payment or supply mentioned in subparagraph (b)(ii), were a reduction in the consideration for the acquisition.

79-75 Adjustment events relating to increasing adjustments under section 79-55

Division 19 applies in relation to an *increasing adjustment that an *operator of a *compulsory third party scheme has under section 79-55 as if:

(a) payments of excess to which the adjustment relates were *consideration for a *taxable supply that the operator made; and

(b) the adjustment were the GST payable on the taxable supply; and

(c) any refunds made by the operator of any of those payments of excess were reductions in the consideration for the supply.

79-80 Payments of excess under compulsory third party schemes are not consideration for supplies

(1) The making of any payment by an entity is *not* treated as *consideration for a supply, to the entity or any other entity, to the extent that the payment is the payment of an excess to an *operator of a *compulsory third party scheme.

(2) This section has effect despite section 9-15 (which is about consideration).

79-85 Supplies of goods to operators in the course of settling claims

(1) A supply of goods is not a *taxable supply if it is *solely* a supply made under a *compulsory third party scheme to an *operator of the scheme in the course of settling a claim for compensation made under the scheme.

(2) In working out the ***value*** of a *taxable supply that is *partly* a supply of goods made under a *compulsory third party scheme to an *operator of the scheme in the course of settling a claim for compensation made under the scheme, disregard the *consideration to the extent that it relates to the supply of those goods.

(3) This section has effect despite section 9-5 (which is about what are taxable supplies) and section 9-75 (which is about the value of taxable supplies).

79-90 Effect of judgments and court orders

If:

(a) in compliance with a judgment or order of a court relating to:

(i) a claim for compensation under a *compulsory third party scheme; or

(ii) a claim by an *operator of a compulsory third party scheme, exercising rights to recover from another entity in respect of a settlement made under the scheme;

an entity makes a payment of *money, makes a supply, or makes both a payment of money and a supply; and

(b) had the payment or supply been made in the absence of such a judgment or order, it would have been a *CTP compensation payment or supply or a CTP ancillary payment or supply;

the payment or supply is treated as having been a CTP compensation payment or supply or a CTP ancillary payment or supply.

Subdivision 79-D—Compulsory third party scheme decreasing adjustments worked out using applicable average input tax credit fraction

79-95 How to work out decreasing adjustments using the applicable average input tax credit fraction

(1) If an *operator of a *compulsory third party scheme has a *decreasing adjustment in relation to a payment or supply that is to be worked out using the applicable *average input tax credit fraction, the amount of the *decreasing adjustment is as follows.

(2) The amount is worked out using the formula:

$$\frac{1}{11} \times \begin{array}{c}\text{Payment or}\\ \text{supply amount}\end{array} \times \left(1 - \begin{array}{c}\text{Applicable average input}\\ \text{tax credit fraction}\end{array}\right)$$

where:

applicable average input tax credit fraction is the *average input tax credit fraction for the *compulsory third party scheme concerned for the *financial year in which:

(a) if the payment or supply is a *CTP compensation payment or supply—the accident or other incident to which the claim relates happened; or

(b) if the payment or supply is a *CTP ancillary payment or supply—the payment or supply was made.

payment or supply amount is the amount worked out in accordance with subsection (3).

Payment or supply amount

(3) The payment or supply amount mentioned in subsection (2) is worked out using this method statement.

Method statement

Step 1. Add together:

(a) the sum of the payments of *money (if any) that are included in the payment or supply; and

(b) the *GST inclusive market value of the supplies (if any) made by the *operator that are included in the payment or supply (other than supplies that would have been *taxable supplies but for section 78-25 or 79-60).

Step 2. If, in relation to the payment or supply, any payments of an excess were made to the *operator, subtract from the step 1 amount the sum of all those payments (except to the extent that they are payments of excess to which section 78-18 or 79-55 applies).

Step 3. Except where the payment or supply is a *CTP ancillary payment or supply, multiply the step 1 amount, or (if step 2 applies) the step 2 amount, by the following:

$$\frac{11}{11 - \text{Applicable average input tax credit percentage}}$$

where:

applicable average input tax credit fraction has the meaning given by subsection (2).

Reduction for non-creditable insurance events

(4) The amount of the *decreasing adjustment under subsection (1) is reduced to the extent (if any) that the payment or supply relates to one or more *non-creditable insurance events.

79-100 Meaning of average input tax credit fraction

(1) Except where subsection (7) applies, the ***average input tax credit fraction*** for a *compulsory third party scheme for a *financial year is:

(a) for the financial year beginning on 1 July 2000, 1 July 2001 or 1 July 2002—nil; and

(b) for the financial year beginning on 1 July 2003, 1 July 2004, 1 July 2005 or 1 July 2006—the business vehicle use fraction for the scheme determined by the Treasurer under subsection (2); and

(c) for any later financial year:

(i) if subparagraph (ii) does not apply—the same fraction as the average input tax credit fraction for the scheme for the preceding financial year; or

(ii) if, under subsection (3), the Treasurer determines the average input tax credit fraction for the scheme for the financial year—that fraction.

Treasurer to determine business vehicle use fraction for 2003-4 to 2006-7 financial years using statistical information

(2) As soon as practicable after the commencement of this section, the Treasurer must, in writing, determine the business vehicle use fraction (see subsection (4)) for each *compulsory third party scheme, using statistical information that:

(a) relates to business and total use of vehicles in the State or Territory in which the scheme operates; and

(b) was published on 27 June 2001 by the Australian Bureau of Statistics in respect of the period 1 November 1999 to 31 October 2000.

Treasurer to use later statistical information to determine whether average input tax credit fraction to be varied for later financial years

(3) As soon as practicable after the beginning of each of the following *financial years (a ***determination year***):

(a) the financial year that begins on 1 July 2006;

(b) the financial years that begin on each 1 July that occurs 3 years, or a multiple of 3 years, after 1 July 2006;

the Treasurer must, for each *compulsory third party scheme:

(c) work out business vehicle use fractions (see subsection (4)) using each set of statistical information, relating to business and total use of vehicles in the State or Territory in which the scheme operates, published by the Australian Bureau of Statistics during the 3 financial years before the determination year; and

(d) work out the average of those fractions (the ***new fraction***); and

(e) if the Treasurer considers the new fraction is significantly different from the average input tax credit fraction that would, disregarding this subsection, apply under subparagraph (1)(c)(i) for the scheme for the financial year (the ***operative year***) following the determination year—in writing, determine that the new fraction is to be the average input tax credit fraction for the scheme for the operative year.

Business vehicle use fraction

(4) The business vehicle use fraction is the fraction of total vehicle use, in the State or Territory in which the *compulsory third party scheme operates, represented by business vehicle use.

Publication of revised statistical information

(5) To avoid doubt, if, after publishing statistical information relating to business and total use of vehicles in a State or Territory, the Australian Bureau of Statistics publishes a revised or replacement version of that statistical information, that revision or replacement is to be disregarded for the purposes of this section.

Gazettal of determinations

(6) The Treasurer must arrange for a copy of any determination that he or she makes under subsection (2) or (3) to be published in the *Gazette*.

Exception

(7) If:

(a) this section is being applied in working out the amount of a *decreasing adjustment that arises under section 79-15 (about sole operator elections); and

(b) the cover under the *insurance policy concerned commenced before 1 July 2003;

the ***average input tax credit fraction*** for the *compulsory third party scheme concerned is nil for all *financial years beginning on or after 1 July 2000.

Division 80—Settlement sharing arrangements

80-1 What this Division is about

A series of adjustments arise if, under an arrangement, an operator of a compulsory third party scheme settles a claim, arising from one or more accidents or other incidents, covered by the arrangement and other operators are obliged to contribute payments to that operator in respect of the settlement.

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80-A Insurance policy settlement sharing arrangements

80-B Nominal defendant settlement sharing arrangements

80-C Hybrid settlement sharing arrangements

Subdivision 80-A—Insurance policy settlement sharing arrangements

80-5 Meaning of insurance policy settlement sharing arrangement etc.

Meaning of ***insurance policy settlement sharing arrangement***

(1) An ***insurance policy settlement sharing arrangement*** is an arrangement:

(a) that relates to an accident or other incident or 2 or more related accidents or other incidents; and

(b) to which the parties are the *operators of a *compulsory third party scheme or schemes who have issued *insurance policies to owners or drivers involved in the accidents or incidents; and

(c) under which:

(i) one party (the ***managing operator***) is to make one or more payments or supplies in settlement of a claim, under the compulsory third party scheme or one of the compulsory third party schemes, relating to the accidents or incidents; and

(ii) each other party (a ***contributing operator***) is to make a payment to the *managing operator in respect of that operator settling the claim.

Meaning of ***managing operator's payment or supply***

(2) If a payment or supply mentioned in subparagraph (1)(c)(i) is not a *CTP ancillary payment or supply, it is a ***managing operator's payment or supply***.

Meaning of ***contributing operator's payment***

(3) A payment mentioned in subparagraph (1)(c)(ii), to the extent that it is not a fee to the *managing operator for managing the process of making settlements under the arrangement, is a ***contributing operator's payment***.

80-10 Effect of becoming parties to industry deeds or entering into settlement sharing arrangements

(1) An *operator of a *compulsory third party scheme does not make a *taxable supply by:

(a) entering into, or becoming a party to, an *insurance policy settlement sharing arrangement; or

(b) becoming a party to a deed created by or under a *State law or a *Territory law establishing a *compulsory third party scheme, that provides for an insurance policy settlement sharing arrangement.

(2) This section has effect despite section 9-5 (which is about what are taxable supplies).

80-15 Effect of contributing operator's payment

(1) A *contributing operator's payment is *not* treated as *consideration for a supply by the *managing operator, or for an acquisition by the *contributing operator.

(2) This section has effect despite section 9-15 (which is about consideration) and section 11-5 (which is about what is a creditable acquisition).

80-20 Managing operator's payments or supplies

(1) For the purposes of Divisions 78 and 79, a *managing operator's payment or supply is treated as follows.

(2) If the *managing operator is a party to the *insurance policy settlement sharing arrangement because it issued only one *insurance policy, the *managing operator's payment or supply is treated as a payment or supply, made by the managing operator, in

settlement of a claim relating to the accidents or incidents, under that insurance policy.

(3) If the *managing operator is a party to the *insurance policy settlement sharing arrangement because it issued 2 or more *insurance policies, the *managing operator's payment or supply is treated as a payment or supply made by the managing operator, in settlement of a claim relating to the accidents or incidents, under the insurance policies, and for that purpose is divided among the policies in equal proportions.

Example: 3 vehicles are involved in an accident, 2 of which are covered by insurance policies issued by the managing operator and the other by a policy issued by a contributing operator. The managing operator makes a payment in settlement of a claim by an insured person in respect of the accident.

For the purposes of Division 78 or 79, half of the payment will be treated as being made under each of the policies issued by the managing operator.

80-25 Contributing operator's payment

(1) For the purposes of Divisions 78 and 79, a *contributing operator's payment is treated as follows.

(2) If the *contributing operator is a party to the *insurance policy settlement sharing arrangement because it issued only one *insurance policy, the *contributing operator's payment is treated as a payment or supply, made by the contributing operator, in settlement of a claim relating to the accidents or incidents, under that insurance policy.

Example: Assume the same facts as in the example in section 80-20. The contributing operator who issued 1 of the 3 policies covering the vehicles in the accident makes a payment to the managing operator.

For the purposes of Division 78 or 79, the payment (except to the extent that it represents a managing operator's fee) will be treated as being made by the contributing operator under the insurance policy that it issued.

(3) If the *contributing operator is a party to the *insurance policy settlement sharing arrangement because it issued 2 or more *insurance policies, the *contributing operator's payment is treated as a payment or supply, made by the contributing operator, in settlement of a claim relating to the accidents or incidents, under

the insurance policies, and for that purpose is divided among the policies in equal proportions.

80-30 Managing operator's increasing adjustment where contributing operator's payment

(1) If:

(a) a *contributing operator's payment is made; and

(b) as a result of section 80-20, there was a *decreasing adjustment for the *managing operator under Division 78 or 79 in relation to the *managing operator's payment or supply;

there is an ***increasing adjustment*** for the managing operator of the following amount:

$$\frac{\text{*Contributing operator's payment}}{\text{Managing operator's settlement amount (see subsection (2))}} \times \text{*Decreasing adjustment}$$

Managing operator's settlement amount

(2) The ***managing operator's settlement amount*** mentioned in subsection (1) is worked out using this method statement.

Method statement

Step 1. Add together:

(a) the sum of the payments of *money (if any) that are included in the *managing operator's payment or supply; and

(b) the *GST inclusive market value of the supplies (if any) that are included in the *managing operator's payment or supply (other than supplies that would have been *taxable supplies but for section 78-25 or 79-60).

Step 2. If, in relation to the *managing operator's payment or supply, any payments of an excess were made to the *managing operator, subtract from the step 1 amount the

sum of all those payments (except to the extent that they are payments of excess to which section 78-18 or 79-55 applies).

Example: Assume the same facts as in the examples in sections 80-20 and 80-25. Assume also that, as a result of section 80-20, there was a decreasing adjustment under Division 78 or 79 for the managing operator's payment or supply.

The managing operator has an increasing adjustment. It equals the part of the decreasing adjustment that is attributable to the managing operator's payment or supply that was repaid by the contributing operator's contribution.

80-35 Adjustment events relating to managing operator's payment or supply

Division 19 applies in relation to an *increasing adjustment that the *managing operator has under section 80-30 as a result of the making of a *managing operator's payment or supply as if:

(a) the *contributing operator's payment were *consideration for a *taxable supply made by the managing operator; and

(b) the adjustment were the GST payable on the taxable supply; and

(c) any changes made to those payments were a change in the consideration for the supply.

Subdivision 80-B—Nominal defendant settlement sharing arrangements

80-40 Meaning of nominal defendant settlement sharing arrangement etc.

Meaning of ***nominal defendant settlement sharing arrangement***

(1) A ***nominal defendant settlement sharing arrangement*** is an arrangement:

(a) that relates to an accident or other incident or 2 or more related accidents or other incidents; and

(b) to which the parties are *operators of a *compulsory third party scheme, where they are parties because the driver

involved in the accidents or incidents was not covered under an *insurance policy; and

(c) under which:

(i) one party (the ***managing operator***) is to make one or more payments or supplies in settlement of a claim, under the compulsory third party scheme, relating to the accidents or incidents; and

(ii) the other party, or one or more of the other parties, (each being a ***contributing operator***) is to make a payment to the *managing operator in respect of that operator settling the claim.

Meaning of ***managing operator's payment or supply***

(2) If a payment or supply mentioned in subparagraph (1)(c)(i) is not a *CTP ancillary payment or supply, it is a ***managing operator's payment or supply***.

Meaning of ***contributing operator's payment***

(3) A payment mentioned in subparagraph (1)(c)(ii), to the extent that it is not a fee to the *managing operator for managing the process of making settlements under the arrangement, is a ***contributing operator's payment***.

80-45 Nominal defendant settlement sharing arrangements to which this Subdivision applies

This Subdivision applies to a *nominal defendant settlement sharing arrangement if its *managing operator is not a party to a *hybrid settlement sharing arrangement relating to the same accidents or incidents.

80-50 Effect of becoming parties to industry deeds or entering into nominal defendant settlement sharing arrangements

(1) An *operator of a *compulsory third party scheme does not make a *taxable supply by:

(a) entering into, or becoming a party to, a *nominal defendant settlement sharing arrangement to which this Subdivision applies; or

(b) becoming a party to a deed created by or under a *State law or a *Territory law establishing a compulsory third party scheme, that provides for a nominal defendant settlement sharing arrangement to which this Subdivision applies.

(2) This section has effect despite section 9-5 (which is about what are taxable supplies).

80-55 Effect of contributing operator's payment

(1) A *contributing operator's payment is *not* treated as *consideration for a supply by the *managing operator, or for an acquisition by the *contributing operator.

(2) This section has effect despite section 9-15 (which is about consideration) and section 11-5 (which is about what is a creditable acquisition).

80-60 Managing operator's payment or supply

For the purposes of Division 79, a *managing operator's payment or supply is treated as a *CTP compensation payment or supply.

80-65 Contributing operator's payment

For the purposes of Division 79, a *contributing operator's payment is treated as a *CTP compensation payment or supply.

80-70 Managing operator's increasing adjustment where contributing operator's payment

(1) If:

(a) a *contributing operator's payment is made; and

(b) as a result of section 80-60, there was a *decreasing adjustment for the *managing operator under Division 79 in relation to the *managing operator's payment or supply;

there is an ***increasing adjustment*** for the managing operator of the following amount:

$$\frac{\text{*Contributing operator's payment}}{\text{Managing operator's settlement amount (see subsection (2))}} \times \text{*Decreasing adjustment}$$

Managing operator's settlement amount

(2) The ***managing operator's settlement amount*** mentioned in subsection (1) is worked out using this method statement.

Method statement

Step 1. Add together:

(a) the sum of the payments of *money (if any) that are included in the *managing operator's payment or supply; and

(b) the *GST inclusive market value of the supplies (if any) that are included in the *managing operator's payment or supply (other than supplies that would have been *taxable supplies but for section 78-25 or 79-60).

Step 2. If, in relation to the *managing operator's payment or supply, any payments of an excess were made to the *managing operator, subtract from the step 1 amount the sum of all those payments (except to the extent that they are payments of excess to which section 78-18 or 79-55 applies).

80-75 Adjustment events relating to managing operator's payment or supply

Division 19 applies in relation to an *increasing adjustment that the *managing operator has under section 80-70 as a result of the making of a *managing operator's payment or supply as if:

(a) the *contributing operator's payment were *consideration for a *taxable supply made by the managing operator; and

(b) the adjustment were the GST payable on the taxable supply; and

(c) any changes made to those payments were a change in the consideration for the supply.

Subdivision 80-C—Hybrid settlement sharing arrangements

80-80 Meaning of hybrid settlement sharing arrangement etc.

Meaning of ***hybrid settlement sharing arrangement***

(1) A ***hybrid settlement sharing arrangement*** is an arrangement:

(a) that relates to an accident or other incident or 2 or more related accidents or other incidents; and

(b) to which the parties are:

(i) an entity that is the *managing operator of a *nominal defendant settlement sharing arrangement, or entities that are managing operators of nominal defendant settlement sharing arrangements, that relate to the accidents or incidents; and

(ii) an *operator or operators of a *compulsory third party scheme or schemes who have issued *insurance policies to owners or drivers involved in the accidents or incidents; and

(c) under which:

(i) one party (the ***managing operator***) is to make one or more payments or supplies in settlement of a claim, under the compulsory third party scheme or one of the compulsory third party schemes involved, relating to the accidents or incidents; and

(ii) each other party (a ***contributing operator***) is to make a payment to the *managing operator in respect of that operator settling the claim.

Meaning of ***managing operator's payment or supply***

(2) If a payment or supply mentioned in subparagraph (1)(c)(i) is not a *CTP ancillary payment or supply, it is a ***managing operator's payment or supply***.

Meaning of ***contributing operator's payment***

(3) A payment mentioned in subparagraph (1)(c)(ii), to the extent that it is not a fee to the *managing operator for managing the process of making settlements under the arrangement, is a ***contributing operator's payment***.

80-85 Subdivision 80-A to apply to hybrid settlement sharing arrangement, subject to exceptions

In addition to its operation apart from this Subdivision, Subdivision 80-A has effect, subject to sections 80-90 and 80-95, as if a *hybrid settlement sharing arrangement were an *insurance policy settlement sharing arrangement.

80-90 Subdivision 80-B to apply to payments or supplies by managing operator of hybrid settlement sharing arrangement who is also managing operator of nominal defendant settlement sharing arrangement

If:

(a) the entity that is the *managing operator of the *hybrid settlement sharing arrangement is a party to that arrangement because it is also the managing operator of a *nominal defendant settlement arrangement; and

(b) the entity makes a payment or supply that, as a result of section 80-85, is a *managing operator's payment or supply under the hybrid settlement sharing arrangement;

then:

(c) Subdivision 80-A does not have any other effect in relation to the payment or supply in accordance with section 80-85; but

(d) Subdivision 80-B (other than section 80-45) applies in relation to the payment or supply as if it were a managing operator's payment or supply under the nominal defendant settlement sharing arrangement and the entity were not party to the hybrid settlement sharing arrangement.

80-95 Subdivision 80-B to apply to payments or supplies by contributing operator of hybrid settlement sharing arrangement who is also managing operator of nominal defendant settlement sharing arrangement

If:

(a) an entity that is a *contributing operator of the *hybrid settlement sharing arrangement is a party to that arrangement because it is also the *managing operator of a *nominal defendant settlement arrangement; and

(b) the entity makes a payment that, as a result of section 80-85, is a *contributing operator's payment under the hybrid settlement sharing arrangement;

then:

(c) Subdivision 80-A does not have any other effect in relation to the payment or supply in accordance with section 80-85; but

(d) Subdivision 80-B (other than section 80-45) applies in relation to the payment as if it were a *managing operator's payment or supply under the nominal defendant settlement sharing arrangement and the entity were not party to the hybrid settlement sharing arrangement.

19 After paragraph 188-22(a)

Insert:

(aa) is a *CTP dual premium or election payment or supply, a *CTP hybrid payment or supply or a *CTP compensation or ancillary payment or supply; or

20 Section 195-1

Insert:

average input tax credit fraction has the meaning given by section 79-100.

21 Section 195-1

Insert:

compulsory third party scheme is a scheme or arrangement:

(a) that is established by an *Australian law; and

(b) that is specified in the regulations, or that is of a kind specified in the regulations, made for the purposes of this definition.

22 Section 195-1 (definition of consideration)

After “78-70,”, insert “79-60, 79-65, 79-80, 80-15, 80-55,”.

23 Section 195-1

Insert:

contributing operator has the meaning given by subparagraph 80-5(1)(c)(ii), 80-40(1)(c)(ii) or 80-80(1)(c)(ii).

24 Section 195-1

Insert:

contributing operator’s payment has the meaning given by subsection 80-5(3), 80-40(3) or 80-80(3).

25 Section 195-1

Insert:

CTP ancillary payment or supply has the meaning given by subsection 79-35(3).

Note: Section 79-90 also treats certain payments or supplies as CTP ancillary payments or supplies.

26 Section 195-1

Insert:

CTP compensation or ancillary payment or supply has the meaning given by subsection 79-35(1).

27 Section 195-1

Insert:

CTP compensation payment or supply has the meaning given by subsection 79-35(2).

Note: Section 79-90 also treats certain payments or supplies as CTP compensation payments or supplies.

28 Section 195-1

Insert:

CTP dual premium or election payment or supply means a payment or supply to which section 79-5 or 79-15 applies.

29 Section 195-1

Insert:

CTP hybrid payment or supply has the meaning given by section 79-25.

30 Section 195-1

Insert:

CTP premium, in relation to a *compulsory third party scheme, means:

(a) a payment of a premium, contribution or similar payment under the scheme; or

(b) a payment of levy in connection with the scheme.

31 Section 195-1

Insert:

hybrid settlement sharing arrangement has the meaning given by subsection 80-80(1).

32 Section 195-1 (table item 4A of the definition of decreasing adjustment)

Repeal the table item, substitute:

4A	Section 78-10 (including as it applies in accordance with Subdivision 79-A or 79-B or Division 80)	Payments or supplies in settlement of insurance claims or under *compulsory third party schemes

4B	Subsection 79-10(1) (including as it applies in accordance with Division 80)	*Decreasing adjustments under *compulsory third party schemes
4C	Section 79-50 (including as it applies in accordance with Division 80)	*Decreasing adjustments under *compulsory third party schemes

33 Section 195-1 (table item 4AA of the definition of increasing adjustment)

Repeal the table item, substitute:

4AA	Section 78-18 (including as it applies in accordance with Subdivision 79-B or Division 80)	Payments of excess etc. under insurance policies or *compulsory third party schemes
4AB	Subsection 79-10(2) (including as it applies in accordance with Division 80)	*Increasing adjustments under *compulsory third party schemes
4AC	Section 79-55 (including as it applies in accordance with Division 80)	*Increasing adjustments under *compulsory third party schemes
4AD	Section 80-30	*Increasing adjustments under *insurance policy settlement sharing arrangements
4AE	Section 80-70	*Increasing adjustments under *nominal defendant settlement sharing arrangements

34 Section 195-1

Insert:

insurance policy settlement sharing arrangement has the meaning given by subsection 80-5(1).

35 Section 195-1

Insert:

managing operator has the meaning given by subparagraph 80-5(1)(c)(i), 80-40(1)(c)(i) or 80-80(1)(c)(i).

36 Section 195-1

Insert:

managing operator's payment or supply has the meaning given by subsection 80-5(2), 80-40(2) or 80-80(2).

37 Section 195-1

Insert:

nominal defendant settlement sharing arrangement has the meaning given by subsection 80-40(1).

38 Section 195-1

Insert:

operator of a *compulsory third party scheme means an entity that is required to make payments or supplies in settlement of claims under the scheme.

39 Section 195-1

Insert:

premium selection test is satisfied has the meaning given by subsection 79-5(2).

40 Section 195-1 (note to definition of taxable supply)

After "78-70,", insert "79-60, 79-85, 80-10, 80-50,".

41 Section 195-1 (paragraph (b) of the definition of value)

After “78-95,”, insert “79-40, 79-85,”.

A New Tax System (Goods and Services Tax Transition) Act 1999

42 At the end of section 22

Add:

(3) The settlement of a claim for compensation does not give rise to any adjustment, and is not a taxable supply, under Division 79 or 80 of the GST Act to the extent that the event giving rise to the claim happened before 1 July 2000.

(4) However, if:

(a) the claim is one mentioned in section 79-25 of the GST Act and the insurance policy concerned covers a period that started before 1 July 2000 and ends after that day; and

(b) it cannot be ascertained whether the event giving rise to the claim happened before 1 July 2000;

subsection (3) does not apply and the settlement does not give rise to any adjustment, and is not a taxable supply, under Division 79 or 80 of the GST Act if the claim was made before 1 July 2000.

Note: The heading to section 22 is replaced by the heading “**Event before 1 July 2000 giving rise to claim**”.

43 Application

The amendments made by this Schedule apply, and are taken to have applied, in relation to net amounts for tax periods starting on or after 1 July 2000.

Schedule 12—New deductible gift recipient category

Income Tax Assessment Act 1997

1 Subsection 30-5(5)

After "*environmental organisations.", insert "Subdivision 30-EA requires the establishment of a register of *harm prevention charities.".

2 Subsection 30-5(5)

Omit "either register", substitute "one of those registers".

3 Subsection 30-45(1) (at the end of the table)

Add:

4.1.4	a public fund that, when the gift is made, is on the register of *harm prevention charities kept under Subdivision 30-EA	the gift must be made after 30 June 2003

4 After Subdivision 30-E

Insert:

Subdivision 30-EA—Register of harm prevention charities

Guide to Subdivision 30-EA

30-286 What this Subdivision is about

This Subdivision requires the establishment of a register of harm prevention charities. Section 30-15 allows you to deduct a gift that you make to a fund that is on the register.

Table of sections

Operative provisions

30-287 Establishing the register
30-288 Meaning of ***harm prevention charity***
30-289 Principal activity—promoting the prevention or control of harm or abuse
30-289A Other requirements
30-289B What must be on the register
30-289C Removal from the register

[This is the end of the Guide.]

Operative provisions

30-287 Establishing the register

The Secretary of the Department of Family and Community Services must keep a register of *harm prevention charities.

Note: Section 30-289B sets out what details must be entered on the register.

30-288 Meaning of harm prevention charity

A ***harm prevention charity*** is a charitable institution that:

(a) satisfies each requirement in sections 30-289 and 30-289A; and

(b) is endorsed as exempt from income tax under Subdivision 50-B.

30-289 Principal activity—promoting the prevention or control of harm or abuse

(1) The principal activity of the institution must be the promotion of the prevention or the control of *behaviour that is harmful or abusive to human beings.

(2) It must maintain a public fund:

(a) to which gifts of money or property for its principal activity are to be made; and

(b) to which any money received because of such gifts is to be credited; and

(c) that does not receive any other money or property.

(3) It must use gifts made to the fund, and any money received because of such gifts, only for its principal activity.

(4) It must have agreed to comply with any rules that the Treasurer and the Minister for Family and Community Services make to ensure that gifts made to the fund are used only for its principal activity.

30-289A Other requirements

No acting as a conduit

(1) The institution must have a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons.

Surplus assets to be transferred on winding up

(2) It must have rules providing that, if the public fund is wound up, any surplus assets of the fund are to be transferred to another fund that is on the register.

Statistical information to be provided

(3) It must have agreed to give the Secretary of the Department of Family and Community Services, within a reasonable period after the end of each income year, statistical information about gifts made to the public fund during that income year.

30-289B What must be on the register

(1) The Secretary of the Department of Family and Community Services must enter on the register each *harm prevention charity, and the public fund it maintains, that he or she has been directed to enter by the Treasurer and the Minister for Family and Community Services.

(2) The Treasurer and the Minister may so direct the Secretary only if the Minister has notified the Treasurer that he or she is satisfied that an institution is a *harm prevention charity. The notification must be in writing.

(3) The direction must be in writing and must specify the day on which the charity and public fund are to be entered on the register. The day must be the day on which the direction is given or a later day.

(4) The Treasurer and the Minister for Family and Community Services must have regard to the policies and budgetary priorities of the Commonwealth Government in deciding whether to give a direction.

30-289C Removal from the register

(1) The Treasurer and the Minister for Family and Community Services may direct the Secretary of the Department of Family and Community Services to remove a *harm prevention charity, and the public fund it maintains, from the register.

(2) The direction must be in writing and must specify the day on which the charity and public fund are to be removed from the register. The day must be the day on which the direction is given or a later day.

5 Subsection 30-315(2) (after table item 53A)

Insert:

53B	Harm prevention charities	item 4.1.4

6 Subsection 995-1(1)

Insert:

behaviour that is harmful or abusive means one or more of the following:

(a) emotional abuse;
(b) sexual abuse;
(c) physical abuse;
(d) suicide;
(e) self-harm;
(f) substance abuse;
(g) harmful gambling.

7 Subsection 995-1(1)

Insert:

harm prevention charity has the meaning given by section 30-288.

[*Minister's second reading speech made in—*
House of Representatives on 29 May 2003
Senate on 23 June 2003]

(75/03)