New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003

No. 133, 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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New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003

No. 133, 2003

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

[*Assented to 17 December 2003*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003*.

2 Commencement

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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—Removal of taxing point on conversion or exchange of traditional securities

Income Tax Assessment Act 1936

1 Subsection 26BB(1)

Insert:

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

2 At the end of section 26BB

Add:

(4) Subsection (2) does not apply to a gain on the disposal or redemption of a traditional security if:
  (a) the disposal or redemption occurs because the traditional security is converted into ordinary shares in a company that is:
    (i) the issuer of the traditional security; or
    (ii) a connected entity of the issuer of the traditional security; and
  (b) the traditional security was issued on the basis that it will or may convert into ordinary shares in:
    (i) the issuer of the traditional security; or
    (ii) the connected entity.

(5) Subsection (2) does not apply to a gain on the disposal or redemption of a traditional security if:
  (a) the disposal or redemption is in exchange for ordinary shares in a company that is neither:
    (i) the issuer of the traditional security; nor
    (ii) a connected entity of the issuer of the traditional security; and
  (b) in the case of a disposal—the disposal is to:
    (i) the issuer of the traditional security; or

(ii) a connected entity of the issuer of the traditional security; and

(c) the traditional security was issued on the basis that it will or may be:

(i) disposed of to the issuer of the traditional security or to the connected entity; or

(ii) redeemed;

in exchange for ordinary shares in the company.

3 After subsection 70B(2A)

Insert:

(2B) A deduction is not allowable under subsection (2) for a loss on the disposal or redemption of a traditional security if:

(a) the disposal or redemption occurs because the traditional security is converted into ordinary shares in a company that is:

(i) the issuer of the traditional security; or

(ii) a connected entity of the issuer of the traditional security; and

(b) the traditional security was issued on the basis that it will or may convert into ordinary shares in:

(i) the issuer of the traditional security; or

(ii) the connected entity.

(2C) A deduction is not allowable under subsection (2) for a loss on the disposal or redemption of a traditional security if:

(a) the disposal or redemption is in exchange for ordinary shares in a company that is neither:

(i) the issuer of the traditional security; nor

(ii) a connected entity of the issuer of the traditional security; and

(b) in the case of a disposal—the disposal is to:

(i) the issuer of the traditional security; or

(ii) a connected entity of the issuer of the traditional security; and

(c) the traditional security was issued on the basis that it will or may be:

(i) disposed of to the issuer of the traditional security or to the connected entity; or

(ii) redeemed;

in exchange for ordinary shares in the company.

Income Tax Assessment Act 1997

4 Section 109-55 (after table item 11)

Insert:

11A	You acquire shares in a company in exchange for the disposal of an exchangeable interest, and the disposal of the exchangeable interest was to: (a) the issuer of the exchangeable interest; or (b) a connected entity of the issuer of the exchangeable interest	when the disposal of the exchangeable interest happened	section 130-105
11B	You acquire shares in a company in exchange for the redemption of an exchangeable interest	when the redemption of the exchangeable interest happened	section 130-105

5 After section 112-75

Insert:

112-77 Exchangeable interests

Exchangeable interests			
Item	**In this situation:**	**Element affected:**	**See section:**
1	You acquire shares in a company in exchange for the disposal of an exchangeable interest, and the disposal of the exchangeable interest was to: (a) the issuer of the exchangeable interest; or (b) a connected entity of the issuer of the exchangeable interest	First element of cost base and reduced cost base	130-105
2	You acquire shares in a company in exchange for the redemption of an exchangeable interest	First element of cost base and reduced cost base	130-105

6 Paragraph 122-25(4)(a)

Omit "option or", substitute "option,".

7 Paragraph 122-25(4)(a)

Omit "; and", substitute "or *exchangeable interest; and".

8 At the end of paragraph 122-25(4)(b)

Add "or in exchange for the disposal or redemption of the exchangeable interest".

9 Paragraph 122-135(4)(a)

Omit "option or", substitute "option,".

10 Paragraph 122-135(4)(a)

Omit "; and", substitute "or *exchangeable interest; and".

11 At the end of paragraph 122-135(4)(b)

Add "or in exchange for the disposal or redemption of the exchangeable interest".

12 Paragraph 126-50(3)(a)

After "134", insert ", or an *exchangeable interest".

13 At the end of paragraph 126-50(3)(b)

Add "or in exchange for the disposal or redemption of the exchangeable interest".

14 Section 130-1

Repeal the section, substitute:

130-1 What this Division is about

This Division sets out the rules for these kinds of investments:

- bonus shares and units; and
- rights; and
- convertible interests; and
- shares acquired under an employee share scheme; and
- exchangeable interests.

Most are about modifying the cost base and reduced cost base of a CGT asset.

15 After section 130-90

Insert:

Subdivision 130-E—Exchangeable interests

Table of sections

130-100 Exchangeable interest
130-105 Shares acquired in exchange for the disposal or redemption of an exchangeable interest

130-100 Exchangeable interest

An ***exchangeable interest*** is a *traditional security that:

(a) was issued on the basis that it will or may be:
  (i) disposed of to the issuer of the traditional security or to a *connected entity of the issuer of the traditional security; or
  (ii) redeemed;
  in exchange for *shares in a company that is neither:
  (iii) the issuer of the traditional security; nor
  (iv) a connected entity of the issuer of the traditional security; and
(b) was issued on or after 1 July 2001.

130-105 Shares acquired in exchange for the disposal or redemption of an exchangeable interest

Cost base and reduced cost base

(1) The table has effect:

Exchange of an exchangeable interest		
Item	**In this situation:**	**The rules about cost base and reduced cost base are modified in this way...**
1	You *acquire shares in a company in exchange for the disposal of an *exchangeable interest, and the disposal of the exchangeable interest was to: (a) the issuer of the exchangeable interest; or (b) a *connected entity of the issuer of the exchangeable interest.	The first element of the *cost base of the shares is the sum of: (a) the cost base of the exchangeable interest at the time of the disposal; and (b) any amount paid for the exchange, except to the extent that the amount is represented in the paragraph (a) amount; and (c) all the amounts to be added under subsection (2). The first element of their *reduced cost base is worked out similarly.

Exchange of an exchangeable interest		
Item	**In this situation:**	**The rules about cost base and reduced cost base are modified in this way...**
2	You *acquire shares in a company in exchange for the redemption of an *exchangeable interest.	The first element of the *cost base of the shares is the sum of: (a) the cost base of the exchangeable interest at the time of the redemption; and (b) any amount paid for the exchange, except to the extent that the amount is represented in the paragraph (a) amount; and (c) all the amounts to be added under subsection (2). The first element of their *reduced cost base is worked out similarly.

(2) An amount is to be added under this subsection if a *capital gain on the disposal or redemption of the exchangeable interest has been reduced under section 118-20. This is so even though a capital gain that is made on the disposal or redemption of the exchangeable interest is disregarded under subsection (4). The amount to be added is the amount of the reduction.

(3) The payment for the exchange can include giving property (see section 103-5).

Other CGT consequences

(4) The table has effect:

Exchange of an exchangeable interest		
Item	**In this situation:**	**This is the result:**
1	You *acquire shares in a company in exchange for the disposal of an *exchangeable interest, and the disposal of the exchangeable interest was to: (a) the issuer of the exchangeable interest; or (b) a *connected entity of the issuer of the exchangeable interest.	(a) you are taken to have acquired the shares when the disposal of the exchangeable interest happened; and (b) a *capital gain or *capital loss you make from the disposal of the exchangeable interest is disregarded.
2	You *acquire shares in a company in exchange for the redemption of an *exchangeable interest.	(a) you are taken to have acquired the shares when the redemption of the exchangeable interest happened; and (b) a *capital gain or *capital loss you make from the redemption of the exchangeable interest is disregarded.

Application

(5) This section applies to the disposal or redemption of an *exchangeable interest on or after 1 July 2001.

16 Subsection 995-1(1)

Insert:

exchangeable interest has the meaning given by section 130-100.

17 Application of amendments

(1) The amendments of sections 26BB and 70B of the *Income Tax Assessment Act 1936* made by this Schedule apply to the disposal or redemption of a traditional security if the traditional security was issued after 7.30 pm, by legal time in the Australian Capital Territory, on 14 May 2002.

(2) The amendments of sections 122-25, 122-135 and 126-50 of the *Income Tax Assessment Act 1997* made by this Schedule apply to the disposal or redemption of an exchangeable interest on or after 1 July 2001.

Schedule 2—Convertible interests

Income Tax Assessment Act 1997

1 Paragraph 122-25(4)(a)

Omit "*convertible note", substitute "*convertible interest".

2 Paragraph 122-25(4)(b)

Omit "convertible note", substitute "convertible interest".

3 Paragraph 122-135(4)(a)

Omit "*convertible note", substitute "*convertible interest".

4 Paragraph 122-135(4)(b)

Omit "convertible note", substitute "convertible interest".

5 Paragraph 126-50(3)(a)

Omit "*convertible note", substitute "*convertible interest".

6 Paragraph 126-50(3)(b)

Omit "convertible note", substitute "convertible interest".

7 Subsection 130-60(1) (table)

Repeal the table, substitute:

Conversion of a convertible interest		
Item	**In this situation:**	**The modification is...**
1	You *acquire *shares or units in a unit trust by converting a *convertible interest that is a *traditional security.	The first element of the *cost base of the shares or units is the sum of: (a) the cost base of the convertible interest at the time of conversion; and (b) any amount paid to convert the convertible interest, except to the extent that the amount is represented in the paragraph (a) amount; and (c) all the amounts to be added under subsection (1A). The first element of their *reduced cost base is worked out similarly.
2	You *acquire *shares (except shares acquired under an *employee share scheme) by converting a *convertible interest that is not a *traditional security.	The first element of the *cost base of the shares is the sum of: (a) the cost base of the convertible interest at the time of conversion; and (b) any amount paid to convert the convertible interest, except to the extent that the amount is represented in the paragraph (a) amount; and (c) all the amounts to be added under subsection (1A). The first element of their *reduced cost base is worked out similarly.

Conversion of a convertible interest		
Item	**In this situation:**	**The modification is...**
3	You *acquire units in a unit trust by converting a *convertible interest (except one that is a *traditional security) that was issued by the trustee of the unit trust after 28 January 1988.	The first element of the *cost base of the units is the sum of: (a) the cost base of the convertible interest at the time of conversion; and (b) any amount paid to convert the convertible interest, except to the extent that the amount is represented in the paragraph (a) amount; and (c) all the amounts to be added under subsection (1A). The first element of their *reduced cost base is worked out similarly.

8 After subsection 130-60(1A)

Insert:

(1B) The payment to convert the convertible interest can include giving property (see section 103-5).

9 Application of amendments

The amendments made by this Schedule apply to the conversion of a convertible interest on or after 1 July 2001.

Schedule 3—Rights

Income Tax Assessment Act 1997

1 Subsection 130-40(6) (table)

Repeal the table, substitute:

Modifications on exercise of rights		
Item	**In this situation:**	**The modification is...**
1	You exercise rights issued to you to *acquire the *shares, units or options.	The first element of your *cost base for the shares, units or options is the sum of: (a) the cost base of the rights at the time of exercise; and (b) any amount paid to exercise the rights, except to the extent that the amount is represented in the paragraph (a) amount; and (c) all the amounts to be added under subsection (6A). The first element of their *reduced cost base is worked out similarly.
2	You exercise rights you *acquired from another entity to acquire the *shares, units or options.	The first element of your *cost base for the shares, units or options is the sum of: (a) the cost base of the rights at the time of exercise; and (b) any amount paid to exercise the rights, except to the extent that the amount is represented in the paragraph (a) amount; and (c) all the amounts to be added under subsection (6A). The first element of their *reduced cost base is worked out similarly.

Modifications on exercise of rights		
Item	**In this situation:**	**The modification is...**
3	You exercise rights issued to you to *acquire the *shares, units or options, and you acquired the original shares or *convertible interests, or the original units or convertible interests, before 20 September 1985.	The first element of your *cost base for the shares, units or options is the sum of: (a) the *market value of the rights when they were exercised; and (b) any amount paid to exercise the rights, except to the extent that the amount is represented in the paragraph (a) amount; and (c) all the amounts to be added under subsection (6A). The first element of their *reduced cost base is worked out similarly.

2 Application of amendment

The amendment made by this Schedule applies to the exercise of a right on or after 1 July 2001.

Schedule 4—Foreign currency

Part 1—Amendments

Financial Corporations (Transfer of Assets and Liabilities) Act 1993

1 Paragraph 15(1)(a)

Omit “, 82Y”.

2 Paragraph 15(1)(a)

Omit “or 15-15”, substitute “, 15-15 or 775-15”.

3 Paragraph 15(1)(b)

Omit “, 82Z”.

4 Paragraph 15(1)(b)

After “8-1”, insert “or 775-30”.

5 Paragraph 15(3)(a)

Omit “or 82Y”.

6 Paragraph 15(3)(a)

Omit “or 15-15”, substitute “, 15-15 or 775-15”.

7 Paragraph 15(3)(b)

Omit “or 82Z”.

8 Paragraph 15(3)(b)

After “8-1”, insert “or 775-30”.

9 At the end of section 15

Add:

Note: For transitional provisions about former sections 82Y and 82Z of the *Income Tax Assessment Act 1936*, see Part 2 of Schedule 4 to the *New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003*.

10 Paragraph 16(1)(a)

Omit “or 82Y”.

11 Paragraph 16(1)(a)

After “6-5”, insert “or 775-15”.

12 Paragraph 16(1)(b)

Omit “or 82Z”.

13 Paragraph 16(1)(b)

After “8-1”, insert “or 775-30”.

14 Subsection 16(2)

Omit “or 82Y”.

15 Subsection 16(2)

After “6-5”, insert “or 775-15”.

16 Paragraph 16(3)(a)

Omit “or 82Y”.

17 Paragraph 16(3)(a)

After “6-5”, insert “or 775-15”.

18 Paragraph 16(3)(b)

Omit “or 82Z”.

19 Paragraph 16(3)(b)

After “8-1”, insert “or 775-30”.

20 At the end of section 16

Add:

Note: For transitional provisions about former sections 82Y and 82Z of the *Income Tax Assessment Act 1936*, see Part 2 of Schedule 4 to the *New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003*.

Income Tax Assessment Act 1936

21 Section 20

Repeal the section.

22 Division 3B of Part III

Repeal the Division.

23 Subsection 102AAW(1)

Omit "20,".

24 Section 102AAX

Repeal the section.

25 Subsection 170(10)

Omit ", 82SA(2) or 82Z(3) or (4)", substitute "or 82SA(2)".

26 Subparagraph 177C(2)(a)(i)

Omit "or 170-B", substitute ", 170-B or 960-D".

27 Subparagraph 177C(2)(b)(i)

After "this Act", insert "or the *Income Tax Assessment Act 1997*, except one under Subdivision 960-D of the *Income Tax Assessment Act 1997*".

28 Subparagraph 177C(2)(c)(i)

Omit "or 170-B", substitute ", 170-B or 960-D".

29 Paragraph 389(a)

Omit "20,".

30 Section 391

Repeal the section.

31 Subsection 57-25(6) in Schedule 2D (table item 4)

Before "**Division 3B**", insert "**the former**".

32 Subsection 57-25(6) in Schedule 2D (table item 6)

Before "**subsection 82Z(1)**", insert "**the former**".

33 Subsection 57-25(6) in Schedule 2D (at the end of the table)

Add:

7	Division 775
8	Subdivision 20-A, so far as it applies to an amount that may be an assessable recoupment because a deduction has been allowed or is allowable under section 775-30

34 After subsection 57-25(6) in Schedule 2D

Insert:

(6A) For the purposes of the application of subsection (5) to the transition taxpayer, a provision covered by item 7 or 8 of the table in subsection (6) is taken to have commenced at the start of the taxpayer's applicable commencement date (within the meaning of Division 775 of the *Income Tax Assessment Act 1997*).

Note: For ***applicable commencement date***, see section 775-155 of the *Income Tax Assessment Act 1997*.

(6B) The rule in subsection (5) does not apply, and is taken never to have applied, to the transition taxpayer in relation to a provision covered by item 7 or 8 of the table in subsection (6) if the taxpayer makes an election under section 775-150 of the *Income Tax Assessment Act 1997*.

35 Subsection 57-30(4) in Schedule 2D (table item 1)

Before "**Division 3B**", insert "**the former**".

36 Subsection 57-30(4) in Schedule 2D (table item 2)

Before "**subsection 82Z(1)**", insert "**the former**".

37 At the end of section 57-30 in Schedule 2D

Add:

(5) A provision listed in subsection (6) only applies to a liability of the transition taxpayer at the transition time if the taxpayer first assumed the liability on or after the taxpayer's applicable commencement date (within the meaning of Division 775 of the *Income Tax Assessment Act 1997*).

Note: For ***applicable commencement date***, see section 775-155 of the *Income Tax Assessment Act 1997*.

(6) The provisions are listed in the table below. Provisions of the *Income Tax Assessment Act 1997* are identified in normal text.

Listed provisions	
Item	**Provision**
1	Division 775
2	Subdivision 20-A, so far as it applies to an amount that may be an assessable recoupment because a deduction has been allowed or is allowable under section 775-30.

(7) The rule in subsection (5) does not apply, and is taken never to have applied, to the transition taxpayer if the taxpayer makes an election under section 775-150 of the *Income Tax Assessment Act 1997*.

Income Tax Assessment Act 1997

38 Section 10-5 (table item headed "foreign exchange")

Omit "**82Y**", substitute "775-15".

39 Section 12-5 (table item headed "foreign exchange")

Omit "**82U to 82ZB**", substitute "775-30".

40 Section 12-5 (table item headed "losses")

Omit "**82U to 82ZB**", substitute "775-30".

41 Subsection 20-30(1) (at the end of the table)

Add:

1.28	775-30	forex realisation loss

42 Subsection 20-30(2) (table item 2.16)

Repeal the item.

43 Subsection 40-35(1)

Omit "Division 328", substitute "Divisions 328 and 775".

44 Paragraph 40-75(2)(f)

Omit "27-90(3).", substitute "27-90(3); or".

45 After paragraph 40-75(2)(f)

Insert:

(g) for which there is a reduction in the asset's opening adjustable value under section 775-70; or

(h) for which there is an increase in the asset's opening adjustable value under section 775-75.

46 Subsection 40-85(2) (note)

Repeal the note, substitute:

Note: The opening adjustable value of a depreciating asset may be modified by one of these provisions:

- Subdivision 27-B;
- subsection 40-90(3);
- subsection 40-285(4);
- paragraph 40-365(5)(b);
- section 775-70;
- section 775-75.

47 Section 40-175 (note)

Repeal the note, substitute:

Note: The cost of a depreciating asset may be modified by one of these provisions:

- Subdivision 27-B;
- subsection 40-90(2);
- paragraph 40-365(5)(a);
- section 775-70;
- section 775-75.

48 Section 103-20

Repeal the section.

49 Section 104-5 (after table item relating to CGT event K9)

Insert:

K10 You make a forex realisation gain covered by item 1 of the table in subsection 775-70(1) *[See section 104-260]*	when the forex realisation event happens	the forex realisation gain	*no capital loss*
K11 You make a forex realisation loss covered by item 1 of the table in subsection 775-75(1) *[See section 104-265]*	when the forex realisation event happens	*no capital gain*	the forex realisation loss

50 After section 104-255

Insert:

104-260 Certain short-term forex realisation gains: CGT event K10

(1) ***CGT event K10*** happens if:

(a) you make a *forex realisation gain as a result of forex realisation event 2; and

(b) item 1 of the table in subsection 775-70(1) applies.

(2) The time of the event is when the forex realisation event happens.

(3) You make a ***capital gain*** equal to the *forex realisation gain.

Note: You cannot make a capital loss under CGT event K10. However, if you make a forex realisation loss covered by item 1 of the table in subsection 775-75(1), you will make a capital loss under CGT event K11 (see section 104-265).

104-265 Certain short-term forex realisation losses: CGT event K11

(1) ***CGT event K11*** happens if:

(a) you make a *forex realisation loss as a result of forex realisation event 2; and

(b) item 1 of the table in subsection 775-75(1) applies.

(2) The time of the event is when the forex realisation event happens.

(3) You make a ***capital loss*** equal to the *forex realisation loss.

Note: You cannot make a capital gain under CGT event K11. However, if you make a forex realisation gain covered by item 1 of the table in subsection 775-70(1), you will make a capital gain under CGT event K10 (see section 104-260).

51 Section 110-10 (after table item relating to CGT event K9)

Insert:

K10	You make a forex realisation gain covered by item 1 of the table in subsection 775-70(1)	104-260
K11	You make a forex realisation loss covered by item 1 of the table in subsection 775-75(1)	104-265

52 Section 112-97 (at the end of the table)

Add:

25	You make a forex realisation gain as a result of forex realisation event 4, and: (a) you incurred the obligation to pay foreign currency: (i) in return for the acquisition of a CGT asset; or (ii) as the second, third, fourth or fifth element of the cost base of a CGT asset; and (b) the foreign currency became due for payment within 12 months after the time when: (i) in the case of the acquisition of a CGT asset—you acquired the CGT asset; or (ii) in the case of the second, third, fourth or fifth element of the cost base of a CGT asset—you incurred the relevant expenditure	total cost base and reduced cost base	section 775-70

26	You make a forex realisation loss as a result of forex realisation event 4, and: (a) you incurred the obligation to pay foreign currency: (i) in return for the acquisition of a CGT asset; or (ii) as the second, third, fourth or fifth element of the cost base of a CGT asset; and (b) the foreign currency became due for payment within 12 months after the time when: (i) in the case of the acquisition of a CGT asset—you acquired the CGT asset; or (ii) in the case of the second, third, fourth or fifth element of the cost base of a CGT asset—you incurred the relevant expenditure	total cost base and reduced cost base	section 775-75
27	You acquire foreign currency as a result of forex realisation event 2	first element of cost base and reduced cost base	section 775-125

53 Section 115-5 (note)

Omit “and 115-45”, substitute “, 115-45 and 775-70”.

54 At the end of subsection 115-25(3)

Add:

(i) *CGT event K10.

55 At the end of section 134-1

Add:

(6) This Division does not apply to:

(a) an option to the extent that the option binds the grantor to *dispose of *foreign currency; or

(b) an option to the extent that the option binds the grantor to *acquire *foreign currency.

56 Section 136-10 (after table item relating to CGT event K8)

Insert:

K10	You make a forex realisation gain covered by item 1 of the table in subsection 775-70(1)	the CGT asset mentioned in that item	1 to 9
K11	You make a forex realisation loss covered by item 1 of the table in subsection 775-75(1)	the CGT asset mentioned in that item	1 to 9

57 Section 376-60

Repeal the section.

58 After Part 4-5 (heading) (before the link note)

Insert:

[The next Division is Division 775]

Division 775—Foreign currency gains and losses

Table of Subdivisions

Guide to Division 775
775-A Objects of this Division
775-B Realisation of forex gains or losses
775-C Roll-over relief for facility agreements

775-D Qualifying forex accounts that pass the limited balance test
775-E Retranslation for qualifying forex accounts

Guide to Division 775

775-5 What this Division is about

Your assessable income includes a forex realisation gain you make as a result of a forex realisation event.

You can deduct a forex realisation loss that you make as a result of a forex realisation event.

There are 5 main types of forex realisation events:

(a) forex realisation event 1 happens if you dispose of foreign currency, or a right to receive foreign currency, to another entity;

(b) forex realisation event 2 happens if you cease to have a right to receive foreign currency (otherwise than because you disposed of the right to another entity);

(c) forex realisation event 3 happens if you cease to have an obligation to receive foreign currency;

(d) forex realisation event 4 happens if you cease to have an obligation to pay foreign currency;

(e) forex realisation event 5 happens if you cease to have a right to pay foreign currency.

There are special rules for certain short-term forex realisation gains and losses.

You may choose roll-over relief for certain facility agreements.

You may elect to receive concessional tax treatment for a qualifying forex account that passes the limited balance test.

You may choose retranslation for a qualifying forex account.

Subdivision 775-A—Objects of this Division

Table of sections

775-10 Objects of this Division

775-10 Objects of this Division

The objects of this Division are as follows:

(a) to recognise *foreign currency gains and losses for income tax purposes;

(b) to quantify those gains and losses by reference to the change in the Australian dollar value of rights and obligations;

(c) to treat certain foreign currency denominated financing facilities that are the economic equivalent of a loan as if the relevant facility were a loan;

(d) to reduce compliance costs by not requiring the recognition of certain low-value foreign currency gains and losses that involve substantial calculations.

Subdivision 775-B—Realisation of forex gains or losses

Table of sections

775-15 Forex realisation gains are assessable
775-20 Certain forex realisation gains are exempt income
775-25 Certain forex realisation gains are non-assessable non-exempt income
775-30 Forex realisation losses are deductible
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775-15 Forex realisation gains are assessable

Basic rule

(1) Your assessable income for an income year includes a *forex realisation gain you make as a result of a *forex realisation event that happens during that year.

Exceptions

(2) However, your assessable income does not include a *forex realisation gain to the extent that it:
  (a) is a gain of a private or domestic nature; and
  (b) is not covered by an item of the table:

Forex realisation gains to which this subsection does not apply			
Item	**You make the forex realisation gain as a result of this event...**	**happening to...**	**and the following condition is satisfied...**
1	forex realisation event 1	*foreign currency or a right, or a part of a right, to receive foreign currency	a gain that would result from the occurrence of a *realisation event in relation to the foreign currency, or to the right, or the part of the right, would, apart from this Division, be taken into account under Part 3-1 or 3-3
2	forex realisation event 2	a right, or a part of a right, created or acquired in return for the occurrence of a *realisation event in relation to a *CGT asset you own, where subparagraph 775-45(1)(b)(iv) applies	a gain or loss that would result from the occurrence of the realisation event in relation to the CGT asset would be taken into account for the purposes of Part 3-1 or 3-3
3	forex realisation event 4	an obligation, or a part of an obligation, you incurred in return for the acquisition of a *CGT asset	a gain or loss that would result from the occurrence of a *realisation event in relation to the CGT asset would be taken into account for the purposes of Part 3-1 or 3-3

Note: Parts 3-1 and 3-3 deal with capital gains and losses.

(3) Section 775-70 provides for additional exceptions.

Note: Section 775-70 is about the tax consequences of certain short-term forex realisation gains.

No double taxation

(4) To the extent that a *forex realisation gain would be included in your assessable income under this section and another provision of

this Act, the gain is only included in your assessable income under this section.

775-20 Certain forex realisation gains are exempt income

A *forex realisation gain you make is exempt income to the extent that, if it had been a *forex realisation loss, it would have been made in gaining or producing exempt income.

775-25 Certain forex realisation gains are non-assessable non-exempt income

A *forex realisation gain you make is non-assessable non-exempt income to the extent that, if it had been a *forex realisation loss, it would have been made in gaining or producing non-assessable non-exempt income.

775-30 Forex realisation losses are deductible

Basic rule

(1) You can deduct from your assessable income for an income year a *forex realisation loss that you make as a result of a *forex realisation event that happens during that year.

Exceptions

(2) However, you cannot deduct a *forex realisation loss under this section to the extent that it:
  (a) is a loss of a private or domestic nature; and
  (b) is not covered by an item of the table:

Forex realisation losses to which this subsection does not apply			
Item	**You make the forex realisation loss as a result of this event...**	**happening to...**	**and the following condition is satisfied...**
1	forex realisation event 2	a right, or a part of a right, created or acquired in return for the occurrence of a *realisation event in relation to a *CGT asset you own, where subparagraph 775-45(1)(b)(iv) applies	a gain or loss that would result from the occurrence of the realisation event in relation to the CGT asset would be taken into account for the purposes of Part 3-1 or 3-3
2	forex realisation event 4	an obligation, or a part of an obligation, you incurred in return for the acquisition of a *CGT asset	a gain or loss that would result from the occurrence of a *realisation event in relation to the CGT asset would be taken into account for the purposes of Part 3-1 or 3-3

Note: Parts 3-1 and 3-3 deal with capital gains and losses.

(3) Section 775-75 provides for additional exceptions.

Note: Section 775-75 is about the tax consequences of certain short-term forex realisation losses.

No double deductions

(4) To the extent that this section and another provision of this Act would allow you a deduction for a *forex realisation loss, you can only deduct the loss under this section.

775-35 Certain forex realisation losses are disregarded

(1) A *forex realisation loss you make as a result of forex realisation event 1, 2 or 5 is disregarded to the extent that it is made in gaining or producing exempt income.

(2) A *forex realisation loss you make as a result of forex realisation event 3, 4 or 6 is disregarded to the extent that:

(a) it is made in gaining or producing exempt income or non-assessable non-exempt income; and
(b) the obligation, or the part of the obligation, does not give rise to a deduction.

775-40 Disposal of foreign currency or right to receive foreign currency—forex realisation event 1

Forex realisation event 1

(1) ***Forex realisation event 1*** is *CGT event A1 that happens if you dispose of:
(a) *foreign currency; or
(b) a right, or a part of a right, to receive foreign currency.

Note: For extended meaning of ***right to receive foreign currency***, see section 775-135.

Disposal

(2) For the purposes of this section, use subsection 104-10(2) to work out whether you have disposed of:
(a) *foreign currency; or
(b) a right, or a part of a right, to receive foreign currency.

Note: Under subsection 104-10(2), a disposal requires a change of ownership.

Time of event

(3) For the purposes of this section, subsection 104-10(3) is modified so that the time of the event is when:
(a) the *foreign currency is disposed of; or
(b) the right, or the part of the right, is disposed of.

Forex realisation gain

(4) You make a ***forex realisation gain*** if:
(a) you make a *capital gain from the event; and
(b) some or all of the capital gain is attributable to a *currency exchange rate effect.

The amount of the ***forex realisation gain*** is so much of the capital gain as is attributable to a currency exchange rate effect.

Note: For ***currency exchange rate effect***, see section 775-105.

(5) For the purposes of paragraph (4)(a), Part 3-1 is modified so that section 118-20 is disregarded in working out the *capital gain.

Note: Section 118-20 deals with reducing capital gains if an amount is otherwise assessable.

Forex realisation loss

(6) You make a ***forex realisation loss*** if:

(a) you make a *capital loss from the event; and

(b) some or all of the capital loss is attributable to a *currency exchange rate effect.

The amount of the ***forex realisation loss*** is so much of the capital loss as is attributable to a currency exchange rate effect.

Note: For ***currency exchange rate effect***, see section 775-105.

No indexation of cost base

(7) For the purposes of this section, disregard Division 114.

Note: Division 114 deals with indexation of the cost base.

Foreign currency hedging gains and losses

(8) For the purposes of this section, disregard section 118-55.

Note: Section 118-55 deals with foreign currency hedging gains and losses.

Capital proceeds

(9) For the purposes of this section, if the *capital proceeds from the event are more or less than the *market value of:

(a) the *foreign currency; or

(b) the right, or the part of the right;

the capital proceeds from the event are taken to be the market value. (The market value is worked out as at the time of the event.)

775-45 Ceasing to have a right to receive foreign currency—forex realisation event 2

Forex realisation event 2

(1) ***Forex realisation event 2*** happens if:

(a) you cease to have a right, or a part of a right, to receive *foreign currency; and

(b) the right, or the part of the right, is one of the following:

(i) a right, or a part of a right, to receive, or that represents, *ordinary income or *statutory income (other than statutory income that is assessable under this Division or Division 102);

(ii) a right, or a part of a right, created or acquired in return for your ceasing to *hold a *depreciating asset;

(iii) a right, or a part of a right, created or acquired in return for your paying, or agreeing to pay, an amount of Australian currency or foreign currency;

(iv) a right, or a part of a right, created or acquired in return for the occurrence of a *realisation event in relation to a *CGT asset you own, and none of subparagraphs (i), (ii) and (iii) applies; and

(c) you did not cease to have the right, or the part of the right, because you disposed of the right or the part of the right (within the meaning of section 775-40).

Note 1: Disposals are dealt with by section 775-40 (forex realisation event 1).

Note 2: For extended meaning of ***right to receive foreign currency***, see section 775-135.

Time of event

(2) The time of the event is when you cease to have the right or the part of the right.

Forex realisation gain

(3) You make a ***forex realisation gain*** if:

(a) the amount you receive in respect of the event happening exceeds the *forex cost base of the right or the part of the right (the forex cost base is worked out as at the tax recognition time); and

(b) some or all of the excess is attributable to a *currency exchange rate effect.

The amount of the ***forex realisation gain*** is so much of the excess as is attributable to a currency exchange rate effect.

Note 1: For ***forex cost base***, see section 775-85.

Note 2: For ***tax recognition time***, see subsection (7).

Note 3: For ***currency exchange rate effect***, see section 775-105.

Forex realisation loss

(4) You make a ***forex realisation loss*** if:

(a) the amount you receive in respect of the event happening falls short of the *forex cost base of the right or the part of the right (the forex cost base is worked out as at the tax recognition time); and

(b) some or all of the shortfall is attributable to a *currency exchange rate effect.

The amount of the ***forex realisation loss*** is so much of the shortfall as is attributable to a currency exchange rate effect.

Note 1: For ***forex cost base***, see section 775-85.

Note 2: For ***tax recognition time***, see subsection (7).

Note 3: For ***currency exchange rate effect***, see section 775-105.

(5) You make a ***forex realisation loss*** if:

(a) the event happens because an option to buy *foreign currency expires without having been exercised, or is cancelled, released or abandoned; and

(b) you were capable of exercising the option immediately before the event happened.

The amount of the ***forex realisation loss*** is the amount you paid in return for the grant or acquisition of the option.

Non-cash benefit

(6) The amount you receive in respect of the event happening can include a *non-cash benefit. Use the *market value of the benefit to work out the amount you receive.

Tax recognition time

(7) For the purposes of this section, the ***tax recognition time*** is worked out using the table:

Tax recognition time		
Item	**If the right, or part of the right, is...**	**the *tax recognition time* is...**
1	a right, or a part of a right, to receive, or that represents, *ordinary income or *statutory income (other than statutory income that is assessable under this Division or Division 102)	(a) in the case of ordinary income—when the ordinary income is derived; or (b) in the case of statutory income—when the requirement first arose to include the statutory income in your assessable income.
2	a right, or a part of a right, created or acquired in return for your ceasing to *hold a *depreciating asset	when you stop holding the asset.
3	a right, or a part of a right, referred to in subsection 775-165(3) (which deals with extensions of loans)	the extension time referred to in that subsection.
4	a right, or a part of a right, created or acquired in return for your paying, or agreeing to pay, an amount of Australian currency, where item 3 does not apply	when the amount is paid.
5	a right, or a part of a right, created or acquired in return for your paying, or agreeing to pay, an amount of *foreign currency, where item 3 does not apply	when the amount is paid.
6	a right, or a part of a right, created in return for the occurrence of a *realisation event in relation to a *CGT asset you own, and none of the above items apply	when the realisation event occurs.

Note: Subsection 775-260(1) modifies the tax recognition time if forex realisation event 2 happens in relation to a qualifying forex account that has ceased to pass the limited balance test.

775-50 Ceasing to have an obligation to receive foreign currency—forex realisation event 3

Forex realisation event 3

(1) ***Forex realisation event 3*** happens if:

(a) you cease to have an obligation, or a part of an obligation, to receive *foreign currency; and

(b) the obligation, or the part of the obligation, is one of the following:

(i) an obligation, or a part of the obligation, incurred in return for the creation or acquisition of a right to pay foreign currency;

(ii) an obligation, or a part of the obligation, incurred in return for the creation or acquisition of a right to pay Australian currency.

Note 1: For extended meaning of ***obligation to receive foreign currency***, see section 775-140.

Note 2: For extended meaning of ***right to pay foreign currency***, see section 775-135.

Time of event

(2) The time of the event is when you cease to have the obligation or the part of the obligation.

Forex realisation gain

(3) You make a ***forex realisation gain*** if:

(a) the amount you receive in respect of the event happening exceeds the net costs of assuming the obligation or the part of the obligation (the net costs are worked out as at the tax recognition time); and

(b) some or all of the excess is attributable to a *currency exchange rate effect.

The amount of the ***forex realisation gain*** is so much of the excess as is attributable to a currency exchange rate effect.

Note 1: For ***net costs of assuming the obligation***, see section 775-100.

Note 2: For ***tax recognition time***, see subsection (7).

Note 3: For ***currency exchange rate effect***, see section 775-105.

(4) You make a ***forex realisation gain*** if:

(a) the event happens because an option to sell *foreign currency expires without having been exercised, or is cancelled, released or abandoned; and

(b) if the option had been exercised immediately before the event, you would have been obliged to buy the foreign currency.

The amount of the ***forex realisation gain*** is the amount you received in return for granting or assuming obligations under the option.

Forex realisation loss

(5) You make a ***forex realisation loss*** if:

(a) the amount you receive in respect of the event happening falls short of the net costs of assuming the obligation or the part of the obligation (the net costs are worked out as at the tax recognition time); and

(b) some or all of the shortfall is attributable to a *currency exchange rate effect.

The amount of the ***forex realisation loss*** is so much of the shortfall as is attributable to a currency exchange rate effect.

Note 1: For ***net costs of assuming the obligation***, see section 775-100.

Note 2: For ***tax recognition time***, see subsection (7).

Note 3: For ***currency exchange rate effect***, see section 775-105.

Non-cash benefit

(6) The amount you receive in respect of the event happening can include a *non-cash benefit. Use the *market value of the benefit to work out the amount you receive.

Tax recognition time

(7) For the purposes of this section, the ***tax recognition time*** is the time when you received an amount in respect of the event happening.

Right to pay Australian currency

(8) To avoid doubt, for the purposes of this section, a ***right to pay Australian currency*** includes a right to pay Australian currency, where the right is subject to a contingency.

775-55 Ceasing to have an obligation to pay foreign currency—forex realisation event 4

Forex realisation event 4

(1) ***Forex realisation event 4*** happens if:

(a) you cease to have an obligation, or a part of an obligation, to pay *foreign currency; and

(b) any of the following applies:

(i) the obligation, or the part of the obligation, is an expense or outgoing that you deduct;

(ii) the obligation, or the part of the obligation, is an element in the calculation of a net amount included in your assessable income (other than under this Division or Division 102 of this Act or Division 5 or 6 of Part III of the *Income Tax Assessment Act 1936*);

(iii) the obligation, or the part of the obligation, is an element in the calculation of a net amount that is deductible (other than under Division 5 of Part III of the *Income Tax Assessment Act 1936*);

(iv) you incurred the obligation, or the part of the obligation, in return for the acquisition of a *CGT asset;

(v) you incurred the obligation, or the part of the obligation, as the second, third, fourth or fifth element of the *cost base of a CGT asset;

(vi) you incurred the obligation, or the part of the obligation, in return for your starting to hold a *depreciating asset, and you deduct an amount under Division 40 or 328 for the depreciating asset;

(vii) you incurred the obligation, or the part of the obligation, as the second element of the *cost of a depreciating asset, and you deduct an amount under Division 40 or 328 for the depreciating asset;

(viii) you incurred the obligation, or the part of the obligation, as a *project amount;

(ix) you incurred the obligation, or the part of the obligation, in return for receiving an amount of Australian currency or foreign currency;

(x) you incurred the obligation, or the part of the obligation, in return for the creation or acquisition of a right to

receive an amount of Australian currency or foreign currency.

Note: For extended meaning of ***obligation to pay foreign currency***, see section 775-140.

Time of event

(2) The time of the event is when you cease to have the obligation or the part of the obligation.

Forex realisation gain

(3) You make a ***forex realisation gain*** if:

(a) the amount you paid in respect of the event happening falls short of the proceeds of assuming the obligation or the part of the obligation (the proceeds are worked out as at the tax recognition time); and

(b) some or all of the shortfall is attributable to a *currency exchange rate effect.

The amount of the ***forex realisation gain*** is so much of the shortfall as is attributable to a currency exchange rate effect.

Note 1: For ***proceeds of assuming the obligation***, see section 775-95.

Note 2: For ***tax recognition time***, see subsection (7).

Note 3: For ***currency exchange rate effect***, see section 775-105.

(4) You make a ***forex realisation gain*** if:

(a) the event happens because an option to sell *foreign currency expires without having been exercised, or is cancelled, released or abandoned; and

(b) if the option had been exercised immediately before the event, you would have been obliged to sell the foreign currency.

The amount of the ***forex realisation gain*** is the amount you received in return for granting or assuming obligations under the option.

Forex realisation loss

(5) You make a ***forex realisation loss*** if:

(a) the amount you paid in respect of the event happening exceeds the proceeds of assuming the obligation or the part

of the obligation (the proceeds are worked out as at the tax recognition time); and

(b) some or all of the excess is attributable to a *currency exchange rate effect.

The amount of the ***forex realisation loss*** is so much of the excess as is attributable to a currency exchange rate effect.

Note 1: For ***proceeds of assuming the obligation***, see section 775-95.

Note 2: For ***tax recognition time***, see subsection (7).

Note 3: For ***currency exchange rate effect***, see section 775-105.

Non-cash benefit

(6) The amount you paid in respect of the event happening can include a *non-cash benefit. Use the *market value of the benefit to work out the amount you paid.

Tax recognition time

(7) For the purposes of this section, the ***tax recognition time*** is worked out using the table:

Tax recognition time

Item	In this case...	the *tax recognition time* is...
1	(a) the obligation, or the part of the obligation, is an expense or outgoing that you deduct; and (b) the obligation, or the part of the obligation, was not incurred: (i) in return for the acquisition of an item of *trading stock; or (ii) in return for your starting to hold a *depreciating asset; and (c) the obligation, or the part of the obligation, was not incurred as the second element of the cost of a depreciating asset	the time when the expense or outgoing became deductible.

Tax recognition time		
Item	**In this case...**	**the *tax recognition time* is...**
2	(a) the obligation, or the part of the obligation, is an expense or outgoing that you deduct; and (b) the obligation, or the part of the obligation, was incurred in return for the acquisition of an item of *trading stock	the time when the item becomes part of your trading stock on hand.
3	the obligation, or the part of the obligation, is an element in the calculation of a net amount included in your assessable income (other than under this Division or Division 102 of this Act or Division 5 or 6 of Part III of the *Income Tax Assessment Act 1936*)	the time of the determination of the exchange rate used to translate the element for the purpose of calculating the net amount.
4	the obligation, or the part of the obligation, is an element in the calculation of a net amount that is deductible (other than under Division 5 of Part III of the *Income Tax Assessment Act 1936*)	the time of the determination of the exchange rate used to translate the element for the purpose of calculating the net amount.
5	(a) you incurred the obligation, or the part of the obligation: (i) in return for your starting to hold a *depreciating asset; or (ii) as the second element of the cost of a depreciating asset; and (b) you deduct an amount under Division 40 or 328 for the depreciating asset	(a) in the case of the acquisition of a depreciating asset—when you began to hold the depreciating asset (worked out under Division 40); or (b) in the case of the second element of the cost of a depreciating asset—when you incurred the relevant expenditure.
6	you incurred the obligation, or the part of the obligation, as a *project amount	the first time when any part of the amount became deductible.
7	the obligation, or the part of the obligation, is referred to in subsection 775-165(5) (which deals with extension of loans)	the extension time referred to in that subsection.

Tax recognition time		
Item	**In this case...**	**the *tax recognition time* is...**
8	you incurred the obligation, or the part of the obligation, in return for: (a) receiving Australian currency or *foreign currency; or (b) the creation or acquisition of a right to receive an amount of Australian currency or foreign currency; where item 7 does not apply	the time when you received the currency.
9	(a) you incurred the obligation, or the part of the obligation, in return for the acquisition of a *CGT asset; and (b) none of the above items apply	the time when you acquired the CGT asset (worked out under Division 109).
10	(a) you incurred the obligation, or the part of the obligation, as the second, third, fourth or fifth element of the *cost base of a CGT asset; and (b) none of the above items apply	the time of the transaction under which you incurred the obligation.

Note 1: Foreign currency is a CGT asset. If you acquire foreign currency as the borrower under a loan, item 8 will apply to your obligation to repay the foreign currency borrowed under the loan.

Note 2: If you have made a choice for roll-over relief for a facility agreement, and forex realisation event 7 (material variation of a facility agreement) happens, subsection 775-220(6) modifies the tax recognition time for an obligation under a security that was in existence under the agreement at the time of that event.

Note 3: Subsection 775-260(2) modifies the tax recognition time if forex realisation event 4 happens in relation to a qualifying forex account that has ceased to pass the limited balance test.

Note 4: If you have made a choice for roll-over relief for a facility agreement, a forex realisation gain or forex realisation loss you make under the agreement as a result of forex realisation event 4 is disregarded—see section 775-200.

775-60 Ceasing to have a right to pay foreign currency—forex realisation event 5

Forex realisation event 5

(1) ***Forex realisation event 5*** happens if:

(a) you cease to have a right, or a part of a right, to pay *foreign currency; and

(b) the right, or the part of the right, is one of the following:

(i) a right, or a part of a right, created or acquired in return for the assumption of an obligation to pay foreign currency;

(ii) a right, or a part of a right, created or acquired in return for the assumption of an obligation to pay Australian currency.

Note 1: For extended meaning of ***right to pay foreign currency***, see section 775-135.

Note 2: For extended meaning of ***obligation to pay foreign currency***, see section 775-140.

Time of event

(2) The time of the event is when you cease to have the right or the part of the right.

Forex realisation gain

(3) You make a ***forex realisation gain*** if:

(a) the amount you pay in respect of the event happening falls short of the *forex entitlement base of the right or the part of the right (the forex entitlement base is worked out as at the tax recognition time); and

(b) some or all of the shortfall is attributable to a *currency exchange rate effect.

The amount of the ***forex realisation gain*** is so much of the shortfall as is attributable to a currency exchange rate effect.

Note 1: For ***forex entitlement base***, see section 775-90.

Note 2: For ***tax recognition time***, see subsection (7).

Note 3: For ***currency exchange rate effect***, see section 775-105.

Forex realisation loss

(4) You make a ***forex realisation loss*** if:

(a) the amount you pay in respect of the event happening exceeds the *forex entitlement base of the right or the part of the right (the forex entitlement base is worked out as at the tax recognition time); and

(b) some or all of the excess is attributable to a *currency exchange rate effect.

The amount of the ***forex realisation loss*** is so much of the excess as is attributable to a currency exchange rate effect.

Note 1: For ***forex entitlement base***, see section 775-90.

Note 2: For ***tax recognition time***, see subsection (7).

Note 3: For ***currency exchange rate effect***, see section 775-105.

(5) You make a ***forex realisation loss*** if:

(a) the event happens because an option to sell *foreign currency expires without having been exercised, or is cancelled, released or abandoned; and

(b) you were capable of exercising the option immediately before the event happened.

The amount of the ***forex realisation loss*** is the amount you paid in return for the grant or acquisition of the option.

Non-cash benefit

(6) The amount you pay in respect of the event happening can include a *non-cash benefit. Use the *market value of the benefit to work out the amount you pay.

Tax recognition time

(7) For the purposes of this section, the ***tax recognition time*** is the time when you pay an amount in respect of the event happening.

Obligation to pay Australian currency

(8) To avoid doubt, for the purposes of this section, an ***obligation to pay Australian currency*** includes an obligation to pay Australian currency, where the obligation is subject to a contingency.

775-65 Only one forex realisation event to be counted

Option to buy foreign currency

(1) The following table applies to an option to buy a particular *foreign currency if the exercise price is payable in another foreign currency:

Option to buy foreign currency			
Item	**If you are...**	**and both of these events happen when the option is exercised...**	**this is the result...**
1	the entity who is capable of exercising the option	(a) forex realisation event 1; (b) forex realisation event 4	ignore forex realisation event 4.
2	the entity who is capable of exercising the option	(a) forex realisation event 2; (b) forex realisation event 4	ignore forex realisation event 4.
3	the entity who granted the option	(a) forex realisation event 3; (b) forex realisation event 4	ignore forex realisation event 3.

Option to sell foreign currency

(2) The following table applies to an option to sell a particular *foreign currency if the exercise price is payable in another foreign currency:

Option to sell foreign currency			
Item	**If you are...**	**and both of these events happen when the option is exercised...**	**this is the result...**
1	the entity who is capable of exercising the option	(a) forex realisation event 3; (b) forex realisation event 5	ignore forex realisation event 3.
2	the entity who granted the option	(a) forex realisation event 3; (b) forex realisation event 4	ignore forex realisation event 3.

Forward contracts

(3) The following table applies to a contract to buy a particular *foreign currency in return for another foreign currency:

Forward contracts		
Item	**If both of these events happen when the contract is carried out...**	**this is the result...**
1	(a) forex realisation event 1; (b) forex realisation event 4	ignore forex realisation event 4.
2	(a) forex realisation event 2; (b) forex realisation event 4	ignore forex realisation event 4.

Residual rule

(4) If:

(a) 2 or more of forex realisation events 1, 2, 3, 4 and 5 happen to you at the same time in relation to the same rights and/or obligations; and

(b) none of the above subsections applies;

apply the forex realisation event that is most appropriate, and ignore the remaining event or events.

775-70 Tax consequences of certain short-term forex realisation gains

(1) The following table has effect unless you have made a choice under section 775-80:

Tax consequences of certain short-term forex realisation gains

Item	In this case...	this is the result...
1	you make a *forex realisation gain as a result of forex realisation event 2, and: (a) the right to receive *foreign currency was created in return for the occurrence of a *realisation event in relation to a *CGT asset you own; and (b) item 6 of the table in subsection 775-45(7) applies; and (c) the foreign currency became due for payment within 12 months after the occurrence of the realisation event	(a) the forex realisation gain is not included in your assessable income under section 775-15; and (b) CGT event K10 happens.

Tax consequences of certain short-term forex realisation gains		
Item	**In this case...**	**this is the result...**
2	you make a *forex realisation gain as a result of forex realisation event 4, and: (a) the obligation to pay *foreign currency was incurred: (i) in return for the acquisition of a *CGT asset; or (ii) as the second, third, fourth or fifth element of the *cost base of a CGT asset; and (b) item 9 of the table in subsection 775-55(7) applies; and (c) the foreign currency became due for payment within 12 months after the time when: (i) if subparagraph (a)(i) applies—you acquired the CGT asset (worked out under Division 109); or (ii) if subparagraph (a)(ii) applies—you incurred the relevant expenditure	(a) the forex realisation gain is not included in your assessable income under section 775-15; and (b) both the *cost base and the *reduced cost base of the CGT asset are reduced by an amount equal to the forex realisation gain.

Tax consequences of certain short-term forex realisation gains		
Item	**In this case...**	**this is the result...**
3	you make a *forex realisation gain as a result of forex realisation event 4, and: (a) the obligation to pay *foreign currency was incurred: (i) in return for your starting to hold a *depreciating asset; or (ii) as the second element of the cost of a depreciating asset; and (b) if subparagraph (a)(i) applies—the foreign currency became due for payment within the 24-month period that began 12 months before the time when you began to hold the depreciating asset (worked out under Division 40); and (c) if subparagraph (a)(ii) applies—the foreign currency became due for payment within 12 months after the time when you incurred the relevant expenditure	(a) the forex realisation gain is not included in your assessable income under section 775-15; and (b) if: (i) the forex realisation event happens in the income year in which the asset's *start time occurs; and (ii) the asset is not allocated to a pool under Subdivision 40-E or 328-D; the asset's *cost is reduced (but not below zero) by an amount equal to the forex realisation gain; and (c) if: (i) the forex realisation event happens in an income year that is later than the one in which the asset's *start time occurs; and (ii) the asset is not allocated to a pool under Subdivision 40-E or 328-D; the depreciating asset's *opening adjustable value for the income year in which the forex realisation event happens is reduced (but not below zero) by an amount equal to the forex realisation gain; and (d) if the asset is allocated to a pool under Subdivision 40-E or 328-D—the opening pool balance of the pool for the income year in which the forex realisation event happens is reduced (but not below zero) by an amount equal to the forex realisation gain.

Tax consequences of certain short-term forex realisation gains		
Item	**In this case...**	**this is the result...**
4	you make a *forex realisation gain as a result of forex realisation event 4, and: (a) the obligation to pay *foreign currency was incurred as a project amount; and (b) the foreign currency became due for payment within 12 months after the time when you incurred the project amount; and (c) the project amount is allocated to a project pool	(a) the forex realisation gain is not included in your assessable income under section 775-15; and (b) the pool value of the project pool for the income year in which you incurred the project amount is reduced (but not below zero) by an amount equal to the forex realisation gain.

Additional result where forex realisation gain exceeds cost etc.

(2) The following table has effect:

Additional result where forex realisation gain exceeds cost etc.			
Item	**If...**	**and the following conditions are satisfied...**	**this is the result...**
1	item 3 of the table in subsection (1) applies in relation to a *depreciating asset	(a) the forex realisation event happens in the income year in which the asset's *start time occurs; and (b) the asset is not allocated to a pool under Subdivision 40-E or 328-D; and (c) the forex realisation gain exceeds the asset's *cost	the excess is included in your assessable income.

Additional result where forex realisation gain exceeds cost etc.			
Item	**If...**	**and the following conditions are satisfied...**	**this is the result...**
2	item 3 of the table in subsection (1) applies in relation to a *depreciating asset	(a) the forex realisation event happens in an income year that is later than the one in which the asset's *start time occurs; and (b) the asset is not allocated to a pool under Subdivision 40-E or 328-D; and (c) the forex realisation gain exceeds the asset's *opening adjustable value for the income year in which the forex realisation event happens	the excess is included in your assessable income.
3	item 3 of the table in subsection (1) applies in relation to a *depreciating asset	(a) the asset is allocated to a pool under Subdivision 40-E or 328-D; and (b) the forex realisation gain exceeds the opening pool balance of the pool for the income year in which the forex realisation event happens	the excess is included in your assessable income.
4	item 4 of the table in subsection (1) applies in relation to a project amount	the forex realisation gain exceeds the pool value of the project pool for the income year in which you incurred the project amount	the excess is included in your assessable income.

(3) To the extent that a *forex realisation gain:

(a) would have been included in your assessable income under section 775-15 if this section had not been enacted; and

(b) would, apart from this subsection, be included in your assessable income under another provision of this Act;

the gain is not included in your assessable income under that other provision.

775-75 Tax consequences of certain short-term forex realisation losses

(1) The following table has effect unless you have made a choice under section 775-80:

Tax consequences of certain short-term forex realisation losses

Item	In this case...	this is the result...
1	you make a *forex realisation loss as a result of forex realisation event 2, and: (a) the right to receive *foreign currency was created in return for the occurrence of a *realisation event in relation to a *CGT asset you own; and (b) item 6 of the table in subsection 775-45(7) applies; and (c) the foreign currency became due for payment within 12 months after the occurrence of the realisation event	(a) the forex realisation loss is not deductible under section 775-30; and (b) CGT event K11 happens.

Tax consequences of certain short-term forex realisation losses		
Item	**In this case...**	**this is the result...**
2	you make a *forex realisation loss as a result of forex realisation event 4, and: (a) the obligation to pay *foreign currency was incurred: (i) in return for the acquisition of a *CGT asset; or (ii) as the second, third, fourth or fifth element of the *cost base of a CGT asset; and (b) item 9 of the table in subsection 775-55(7) applies; and (c) the foreign currency became due for payment within 12 months after the time when: (i) if subparagraph (a)(i) applies—you acquired the CGT asset (worked out under Division 109); or (ii) if subparagraph (a)(ii) applies—you incurred the relevant expenditure	(a) the forex realisation loss is not deductible under section 775-30; and (b) both the *cost base and the *reduced cost base of the CGT asset are increased by an amount equal to the *forex realisation loss.

Tax consequences of certain short-term forex realisation losses		
Item	**In this case...**	**this is the result...**
3	you make a *forex realisation loss as a result of forex realisation event 4, and: (a) the obligation to pay *foreign currency was incurred: (i) in return for your starting to hold a *depreciating asset; or (ii) as the second element of the cost of a depreciating asset; and (b) if subparagraph (a)(i) applies—the foreign currency became due for payment within the 24-month period that began 12 months before the time when you began to hold the depreciating asset (worked out under Division 40); and (c) if subparagraph (a)(ii) applies—the foreign currency became due for payment within 12 months after the time when you incurred the relevant expenditure	(a) the forex realisation loss is not deductible under section 775-30; and (b) if: (i) the forex realisation event happens in the income year in which the asset's *start time occurs; and (ii) the asset is not allocated to a pool under Subdivision 40-E or 328-D; the asset's *cost is increased by an amount equal to the forex realisation loss; and (c) if: (i) the forex realisation event happens in an income year that is later than the one in which the asset's *start time occurs; and (ii) the asset is not allocated to a pool under Subdivision 40-E or 328-D; the depreciating asset's *opening adjustable value for the income year in which the forex realisation event happens is increased by an amount equal to the forex realisation loss; and (d) if the asset is allocated to a pool under Subdivision 40-E or 328-D—the opening pool balance of the pool for the income year in which the forex realisation event happens is increased by an amount equal to the forex realisation loss.

Tax consequences of certain short-term forex realisation losses		
Item	**In this case...**	**this is the result...**
4	you make a *forex realisation loss as a result of forex realisation event 4, and: (a) the obligation to pay *foreign currency was incurred as a project amount; and (b) the foreign currency became due for payment within 12 months after the time when you incurred the project amount	(a) the forex realisation loss is not deductible under section 775-30; and (b) the pool value of the project pool for the income year in which you incurred the project amount is increased by an amount equal to the forex realisation loss.

(2) To the extent that:

(a) section 775-30 would have allowed you a deduction for a *forex realisation loss if this section had not been enacted; and

(b) apart from this subsection, another provision of this Act would allow you a deduction for the loss;

you cannot deduct the loss under that other provision.

775-80 You may choose not to have sections 775-70 and 775-75 apply to you

(1) You may choose not to have sections 775-70 and 775-75 apply to you.

(2) A choice must be in writing.

(3) A choice must be made:

(a) if you were in existence at the start of the applicable commencement date:

(i) within 90 days after the applicable commencement date; or

(ii) within 30 days after the commencement of this subsection; or

(b) if you came into existence within 90 days after the start of the applicable commencement date:

(i) within 90 days after you came into existence; or

(ii) within 30 days after the commencement of this subsection; or

(c) if the Commissioner allows a longer period—within that longer period.

Note: For ***applicable commencement date***, see section 775-155.

(4) A choice has effect from the start of the applicable commencement date.

(5) A choice may not be revoked.

775-85 Forex cost base of a right to receive foreign currency

The ***forex cost base*** of a right, or a part of a right, to receive *foreign currency is the total of:

(a) the money you:

(i) paid; or

(ii) are required to pay; or

(iii) would be required to pay in the event of the exercise of an option;

in respect of acquiring the right or part of the right; and

(b) the *market value of any *non-cash benefit you:

(i) provided; or

(ii) are required to provide; or

(iii) would be required to provide in the event of the exercise of an option;

in respect of acquiring the right or part of the right;

reduced by any amounts that are deductible under a provision of this Act other than this Division.

775-90 Forex entitlement base of a right to pay foreign currency

The ***forex entitlement base*** of a right, or a part of a right, to pay *foreign currency is the total of:

(a) the money you:

(i) are entitled to receive; or

(ii) would be entitled to receive in the event of the exercise of an option;

in respect of the discharge or satisfaction of the right or the part of the right; and

(b) the *market value of any *non-cash benefit you:
  (i) are entitled to acquire or obtain; or
  (ii) would be entitled to acquire or obtain in the event of the exercise of an option;
  in respect of the discharge or satisfaction of the right or the part of the right;

reduced by:

(c) any amounts that you paid to acquire the right or the part of the right, where the amounts are not deductible under a provision of this Act other than this Division; and

(d) the market value of any non-cash benefit that you provided to acquire the right or the part of the right, where the market value is not deductible under a provision of this Act other than this Division.

775-95 Proceeds of assuming an obligation to pay foreign currency

For the purposes of this Division, the ***proceeds*** of assuming an obligation, or a part of an obligation, to pay *foreign currency are the total of:

(a) the money you:
  (i) received; or
  (ii) are entitled to receive; or
  (iii) would be entitled to receive in the event of the exercise of an option;
  in return for incurring the obligation or the part of the obligation; and

(b) the *market value of any *non-cash benefit you:
  (i) acquired or obtained; or
  (ii) are entitled to acquire or obtain; or
  (iii) would be entitled to acquire or obtain in the event of the exercise of an option;
  in return for incurring the obligation or the part of the obligation;

reduced by any amounts that are included in assessable income under a provision of this Act other than this Division.

775-100 Net costs of assuming an obligation to receive foreign currency

(1) For the purposes of this Division, the ***net costs*** of assuming an obligation, or a part of an obligation, to receive *foreign currency are the total of:

(a) the money you:

(i) are required to pay; or

(ii) would be required to pay in the event of the exercise of an option;

in respect of the fulfilment of the obligation or the part of the obligation; and

(b) the *market value of any *non-cash benefit you:

(i) are required to provide; or

(ii) would be required to provide in the event of the exercise of an option;

in respect of the fulfilment of the obligation or the part of the obligation;

reduced by the amount worked out under subsection (2).

(2) The amount worked out under this subsection is the total of:

(a) the money you:

(i) received; or

(ii) are entitled to receive;

because you incurred the obligation or the part of the obligation; and

(b) the *market value of any *non-cash benefit you:

(i) received or obtained; or

(ii) are entitled to receive or obtain;

because you incurred the obligation or the part of the obligation;

reduced by any amounts that are included in assessable income under a provision of this Act other than this Division.

(3) To avoid doubt, paragraphs (2)(a) and (b) do not apply to money or a *non-cash benefit that you:

(a) received or obtained; or

(b) are entitled to receive or obtain;

because of the fulfilment of the obligation or the part of the obligation.

775-105 Currency exchange rate effect

(1) A ***currency exchange rate effect*** is:
  (a) any currency exchange rate fluctuations; or
  (b) a difference between:
    (i) an expressly or implicitly agreed currency exchange rate for a future date or time; and
    (ii) the applicable currency exchange rate at that date or time.

(2) To work out whether there is a currency exchange rate effect and (if so), the extent of that effect, use whichever of the following translation rules is applicable to you:
  (a) the translation rules in section 960-50 (the standard rules);
  (b) the translation rules in section 960-80 (the functional currency rules).

775-110 Constructive receipts and payments

For the purposes of this Subdivision, if an entity (the ***payer***) did not actually pay an amount to another entity (the ***recipient***), but the amount was applied or dealt with in any way on the recipient's behalf or as the recipient directs (including by discharging all or a part of an obligation owed by the recipient), then:
  (a) the payer is taken to have paid the amount as soon as it is applied or dealt with; and
  (b) the recipient is taken to have received the amount as soon as it is applied or dealt with.

Note: The set-off of an obligation to pay an amount against a right to receive an amount is an example of how this section would operate.

775-115 Economic set-off to be treated as legal set-off

If the economic effect of an *arrangement is to provide for the set-off, in whole or in part, of one or more amounts against one or more other amounts, this Subdivision applies as if:
  (a) the parties to the arrangement had the respective rights and obligations that they would have had if the provision for

economic set-off were structured as a provision for legal set-off of rights and obligations; and

(b) if the economic set-off happens—the parties were taken, under section 775-110, to have paid and received the respective amounts that they would have paid and received if the economic set-off were structured as a legal set-off of rights and obligations.

775-120 Non-arm's length transactions

If:

(a) you and another entity did not deal with each other at arm's length in connection with a transaction that is relevant to working out:

(i) whether you make a *forex realisation gain or a *forex realisation loss; or

(ii) the amount of any *forex realisation gain or a *forex realisation loss made by you; and

(b) apart from this section, a particular amount is more or less than it would have been if you and the other entity had been dealing with each other at arm's length;

this Subdivision applies to you as if that amount were the amount it would have been if you and the other entity had been dealing with each other at arm's length.

775-125 CGT consequences of the acquisition of foreign currency as a result of forex realisation event 2 or 3

If you acquire *foreign currency as a result of forex realisation event 2 or 3:

(a) the first element of the foreign currency's *cost base is replaced by the foreign currency's *market value at the time you received the foreign currency; and

(b) the first element of the foreign currency's *reduced cost base is replaced by the foreign currency's market value at the time you received the foreign currency.

775-130 Certain deductions not allowable

If:

(a) an amount is included in your assessable income under this Division; and

(b) if this Division had not been enacted, the amount would not have been included in your assessable income under any other provision of this Act (other than Division 102); and

(c) if this section had not been enacted, a deduction would be allowable to you under a provision listed in the table in subsection 51AAA(2) of the *Income Tax Assessment Act 1936*; and

(d) if the amount had not been included in your assessable income under this Division, the deduction would not be allowable;

the deduction is not allowable.

775-135 Right to receive or pay foreign currency

Extended meaning of ***right to receive foreign currency***

(1) For the purposes of this Division, a ***right to receive foreign currency*** includes a right to receive an amount calculated by reference to a currency exchange rate effect, even if that amount is not an amount of *foreign currency.

(2) To avoid doubt, for the purposes of this Division, a ***right to receive foreign currency*** includes a right to receive *foreign currency, where the right is subject to a contingency.

Extended meaning of ***right to pay foreign currency***

(3) For the purposes of this Division, a ***right to pay foreign currency*** includes a right to pay an amount calculated by reference to a currency exchange rate effect, even if that amount is not an amount of *foreign currency.

(4) To avoid doubt, for the purposes of this Division, a ***right to pay foreign currency*** includes a right to pay *foreign currency, where the right is subject to a contingency.

775-140 Obligation to pay or receive foreign currency

Extended meaning of ***obligation to pay foreign currency***

(1) For the purposes of this Division, an ***obligation to pay foreign currency*** includes an obligation to pay an amount calculated by reference to a currency exchange rate effect, even if that amount is not an amount of *foreign currency.

(2) To avoid doubt, for the purposes of this Division, an ***obligation to pay foreign currency*** includes an obligation to pay *foreign currency, where the obligation is subject to a contingency.

Extended meaning of ***obligation to receive foreign currency***

(3) For the purposes of this Division, an ***obligation to receive foreign currency*** includes an obligation to receive an amount calculated by reference to a currency exchange rate effect, even if that amount is not an amount of *foreign currency.

(4) To avoid doubt, for the purposes of this Division, an ***obligation to receive foreign currency*** includes an obligation to receive *foreign currency, where the obligation is subject to a contingency.

775-145 Application of forex realisation events to currency and fungible rights and obligations

(1) Forex realisation event 1, 2 or 4 applies in relation to:
   (a) *foreign currency; or
   (b) a fungible right, or a part of a fungible right, to receive foreign currency; or
   (c) a fungible obligation, or a part of a fungible obligation, to pay foreign currency;

   on a first-in first-out basis.

(2) The regulations may provide that any or all of forex realisation events 1, 2 and 4 apply, or apply in specified circumstances, to:
   (a) *foreign currency; or
   (b) a fungible right, or a part of a fungible right, to receive foreign currency; or
   (c) a fungible obligation, or a part of a fungible obligation, to pay foreign currency;

on a weighted average basis (despite subsection (1)).

(3) The circumstances that may be specified for the purposes of subsection (2) include the circumstance that you have made an election to use a weighted average basis.

(4) Subsection (3) does not limit subsection (2).

775-150 Transitional election

(1) You may elect to have this section apply to you.

Note: For the consequences of an election, see sections 775-160 and 775-165.

(2) An election must be in writing.

(3) An election must be made:
  (a) within 60 days after the applicable commencement date; or
  (b) within 30 days after the commencement of this subsection.

Note: For ***applicable commencement date***, see section 775-155.

(4) An election may not be revoked.

775-155 Applicable commencement date

For the purposes of this Division, your ***applicable commencement date*** is:
  (a) the first day of the 2003-04 income year; or
  (b) if that day is earlier than 1 July 2003—the first day of the 2004-05 income year.

775-160 Exception—event happens before the applicable commencement date

(1) A *forex realisation gain or *forex realisation loss you make as a result of forex realisation event 1, 2, 3, 4 or 5 is disregarded if the event happened before the applicable commencement date.

Note: For ***applicable commencement date***, see section 775-155.

(2) Subsection (1) does not apply if:
  (a) you have made an election under section 775-150; and

(b) the Commissioner is satisfied that the event happened under, or as a result of, an *arrangement that was entered into or carried out for the purpose, or for purposes that included the purpose, of obtaining the benefit of the operation of subsection (1).

775-165 Exception—currency or right acquired, or obligation incurred, before the applicable commencement date

Exception—foreign currency acquired before the applicable commencement date

(1) A *forex realisation gain or *forex realisation loss you make on the disposal of *foreign currency as a result of forex realisation event 1 is disregarded if:

(a) the foreign currency was acquired before the applicable commencement date; and

(b) you have not made an election under section 775-150.

For the purposes of paragraph (a), the time of acquisition is worked out under Division 109.

Note: For ***applicable commencement date***, see section 775-155.

Exception—right acquired before the applicable commencement date

(2) A *forex realisation gain or *forex realisation loss you make as a result of forex realisation event 1, 2 or 5 happening to a right or a part of a right is disregarded if:

(a) the right, or the part of the right;

(i) was acquired before the applicable commencement date; or

(ii) arose under an eligible contract (within the meaning of the former Division 3B of Part III of the *Income Tax Assessment Act 1936*) that was entered into before the applicable commencement date; and

(b) you have not made an election under section 775-150.

For the purposes of subparagraph (a)(i), the time of acquisition is worked out under Division 109.

Note: For ***applicable commencement date***, see section 775-155.

(3) If:

(a) at a particular time (the ***extension time***) on or after the applicable commencement date and under a contract that was entered into before the applicable commencement date, the period for which money has been lent is extended; and

(b) either:

(i) the contract is separate from the original loan contract; or

(ii) the extension amounts to a variation of the original loan contract;

subparagraph (2)(a)(ii) does not apply to a right, or a part of a right, that arises after the extension time and relates to the loan.

Note: For ***applicable commencement date***, see section 775-155.

Exception—obligation incurred before the applicable commencement date

(4) A *forex realisation gain or *forex realisation loss you make as a result of forex realisation event 3 or 4 happening to an obligation or a part of an obligation is disregarded if:

(a) either:

(i) you incurred the obligation, or the part of the obligation, before the applicable commencement date; or

(ii) the obligation, or the part of the obligation, arose under an eligible contract (within the meaning of the former Division 3B of Part III of the *Income Tax Assessment Act 1936*) that was entered into before the applicable commencement date; and

(b) you have not made an election under section 775-150.

Note: For ***applicable commencement date***, see section 775-155.

(5) If:

(a) at a particular time (the ***extension time***) on or after the applicable commencement date and under a contract that was entered into before the applicable commencement date, the period for which money has been lent is extended; and

(b) either:

(i) the contract is separate from the original loan contract; or

(ii) the extension amounts to a variation of the original loan contract;

subparagraph (4)(a)(ii) does not apply to an obligation, or a part of an obligation, that arises after the extension time and relates to the loan.

Note: For ***applicable commencement date***, see section 775-155.

775-170 Exemption for ADIs and non-ADI financial institutions

This Division does not apply to a *forex realisation gain or a *forex realisation loss made by an *ADI or a *non-ADI financial institution.

775-175 Application to things happening before commencement

The use of the present tense in a provision of this Division does not imply that the provision does not apply to things happening before the commencement of this Division.

Subdivision 775-C—Roll-over relief for facility agreements

Guide to Subdivision 775-C

775-180 What this Subdivision is about

A ***facility agreement*** is an agreement where:

(a) you have a right to issue eligible securities and another entity or entities must acquire the securities; and

(b) the economic effect of the agreement is to enable you to obtain finance in a particular foreign currency.

If you choose roll-over relief for a facility agreement:

(a) a forex realisation gain or a forex realisation loss you make as a result of forex realisation event 4 is disregarded if the event happens because you discharge your obligation under an eligible security issued by you under the agreement; and

(b) if you issue an eligible security under the agreement otherwise than as a result of a roll-over—you are taken to have been given a loan (the ***notional loan***); and

(c) if an eligible security is rolled-over under the agreement—the period of the notional loan is extended by the term of the new security; and

(d) forex realisation event 6 happens if you discharge your obligation under the notional loan; and

(e) forex realisation event 7 happens if a material variation is made to the agreement.

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[This is the end of the Guide.]

Operative provisions

775-185 What is a *facility agreement*?

A ***facility agreement*** is an agreement between an entity (the ***first entity***) and another entity or entities under which:

(a) the first entity has a right to issue *eligible securities; and

(b) an entity or entities must acquire the securities;

where the economic effect of the agreement is to enable the first entity to obtain finance in a particular *foreign currency:

(c) up to the foreign currency amount specified in the agreement; and
(d) during the term of the agreement.

775-190 What is an *eligible security*?

An ***eligible security*** is:
(a) a bill of exchange, or a promissory note, that is:
(i) non-interest bearing; and
(ii) issued at a discount to face value; and
(iii) denominated in a particular *foreign currency; and
(iv) for a fixed term; or
(b) a security that is:
(i) specified in the regulations; and
(ii) denominated in a foreign currency; and
(iii) for a fixed term.

775-195 You may choose roll-over relief for a facility agreement

(1) You may choose roll-over relief for a *facility agreement if:
(a) you have entered into the agreement; and
(b) you have a right to issue *eligible securities under the agreement; and
(c) the economic effect of the agreement is to enable you to obtain finance in a particular *foreign currency:
(i) up to the foreign currency amount specified in the agreement; and
(ii) during the term of the agreement.

(2) A choice must be made:
(a) within 90 days after the first time you issue an *eligible security under the *facility agreement; or
(b) within 90 days after the applicable commencement date; or
(c) within 30 days after the commencement of this subsection.

Note: For ***applicable commencement date***, see section 775-155.

(3) If you make a choice within 90 days after the first time you issue an *eligible security under the *facility agreement, the choice is taken to have been in effect throughout the period that began

immediately before the first time you issued an eligible security under the facility agreement.

(4) If:

(a) you make a choice:

(i) within 90 days after the applicable commencement date; or

(ii) within 30 days after the commencement of this subsection; and

(b) subsection (3) does not apply;

the choice is taken to have been in effect throughout the period that began at whichever is the later of the following times:

(c) the start of the applicable commencement date;

(d) the first time you issued an *eligible security under the *facility agreement.

Note: For ***applicable commencement date***, see section 775-155.

(5) A choice must be in writing.

(6) A choice continues to apply until the *facility agreement ends.

Note: If forex realisation event 7 happens (material variation of facility agreement), subsection 775-220(5) terminates your choice.

(7) A choice may not be revoked.

(8) An *ADI or a *non-ADI financial institution is not entitled to make a choice under this section.

775-200 Forex realisation event 4 does not apply

A *forex realisation gain or a *forex realisation loss you make as a result of forex realisation event 4 is disregarded to the extent to which the event happens because:

(a) you discharge your obligation under an *eligible security issued by you under a *facility agreement; and

(b) you have made a choice for roll-over relief for the facility agreement, and that choice is in effect.

775-205 What is a *roll-over*?

A ***roll-over*** happens under a *facility agreement if:

(a) you discharge your obligation under an *eligible security issued by you under the agreement (the ***rolled-over security***); and

(b) at the same time, you issue a new eligible security (the ***new security***) under the agreement; and

(c) the issue of the new security is related to the discharge of your obligation under the rolled-over security in one of the following ways:

(i) your obligation under the rolled-over security is wholly or partly set-off against your right to receive the *foreign currency issue price of the new security;

(ii) your obligation under the rolled-over security is wholly or partly satisfied by the issue of the new security; and

(d) you have made a choice for roll-over relief for the agreement, and that choice is in effect; and

(e) the new security is issued on or after the applicable commencement date; and

(f) if you have not made an election under section 775-150—the rolled-over security is issued on or after the applicable commencement date.

Note: For ***applicable commencement date***, see section 775-155.

775-210 Notional loan

(1) The rules in this section have effect only for the purposes of this Subdivision.

Notional loan

(2) If you issue an *eligible security under a *facility agreement otherwise than as a result of a roll-over, you are taken to have been given a loan (the ***notional loan***):

(a) of a *foreign currency principal amount equal to the foreign currency face value of the security; and

(b) for a period equal to the term of the security; and

(c) that is taken to be attached to the security; and

(d) the ***start time*** of which is the time when you issued the security.

Note 1: The period of the notional loan may be extended as the result of a later roll-over—see subsection (3).

Note 2: The notional loan may become attached to a later security as the result of a roll-over—see subsection (3).

Note 3: The foreign currency principal amount of the notional loan may remain the same, or may fall (but not rise), as a result of a later roll-over—see subsection (3).

Note 4: If, at a later time, the security is rolled-over, and the foreign currency face value of the new security exceeds the foreign currency face value of the rolled-over security, you are taken to have been given an additional notional loan of a foreign currency principal amount equal to the excess—see subsection (3).

Effect of roll-over

(3) The table has effect if an *eligible security is rolled-over under a *facility agreement:

Roll-over of eligible security		
Item	**If the foreign currency face value of the new security...**	**this is the result...**
1	equals the *foreign currency face value of the rolled-over security	(a) the period of each notional loan attached to the rolled-over security is extended by the term of the new security; and (b) each notional loan attached to the rolled-over security is taken to be attached to the new security.

Roll-over of eligible security		
Item	**If the foreign currency face value of the new security...**	**this is the result...**
2	exceeds the *foreign currency face value of the rolled-over security	(a) you are taken to have been given an additional notional loan: (i) of a foreign currency principal amount equal to the excess; and (ii) for a period equal to the term of the new security; and (iii) that is taken to be attached to the new security; and (iv) the start time of which is the time when you issued the new security; and (b) the period of each notional loan attached to the rolled-over security is extended by the term of the new security; and (c) each notional loan attached to the rolled-over security is taken to be attached to the new security.
3	falls short of the *foreign currency face value of the rolled-over security, and there is only one notional loan attached to the rolled-over security	(a) you are taken to have paid a foreign currency amount equal to the shortfall in order to discharge so much of your obligation to pay the foreign currency principal amount of the notional loan as equals the shortfall; and (b) the period of the notional loan is extended by the term of the new security; and (c) the notional loan is taken to be attached to the new security.

Roll-over of eligible security		
Item	**If the foreign currency face value of the new security...**	**this is the result...**
4	falls short of the *foreign currency face value of the rolled-over security, and there are 2 or more notional loans attached to the rolled-over security	(a) you are taken to have paid a foreign currency amount equal to the shortfall in order to discharge your obligation to pay so much of the total foreign currency principal amounts of the notional loans as equals the shortfall, and to have done so on a first-in first-out basis, that is to say: (i) first, by fully or partly discharging (as the case requires) your obligation to pay the foreign currency principal amount of the notional loan with the earliest start date; and (ii) second, if your obligation to pay the foreign currency principal amount of the notional loan with the earliest start date is fully discharged—by fully or partly discharging (as the case requires) your obligation to pay the foreign currency principal amount of the notional loan with the next start date, and so on; and (b) the period of each notional loan attached to the rolled-over security that is not fully discharged is extended by the term of the new security; and (c) each notional loan attached to the rolled-over security that is not fully discharged is taken to be attached to the new security.

Consequences if security is not rolled-over

(4) If:

(a) you discharge your obligation under an *eligible security issued under a *facility agreement; and

(b) the security is not rolled-over at the time of discharge; and

(c) you have made a choice for roll-over relief for the facility agreement, and that choice is in effect;

then, for each notional loan attached to the security, you are taken to have paid a *foreign currency amount equal to the foreign currency principal amount of the notional loan in order to discharge your obligation to pay the foreign currency principal amount of the notional loan.

Foreign currency

(5) For the purposes of the application of this section to a particular *facility agreement that provides for the issue of *eligible securities, ***foreign currency*** is the *foreign currency in which the securities are denominated.

Note: Section 960-50 (Australian currency translation rule) does not affect the operation of this section—see subsection 960-50(10). You translate to Australian currency when you apply section 775-215 (forex realisation event 6).

775-215 Discharge of obligation to pay the principal amount of a notional loan under a facility agreement—forex realisation event 6

Forex realisation event 6

(1) ***Forex realisation event 6*** happens if:

(a) you discharge an obligation, or a part of an obligation, to pay the *foreign currency principal amount of a notional loan attached to an *eligible security issued by you under a *facility agreement; and

(b) you have made a choice for roll-over relief for the agreement, and that choice is in effect.

Time of event

(2) The time of the event is when you discharge the obligation or the part of the obligation.

Forex realisation gain

(3) You make a ***forex realisation gain*** if:

(a) the amount of the obligation, or the part of the obligation, at the start time of the notional loan, exceeds the amount you paid in order to discharge the obligation or the part of the obligation; and

(b) some or all of the excess is attributable to a *currency exchange rate effect.

The amount of the ***forex realisation gain*** is so much of the excess as is attributable to a currency exchange rate effect.

Note: For ***currency exchange rate effect***, see section 775-105.

Forex realisation loss

(4) You make a ***forex realisation loss*** if:

(a) the amount of the obligation, or the part of the obligation, at the start time of the notional loan, falls short of the amount you paid in order to discharge the obligation or the part of the obligation; and

(b) some or all of the shortfall is attributable to a *currency exchange rate effect.

The amount of the ***forex realisation loss*** is so much of the shortfall as is attributable to a currency exchange rate effect.

Note: For ***currency exchange rate effect***, see section 775-105.

Exempt income etc.

(5) For the purposes of the application of sections 775-20, 775-25 and 775-35 to the event, assume that the notional loan had been an actual loan.

775-220 Material variation of a facility agreement—forex realisation event 7

Forex realisation event 7

(1) ***Forex realisation event 7*** happens if:

(a) a material variation is made to the terms or conditions of a *facility agreement; or

(b) a material variation is made to the effect of a facility agreement; or

(c) a material variation is made to the type or types of security that can be issued under a facility agreement;

so long as you have made a choice for roll-over relief for the facility agreement, and that choice is in effect.

Note: See also subsections (7) and (8).

Time of the event

(2) The time of the event is when the material variation happens.

Forex realisation gain

(3) You make a ***forex realisation gain*** if:

(a) the total of the forex realisation gains that you would have made as a result of forex realisation event 6 if you had, at the time of forex realisation event 7:

(i) discharged your liabilities under each of the notional loans to which the agreement relates; and

(ii) not rolled-over any *eligible security;

exceeds:

(b) the total of the forex realisation losses that you would have made as a result of forex realisation event 6 if you had, at the time of forex realisation event 7:

(i) discharged your liabilities under each of the notional loans to which the agreement relates; and

(ii) not rolled-over any eligible security.

The amount of the ***forex realisation gain*** is the amount of the excess.

Note: See also subsection (9).

Forex realisation loss

(4) You make a ***forex realisation loss*** if:

(a) the total of the forex realisation losses that you would have made as a result of forex realisation event 6 if you had, at the time of forex realisation event 7:

(i) discharged your liabilities under each of the notional loans to which the agreement relates; and

(ii) not rolled-over any *eligible security;

exceeds:

(b) the total of the forex realisation gains that you would have made as a result of forex realisation event 6 if you had, at the time of forex realisation event 7:
  (i) discharged your liabilities under each of the notional loans to which the agreement relates; and
  (ii) not rolled-over any eligible security.

The amount of the ***forex realisation loss*** is the amount of the excess.

Note: See also subsection (9).

Termination of choice

(5) If forex realisation event 7 happens in relation to a *facility agreement:
  (a) your choice for roll-over relief for the facility agreement ceases to have effect immediately after the event; and
  (b) you are not entitled to make a fresh choice for roll-over relief for the facility agreement.

Modification of tax recognition time

(6) If:
  (a) forex realisation event 7 happens in relation to a *facility agreement; and
  (b) an *eligible security issued by you under the facility agreement was in existence at the time of that event; and
  (c) at a later time, forex realisation event 4 happens because you cease to have an obligation, or a part of an obligation, to pay *foreign currency under the security;

section 775-55 applies to you as if the tax recognition time for the obligation, or the part of the obligation, were the time of forex realisation event 7 (despite subsection 775-55(7)).

Material variation

(7) To avoid doubt, if a variation to:
  (a) the terms or conditions of a facility agreement; or
  (b) the effect of a facility agreement;

results in the agreement ceasing to be a facility agreement, the variation is taken to be a material variation for the purposes of subsection (1).

(8) The regulations may provide that a specified kind of variation is taken to be a material variation for the purposes of subsection (1).

Total amount

(9) To avoid doubt, the total amount referred to in paragraph (3)(b) or (4)(b) may be zero.

Subdivision 775-D—Qualifying forex accounts that pass the limited balance test

Guide to Subdivision 775-D

775-225 What this Subdivision is about

You may elect to have this Subdivision apply to one or more qualifying forex accounts held by you.

If you elect to have this Subdivision apply to an account, a forex realisation gain or a forex realisation loss you make in relation to the account as a result of forex realisation event 2 or 4 is disregarded if the account passes the limited balance test.

For an account to pass the limited balance test, the combined balance of all the accounts covered by your election must not be more than the foreign currency equivalent of $250,000.

The limited balance test includes a buffer provision which allows the combined balance to be more than the foreign currency equivalent of $250,000, but not more than the foreign currency equivalent of $500,000, for not more than 2 15-day periods in any income year.

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[This is the end of the Guide.]

Operative provisions

775-230 Election to have this Subdivision apply to one or more qualifying forex accounts

(1) You may elect to have this Subdivision apply to one or more *qualifying forex accounts held by you.

(2) An election must be in writing.

(2A) If:
- (a) you make an election within 30 days after the commencement of this subsection; and
- (b) the election is expressed to have come into effect on a specified day; and
- (c) the specified day is included in the period:
  - (i) beginning on 1 July 2003; and
  - (ii) ending on the day on which the election is made;

the election is taken to have come into effect on the specified day.

(3) An election continues in effect, in relation to a particular account, until:
- (a) you cease to hold the account; or
- (b) the account ceases to be a *qualifying forex account; or
- (c) the election is varied by removing the account; or
- (d) a withdrawal of the election takes effect;

whichever happens first.

Note 1: For variation of election, see section 775-235.

Note 2: For withdrawal of election, see section 775-240.

(4) If an election made by you under this section is in effect, you are not entitled to make another election under this section.

(5) An *ADI or a *non-ADI financial institution is not entitled to make an election under this section.

775-235 Variation of election

(1) If you have made an election under section 775-230, you may vary your election by:
  (a) adding one or more *qualifying forex accounts; or
  (b) removing one or more qualifying forex accounts.

(2) A variation must be in writing.

(3) Removing an account does not prevent you from adding the account in a future variation.

775-240 Withdrawal of election

(1) If you have made an election under section 775-230, you may withdraw your election.

(2) A withdrawal must be in writing.

(3) Withdrawing an election does not prevent you from making a fresh election under section 775-230 in relation to any or all of the same accounts.

775-245 When does a qualifying forex account *pass the limited balance test*?

Basic rule

(1) For the purposes of this Subdivision, a *qualifying forex account that you hold ***passes the limited balance test*** at a particular time if, at that time:
  (a) an election made by you under section 775-230 has effect in relation to:
    (i) the account; or
    (ii) the account and one or more other *qualifying forex accounts; and

(b) the total of the credit balances of the account and each of those other accounts (if any) is not more than the *foreign currency equivalent of $250,000; and

(c) the total of the debit balances of the account and each of those other accounts (if any) is not more than the foreign currency equivalent of $250,000.

Note: For buffering during an increased balance period, see subsections (2) and (3).

Buffering during first and second increased balance period

(2) For the purposes of this section, an ***increased balance period*** is a continuous period consisting of:

(a) an income year; or

(b) a particular part of an income year;

where, at each time during the period, either or both of the following conditions is satisfied:

(c) the total of the credit balances of the account or accounts covered by your section 775-230 election is more than the *foreign currency equivalent of $250,000, but not more than the foreign currency equivalent of $500,000;

(d) the total of the debit balances of the account or accounts covered by your section 775-230 election is more than the foreign currency equivalent of $250,000, but not more than the foreign currency equivalent of $500,000.

(3) The table has effect:

Increased balance period		
Item	**In this case...**	**this is the result...**
1	(a) an increased balance period is the first or only increased balance period that occurs in a particular income year; and (b) the duration of the period is 15 days or less; and (c) it is not the case that: (i) the period began at the start of the income year; and (ii) another increased balance period ended at the end of the previous income year	paragraphs (1)(b) and (c) do not apply during the first-mentioned increased balance period.
2	(a) an increased balance period is the first or only increased balance period that occurs in a particular income year; and (b) both: (i) the period began at the start of the income year; and (ii) another increased balance period ended at the end of the previous income year; and (c) the total duration of those increased balance periods is 15 days or less	paragraphs (1)(b) and (c) do not apply during those increased balance periods.

Increased balance period		
Item	**In this case...**	**this is the result...**
3	(a) an increased balance period is the first or only increased balance period that occurs in a particular income year; and (b) the duration of the period is more than 15 days; and (c) it is not the case that: (i) the period began at the start of the income year; and (ii) another increased balance period ended at the end of the previous income year	paragraphs (1)(b) and (c) do not apply during the first 15 days of the first-mentioned increased balance period.
4	(a) an increased balance period is the first or only increased balance period that occurs in a particular income year; and (b) both: (i) the period began at the start of the income year; and (ii) another increased balance period ended at the end of the previous income year; and (c) the total duration of those increased balance periods is more than 15 days	paragraphs (1)(b) and (c) do not apply during the first 15 days of the period that consists of those increased balance periods.
5	(a) an increased balance period is the second increased balance period that occurs in a particular income year; and (b) the duration of the period is 15 days or less; and (c) item 1 or 2 applies to the first increased balance period that occurred in the income year	paragraphs (1)(b) and (c) do not apply during the first-mentioned increased balance period.

Increased balance period		
Item	**In this case...**	**this is the result...**
6	(a) an increased balance period is the second increased balance period that occurs in a particular income year; and (b) the duration of the period is more than 15 days; and (c) item 1 or 2 applies to the first increased balance period that occurred in the income year	paragraphs (1)(b) and (c) do not apply during the first 15 days of the first-mentioned increased balance period.

Translation of foreign currency

(4) For the purposes of the application of section 960-50 to this section, work out the *foreign currency equivalent of an amount of Australian currency as at a particular time in an income year by translating the foreign currency to Australian currency at the average exchange rate for the third month that preceded the income year.

Debit balances

(5) For the purposes of this section, a debit balance is to be expressed as a positive amount.

Note: For example, if you owe $1,100 on a credit card account, the debit balance of that account is $1,100.

775-250 Tax consequences of passing the limited balance test

(1) A *forex realisation gain or a *forex realisation loss you make as a result of forex realisation event 2 or 4 is disregarded if the event happens in relation to a *qualifying forex account that:
  (a) you hold at the time of the event; and
  (b) passes the limited balance test at the time of the event.

(2) If CGT event C1 or C2 happens in relation to a *qualifying forex account that:
  (a) you hold at the time of the event; and
  (b) passes the limited balance test at the time of the event;

disregard so much of any *capital gain or *capital loss you make as a result of the event as is attributable to a *currency exchange rate effect.

Note: For ***currency exchange rate effect***, see section 775-105.

775-255 Notional realisation when qualifying forex account starts to pass the limited balance test

Credit balance

(1) For the purposes of this Division, if:
  (a) you hold a *qualifying forex account; and
  (b) at a particular time:
    (i) the account starts to pass the limited balance test; and
    (ii) the account has a credit balance; and
    (iii) you have one or more rights to receive a total amount of *foreign currency represented by the credit balance of the account;

you are treated as:
  (c) having ceased to have those rights at that time; and
  (d) having re-acquired those rights immediately after that time.

Note: This means that forex realisation event 2 will happen when the account starts to pass the limited balance test.

Debit balance

(2) For the purposes of this Division, if:
  (a) you hold a *qualifying forex account; and
  (b) at a particular time:
    (i) the account starts to pass the limited balance test; and
    (ii) the account has a debit balance; and
    (iii) you have one or more obligations to pay a total amount of *foreign currency represented by the debit balance of the account;

you are treated as:
  (c) having ceased to have those obligations at that time; and
  (d) having started to again owe those obligations immediately after that time.

Note: This means that forex realisation event 4 will happen when the account starts to pass the limited balance test.

775-260 Modification of tax recognition time

Forex realisation event 2

(1) If:

(a) forex realisation event 2 happens in relation to a *qualifying forex account that:

(i) you hold at the time of the event; and

(ii) does not pass the limited balance test at the time of the event; and

(b) apart from this subsection, the tax recognition time, worked out using the table in subsection 775-45(7), happened at a time when the account passed the limited balance test;

section 775-45 applies to you as if the tax recognition time were the most recent time before the forex realisation event when the account ceased to pass the limited balance test (despite subsection 775-45(7)).

Forex realisation event 4

(2) If:

(a) forex realisation event 4 happens in relation to a *qualifying forex account that:

(i) you hold at the time of the event; and

(ii) does not pass the limited balance test at the time of the event; and

(b) apart from this subsection, the tax recognition time, worked out using the table in subsection 775-55(7), happened at a time when the account passed the limited balance test;

section 775-55 applies to you as if the tax recognition time were the most recent time before the forex realisation event when the account ceased to pass the limited balance test (despite subsection 775-55(7)).

Subdivision 775-E—Retranslation for qualifying forex accounts

Guide to Subdivision 775-E

775-265 What this Subdivision is about

If you choose retranslation for a qualifying forex account:

(a) a forex realisation gain or a forex realisation loss you make in relation to the account as a result of forex realisation event 2 or 4 is disregarded; and

(b) forex realisation event 8 enables any gains or losses to be worked out on a retranslation basis.

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775-280 Tax consequences of choosing retranslation for an account
775-285 Retranslation of gains and losses relating to a qualifying forex account—forex realisation event 8

[This is the end of the Guide.]

Operative provisions

775-270 You may choose retranslation for a qualifying forex account

(1) You may choose retranslation for a *qualifying forex account held by you.

(2) A choice must be in writing.

(2A) If:

(a) you make a choice within 30 days after the commencement of this subsection; and

(b) the choice is expressed to have come into effect on a specified day; and

(c) the specified day is included in the period:
(i) beginning on 1 July 2003; and
(ii) ending on the day on which the choice is made;

the choice is taken to have come into effect on the specified day.

(3) A choice continues in effect until:
(a) you cease to hold the account; or
(b) the account ceases to be a *qualifying forex account; or
(c) a withdrawal of the choice takes effect;

whichever happens first.

Note: For withdrawal of choice, see section 775-275.

775-275 Withdrawal of choice

(1) If you have made a choice for retranslation for a *qualifying forex account held by you, you may withdraw your choice.

(2) A withdrawal must be in writing.

(3) Withdrawing a choice does not prevent you from making a fresh choice under section 775-270.

775-280 Tax consequences of choosing retranslation for an account

(1) A *forex realisation gain or *forex realisation loss you make as a result of forex realisation event 2 or 4 is disregarded if:
(a) the event happens in relation to a *qualifying forex account that you hold; and
(b) you have made a choice for retranslation for the account; and
(c) the choice is in effect when the event happens.

(2) If:
(a) CGT event C1 or C2 happens in relation to a *qualifying forex account that you hold at the time of the event; and
(b) you have made a choice for retranslation for the account; and
(c) the choice is in effect when the event happens;

disregard so much of any *capital gain or *capital loss you make as a result of the event as is attributable to a *currency exchange rate effect.

Note: For ***currency exchange rate effect***, see section 775-105.

775-285 Retranslation of gains and losses relating to a qualifying forex account—forex realisation event 8

Forex realisation event 8

(1) ***Forex realisation event 8*** happens if:

(a) you have made a choice for retranslation for a *qualifying forex account held by you; and

(b) that choice was in effect throughout a continuous period (the ***retranslation period***) consisting of:

(i) an income year; or

(ii) a particular part of an income year; and

(c) either:

(i) there is a positive retranslation amount for the account for the retranslation period (worked out under subsection (2)); or

(ii) there is a negative retranslation amount for the account for the retranslation period (worked out under subsection (3)).

Retranslation amount

(2) If the amount worked out using the formula in subsection (4) is a positive amount, that amount is a ***positive retranslation amount*** for the account for the retranslation period.

(3) If the amount worked out using the formula in subsection (4) is a negative amount, that amount is a ***negative retranslation amount*** for the account for the retranslation period.

(4) Work out an amount for the account for the retranslation period using the formula:

Closing balance of account for the retranslation period	–	Opening balance of account for the retranslation period	–	Total deposits made to account during the retranslation period	+	Total withdrawals made from account during the retranslation period

(5) For the purposes of subsection (4), a debit balance is to be expressed as a negative amount (for example, a debit balance of $50,000 is to be expressed as – $50,000).

Forex realisation gain

(6) You make a ***forex realisation gain*** if there is a positive retranslation amount for the account for the retranslation period. The amount of the ***forex realisation gain*** is the positive retranslation amount.

Forex realisation loss

(7) You make a ***forex realisation loss*** if there is a negative retranslation amount for the account for the retranslation period. The amount of the ***forex realisation loss*** is the negative retranslation amount.

(8) For the purposes of subsection (7), reverse a negative amount (for example, a negative retranslation amount of – $50,000 will become a forex realisation loss of $50,000).

Translation of foreign currency

(9) For the purposes of the application of section 960-50 to this section:

(a) if a retranslation period for an account did not begin immediately after the end of another retranslation period for the account—the opening balance of the account for the first-mentioned retranslation period is to be translated to Australian currency at the exchange rate applicable at the start of the first-mentioned retranslation period; and

(b) if a retranslation period for an account began immediately after the end of another retranslation period for the account—the opening balance of the account for the first-mentioned retranslation period is to be translated to Australian currency at the exchange rate applicable at the end of the other retranslation period; and

(c) the closing balance of an account for a retranslation period is to be translated to Australian currency at the exchange rate applicable at the end of the retranslation period; and

(d) each deposit is to be translated to Australian currency at the exchange rate applicable at the time of the deposit; and

(e) each withdrawal is to be translated to Australian currency at the exchange rate applicable at the time of the withdrawal.

Deposits

(10) For the purposes of this section, a ***deposit*** includes any amount paid or transferred into the account.

Withdrawals

(11) For the purposes of this section, a ***withdrawal*** includes any amount paid, advanced, drawn or transferred out of the account.

59 Before Subdivision 960-E

Insert:

Subdivision 960-C—Foreign currency

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960-49 Objects of this Subdivision

The objects of this Subdivision are as follows:

(a) to set out a basic rule requiring an amount in a *foreign currency to be translated into an Australian dollar amount (the basic rule is subject to the functional currency rules in Subdivision 960-D and to certain specific exclusions);

(b) to ensure that the rules for identifying the exchange rate for the translation of a foreign currency amount into Australian dollars:

(i) reflect an appropriate prevailing exchange rate; and

(ii) take into account, as appropriate, commercial practices for the translation of foreign currency amounts into Australian dollars.

960-50 Translation of amounts into Australian currency

(1) For the purposes of this Act, an amount in a *foreign currency is to be translated into Australian currency.

Examples of an amount

(2) The following are examples of an amount:
  (a) an amount of *ordinary income;
  (b) an amount of an expense;
  (c) an amount of an obligation;
  (d) an amount of a liability;
  (e) an amount of a receipt;
  (f) an amount of a payment;
  (g) an amount of consideration;
  (h) a value.

(3) The amounts set out in paragraphs (2)(b) to (h) may be amounts on revenue account, capital account or otherwise.

Amounts that are elements in the calculation of other amounts

(4) In applying this section:
  (a) first, translate any amounts that are elements in the calculation of other amounts (except *special accrual amounts); and
  (b) then, calculate the other amounts.

Special accrual amounts

(5) In applying this section:
  (a) calculate a *special accrual amount without translation; and
  (b) then, translate the special accrual amount.

Special translation rules

(6) The table has effect:

Special translation rules		
Item	**In this case...**	**this is the result...**
1	forex realisation event 4 happens when you cease to have an obligation, or a part of an obligation, to pay *foreign currency, and neither of subparagraphs 775-55(1)(b)(ii) and (iii) applies	for the purposes of section 775-55, the amount of the obligation, or the part of the obligation, at the tax recognition time (see subsection 775-55(7)) is to be translated to Australian currency at the exchange rate applicable at that time.
2	cost of a *depreciating asset	(a) if you incur an obligation in return for your starting to hold the asset, and the obligation is not satisfied before you begin to hold the asset (worked out under Division 40)—the cost of the asset is to be translated to Australian currency at the exchange rate applicable when you begin to hold the asset; or (b) if you incur an obligation in return for your starting to hold the asset, and the obligation is satisfied before you begin to hold the asset (worked out under Division 40)—the cost of the asset is to be translated to Australian currency at the exchange rate applicable when the obligation is satisfied.
3	value of an item of *trading stock on hand at the end of an income year, where you have elected to use its *cost	the value is to be translated to Australian currency at the exchange rate applicable at the time when the item became on hand.
4	value of an item of *trading stock on hand at the end of an income year, where you have elected to use: (a) its market selling value; or (b) its replacement value	the value is to be translated to Australian currency at the exchange rate applicable at the end of the income year.

Special translation rules		
Item	**In this case...**	**this is the result...**
5	a transaction or event that: (a) involves an amount of money or the *market value of other property; and (b) is relevant for the purposes of Part 3-1 or 3-3; to the extent to which the amount or value is relevant for the purposes of Part 3-1 or 3-3	the amount or value is to be translated, for the purposes of Part 3-1 or 3-3, to Australian currency at the exchange rate applicable at the time of the transaction or event.
6	an amount of *ordinary income	(a) if the amount is received at or before the time when it is derived—the amount is to be translated to Australian currency at the exchange rate applicable at the time of receipt; or (b) in any other case—the amount is to be translated to Australian currency at the exchange rate applicable when it is derived.
7	an amount of *statutory income (other than an amount included in assessable income under Division 102)	(a) if the amount is received at or before the time when the requirement first arose to include it in your assessable income—the amount is to be translated to Australian currency at the exchange rate applicable at the time of receipt; or (b) in any other case—the amount is to be translated to Australian currency at the exchange rate applicable at the time when the requirement first arose to include it in your assessable income.

Special translation rules		
Item	**In this case...**	**this is the result...**
8	an amount that you deduct (other than under Division 40)	(a) if the amount is paid at or before the time when it became deductible—the amount is to be translated to Australian currency at the exchange rate applicable at the time of payment; or (b) in any other case—the amount is to be translated to Australian currency at the exchange rate applicable at the time when it became deductible.
9	an amount that is relevant for the purposes of quantifying: (a) the total of all of a company's *production expenditure on a *film; or (b) the total of the company's *qualifying Australian production expenditure on a film; to the extent to which the amount is relevant for the purposes of Division 376	the amount is to be translated to Australian currency at the average of the exchange rates applicable from time to time during the period that: (a) starts on the earliest day on which: (i) principal photography takes place; or (ii) the production of the animated image commences; and (b) ends when the film is *completed.
10	an amount that Division 12 of Part 2.5 in Schedule 1 to the *Taxation Administration Act 1953* requires to be withheld from a payment	the amount is to be translated to Australian currency at the exchange rate applicable at the time when the amount is required to be withheld under that Division.
11	an amount of a receipt or a payment, where none of the above items apply	the amount is to be translated to Australian currency at the exchange rate applicable at the time of the receipt or payment.

(7) Subsection (6) has effect subject to any modifications made by the regulations. For this purpose, ***modifications*** includes additions, omissions and substitutions.

Regulations about translation

(8) An entity must comply with the regulations (if any) in translating an amount into Australian currency.

Note: For example, the regulations could require the use of a particular translation method and require consistency in the use of the translation method.

(9) Regulations made for the purposes of subsection (8) may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any of the *accounting standards:

(a) as in force or existing at a particular time; or

(b) as in force or existing from time to time.

Operation of certain provisions unaffected

(10) This section does not affect the operation of the following provisions:

(a) section 775-210 (notional loans under *facility agreements);

(b) Subdivision 960-D (functional currency);

(c) subsection 974-35(6) (valuation of financial benefits for the purposes of the debt/equity provisions);

(d) Part XI of the *Income Tax Assessment Act 1936* (about foreign investment funds and life assurance).

960-55 Application of translation rules

(1) Section 960-50 applies to:

(a) a transaction, event or thing that:

(i) involves an amount in a *foreign currency; and

(ii) occurs on or after the applicable commencement date (within the meaning of Division 775); or

(b) a transaction, event or thing that:

(i) involves an amount in a foreign currency; and

(ii) occurs before the applicable commencement date (within the meaning of Division 775);

to the extent to which the transaction, event or thing is relevant for the purposes of Division 775; or

(c) an amount that Division 12 of Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953* requires to be withheld

from a payment, if the time when the amount is required to be withheld occurs on or after 1 July 2003; or

(d) a payment that Part 5-30 in Schedule 1 to the *Taxation Administration Act 1953* requires to be reported, if the amount is paid on or after 1 July 2003.

Note: For ***applicable commencement date***, see section 775-155.

Exceptions

(2) Despite subsection (1), section 960-50 does not apply to a transaction, event or thing that involves:

(a) an amount covered by subsection 775-165(1); or

(b) a right, or a part of a right, covered by subsection 775-165(2); or

(c) an obligation, or a part of an obligation, covered by subsection 775-165(4).

Note: Subsections 775-165(1), (2) and (4) are transitional provisions relating to forex realisation events.

(3) Despite subsection (1), section 960-50 does not apply for the purposes of working out the assessable income, deductions or tax offsets of:

(a) an *ADI; or

(b) a *non-ADI financial institution.

Subdivision 960-D—Functional currency

Guide to Subdivision 960-D

960-56 What this Subdivision is about

The net income of any of the following entities (or parts of entities) that keeps its accounts solely or predominantly in a particular foreign currency can be worked out in that currency, with the net amount being translated into Australian currency:

(a) an Australian resident who is required to prepare financial reports under section 292 of the *Corporations Act 2001*;

(b) a permanent establishment;

(c) an offshore banking unit;

(d) a controlled foreign company (CFC);

(e) a transferor trust.

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[This is the end of the Guide.]

Operative provisions

960-59 Object of this Subdivision

The object of this Subdivision is, for the purposes of reducing compliance costs and reflecting commercial practice, to allow certain entities (or parts of entities) whose accounts are kept solely or predominantly in a particular *foreign currency (the ***functional currency***) to calculate their net incomes by reference to the functional currency.

960-60 You may choose a functional currency

(1) The table has effect:

Choosing to use a functional currency			
Item	**If you are:**	**you may choose to use the *applicable functional currency to...**	**with effect from the start of...**
1	an *Australian resident who is required to prepare financial reports under section 292 of the *Corporations Act 2001*	work out so much of your taxable income or tax loss as is not subject to a choice made by you under any of the other items of this table	(a) if the choice you make under this item is a backdated startup choice (see section 960-65)—the income year in which you make the choice; or (b) in any other case—the income year following the one in which you make the choice.
2	(a) an *Australian resident carrying on an activity or business at or through an*overseas permanent establishment; or (b) a *foreign resident carrying on an activity or business at or through an *Australian permanent establishment	work out the taxable income or tax loss derived from the activity or business carried on at or through the permanent establishment	(a) if the choice you make under this item is a backdated startup choice (see section 960-65)—the income year in which you make the choice; or (b) in any other case—the income year following the one in which you make the choice.

Choosing to use a functional currency			
Item	**If you are:**	**you may choose to use the *applicable functional currency to...**	**with effect from the start of...**
3	an *offshore banking unit	work out your total assessable OB income (within the meaning of Division 9A of Part III of the *Income Act Assessment Act 1936*) and your total allowable OB deductions (within the meaning of that Division)	(a) if the choice you make under this item is a backdated startup choice (see section 960-65)—the income year in which you make the choice; or (b) in any other case—the income year following the one in which you make the choice.
4	an attributable taxpayer (within the meaning of Part X of the *Income Tax Assessment Act 1936*) of a *controlled foreign company (CFC)	work out the *attributable income of the CFC	(a) if the choice you make under this item is a backdated startup choice (see section 960-65)—the CFC's statutory accounting period (within the meaning of Part X of the *Income Act Assessment Act 1936*) in which you make the choice; or (b) in any other case—the CFC's statutory accounting period following the one in which you make the choice.

Choosing to use a functional currency			
Item	**If you are:**	**you may choose to use the *applicable functional currency to...**	**with effect from the start of...**
5	a *transferor trust	work out your attributable income (within the meaning of Division 6AAA of Part III of the *Income Tax Assessment Act 1936*)	(a) if the choice you make under this item is a backdated startup choice (see section 960-65)—the income year in which you make the choice; or (b) in any other case—the income year following the one in which you make the choice.

Note: The attributable income of a controlled foreign company is calculated separately for each attributable taxpayer—see section 381 of the *Income Tax Assessment Act 1936*.

(2) A choice must be in writing.

(3) A choice under item 1 of the table in subsection (1) continues in effect until:

(a) a withdrawal of the choice takes effect (see section 960-90); or

(b) immediately after the end of the income year in which you cease to be subject to a requirement to prepare financial reports under section 292 of the *Corporations Act 2001*;

whichever happens first.

(4) A choice under item 2, 3, 4 or 5 of the table in subsection (1) continues in effect until a withdrawal of the choice takes effect (see section 960-90).

(5) An *ADI or a *non-ADI financial institution is not entitled to make a choice under this section.

960-65 Backdated startup choice

The table has effect:

Backdated startup choice		
Item	**In this case:**	**the choice is a *backdated startup choice* if...**
1	you make a choice under item 1 of the table in subsection 960-60(1)	(a) both: (i) you were in existence at the start of the income year in which you made the choice; and (ii) you make the choice within 90 days after the beginning of that income year or within 30 days after the commencement of this section; or (b) both: (i) you came into existence during the income year in which you made the choice; and (ii) you make the choice within 90 days after you came into existence or within 30 days after the commencement of this section.

Backdated startup choice		
Item	**In this case:**	**the choice is a *backdated startup choice* if...**
2	you make a choice under item 2 of the table in subsection 960-60(1)	(a) both: (i) the permanent establishment was in existence at the start of the income year in which you made the choice; and (ii) you make the choice within 90 days after the beginning of that income year or within 30 days after the commencement of this section; or (b) both: (i) the permanent establishment came into existence during the income year in which you made the choice; and (ii) you make the choice within 90 days after the permanent establishment came into existence or within 30 days after the commencement of this section.

Backdated startup choice		
Item	**In this case:**	**the choice is a *backdated startup choice* if...**
3	you make a choice under item 3 of the table in subsection 960-60(1)	(a) both: (i) the *offshore banking unit was in existence at the start of the income year in which you made the choice; and (ii) you make the choice within 90 days after the beginning of that income year or within 30 days after the commencement of this section; or (b) both: (i) the offshore banking unit came into existence during the income year in which you made the choice; and (ii) you make the choice within 90 days after the offshore banking unit came into existence or within 30 days after the commencement of this section.

Backdated startup choice		
Item	**In this case:**	**the choice is a *backdated startup choice* if...**
4	you make a choice under item 4 of the table in subsection 960-60(1)	(a) both: (i) you are an attributable taxpayer of the CFC at the beginning of the CFC's statutory accounting period (within the meaning of Part X of the *Income Tax Assessment Act 1936*) in which you made the choice; and (ii) you make the choice within 90 days after the beginning of the CFC's statutory accounting period or within 30 days after the commencement of this section; or (b) both: (i) you became an attributable taxpayer in relation to the CFC during the CFC's statutory accounting period (within the meaning of Part X of the *Income Tax Assessment Act 1936*) during which you made the choice; and (ii) you make the choice within 90 days after the beginning of the CFC's statutory accounting period or within 30 days after the commencement of this section.
5	you make a choice under item 5 of the table in subsection 960-60(1)	you make the choice within 90 days after the beginning of an income year or within 30 days after the commencement of this section.

960-70 What is the *applicable functional currency*?

Australian resident required to prepare financial reports under section 292 of the Corporations Act 2001

(1) If you make a choice under item 1 of the table in subsection 960-60(1) with effect from the start of a particular income year, your ***applicable functional currency*** for:

(a) that income year; and

(b) each later income year for which the choice is in effect;

is the sole or predominant *foreign currency in which you kept your accounts at the time when you made the choice.

Permanent establishment, offshore banking unit or transferor trust

(2) If you make a choice under item 2, 3 or 5 of the table in subsection 960-60(1) in relation to a *permanent establishment, an *offshore banking unit or a *transferor trust with effect from the start of a particular income year, the ***applicable functional currency*** of the establishment, unit or trust for:

(a) that income year; and

(b) each later income year for which the choice is in effect;

is the sole or predominant *foreign currency in which the establishment, unit or trust kept its accounts at the time when you made the choice.

Controlled foreign company

(3) If you make a choice under item 4 of the table in subsection 960-60(1) in relation to a *controlled foreign company (CFC) with effect from the start of a particular statutory accounting period (within the meaning of Part X of the *Income Tax Assessment Act 1936*), the ***applicable functional currency*** of the CFC for:

(a) that statutory accounting period; and

(b) each later statutory accounting period for which the choice is in effect;

is the sole or predominant *foreign currency in which the CFC kept its accounts at the time when you made the choice.

Note: The attributable income of a controlled foreign company is calculated separately for each attributable taxpayer—see section 381 of the *Income Tax Assessment Act 1936*.

Accounts

(4) For the purposes of this section, ***accounts*** means:
  (a) ledgers; and
  (b) journals; and
  (c) statements of financial performance; and
  (d) profit and loss accounts; and
  (e) balance-sheets; and
  (f) statements of financial position;

and includes statements, reports and notes attached to, or intended to be read with, any of the foregoing.

960-75 What is a *transferor trust*?

A ***transferor trust*** is a trust where, having regard to all relevant circumstances, it would be reasonable to conclude that another entity is, or is likely to be, an attributable taxpayer in relation to the trust for the purposes of Division 6AAA of Part III of the *Income Tax Assessment Act 1936*.

960-80 Translation rules

(1) The table has effect:

Translation rules		
Item	**In this case...**	**these rules apply...**
1	(a) you are an *Australian resident required to prepare financial reports under section 292 of the *Corporations Act 2001*; and (b) you have made a choice under item 1 of the table in subsection 960-60(1), and that choice is in effect for an income year	(a) first, for the purpose of working out, for the income year, so much of your taxable income or tax loss as is not the subject of a choice made by you under any other item of that table: (i) an amount that is not in the *applicable functional currency is to be translated into the applicable functional currency; and (ii) the definition of ***foreign currency*** in subsection 995-1(1) does not apply; and (iii) the applicable functional currency is taken not to be a foreign currency; and (iv) Australian currency and any other currency (except the applicable functional currency) are taken to be foreign currencies; and (b) second, so much of your taxable income as is not the subject of a choice made by you under any other item of that table is to be translated into Australian currency.

Translation rules		
Item	**In this case...**	**these rules apply...**
2	(a) you are: (i) an *Australian resident carrying on an activity or business at or through an *overseas permanent establishment; or (ii) a *foreign resident carrying on an activity or business at or through an *Australian permanent establishment; and (b) you have made a choice under item 2 of the table in subsection 960-60(1) in relation to the permanent establishment, and that choice is in effect for an income year	(a) first, for the purpose of working out, for the income year, the taxable income or tax loss derived from the activity or business carried on at or through the permanent establishment: (i) an amount that is not in the *applicable functional currency is to be translated into the applicable functional currency; and (ii) the definition of ***foreign currency*** in subsection 995-1(1) does not apply; and (iii) the applicable functional currency is taken not to be a foreign currency; and (iv) Australian currency and any other currency (except the applicable functional currency) are taken to be foreign currencies; and (b) second, the taxable income derived from the activity or business carried on at or through the permanent establishment is to be translated into Australian currency.

Translation rules		
Item	**In this case...**	**these rules apply...**
3	(a) you are an *offshore banking unit (OBU); and (b) you have made a choice under item 3 of the table in subsection 960-60(1) in relation to the OBU, and that choice is in effect for an income year	(a) first, for the purpose of working out, for the income year, your total assessable OB income (within the meaning of Division 9A of Part III of the *Income Tax Assessment Act 1936*) and your total OB deductions (within the meaning of that Division): (i) an amount that is not in the *applicable functional currency is to be translated into the applicable functional currency; and (ii) the definition of ***foreign currency*** in subsection 995-1(1) does not apply; and (iii) the applicable functional currency is taken not to be a foreign currency; and (iv) Australian currency and any other currency (except the applicable functional currency) are taken to be foreign currencies; and (b) second, the total assessable OB income and the total allowable OB deductions are to be translated into Australian currency.

Translation rules		
Item	**In this case...**	**these rules apply...**
4	(a) you are an attributable taxpayer (within the meaning of Part X of the *Income Tax Assessment Act 1936*) of a *controlled foreign company (CFC); and (b) you have made a choice under item 4 of the table in subsection 960-60(1) in relation to the CFC, and that choice is in effect for a statutory accounting period (within the meaning of Part X of the *Income Tax Assessment Act 1936*) of the CFC	(a) first, for the purpose of working out, for the statutory accounting period, the *attributable income of the CFC: (i) an amount that is not in the *applicable functional currency is to be translated into the applicable functional currency; and (ii) the definition of ***foreign currency*** in subsection 995-1(1) does not apply; and (iii) the applicable functional currency is taken not to be a foreign currency; and (iv) Australian currency and any other currency (except the applicable functional currency) are taken to be foreign currencies; and (b) second, the attributable income is to be translated into Australian currency.

Translation rules		
Item	**In this case...**	**these rules apply...**
5	(a) you are a *transferor trust; and (b) you have made a choice under item 5 of the table in subsection 960-60(1) in relation to the trust, and that choice is in effect for an income year	(a) first, for the purpose of working out, for the income year, your attributable income (within the meaning of Division 6AAA of Part III of the *Income Tax Assessment Act 1936*): (i) an amount that is not in the *applicable functional currency is to be translated into the applicable functional currency; and (ii) the definition of ***foreign currency*** in subsection 995-1(1) does not apply; and (iii) the applicable functional currency is taken not to be a foreign currency; and (iv) Australian currency and any other currency (except the applicable functional currency) are taken to be foreign currencies; and (b) second, the attributable income is to be translated into Australian currency.

Note: The attributable income of a controlled foreign company is calculated separately for each attributable taxpayer—see section 381 of the *Income Tax Assessment Act 1936*.

Examples of an amount

(2) The following are examples of an amount:

(a) an amount of *ordinary income;
(b) an amount of an expense;
(c) an amount of an obligation;
(d) an amount of a liability;
(e) an amount of a receipt;
(f) an amount of a payment;
(g) an amount of consideration;

(h) a value;

(i) a monetary limit or other amount set out in this Act or any other law of the Commonwealth.

(3) The amounts set out in paragraphs (2)(b) to (i) may be amounts on revenue account, capital account or otherwise.

Amounts that are elements in the calculation of other amounts

(4) In applying this section:

(a) first, translate any amounts that are elements in the calculation of other amounts (except *special accrual amounts); and

(b) then, calculate the other amounts.

Special accrual amounts

(5) In applying this section:

(a) calculate a *special accrual amount without translation and without applying the first rule set out in the relevant item of the table in subsection (1); and

(b) then, translate the special accrual amount to Australian currency for the purposes of applying the second rule set out in the relevant item of the table in subsection (1).

Special translation rules

(6) Subsection 960-50(6) has effect, in relation to the translation of an amount into the *applicable functional currency, as if each reference in that subsection to Australian currency were a reference to the applicable functional currency.

Regulations about translation

(7) An entity must comply with the regulations (if any) in translating an amount into:

(a) the *applicable functional currency; or

(b) Australian currency.

Note: For example, the regulations could require the use of a particular translation method and require consistency in the use of the translation method.

(8) Regulations made for the purposes of subsection (7) may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any of the *accounting standards:

(a) as in force or existing at a particular time; or

(b) as in force or existing from time to time.

960-85 Special rule about translation—events that happened before the current choice took effect

Australian resident required to prepare financial reports under section 292 of the Corporations Act 2001

(1) If:

(a) as the result of a choice (the ***current choice***) made by you under item 1 of the table in subsection 960-60(1), subsection 960-80(1) requires that an amount be translated to the *applicable functional currency; and

(b) the amount is attributable to an event that happened, or a state of affairs that came into existence, at a time (the ***event time***) before the current choice took effect;

the table has effect:

Special rule about translation

Item	In this case...	this is the result...
1	at the event time, no previous choice made by you under item 1 of the table in subsection 960-60(1) was in effect	the amount is to be translated first to Australian currency at the exchange rate applicable at the event time, and then to the *applicable functional currency at the exchange rate applicable when the current choice took effect.
2	at the event time, a previous choice made by you under item 1 of the table in subsection 960-60(1) was in effect	the amount is to be translated first to the previous *applicable functional currency at the exchange rate applicable at the event time, and then to the current applicable functional currency at the exchange rate applicable when the current choice took effect.

Permanent establishment, offshore banking unit, CFC or transferor trust

(2) If:

(a) as the result of a choice (the ***current choice***) made by you under item 2, 3, 4 or 5 of the table in subsection 960-60(1), subsection 960-80(1) requires that an amount be translated to the *applicable functional currency; and

(b) the amount is attributable to an event that happened, or a state of affairs that came into existence, at a time (the ***event time***) before the current choice took effect;

the table has effect:

Special rule about translation		
Item	**In this case...**	**this is the result...**
1	at the event time, no previous choice made by you under section 960-60 in relation to the establishment, unit, CFC or trust was in effect	the amount is to be translated first to Australian currency at the exchange rate applicable at the event time, and then to the *applicable functional currency at the exchange rate applicable when the current choice took effect.
2	at the event time, a previous choice made by you under section 960-60 in relation to the establishment, unit, CFC or trust was in effect	the amount is to be translated first to the previous *applicable functional currency at the exchange rate applicable at the event time, and then to the current applicable functional currency at the exchange rate applicable when the current choice took effect.

960-90 Withdrawal of choice

(1) The table has effect if you have made a choice under section 960-60:

Withdrawal		
Item	**In this case:**	**you may withdraw your choice with effect from immediately after the end of...**
1	(a) you are an *Australian resident who is required to prepare financial reports under section 292 of the *Corporations Act 2001*; and (b) your *applicable functional currency has ceased to be the sole or predominant currency in which you keep your accounts (within the meaning of section 960-70)	the income year in which you withdraw your choice.
2	(a) you are an *Australian resident carrying on an activity or business at or through an*overseas permanent establishment or a *foreign resident carrying on an activity or business at or through an *Australian permanent establishment; and (b) the *applicable functional currency of the permanent establishment has ceased to be the sole or predominant currency in which the establishment keeps its accounts (within the meaning of section 960-70)	the income year in which you withdraw your choice.
3	(a) you are an *offshore banking unit (OBU); and (b) the *applicable functional currency of the OBU has ceased to be the sole or predominant currency in which the OBU keeps its accounts (within the meaning of section 960-70)	the income year in which you withdraw your choice.

Withdrawal		
Item	**In this case:**	**you may withdraw your choice with effect from immediately after the end of...**
4	(a) you are an attributable taxpayer (within the meaning of Part X of the *Income Tax Assessment Act 1936*) of a *controlled foreign company (CFC); and (b) you have made a choice under item 4 of the table in subsection 960-60(1) in relation to the CFC; and (c) the *applicable functional currency of the CFC has ceased to be the sole or predominant currency in which the CFC keeps its accounts (within the meaning of section 960-70)	the CFC's statutory accounting period (within the meaning of Part X of the *Income Tax Assessment Act 1936*) in which you withdraw your choice.
5	(a) you are a *transferor trust; and (b) the *applicable functional currency of the trust has ceased to be the sole or predominant currency in which the trust keeps its accounts (within the meaning of section 960-70)	the income year in which you withdraw your choice.

(2) A withdrawal must be in writing.

(3) Withdrawing a choice does not prevent you from making a fresh choice under section 960-60.

60 Subsection 995-1(1)

Insert:

applicable functional currency has the meaning given by section 960-70.

61 Subsection 995-1(1)

Insert:

currency exchange rate effect has the meaning given by section 775-105.

62 Subsection 995-1(1)

Insert:

eligible security has the meaning given by section 775-190.

63 Subsection 995-1(1)

Insert:

facility agreement has the meaning given by section 775-185.

64 Subsection 995-1(1)

Insert:

forex cost base has the meaning given by section 775-85.

65 Subsection 995-1(1)

Insert:

foreign currency means a currency other than Australian currency.

66 Subsection 995-1(1)

Insert:

forex entitlement base has the meaning given by section 775-90.

67 Subsection 995-1(1)

Insert:

forex realisation event means any of the forex realisation events described in Division 775.

68 Subsection 995-1(1)

Insert:

forex realisation gain: for each *forex realisation event a ***forex realisation gain*** is worked out in the way described in the event.

69 Subsection 995-1(1)

Insert:

forex realisation loss: for each *forex realisation event a ***forex realisation loss*** is worked out in the way described in the event.

70 Subsection 995-1(1)

Insert:

offshore banking unit has the meaning given by section 128AE of the *Income Tax Assessment Act 1936*.

71 Subsection 995-1(1)

Insert:

non-ADI financial institution has the meaning given by subsection 128A(1) of the *Income Tax Assessment Act 1936*.

72 Subsection 995-1(1)

Insert:

qualifying forex account means an account that:

(a) is denominated in a particular *foreign currency; and

(b) is:

(i) maintained in Australia, or in a foreign country, with an *ADI; or

(ii) maintained in a foreign country with a financial institution similar to an *ADI; and

(c) either:

(i) has the primary purpose of facilitating transactions; or

(ii) is a credit card account.

73 Subsection 995-1(1)

Insert:

special accrual amount means an amount that is included in assessable income, or an amount that is a deduction from assessable income, under any of the following:

(a) Division 42A in Schedule 2E of the *Income Tax Assessment Act 1936*;

(b) Division 240 of this Act;

(c) Division 16D of Part III of the *Income Tax Assessment Act 1936*;

(d) Division 16E of Part III of the *Income Tax Assessment Act 1936*.

74 Subsection 995-1(1)

Insert:

transferor trust has the meaning given by section 960-75.

Taxation Administration Act 1953

75 Section 12-15 in Schedule 1

Repeal the section.

76 Section 425-30 in Schedule 1

Repeal the section.

Part 2—Transitional provisions

77 Transitional—Division 3B of Part III of the *Income Tax Assessment Act 1936*

(1) Despite the repeal of Division 3B of Part III of the *Income Tax Assessment Act 1936* by this Schedule, that Division continues to apply:

(a) in relation to an eligible contract entered into before the applicable commencement date (within the meaning of Division 775 of the *Income Tax Assessment Act 1997*); or

(b) for the purposes of working out the assessable income or allowable deductions of an ADI or a non-ADI financial institution (within the meaning of the *Income Tax Assessment Act 1997*);

as if that repeal had not happened.

Note: For ***applicable commencement date***, see section 775-155 of the *Income Tax Assessment Act 1997*.

(2) Despite the following amendments:

(a) the amendment of subsection 20-30(2) of the *Income Tax Assessment Act 1997* by this Schedule;

(b) the amendment of subsection 170(10) of the *Income Tax Assessment Act 1936* by this Schedule;

subsection 20-30(2) of the *Income Tax Assessment Act 1997* and subsection 170(10) of the *Income Tax Assessment Act 1936* continue to apply, in relation to the former Division 3B of Part III of the *Income Tax Assessment Act 1936*, as if those amendments had not been made.

(3) Despite the amendments made by this Schedule that omit references to sections 82Y and 82Z of the *Income Tax Assessment Act 1936* from sections 15 and 16 of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*, sections 15 and 16 of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* continue to apply, in relation to the former sections 82Y and 82Z of the *Income Tax Assessment Act 1936*, as if those amendments had not been made.

78 Transitional—sections 20, 102AAX and 391 of the *Income Tax Assessment Act 1936* and sections 103-20 and 376-60 of the *Income Tax Assessment Act 1997*

(1) Despite the repeals of sections 20, 102AAX and 391 of the *Income Tax Assessment Act 1936* and sections 103-20 and 376-60 of the *Income Tax Assessment Act 1997* by this Schedule, those sections continue to apply, in relation to a transaction, event or thing:

(a) that involves an amount in a foreign currency; and

(b) to which section 960-50 of the *Income Tax Assessment Act 1997* does not apply;

as if those repeals had not happened.

(2) Despite the following amendments:

(a) the amendment of section 102AAW of the *Income Tax Assessment Act 1936* by this Schedule;

(b) the amendment of section 389 of the *Income Tax Assessment Act 1936* by this Schedule;

sections 102AAW and 389 of the *Income Tax Assessment Act 1936* continue to apply, in relation to the former section 20 of the *Income Tax Assessment Act 1936*, as if those amendments had not been made.

79 Transitional—sections 12-15 and 425-30 in Schedule 1 to the *Taxation Administration Act 1953*

Despite the repeals of sections 12-15 and 425-30 in Schedule 1 to the *Taxation Administration Act 1953* by this Schedule, those sections continue to apply, in relation to an amount:

(a) that is in a foreign currency; and

(b) to which section 960-50 of the *Income Tax Assessment Act 1997* does not apply;

as if those repeals had not happened.

[*Minister's second reading speech made in—*
House of Representatives on 29 May 2003
Senate on 24 June 2003]

(68/03)